

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:

Video Conference via Zoom

Meeting date: 15 March 2021

Meeting time: 09.30

For further information contact:

Gareth Williams

Committee Clerk

0300 200 6565

SeneddLJC@senedd.wales

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 (09.00–09.30)

- 1 Introduction, apologies, substitutions and declarations of interest
09.30
- 2 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3
09.30–09.35 (Pages 1 – 2)
CLA(5)–09–21 – Paper 1 – Statutory instruments with clear reports
Affirmative Resolution Instruments
 - 2.1 SL(5)756 – The Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) Regulations 2021
 - 2.2 SL(5)779 – The Official Statistics (Wales) (Amendment) Order 2021
- 3 Instruments that raise issues to be reported to the Senedd under Standing Order 21.2 or 21.3
09.35–09.40
Composite Negative Resolution Instruments



Senedd Cymru
Welsh Parliament

3.1 SL(5)770 – The Education (Student Loans) (Repayment) (Amendment) Regulations 2021

(Pages 3 – 15)

CLA(5)–09–21 – Paper 2 – Report

CLA(5)–09–21 – Paper 3 – Regulations

CLA(5)–09–21 – Paper 4 – Explanatory Memorandum
Affirmative Resolution Instruments

3.2 SL(5)757 – Local Government and Elections (Wales) Act 2021 (Consequential Amendments and Miscellaneous Provisions) Regulations 2021

(Pages 16 – 42)

CLA(5)–09–21 – Paper 5 – Report

CLA(5)–09–21 – Paper 6 – Regulations

CLA(5)–09–21 – Paper 7 – Explanatory Memorandum

3.3 SL(5)758 – The Education Workforce Council (Interim Suspension Orders) (Additional Functions) (Wales) Order 2021

(Pages 43 – 81)

CLA(5)–09–21 – Paper 8 – Report

CLA(5)–09–21 – Paper 9 – Regulations

CLA(5)–09–21 – Paper 10 – Explanatory Memorandum

3.4 SL(5)769 – The Agricultural Support (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021

(Pages 82 – 132)

CLA(5)–09–21 – Paper 11 – Report

CLA(5)–09–21 – Paper 12 – Regulations

CLA(5)–09–21 – Paper 13 – Explanatory Memorandum

Made Affirmative Resolution Instruments

3.5 SL(5)783 – The Land Transaction Tax (Temporary Variation of Rates and Bands for Residential Property Transactions) (Wales) (Amendment) Regulations 2021

(Pages 133 – 146)

CLA(5)–09–21 – Paper 14 – Report

CLA(5)–09–21 – Paper 15 – Regulations

CLA(5)–09–21 – Paper 16 – Explanatory Memorandum

**CLA(5)–09–21 – Paper 17 – Letter from the Minister for Finance and
Trefnydd, 3 March 2021**

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

09.40–09.45

4.1 SL(5)764 – The Corporate Joint Committees (Amendment of Schedule 6 to the Welsh Language (Wales) Measure 2011) Regulations 2021

(Pages 147 – 150)

CLA(5)–09–21 – Paper 18 – Report

CLA(5)–09–21 – Paper 19 – Welsh Government response

5 Written Statements under Standing Order 30C

09.45–09.50

5.1 WS–30C(5)217 – The Greenhouse Gas Emissions (Kyoto Protocol Registry) (Amendments) (EU Exit) Regulations 2021

(Pages 151 – 155)

CLA(5)–09–21 – Paper 20 – Written statement

CLA(5)–09–21 – Paper 21 – Commentary

6 Papers to note

09.50–09.55

6.1 Letter from The Kennel Club: The Animal Welfare (Licensing of Activities Involving Animals) (Wales) Regulations 2021

(Pages 156 – 157)

**CLA(5)–09–21 – Paper 22 – Letter from Dr Edward Hayes, Head of Public
Affairs, The Kennel Club, 9 March 2021**

6.2 Letter from the Minister for Environment, Energy and Rural Affairs: Committee report on the Welsh Government's Supplementary Legislative Consent Memorandum on the Environment Bill

(Pages 158 – 183)

CLA(5)–09–21 – Paper 23 – Letter from the Minister for Environment, Energy and Rural Affairs, 9 March 2021

- 6.3 Letter from the Minister for Environment, Energy and Rural Affairs: The Official Controls (Temporary Measure) (Covid–19) (Amendments) Regulations 2021 and The Organics (Amendment) Regulations 2021**

(Pages 184 – 189)

CLA(5)–09–21 – Paper 24 – Letter from the Minister for Environment, Energy and Rural Affairs, 12 March 2021

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

09.55

- 8 Legislative Consent Memorandum on the Animal Welfare (Sentencing) Bill – consideration of draft report**

09.55–10.05

(Pages 190 – 194)

CLA(5)–09–21 – Paper 25 – Draft report

- 9 Legislative Consent Memorandum on the Armed Forces Bill – consideration of draft report**

10.05–10.15

(Pages 195 – 200)

CLA(5)–09–21 – Paper 26 – Draft report

- 10 Legacy work – consideration of draft report**

10.15–11.00

(Pages 201 – 256)

CLA(5)–09–21 – Paper 27 – Draft report

Date of the next meeting – 22 March 2021

Statutory Instruments with Clear Reports 15 March 2021

SL(5)756 – The Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) Regulations 2021

Procedure: Affirmative

These Regulations amend the Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014 ("the 2014 Regulations") which make provision for which classes of persons who are subject to immigration control are eligible for an allocation of housing accommodation and for housing assistance.

Regulation 3 amends regulation 3 of the 2014 Regulations which relates to the eligibility of persons subject to immigration control for an allocation of housing accommodation under the Housing Act 1996 ("1996 Act"). It prescribes an additional class of persons subject to immigration control, namely stateless persons, who are eligible for an allocation of housing accommodation under the 1996 Act.

Regulation 4 amends regulation 5(1) of the 2014 Regulations which relates to the eligibility of persons subject to immigration control for housing assistance under the Housing (Wales) 2014 Act. It prescribes an additional class of persons, namely stateless persons, who are eligible for such assistance.

Parent Act: Housing Act 1996, Housing (Wales) Act 2014

Date Made:

Date Laid:

Coming into force date: 19 March 2021

SL(5)779 – The Official Statistics (Wales) (Amendment) Order 2021

Procedure: Affirmative

This Order is proposed to be made by the Welsh Ministers under section 6(1)(b)(iii) and (2) of the Statistics and Registration Service Act 2007 ("the 2007 Act").

It amends the Schedule to the Official Statistics (Wales) Order 2017 to provide that statistics produced, or to be produced, by Digital Health and Care Wales are official statistics for the purpose of Part 1 of the 2007 Act.



Digital Health and Care Wales was established as a Special Health Authority by the Digital Health and Care Wales (Establishment and Membership) Order 2020 on 30 December 2020.

Parent Act: Statistics and Registration Service Act 2007

Date Made:

Date Laid:

Coming into force date: 01 April 2021



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

Legislation, Justice and Constitution Committee

Pack Page 2

SL(5)770 – The Education (Student Loans) (Repayment) (Amendment) Regulations 2021

Background and Purpose

These Regulations amend the Education (Student Loans) (Repayment) Regulations 2009 (“the 2009 Regulations”), which govern the repayment of income-contingent student loans in England and Wales. The changes are consequential to the change to the threshold at which Scottish student loans are to begin to be repaid.

The purpose of the Regulations is to make changes to the 2009 Regulations to facilitate:

- The introduction of a new and distinct earnings-based repayment threshold for loans made under the Education (Scotland) Act 1980, defined as “Scottish Student Loans”;
- The provision of electronic format information notices to borrowers;
- An amendment to Regulation 17(ca)(ii) to clarify that it does not confer a discretionary function on Her Majesty’s Revenue and Customs (HMRC).

Where individuals are repaying another student loan and a Scottish student loan, the Regulations will provide for how an apportionment of repayment is to be calculated between the repayment plans.

The 2009 Regulations, which were made as composite regulations by the Welsh Ministers (in relation to Wales) and the Secretary of State, contain provisions (not devolved to the Welsh Ministers) which are made by the Secretary of State in relation to England and Wales which concern the tax system operated by HMRC. Some other provisions are made by the Welsh Ministers in relation to Wales and the Secretary of State in relation to England.

Procedure

Composite negative.

The Regulations were made by both the Welsh Ministers and the Secretary of State, before being laid before both the Senedd and the United Kingdom Parliament. 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. The United Kingdom Parliament can also annul the Regulations, in accordance with the rules for annulment that apply to the United Kingdom Parliament.

Technical Scrutiny

The following point is 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

These Regulations have been made as a composite instrument, meaning the Regulations have been: (a) made by both the Welsh Ministers and the Secretary of State, and (b) laid before both the Senedd and the UK Parliament.

As a result, the Regulations have been made in English only.

The Explanatory Memorandum explains that:

"Given the composite nature of the regulations and that no routine Parliamentary processes exist by which to lay bilingual regulations before Parliament, these Regulations will exceptionally be made in English only."

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 not required.

Legal Advisers

Legislation, Justice and Constitution Committee

5 March 2021



STATUTORY INSTRUMENTS

2021 No. 191

EDUCATION

**The Education (Student Loans) (Repayment) (Amendment)
Regulations 2021**

<i>Made</i>	- - - -	<i>24th February 2021</i>
<i>Laid before Parliament</i>		<i>26th February 2021</i>
<i>Laid before Senedd Cymru</i>		<i>26th February 2021</i>
<i>Coming into force</i>	- -	<i>6th April 2021</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 22(1), (2), (3) and (5) and 42(6) of the Teaching and Higher Education Act 1998^(a) and sections 73(f) and 73B of the Education (Scotland) Act 1980^(b).

The Welsh Ministers make the following Regulations in exercise of the powers conferred on the Secretary of State by sections 22(1), (2) and (3) and 42(6) of the Teaching and Higher Education Act 1998, now exercisable by them^(c).

Citation and commencement

1. These Regulations may be cited as the Education (Student Loans) (Repayment) (Amendment) Regulations 2021 and come into force on 6th April 2021.

-
- (a) 1998 c. 30; section 22 was amended by section 146(2) of, and Schedule 11 to, the Learning and Skills Act 2000 (c. 21), paragraph 236 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1), section 147(3) of the Finance Act 2003 (c. 14), sections 42(1) and 43 of, and Schedule 7 to, the Higher Education Act 2004 (c. 8), section 257(2) of the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), section 76 of the Education Act 2011 (c. 21), section 88 of the Higher Education and Research Act 2017 (c. 29) and S.I. 2013/1881. Section 43(1) of the Teaching and Higher Education Act 1998 defines “prescribed” and “regulations”.
- (b) 1980 c. 44; section 73(f) was amended by section 29(1) of the Teaching and Higher Education Act 1998 and section 3(2) of the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp 6). Section 73B was inserted by section 29(2) of the Teaching and Higher Education Act 1998 and amended by section 3(3) of the Education (Graduate Endowment and Student Support) (Scotland) Act 2001, paragraph 149 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1), section 34(1) of the Bankruptcy and Diligence etc (Scotland) Act 2007 (asp 3) and paragraph 8 of Schedule 8 to the Bankruptcy (Scotland) Act 2016 (asp 21).
- (c) The Secretary of State’s functions in section 22(2)(a) to (i) and (k) of the Teaching and Higher Education Act 1998 were transferred to the National Assembly for Wales so far as they relate to making provision in relation to Wales by section 44 of the Higher Education Act 2004 (c. 8), with subsection (2)(a), (c) and (k) exercisable concurrently with the Secretary of State. The Secretary of State’s function in section 42 was transferred, in so far as exercisable in relation to Wales, to the National Assembly for Wales by S.I. 1999/672. The above functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32). The National Assembly for Wales was renamed Senedd Cymru, or the Welsh Parliament, by section 2 of the Senedd and Elections (Wales) Act 2020 (anaw. 1).

Amendment of the Education (Student Loans) (Repayment) Regulations 2009

2. The Education (Student Loans) (Repayment) Regulations 2009(a) are amended in accordance with regulations 3 to 11.

Amendment of regulation 3 (interpretation)

3. In regulation 3(b)—

- (a) for the definition of “repayment threshold” substitute—
““repayment threshold” has the meaning given in regulation 29(7) to (10);”; and
- (b) after the definition of “repayment threshold year” insert—
““Scottish student loan” means a student loan within the meaning given in regulation 6;
”.

Amendment of regulation 8 (service by post or electronic communication)

4. In regulation 8(1), for the words from “post” to the end substitute “post or by an electronic format”.

Amendment of regulation 17 (date of repayment)

5. In regulation 17(ca)(ii)(c), for the words from “such” to “that adjustment” substitute “the day on which that adjustment is made or the last day of the relevant tax year if the adjustment is made outside the relevant tax year”.

Amendment of regulation 18A (division of repayment)

6. In regulation 18A(d)—

- (a) in paragraph (1), after “not a post-2012 student loan” in both places it occurs insert “nor a Scottish student loan”;
- (b) after paragraph (1) insert—
“(1A) Subject to paragraph (2), where a borrower both has a student loan which is neither a post-2012 student loan nor a Scottish student loan, and has a Scottish student loan, and it is time for the borrower to repay both loans in accordance with regulation 15, the repayment will be divided between the loans so that—
 - (a) the part of the repayment relating to income above the repayment threshold in regulation 29(8B) is to reduce the outstanding balance of the Scottish student loan; and
 - (b) the part of the repayment relating to income above the applicable repayment threshold in regulation 29(7) up to and including the repayment threshold in regulation 29(8B) is to reduce the outstanding balance of the student loan which is not a post-2012 student loan nor a Scottish student loan.
(1B) Subject to paragraph (2), where a borrower has a post-2012 student loan and has a Scottish student loan, and it is time for the borrower to repay both loans in accordance with regulation 15, the repayment will be divided between the loans so that—
 - (a) the part of the repayment relating to income above the repayment threshold in regulation 29(8) is to reduce the outstanding balance of the post-2012 student loan; and

(a) S.I. 2009/470.

(b) Regulation 3 was amended by S.I. 2012/1309, 2017/831, 2018/284, 2018/599 and 2018/810; there are other amending instruments but none is relevant.

(c) Regulation 17(ca) was inserted by S.I. 2019/189.

(d) Regulation 18A was inserted by S.I. 2012/1309 and amended by 2019/189.

- (b) the part of the repayment relating to income above the repayment threshold in regulation 29(8B) up to and including the repayment threshold in regulation 29(8) is to reduce the outstanding balance of the student loan which is a Scottish student loan.

(1C) Subject to paragraph (2), where a borrower has a student loan which is neither a post-2012 student loan nor a Scottish student loan, and has a post-2012 student loan, and has a Scottish student loan, and it is time for the borrower to repay all three loans in accordance with regulation 15, the repayment will be divided between the loans so that—

- (a) the part of the repayment relating to income above the repayment threshold in regulation 29(8) is to reduce the outstanding balance of the post-2012 student loan;
- (b) the part of the repayment relating to income above the repayment threshold in regulation 29(8B) up to and including the repayment threshold in regulation 29(8) is to reduce the outstanding balance of the student loan which is a Scottish student loan; and
- (c) the part of the repayment relating to income above the applicable repayment threshold in regulation 29(7) up to and including the repayment threshold in regulation 29(8B) is to reduce the outstanding balance of the student loan which is not a post-2012 student loan nor a Scottish student loan.”;
- (c) in paragraph (2)—
 - (i) for “paragraph (1)” substitute “paragraphs (1) to (1C)”;
 - (ii) for “and 29(8)” substitute “, 29(8) and 29(8B)”.

Amendment of regulation 20A (excess payments: more than one loan)

7. In regulation 20A(1)(a)(a)—

- (a) in paragraphs (ii) and (iii)—
 - (i) for “not” substitute “neither”;
 - (ii) at the end insert “nor a Scottish student loan”;
- (b) at the end of paragraph (ii) omit “or”;
- (c) at the end of paragraph (iii), before “and” insert—
 - “(iv) a Scottish student loan and a student loan which is neither a post-2012 student loan nor a Scottish student loan;
 - (v) a Scottish student loan and a post-2012 student loan; or
 - (vi) a Scottish student loan and a postgraduate degree loan;”.

Amendment of regulation 23 (information notices)

8. In regulation 23(1), for “at the borrower’s home address” substitute “by post or by an electronic format”.

Amendment of regulation 24 (penalties and penalty notices)

9. In regulation 24(5), for “at the borrower’s home address” substitute “by post or by an electronic format”.

Amendment of regulation 29 (time for and amount of repayments)

10. In regulation 29(b)—

-
- (a) Regulation 20A was inserted by S.I. 2017/831 and amended by S.I. 2018/599.
 - (b) Regulation 29 was amended by S.I. 2012/1309, 2013/607, 2014/651, 2017/831 and 2018/284; there are other amending instruments but none is relevant.

- (a) in paragraph (7), after “(8)” insert “, (8B)”;
- (b) after paragraph (8A) insert—
 - “(8B) Subject to paragraph (9), the repayment threshold in relation to a Scottish student loan is that set out in regulation 2 (interpretation) of the Repayment of Student Loans (Scotland) Regulations 2000 as that regulation had effect on the day on which these Regulations come into force(a).”;
- (c) for paragraph (9) substitute—
 - “(9) The repayment threshold is that set out in paragraph (7)(a) or (b) (as the case may be) where—
 - (a) a borrower has a post-2012 student loan and a student loan which is neither a post-2012 student loan nor a Scottish student loan;
 - (b) a borrower has—
 - (i) a student loan which is neither a post-2012 student loan nor a Scottish student loan; and
 - (ii) a Scottish student loan;
 - (c) a borrower has—
 - (i) a student loan which is neither a post-2012 student loan nor a Scottish student loan;
 - (ii) a post-2012 student loan; and
 - (iii) a Scottish student loan.
 - (10) The repayment threshold where a borrower has a post-2012 student loan and a Scottish student loan is that set out in paragraph (8B).”.

Amendment of regulation 44 (amount of repayments)

11. In regulation 44(7)(b)—

- (a) for “not a post-2012 student loan” insert “neither a post-2012 student loan nor a Scottish student loan”;
- (b) for “29(7)(b) or (c) (as the case may be)” substitute “29(7)(b)”.

24th February 2021

Michelle Donelan
Minister of State
Department for Education

24th February 2021

Kirsty Williams
Minister for Education, one of the Welsh Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Education (Student Loan) (Repayment) Regulations 2009 (S.I. 2009/470) (“the Principal Regulations”), which make provision for the repayment of income-contingent student loans in England and Wales. The changes are consequential to the change to the threshold at which Scottish student loans are to begin to be repaid.

Regulations 3 amends definitions in the Principal Regulations.

(a) S.S.I. 2000/110, amended by S.S.I. 2012/22, 2016/82 and 2021/8; there are other amending instruments but none is relevant.
(b) Regulation 44(7) was inserted by S.I. 2013/607.

Regulation 4 removes the requirement in regulation 8(1) of the Principal Regulations for consent to be given to notices being sent by electronic format.

Regulation 5 amends regulation 17 of the Principal Regulations to specify that there is an adjustment to a deduction made by an employer under Part 4, the amount deducted is to be deemed received by the authority to whom the repayment is to be made on the day the adjustment is made or, where the adjustment is made outside of the relevant tax year, the last day of the relevant tax year.

Regulation 6 amends regulation 18A of the Principal Regulations which relates to division of repayments when a borrower has more than one type of student loan. With the threshold for Scottish student loans having changed, and a new Scottish student loan plan having been created (which reflects the changes to the terms and conditions relating to loan repayments for existing and future Scottish borrowers), regulation 6 adds into regulation 18A provision as to how repayments are to be divided when one of the student loans is a Scottish student loan. Provision is made for the various different combinations of loan types a borrower might have.

Regulation 7 amends regulation 20A of the Principal Regulations which relates to excess payments where a borrower has more than one type of loan. Regulation 7 adds to the list, in regulation 20A(1), of combinations of student loans a borrower might have, and to which regulation 20A applies, combinations of Scottish student loans with other student loan types.

Regulation 8 amends regulation 23 of the Principal Regulations to allow an information notice to be served electronically.

Regulation 9 amends regulation 24 of the Principal Regulations to allow a penalty notice to be served electronically.

Regulation 10 amends regulation 29 of the Principal Regulations to add provision relating to repayment thresholds for Scottish student loans both when they are the only type of student loan a borrower has and when the borrower has other types as well. It inserts a new paragraph (8B) into regulation 29 providing that the threshold for repayment of Scottish student loan when that is the only student loan a borrower has is that set out in regulation 2 of the Repayment of Student Loans (Scotland) Regulations 2000 (S.S.I. 2000/110) and provides that where someone has a combination of a Scottish student loan and another type of student loan(s), the repayment threshold is either that set out in regulation 29(8B) where the types of loans a borrower has are a Scottish student loan and a post-2012 student loan, or regulation 29(7) in the case of all other combinations of student loan types.

Regulation 11 amends regulation 44 of the Principal Regulations to provide that the default threshold for a Scottish student loan for the purposes of that regulation is the repayment threshold set out in regulation 29(7)(b) or (c).

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen. The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to the exercise of the Welsh Ministers' functions in 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 Higher Education Division, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

Explanatory Memorandum to the Education (Student Support) (Repayment) (Amendment) Regulations 2021

This Explanatory Memorandum has been prepared by Higher Education Division and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Education (Student Support) (Repayment) Regulations 2021. I am satisfied the benefits justify the likely costs.

Kirsty Williams MS
Minister for Education
26 February 2021

PART 1

1. Description

The Education (Student Loans) (Repayment) (Amendment) Regulations 2021 ('the Regulations') provides for amendments to be made to the Education (Student Loans) (Repayment) Regulations 2009 (SI 2009/470) ("the 2009 Regulations").

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

The Regulations further amend the 2009 Regulations as amended. The 2009 Regulations were made as composite regulations by the Welsh Ministers (in relation to Wales) and the Secretary of State. They govern repayments of student loans by borrowers who have taken out income-contingent loans for courses which began on or after September 1998. The 2009 Regulations contain provisions (not devolved to the Welsh Ministers) which are made by the Secretary of State in relation to England and Wales which concern the tax system operated by HMRC. Some other provisions are made by the Welsh Ministers in relation to Wales and the Secretary of State in relation to England.

This composite statutory instrument is subject to the negative resolution procedure in Senedd Cymru and in the UK Parliament. Given the composite nature of the regulations and that no routine Parliamentary processes exist by which to lay bilingual regulations before Parliament, these Regulations will exceptionally be made in English only.

3. Legislative background

The Regulations will be subject to the negative procedure and made using powers under sections 22, and 42(6) of the Teaching and Higher Education Act 1998. In particular section 22(2) provides for regulations to prescribe requirements or other provisions, whether as to repayment or otherwise. Section 22(3) makes provision for regulations made by virtue of section 22(2) to include requirements for such loans to be repaid in such manner, at such times, and to such person or body as may be prescribed from time to time.

The Secretary of State's functions in section 22(2)(2)(a) of the 1998 Act were transferred to the National Assembly for Wales so far as they relate to making provision in relation to Wales by section 44 of the Higher Education Act 2004 and are exercisable concurrently with the Secretary of State. The Secretary of State's

function in section 42 was transferred, in so far as exercisable in relation to Wales, to the National Assembly for Wales by S.I. 1999/672. All the above functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

4. Purpose and intended effect of the legislation

Loans are made available to support eligible students ordinarily resident in Wales undertaking designated courses of higher education. The 2009 Regulations provide for the repayment of those loans. The terms of the repayment are set in order to balance the need for adequate returns to the taxpayer while ensuring loans are not a disincentive to undertaking higher education. The 2009 Regulations make provision for the repayment of student loans in England and Wales.

These composite Regulations made by the Secretary of State and Welsh Ministers amend the 2009 Regulations. Whilst the Regulations will enable the change in England and Wales, the changes will apply to the whole of the UK.

Scottish Student Loans Repayment Threshold'

The Scottish First Minister announced, as part of the Programme for Government 2017-18, that the Scottish student loan repayment threshold would rise to £22,000 by the end of the current Parliamentary term. The Minister for Further Education, Higher Education and Science confirmed to the Scottish Parliament in June 2018 that the repayment threshold rate would increase to £25,000 by April 2021.

In order to protect the current and future terms and conditions relating to loan repayments for Scottish borrowers, a new repayment threshold needs to be created to allow Scottish Ministers control over any future changes to these terms and conditions.

Amendments are required to the 2009 Regulations to make provision for this new repayment threshold. Such amendments will define what a Scottish student loan is and will also clarify which repayment threshold applies in cases where the borrower has more than one plan type loan.

The Regulations will also provide for how an apportionment of repayment is to be calculated in cases where a student is repaying a Welsh student loan and a Scottish student loan.

The creation of a new Scottish repayment threshold will not change the general terms and conditions of Welsh student loans. Currently, where a borrower has loan balances across more than one plan type then repayment instalments are 9% of gross annual income above the lowest applicable income threshold. This will not change – where students are repaying a Welsh student loan and a Scottish student loan, the amount of their repayment will be apportioned between the repayment plans.

Regulation 17 More Frequent Data Sharing (MFDS) correction – Date of Repayment

The Education (Student Loans) (Repayment) (Amendment) Regulations 2019 which amend the 2009 Regulations were laid in January 2019. Regulation 17(ca)(ii) is amended to remove the impression that HMRC has a discretion to select the date of the deemed receipt of repayment where an adjustment is made.

Modernisation of Student Loans Company communication processes

Currently the 2009 Regulations provides for the SLC to issue correspondence in relation to 'Confirmation of Customer Details' in paper format or via electronic format subject to prior agreement of the recipient. An amendment is made to remove the requirement on SLC to obtain prior agreement from the recipient for correspondence to be issued in electronic format to enable efficient operation.

Similarly, the 2009 Regulations provide for SLC to serve Information notices at the recipient's home address. An amendment is made to remove the reference to the recipient's home address so that electronic forms of communication can be used.

5. Consultation

There is no statutory requirement to consult on these Regulations and no consultation has been undertaken.

6. Regulatory Impact Assessment (RIA)

An RIA has been conducted for the Regulations.

Options

Two options have been considered, which are set out below. The Welsh Government is constrained by the need to operate a single unified repayment system for England and Wales by Her Majesty's Customs and Revenue.

Option 1: Business as usual

No changes would be made to the Regulations under this option.

Option 2: Make the Regulations

Introduce the Regulations to make provision for Scottish Part 4 loan plans and to apportion repayments between those loans and Welsh loans; to remove the impression that HMRC has a discretion to select the date of the deemed receipt of repayment where an adjustment is made and to enable the SLC to communicate with borrowers electronically.

Costs and benefits

Option 1: Business as usual

If the Regulations are not amended, then it will not be possible for the SLC to modernise processes to enable use of electronic format of communication to be used without prior approval of the recipient. It will also mean that the Regulations will continue to give the impression that HMRC has discretion to decide the date of an adjusted repayment. Additionally the Regulations will not enable repayments to take account of the new Scottish student loans threshold.

This is the baseline option and as such there are no additional costs or benefits associated with this option.

Option 2: Make the Regulations

By amending the Regulations, the Welsh Ministers ensures that it delivers benefits to borrowers. The changes will clarify that HMRC has no discretion to decide the date of an adjusted repayment. The changes will mean that SLC will be able to modernise its operation processes and in doing so become more efficient. Additionally the changes will also mean that the Regulations will provide for students to repay when in receipt of Scottish student loans.

The changes which will enable SLC to correspond electronically with borrowers are expected to generate administrative cost savings for the SLC.

The changes associated with the new Scottish student loans threshold may have a very small cost impact on the Welsh Government. The Resource Accounting and Budgeting (RAB) charge is the estimated cost to Government of borrowing to support the student finance system. It is based on predicted future loan write-offs and interest subsidies in net present value terms. Insofar as a small number of Welsh borrowers may have both a Scottish student loan and a Welsh student loan, the amount repaid to the Welsh loan may fall, and thus the RAB charge, which the Welsh Government must fund, rise. However, due to existing restrictions on students having more than one loan, this is likely to happen only very rarely so the impact on the RAB charge would be small.

As the anticipated expenditure associated with the changes can be met from within existing resources, there are no new financial implications for the Welsh Ministers arising from the regulatory amendments as detailed above.

Competition Assessment

The making of the Regulations has no impact on the competitiveness of businesses, charities or the voluntary sector.

Post-Implementation Assessment

The regulations governing the repayment of student support are revised occasionally and are subject to ongoing review, both by policy officials and delivery partners in their practical implementation of the regulations.

Summary

The making of the Regulations is necessary to ensure that SLC will be able to modernise its operation processes and in doing so become more efficient. Additionally the changes will also mean that the Regulations will provide for students to repay when in receipt of Scottish student loans.

Agenda Item 3.2

SL(5)757 – Local Government and Elections (Wales) Act 2021 (Consequential Amendments and Miscellaneous Provisions) Regulations 2021

Background and Purpose

The Local Government and Elections (Wales) Act 2021 (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 ("the Regulations") make amendments:

- which are consequential on amendments made by Schedule 4 to the Local Government and Elections (Wales) Act 2021 ("the 2021 Act") to provisions in Part 5A of the Local Government Act 1972 ("the 1972 Act"); or
- give effect to provisions in section 47 of the 2021 Act relating to remote attendance.

The Regulations also make provision relating to the length of time certain local authority documents are required to be electronically accessible under the Local Authorities (Coronavirus) Meetings (Wales) Regulations 2020 ("the 2020 Regulations").

In summary, the amendments made by the Regulations are to:

- The Public Audit (Wales) Act 2004 relating to consideration by local authorities of reports made by the Auditor General for Wales in the public interest. The amendments provide that powers of local authorities to exclude items from electronic publication or inspection or from rights of access do not apply to those reports. They also provide for the notices to be given of local authorities' meetings to consider those reports to reflect requirements for notices to be given electronically and to reflect that meetings may be held through remote means.
- The Local Democracy, Economic Development and Construction Act 2009, which relates to consideration by local authorities of public interest reports by the Auditor General for Wales on entities connected with those authorities. The effect of the amendment is that powers of local authorities to exclude items from electronic publication or inspection or from rights of access do not apply to such public interest reports.
- The Local Government Democracy (Wales) Act 2013 to omit section 56 which inserted subsection (1ZA) into section 232 of the 1972 Act, relating to notices of meetings given by community councils. That subsection has been omitted by provision made in Schedule 4 to the 2021 Act.
- The 2021 Act to provide that documents relating to local authority meetings which are required to be published electronically are to be treated as documents required by law to be open to public inspection for the purposes of paragraph 5 of Schedule 1 to the Defamation Act 1996.



- The National Park Authorities (Wales) Order 1995 to give full effect to the provisions of the 2021 Act relating to remote attendance at meetings and the giving of electronic notices by making provision for notices of, and summonses, to meetings to be given electronically and for remote attendance.
- The Standards Committees (Wales) Regulations 2001. Those Regulations apply provisions of Part 5A of the 1972 Act to meetings of standards committees of local authorities, with modifications. The amendments made to those Regulations ensure those Regulations reflect the relevant changes made to the requirements of Part 5A of the 1972 Act by Schedule 4 to the 2021 Act.
- The Licensing Act 2003 (Hearings) Regulations 2005 and the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-Committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007 to apply to hearings of local authority licensing committees the amendments made to Part 5A of the 1972 Act relating to notices of hearings.
- The 2020 Regulations, to:
 - o specify a period of six years during which local authorities are required to ensure that certain documents remain accessible by the public. These are documents relating to meetings held, and executive decisions taken, between 22 April 2020 and the end of 30 April 2021 which were published under temporary provision under the 2020 Regulations, and
 - o make transitional provision relating to notices or other documents published or sent before 1 May 2021 in relation to meetings or hearings held on or after that date.

Procedure

Draft Affirmative

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(iv) – that it appears to have retrospective effect where the authorising enactment does not give express authority for this.

Regulations 10 and 11 require notices or documents which have been published between 22 April 2020 and 30 April 2021 to remain accessible electronically for a period of six years. The Regulations are not due to come into force until 1 May 2021. Regulations 10 and 11 therefore appear to retrospectively change the law relating to documents published before the Regulations come into force. The enabling provisions for these Regulations in the 2021



Act and the Local Government Act 2000 do not provide express authority for the Regulations to have retrospective effect.

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

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

No consultation was undertaken in relation to the Regulations. The Explanatory Memorandum states that:

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

Welsh Government response

A Welsh Government response is required in relation to the technical reporting point only.

Legal Advisers

Legislation, Justice and Constitution Committee

10 March 2021



Draft Regulations laid before Senedd Cymru under section 174 of the Local Government and Elections (Wales) Act 2021, for approval by resolution of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2021 No. (W.)

**LOCAL GOVERNMENT,
WALES**

**The Local Government and
Elections (Wales) Act 2021
(Consequential Amendments and
Miscellaneous Provisions)
Regulations 2021**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments which are consequential on amendments made by Schedule 4 to the Local Government and Elections (Wales) Act 2021 (“the 2021 Act”) to provisions in Part 5A of the Local Government Act 1972 (“the 1972 Act”) and which give effect to section 47 of the 2021 Act relating to remote attendance. They also make provision relating to the length of time certain local authority documents are required to be electronically accessible under Part 5A of the 1972 Act as modified by the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020.

Part 5A of the 1972 Act makes provision in relation to access to meetings and documents of local authorities. The provisions of that Part of that Act are applied in numerous other enactments to certain committees of local authorities and to other types of body.

Section 47 of the 2021 Act requires local authorities to make and publish arrangements for the purpose of ensuring that local authority meetings are able to be held through remote means that enable persons who are not in the same place to attend the meetings remotely, if certain conditions are met.

Schedule 4 to the 2021 Act amends, among other provisions, Part 5A of the 1972 Act to require the electronic publication of certain local authority meeting documents, to give effect to the requirements under section 47 of the 2021 Act and for connected purposes.

Section 50 of the 2021 Act enables the Welsh Ministers to make regulations to make provision for and in connection with requirements concerning notices and other documents relating to local authority meetings and concerning the conduct of such meetings.

These Regulations are made up of four parts. **Part 1** sets out the title and the commencement provisions.

Part 2 of the Regulations sets out consequential amendments to provisions of primary legislation.

Regulation 2 amends provisions of the Public Audit (Wales) Act 2004 relating to consideration by local authorities of reports made by the Auditor General for Wales in the public interest. The amendments provide that powers of local authorities under the amended Part 5A of the 1972 Act to exclude items from electronic publication or inspection or from rights of access do not apply to those reports. They also provide for the notices to be given of local authorities' meetings to consider those reports to reflect requirements for notices to be given electronically and to reflect that meetings may be held through remote means.

Regulation 3 amends section 49 of the Local Democracy, Economic Development and Construction Act 2009, which relates to consideration by local authorities of public interest reports by the Auditor General for Wales on entities connected with those authorities. The effect of the amendment is that powers of local authorities under the amended Part 5A of the 1972 Act to exclude items from electronic publication or inspection or from rights of access do not apply to such public interest reports.

Regulation 4 amends the Local Government Democracy (Wales) Act 2013 to omit section 56 which inserted subsection (1ZA) into section 232 of the 1972 Act. That subsection has been omitted by provision made in Schedule 4 to the 2021 Act.

Regulation 5 amends the Local Government and Elections (Wales) Act 2021 to provide that documents relating to local authority meetings which are required to be published electronically are to be treated as documents required by law to be open to public inspection for the purposes of paragraph 5 of Schedule 1 to the Defamation Act 1996 (c. 31).

Part 3 sets out consequential amendments to secondary legislation.

Regulation 6 amends the National Park Authorities (Wales) Order 1995 to give full effect to the provisions of the 2021 Act relating to remote attendance at meetings and the giving of electronic notices by making provision for notices of, and summonses, to meetings to be given electronically and for remote attendance.

Regulation 7 amends the Standards Committees (Wales) Regulations 2001. Those Regulations apply provisions of Part 5A of the 1972 Act to meetings of standards committees of local authorities, with modifications. The amendments made to those Regulations ensure those Regulations reflect the relevant changes made to the requirements of Part 5A of the 1972 Act by Schedule 4 to the 2021 Act.

Regulation 8 amends the Licensing Act 2003 (Hearings) Regulations 2005 to apply to hearings of local authority licensing committees the amendments made to Part 5A of the 1972 Act relating to notices of hearings. Regulation 9 does the same in relation to the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-Committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007

Part 4 makes provision relating to the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020.

Regulation 10 specifies a period of six years during which local authorities are required to ensure that certain documents remain accessible by the public. These are documents relating to meetings held, and executive decisions taken, between 22 April 2020 and the end of 30 April 2021 which were published under temporary provision under the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020.

Regulation 11 makes transitional provision relating to notices or other documents published or sent before 1 May 2021 in relation to meetings or hearings held on or after that date.

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 benefit of complying with these Regulations. A copy can be obtained from the Local Government Democracy Division, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

Draft Regulations laid before Senedd Cymru under section 174 of the Local Government and Elections (Wales) Act 2021, for approval by resolution of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2021 No. (W.)

**LOCAL GOVERNMENT,
WALES**

**The Local Government and
Elections (Wales) Act 2021
(Consequential Amendments and
Miscellaneous Provisions)
Regulations 2021**

Made

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

The Welsh Ministers make the following Regulations in exercise of the powers conferred upon them by sections 50 and 173 of the Local Government and Elections (Wales) Act 2021⁽¹⁾ and sections 22(6), (7), (8), (9), (10), (11) and (12)⁽²⁾ and 105 of the Local Government Act 2000⁽³⁾.

In accordance with section 174(4) and (5)(f) and (t) of the Local Government and Elections (Wales) Act 2021, a draft of these Regulations has been laid before and approved by a resolution of Senedd Cymru.

-
- (1) 2021 asc 1. *See* also section 40 of the Legislation (Wales) Act 2019 (anaw 4) for provision about the procedure that applies to this instrument.
- (2) Paragraph 28 of Schedule 3 to the Localism Act 2011 (c. 20) substituted the words “Welsh Ministers” for “Secretary of State” in section 22.
- (3) 2000 c. 22.

PART 1

General

Title and commencement

1.—(1) The title of these Regulations is the Local Government and Elections (Wales) Act 2021 (Consequential Amendments and Miscellaneous Provisions) Regulations 2021.

(2) These Regulations come into force immediately after Schedule 4 to the Local Government and Elections (Wales) Act 2021 comes fully into force⁽¹⁾.

PART 2

Amendments to primary legislation

Public Audit (Wales) Act 2004

2.—(1) The Public Audit (Wales) Act 2004⁽²⁾ is amended as follows.

(2) In section 24⁽³⁾ (consideration of reports in public interest)—

(a) in subsection (5)(b)—

(i) in the words before sub-paragraph (i), for “section 100B(2)”⁽⁴⁾ substitute “section 100BA(2)”⁽⁵⁾;

(ii) in sub-paragraph (i), for “open to inspection under section 100B1”⁽⁶⁾ substitute “published under section 100BA(1)”;

(iii) in sub-paragraph (ii) for “section 100B(7)” substitute “section 100BA(9)”;

⁽¹⁾ Paragraph 17(4) of Schedule 4 to the Local Government and Elections (Wales) Act 2021 (“the 2021 Act”) came into force on 21 January 2021. The rest of Schedule 4 to the 2021 Act came into force on 1 May 2021 by commencement order made in accordance with section 175(7) of that Act.

⁽²⁾ 2004 c. 23.

⁽³⁾ There are amendments to section 24 which are not relevant to these Regulations. Section 24 was temporarily modified, in relation to meetings of authorities held between 22 April 2020 and the end of 30 April 2021, by paragraph 3(a) of the Schedule to the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020 (S.I. 2020/442 (W. 100)). That Schedule was inserted into S.I. 2020/442 (W. 100) by S.I. 2020/653 (W. 150).

⁽⁴⁾ Part 5A of the Local Government Act 1972 (c. 70) (“the 1972 Act”) was inserted by the Local Government (Access to Information) Act 1985 (c. 43), section 1. Section 100B of the 1972 Act was temporarily modified, in relation to meetings of authorities held between 22 April 2020 and the end of 30 April 2021, by S.I. 2020/442 (W. 100), paragraph 21(3).

⁽⁵⁾ Section 100BA was inserted into Part 5A of the 1972 Act by the 2021 Act, Schedule 4, paragraph 7.

⁽⁶⁾ Section 100B(1) was amended by the 2021 Act, Schedule 4, paragraph 6(2).

- (b) in subsection (7), for “section 100C(1)(d)”⁽¹⁾ substitute “section 100C(1B)(d)”⁽²⁾.

(3) In section 26⁽³⁾ (publicity for meetings under section 25)—

- (a) in subsection (3)—

- (i) in paragraph (a) insert at the end “(but where the meeting is to be held by a body mentioned in subsection (3A) through remote means only, there is no need for the notice to state the place of the meeting)”;

- (ii) after paragraph (a) insert—

- “(aa) in the case of a meeting held through remote means by a body mentioned in subsection (3A), also gives details of how to access the meeting;”;

- (b) after subsection (3) insert—

“(3A) The bodies referred to in subsection (3)(a) and (aa) are—

- (a) a local authority in Wales;
 - (b) a committee of a local authority in Wales (including a joint committee of two or more local authorities in Wales);
 - (c) a National Park authority for a National Park in Wales;
 - (d) a fire and rescue authority in Wales constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 (c. 21)⁽⁴⁾ or a scheme to which section 4 of that Act applies.

(3B) In subsection (3)(a) and (aa) the references to a meeting of a body held through remote means are to a meeting held by means of equipment or other facility which enables persons who are not in the same place to speak to and be heard by each other (whether or not the equipment or facility enables those persons to see and be seen by each other).”

- (c) in subsection (6)—

(1) Section 100C was temporarily modified, in relation to meetings of authorities held between 22 April 2020 and the end of 30 April 2021, by S.I. 2020/442 (W. 100), regulation 21(4). Section 100C(1) was amended by the 2021 Act, Schedule 4, paragraph 8(2).

(2) Section 100C(1B)(d) was inserted into the 1972 Act by the 2021 Act, Schedule 4, paragraph 8(3).

(3) Section 26 was temporarily modified, in relation to meetings of authorities held between 22 April 2020 and the end of 30 April 2021, by paragraph 3(b) of the Schedule to S.I. 2020/442 (W. 100).

(4) 2004 c. 21.

- (i) after “availability for inspection” insert “and publication”;
- (ii) after “are” insert “published electronically or”.

The Local Democracy, Economic Development and Construction Act 2009

3. In the Local Democracy, Economic Development and Construction Act 2009(1), in section 49 (consideration of report by local authority)—

- (a) in subsection (8)(b)—
 - (i) in the words before sub-paragraph (i) for “section 100B(2)” substitute “section 100BA(2)”;
 - (ii) in sub-paragraph (i) for “open to inspection under section 100B(1)” substitute “published under section 100BA(1)”;
 - (iii) in sub-paragraph (ii) for “section 100B(7)” substitute “section 100BA(9)”;
- (b) in subsection (9), for “section 100C(1)(d)” substitute “section 100C(1B)(d)”.

The Local Government (Democracy) (Wales) Act 2013

4. In the Local Government (Democracy) (Wales) Act 2013(2), omit section 56 (requirement to give public notices electronically)(3).

The Local Government and Elections (Wales) Act 2021

5.—(1) Section 49 (notices etc. of local authority meetings) of the Local Government and Elections (Wales) Act 2021 is amended as follows.

(2) The existing text becomes subsection (1).

(3) After that subsection insert—

“(2) Any notice or other document relating to a local authority meeting which is required under any enactment to be published electronically is, for the purposes of paragraph 5 of Schedule 1 to the Defamation Act 1996 (c. 31), to be treated as a document required by law to be open to public inspection.

(1) 2009 c. 20. Section 49 has not been commenced.

(2) 2013 anaw 4.

(3) Section 56 inserted a new subsection (1ZA) relating to notices given by community councils in section 232 of the 1972 Act, which is omitted by the 2021 Act, Schedule 4, paragraph 17(3)(c).

(3) In subsection (2) “local authority meeting” has the same meaning as in section 50(5).”

PART 3

Amendments to secondary legislation

The National Park Authorities (Wales) Order 1995

6.—(1) Paragraph 6(1) of Schedule 3 to the National Park Authorities (Wales) Order 1995(2) is amended as follows.

(2) In sub-paragraph (2)(a)—

- (a) omit “of the time and place”;
- (b) for “at the principal offices of the Authority” substitute “electronically”;
- (c) for “be signed by” substitute “state the names of”.

(3) In sub-paragraph (2)(b)(3)—

- (a) for “signed” substitute “authenticated”;
- (b) for “left at or sent by post to the usual place of residence of” substitute “sent electronically to”;
- (c) for “a copy” substitute “an electronic copy”(4).

(4) After sub-paragraph (2) insert—

“(2A) The notice of the meeting given under sub-paragraph (2)(a) must—

-
- (1) Paragraph 6 was temporarily modified, in relation to meetings of national park authorities held between 22 April 2020 and the end of 30 April 2021, by S.I. 2020/442 (W. 100), regulation 18.
 - (2) S.I. 1995/2803. There are amendments to Schedule 3 none of which are relevant.
 - (3) Paragraph 6(2)(b) was amended by paragraph 52 of Schedule 4 to the Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755 (W. 90)).
 - (4) The function of receiving a copy of the summons to a meeting of a national park authority under paragraph 6(2)(b) is conferred on the Welsh Ministers. The powers conferred on the Secretary of State by sections 63(1) and (5) of, and paragraphs 1(2) and (3), and 2(1) and (2) of Schedule 7 to, the Environment Act 1995 (c. 25) were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). Under article 3 of that Order, any reference in that Order to a function of a Minister of the Crown under an enactment includes a reference to any functions of that Minister which are included in any scheme, regulations, rules, order, bye-laws or other instrument having effect under or in relation to that enactment, and the power to confer functions on that Minister by any such scheme, regulations, rules, order, bye-laws or other instrument has effect as a power to confer such functions on the Assembly. By virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32), the functions conferred on the National Assembly for Wales are now exercisable by the Welsh Ministers.

- (a) where the meeting or part of the meeting is open to the public and is held through remote means only, give details of the time of the meeting and how to access it;
- (b) where the meeting or part of the meeting is open to the public and is held partly through remote means or is not held through remote means, give details of the time and place of the meeting and how to access it;
- (c) where the meeting is not open to the public and is held partly through remote means or is not held through remote means, give details of the time and place of the meeting and the fact that it is not open to the public;
- (d) where the meeting is not open to the public and is held through remote means only, give details of the time of the meeting, and the fact that it is being held through remote means only and is not open to the public.

(2B) In sub-paragraph (2)(b) “authenticated” means signed or otherwise authenticated in such manner as the proper officer of the Authority considers appropriate.

(2C) Every member of the Authority must specify an electronic address for the purpose of receiving a summons referred to in sub-paragraph (2)(b).

(2D) In this paragraph, references to a meeting of the Authority held through remote means are to a meeting held by means of any equipment or other facility which enables persons who are not in the same place to speak and be heard by each other (whether or not the equipment or facility enables those persons to see or be seen by each other).”;

(5) In sub-paragraph (3)—

- (i) for “he” substitute “that member”;
- (ii) for “him” in each place it occurs, substitute “that member”;
- (iii) for “other than his usual place of residence” substitute “rather than electronically”;
- (iv) for “his” substitute “that member’s”.

The Standards Committees (Wales) Regulations 2001

7.—(1) The Standards Committees (Wales) Regulations 2001⁽¹⁾ are amended as follows.

(2) In regulation 26⁽²⁾ (applicable provisions of Part 5A of the Local Government Act 1972)—

- (a) in paragraph (1)(b) for “section 100B” substitute “section 100BA”;
- (b) after paragraph (1) insert—

“(1A) The duty of a standards committee, by virtue of paragraph (1), to publish any document electronically is a duty to publish the document on the website of the relevant authority (if that authority has one).”;
- (c) in paragraph (2) for “subsection (1) of section 100B” substitute “subsection (1) of section 100BA”;
- (d) in paragraph (2A)⁽³⁾—
 - (i) in sub-paragraph (a)—
 - (aa) for “section 100B” substitute “section 100BA”;
 - (bb) after “publish” insert “electronically”;
 - (ii) in sub-paragraph (d), after “publish” insert “electronically”;
- (e) omit paragraph (3);
- (f) for paragraph (4) substitute—

“(4) In subsections (1)(c) and (2A)(b) of section 100D, for “offices of the council” substitute “offices of the relevant authority”;
- (g) in paragraph (6), for “subsection (3) of section 100H” substitute “subsections (3), (3A) and (6A) of section 100H”⁽⁴⁾;
- (h) in paragraph (7), in the text inserted by sub-paragraph (a), at the end insert “and see

(1) S.I. 2001/2283 (W. 172).

(2) Regulation 26 was temporarily modified by paragraph 2(a) of the Schedule to S.I. 2020/442 (W. 100) in relation to meetings of standards committees held between 22 April 2020 and the end of 30 April 2021.

(3) Paragraph (2A) was inserted by of the Local Government (Standards Committees, Investigations, Dispensations and Referral) (Wales) (Amendment) Regulations 2016 (S.I. 2016/85 (W. 39)), regulation 2(16).

(4) Subsection (6A) of section 100H was inserted by the 2021 Act, Schedule 4, paragraph 10(8). Section 100H was temporarily modified by regulation 21 (8) of S.I. 2020/442 (W. 100) in relation to local authority meetings held between 22 April 2020 and the end of 30 April 2021.

section 100J(3YA), (3ZA)(b) and (3ZAA) above”(1).

(3) In regulation 27(2) (applicable provisions of Part 5A of the Local Government Act 1972)—

(a) for paragraph (1) substitute—

“(1) Where—

(a) a local authority is required by virtue of section 100A of the 1972 Act, as modified by regulation 26, to publish electronically a notice relating to a meeting of its standards committee, and

(b) one or more of the community councils situated in the local authority’s area have a website,

the local authority may, if it thinks fit, provide for the notice to be published on one or more of those websites (as well as on its own website).”;

(b) for paragraph (2) substitute—

“(2) Where—

(a) a local authority is required by virtue of section 100BA of the 1972 Act, as modified by regulation 26, to publish electronically agendas and reports for meetings of its standards committee, and

(b) one or more the community councils situated in the local authority’s area have a website,

the local authority may, if it thinks fit, provide for the agendas or reports to be published on one or more of those websites (as well as on its own website).”;

(c) for paragraph (3) substitute—

“(3) Where—

(a) a local authority is required by virtue of section 100C of the 1972 Act, as modified by regulation 26, to publish electronically minutes of meetings of its standards committee or other documents relating to meetings of its standards committee, and

(1) Section 100J(3YA) was inserted by the Localism Act 2011 (c. 20), section 231(5). Section 100J(3ZA) was inserted by the Housing and Regeneration Act 2008 (c. 17), Schedule 8, paragraph 15(4). Section 100J(3ZAA) was inserted by the Localism Act 2011, Schedule 22, paragraph 3(4).

(2) Regulation 27 was temporarily modified by paragraph 2(b) of the Schedule to S.I. 2020/442 (W. 100) in relation to meetings of standards committees held between 22 April 2020 and the end of 30 April 2021.

- (b) one or more the community councils situated in the local authority's area have a website,

the local authority may, if it thinks fit, provide for those minutes and documents to be published on one or more those websites (as well as on its own website).”

The Licensing Act 2003 (Hearings) Regulations 2005

8.—(1) The Licensing Act 2003 (Hearings) Regulations 2005⁽¹⁾ are amended as follows.

(2) In regulation 2 (interpretation), after paragraph (2) insert—

“(2A) In these Regulations, a reference to a hearing of an authority in Wales held through remote means is to a hearing held by means of any equipment or other facility which enables persons who are not in the same place to speak and be heard by each other (whether or not the equipment or facility enables those persons to see or be seen by each other).”

(3) In regulation 4 (period of time within which hearing to be held)—

- (a) the existing text becomes paragraph (1);
- (b) in that paragraph, at the beginning, for the “The authority” substitute “An authority in England”;
- (c) after that paragraph insert—

“(2) An authority in Wales must—

- (a) in the case of a hearing which is held through remote means only, arrange for the date and time at which the hearing is to be held in accordance with regulation 5;
- (b) in the case of a hearing which is held partly through remote means or not through remote means, arrange for the date on which and the place and time at which a hearing is to be held in accordance with regulation 5;

(2A) In either case mentioned in paragraph (2) an authority in Wales must give a notice of hearing in accordance with regulations 6(1A) and 7.”

(4) In regulation 6 (notice of hearing)—

⁽¹⁾ S.I. 2005/44. Section 50(4) of the 2021 Act provides that Regulations under that section may amend, modify, repeal or revoke any enactment.

(a) in paragraph (1), for “the authority” substitute “an authority in England”;

(b) after paragraph (1) insert—

“(1A) In the case of hearings under the provisions listed in column 1 of the table in Schedule 2, an authority in Wales must, in accordance with the following provisions of this regulation, give to the persons listed in column 2 of the table a notice which—

(a) where the hearing is held through remote means only, gives details of the time of the hearing and how to access it, or

(b) where the hearing is held partly through remote means or not through remote means, gives details of the time and place of the hearing and how to access it.”

(5) In regulation 12 (power to extend time etc.)—

(a) in paragraph (2), after “an authority” insert “in England”;

(b) after paragraph (2) insert—

“(2A) Where an authority in Wales has adjourned a hearing to a specified date, it must forthwith notify the parties—

(a) in the case of a hearing held through remote means only, of the date and time to which the hearing has been adjourned and how to access it; or

(b) in the case of a hearing held partly through remote means or not through remote means, of the date, time and place to which the hearing has been adjourned and how to access it.”

(c) in paragraph (3), after “an authority” insert “in England”;

(d) after paragraph (3) insert—

“(3A) Where an authority in Wales has arranged for a hearing to be held on a specified additional date, it must forthwith notify the parties—

(a) in the case of a hearing held through remote means only, of the additional date on which and time at which the hearing is to be held and how to access it; or

(b) in the case of a hearing held partly through remote means or not through remote means, of the additional date on which and time and place at which the hearing is to be held and how to access it.
”

(6) In regulation 20 (failure of parties to attend the hearing)—

(a) in paragraph (4) for “the authority” substitute “an authority in England”;

(b) after paragraph (4) insert—

“(4A) Where an authority in Wales adjourns the hearing to a specified date it must forthwith notify the parties—

(a) in the case of a hearing held through remote means only, of the date and time to which the hearing has been adjourned and how to access it; or

(b) in the case of a hearing held partly through remote means or not through remote means, of the date, time and place to which the hearing has been adjourned and how to access it.”

Gambling Act 2005 (Proceedings of Licensing Committees and Sub-Committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007

9.—(1) The Gambling Act 2005 (Proceedings of Licensing Committees and Sub-Committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007⁽¹⁾ are amended as follows.

(2) In regulation 2 (interpretation), after paragraph (1) insert—

“(1A) In these Regulations, a reference to a hearing of a relevant committee in Wales held through remote means is to a hearing held by means of any equipment or other facility which enables persons who are not in the same place to speak and be heard by each other (whether or not the equipment or facility enables those persons to see or be seen by each other).”

(3) In regulation 5 (notice of hearing)—

(a) in paragraph (2), in the words before subparagraph (a), after “committee” insert “in England”;

(b) after paragraph (2) insert—

“(3) A relevant committee in Wales must ensure that the notice referred to in paragraph (1)—

(1) S.I. 2007/173. Section 50(4) of the 2021 Act provides that Regulations under that section may amend, modify, repeal or revoke any enactment. The definition of “relevant committee” was substituted for “licensing committee” by regulation 16 of the Welsh Language (Gambling and Licence Forms) Regulations 2010 (S.I. 2010/2440).

- (a) where the hearing is held through remote means only, gives details of the date and time of the hearing and how to access it;
 - (b) where the hearing is held partly through remote means or is not held through remote means, gives details of the date, time and place of the hearing and how to access it;
 - (c) states that the relevant committee will make available the documents listed in the relevant entry in column 3 of the table in the Schedule to the following persons if those persons request them—
 - (i) any person who has made representations (unless the relevant committee considers that the representations are vexatious, frivolous or will certainly not influence the determination of the application), and
 - (ii) in the case of an application under section 188 for the transfer of a premises licence, the licensee,
 - (d) is sent so that, in the ordinary course of events, it is received no later than 10 working days before the first day on which the hearing is to be held (as specified in the notice).”
- (4) In regulation 7 (power to postpone)—
- (a) in paragraph (3), after “a relevant committee” insert “in England”;
 - (b) after paragraph (3) insert—

“(3A) Where a relevant committee in Wales has adjourned a hearing to a specified date, it must, as soon as reasonably practicable, notify the parties—

 - (a) in the case of a hearing held through remote means only, of the new date and time for the hearing and how to access it; or
 - (b) in the case of a hearing held partly through remote means or not held through remote means, of the new date, time and place for the hearing and how to access it.”
 - (c) in paragraph (4) after “a relevant committee” insert “in England”;
 - (d) after paragraph (4) insert—

“(4A) Where a relevant committee in Wales has arranged for the hearing to be held on a

specified additional date it must, as soon as reasonably practicable, notify the parties—

- (a) in the case of a hearing held through remote means only, of the additional date and time of the hearing and how to access it; or
- (b) in the case of a hearing held partly through remote means or not held through remote means, of the additional date, time and place of the hearing and how to access it.”

(5) In regulation 10 (failure of parties to attend the hearing)—

- (a) in paragraph (4) for the “the relevant committee” substitute “a relevant committee in England”;
- (b) after paragraph (4) insert—

“(4A) Where, under this regulation, a relevant committee in Wales adjourns the hearing to a specified date it must, as soon as reasonably practicable, notify the parties—

- (a) in the case of a hearing held through remote means only, of the date and time to which the hearing has been adjourned and how to access it; or
- (b) in the case of a hearing held partly through remote means or not held through remote means, of the date, time and place to which the hearing has been adjourned and how to access it.”

PART 4

Requirements under the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020 for documents to remain accessible electronically and transitional provisions

The Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020

10.—(1) This regulation applies to documents relating to a meeting held, or an executive decision taken, on or after 22 April 2020 and before the end of 30 April 2021 which were required to remain accessible electronically by members of the public under—

- (a) section 100C of the Local Government Act 1972 as modified by regulation 21(4) of the

Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020⁽¹⁾, or

- (b) regulation 13 of the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001⁽²⁾ as modified by regulation 23(8)(e)⁽³⁾ of the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020.

(2) Documents to which this regulation applies must remain accessible electronically by members of the public until the expiration of the period of six years beginning with the date of the meeting or of the executive decision.

Transitional provision

11.—(1) Any notice or other document published or sent before 1 May 2021 in accordance with the provisions specified in paragraph (2) in relation to a meeting or hearing held on or after 1 May 2021, is to be treated as having been published or sent in accordance with those provisions as amended by these Regulations.

(2) The provisions are—

- (a) sections 24(5) and 26(3) of the Public Audit (Wales) Act 2004 as modified by the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020;
- (b) paragraph 6(2) and (3) of Schedule 3 to the National Park Authorities (Wales) Order 1995 as modified by the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020;

(1) S.I. 2020/442 (W. 100)), which was amended by S.I. 2020/653 (W. 150). Section 100C of the 1972 Act was temporarily modified, in relation to local authority meetings held between 22 April 2020 and the end of 30 April 2021, by regulation 21(4) of S.I. 2020/442 (W. 100)) so that section 100C was to be read as if it included, among other things, a subsection (7) which required anything published under sections 100B and 100C of the 1972 Act, as modified, to remain accessible electronically by members of the public. Section 100C was further amended by the 2021 Act, Schedule 4, paragraph 8. There are other amendments to the section none of which are relevant.

(2) S.I. 2001/2290 (W. 178).

(3) Regulation 13 of S.I. 2001/2290 was temporarily modified, in relation to meetings of local authority executives held and executive decisions taken between 22 April 2020 and the end of 30 April 2021, by regulation 23(8)(e) of S.I. 2020/442 (W. 100) so that regulation 13 of S.I. 2001/2290 was to be read as if it included, among other provisions, a paragraph (5A) which required anything published electronically under regulation 8 of S.I. 2001/2290, as modified, to be retained by the local authority and to remain accessible electronically by members of the public.

- (c) regulations 26(1), (2A) and (4) and 27(1) to (3) of the Standards Committees (Wales) Regulations 2001 as modified by the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020;
- (d) regulations 4, 6, 12, and 20 of the Licensing Act 2003 (Hearings) Regulations 2005;
- (e) regulations 5, 7, and 10 of the Gambling Act (Proceedings of Licensing Committees and Sub-Committees) (Premises Licenses and Provisional Statements) (England and Wales) Regulations 2007.

Name

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

Date

Explanatory Memorandum to the Local Government and Elections (Wales) Act 2021 (Consequential Amendments and Miscellaneous Provisions) Regulations 2021

This Explanatory Memorandum has been prepared by the Department for Local 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 Local Government and Elections (Wales) Act 2021 (Consequential Amendments and Miscellaneous Provisions) Regulations 2021. I am satisfied the benefits justify the likely costs.

Julie James MS
Minister for Housing and Local Government
23 February 2021

PART 1

1. Description

The Local Government and Elections (Wales) Act 2021 (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 ('the Regulations') make amendments:

- which are consequential on amendments made by Schedule 4 to the Local Government and Elections (Wales) Act 2021 (the 2021 Act) to provisions in Part 5A of the Local Government Act 1972 (the 1972 Act); or
- give effect to provisions in section 47 of the 2021 Act relating to remote attendance.

The Regulations also make provision relating to the length of time certain local authority documents are required to be electronically accessible under the Local Authorities (Coronavirus) Meetings (Wales) Regulations 2020.

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

None.

3. Legislative background

The Regulations are made under sections 50 and 173 of the 2021 Act and sections 22 and 105 of the Local Government Act 2000.

Part 5A of the Local Government Act 1972 (the "1972 Act") makes provision in relation to access to meetings and documents of local authorities. The provisions of Part 5A are applied in other enactments to certain committees and proceedings of local authorities and to National Park authorities.

Section 47 of the Local Government and Elections (Wales) Act 2021 (the "2021 Act") requires local authorities to make and publish arrangements for the purpose of ensuring that local authority meetings are able to be held through remote means that enable persons who are not in the same place to attend meetings remotely, if certain conditions are met.

Schedule 4 to the 2021 Act amends, among other provisions, Part 5A of the 1972 Act to require electronic publication of certain local authority meeting documents to complement and to give effect to the requirements under section 47 of the 2021 Act and for connected purposes.

Section 50 of the 2021 Act enables the Welsh Ministers to make regulations to make provision for and in connection with requirements concerning notices and other documents relating to local authority meetings and concerning the conduct of such meetings.

Section 22 of the Local Government Act 2000 enables the Welsh Ministers to make provision by regulations relating to public access to meetings, decisions and documents of local authority executives and their committees. Where executive functions are delegated to individual members of the executive, those decisions are not taken in meetings of the executive. Section 22 enables the Welsh Ministers to make regulations relating to executive decisions that are not made in meetings of the executive.

Section 105(5) of the 2000 Act and paragraphs 30 and 34 of Schedule 11 to the Government of Wales Act 2006 provide that the negative resolution procedure will apply to Regulations made under section 22 of the 2000 Act.

Sections 174(4) and (5)(f) and (t) of the 2021 Act provide that the affirmative resolution procedure will apply to Regulations made under section 50 or section 173 of the 2021 Act.

Under section 40 of the Legislation (Wales) Act 2019, provision subject to the negative procedure may be combined in the same instrument as provision subject to the affirmative procedure. As a result, the affirmative procedure applies to these Regulations.

4. Purpose and intended effect of the legislation

Part 1

Regulation 1 sets out the title and commencement provisions.

Part 2

Regulation 2 amends provisions of the Public Audit (Wales) Act 2004 so, when considering a report in the public interest made by the Auditor General for Wales, a local authority must not exclude such a report from electronic publication or inspection or from rights of access and so the notice to be given of local authorities' meetings to consider such reports is consistent with the new requirements under the 2021 Act.

Regulation 3 amends section 49 of the Local Democracy, Economic Development and Construction Act 2009, so a local authority when considering a public interest report by the Auditor General for Wales on entities connected with that authority, must not exclude such a report from electronic publication or inspection or from rights of access.

Regulation 4 amends the Local Government Democracy (Wales) Act 2013 to repeal section 56 of that Act, which inserted subsection (1ZA) into section 232 of the 1972 Act; that subsection was itself omitted by provision made in Schedule 4 to the 2021 Act.

Regulation 5 amends the 2021 Act to provide that documents relating to local authority meetings which are required to be published electronically are to be treated as documents required by law to be open to public inspection for the

purposes of paragraph 5 of Schedule 1 to the Defamation Act 1996, and thereby are privileged (unless publication is shown to be made with malice).

Part 3

Regulation 6 amends the National Park Authorities (Wales) Order 1995 to give full effect to the provisions of the 2021 Act relating to remote attendance at meetings and the giving of electronic summonses and notices.

Regulation 7 amends the Standards Committees (Wales) Regulations 2001. Those Regulations apply provisions of Part 5A of the 1972 Act to meetings of standards committees of local authorities, with modifications. The amendments made to those Regulations are consequential on the changes made to Part 5A of the 1972 Act by Schedule 4 to the 2021 Act.

Regulation 8 amends the Licensing Act 2003 (Hearings) Regulations 2005 to apply to hearings of local authority licensing committees the amendments made to Part 5A of the 1972 Act, in particular relating to notices of hearings. Regulation 9 does the same in relation to the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-Committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007

Part 3

Part 3 makes provision relating to the Local Authorities (Coronavirus) Meetings (Wales) Regulations 2020 (the “2020 Regulations”).

The 2020 Regulations did not specify a retention period for certain documents published electronically relating to local authority meetings held between 22 April 2020 and 31 April 2021 under those regulations. Regulation 10 of these regulations specifies that such documents should remain accessible electronically for six years, a period which is the specified retention period for the documents required to be published electronically under the 2021 Act.

Regulation 11 makes transitional provision relating to notices or documents published or sent before 1 May 2021 relating to meetings held on or after that date.

5. Consultation

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

6. Regulatory Impact Assessment (RIA)

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to the Regulations.

Regulations 2 to 9 simply make consequential amendments to statute and regulation 11 makes transitional provision. Those provisions do not impose or reduce costs for business, charities or voluntary bodies or the public sector.

In respect of Regulation 10, two options have been considered:

- Option 1: Do Nothing
- Option 2: Introduce the regulations

Costs and benefits

Option 1

This is the baseline option and as such there are no additional costs or benefits associated with this option.

Option 2

No additional costs have been identified under this option.

Local authorities are already required to make certain documents relating to meetings held between 22 April 2020 and 31 April 2021 available electronically.

Regulation 10 specifies that those documents should remain accessible for a period of six years from the date of the meeting. Placing a time limit on how long the documents need to remain accessible for is not expected to result in additional costs.

It is considered that Regulation 10 strikes an appropriate balance between:

- (a) ensuring electronic records relating to local authority meetings remain available for public scrutiny for a reasonable period of time; and
- (b) not requiring local authorities to maintain those records indefinitely.

Competition assessment

The Regulations are not expected to impact on the level of competition within Wales or on the competitiveness of Welsh businesses.

SL(5)758 – The Education Workforce Council (Interim Suspension Orders) (Additional Functions) (Wales) Order 2021

Background and Purpose

The Education Workforce Council ("the Council") was continued in existence by the Education (Wales) Act 2014 ("the 2014 Act"). The Council is the independent regulator in Wales for:

- school teachers;
- school learning support workers;
- further education teachers (lecturers);
- further education learning support workers;
- work based learning practitioners;
- qualified youth workers; and
- qualified youth support workers.

As part of its role as regulator, the Council is required to maintain a register of all the persons registered with the Council in each of the categories listed above (known as "Registered Persons").

The 2014 Act requires the Council to carry out such investigations as it thinks appropriate where it is alleged that a Registered Person is guilty of unacceptable professional conduct, professional incompetence or it is alleged the person has been convicted of a relevant offence. After carrying out such an investigation the Council must decide what action to take, with the imposition of a disciplinary order following a hearing being a possible outcome.

Currently, the functions conferred on the Council do not allow it to suspend a Registered Person pending the outcome of an investigation and disciplinary hearing. This Order adds to the functions of the Council so that the council may, by way of an Interim Suspension Order ("ISO"), suspend a Registered Person from the public register prior to the outcome of an investigation and disciplinary hearing.

Procedure

Draft Affirmative.

The Welsh Ministers have laid a draft of the Order before the Senedd. The Welsh Ministers cannot make the Order unless the Senedd approves the draft Order.



Technical Scrutiny

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

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument:

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

Article 12 of this Order makes provision in connection with an application for review of an interim suspension order by the person to whom it relates.

Paragraph (1)(a) provides that a former Registered Person may make a request for an ISO to be reviewed within 6 months of:

- (i) the date of the ISO being made; or
- (ii) the date on which the order was extended by the High Court.

Paragraph (1)(b) provides that a subsequent request may be made within the 6 months thereafter.

Paragraphs (2)(a) and (b) provide that where a request for review has been made under paragraph (1)(a) or (b) respectively, the Council must convene a hearing to consider the case before the expiry of the 6 month period.

The effect of this is that the Council may have very little time to convene a meeting. This is illustrated in the following example:

An ISO is made against a person ("P") on Thursday 1 April. The 6 month period from the date on which the ISO was made expires on Thursday 30 September.

On Wednesday 29 September P submits an application (containing all the requisite information required by Article 13) to the Council requesting that it reviews the ISO.

*As P's application satisfies Article 12(1)(a) (it was made within the 6 month period), in order to comply with Article 12(2)(a) the Council **must** convene a hearing to consider the case by the end of Thursday 30 September (when the 6 month period expires).*

The application of paragraphs (2)(a) and (b) could result in onerous timescales being imposed on the Council in certain circumstances. This is inconsistent with the approach taken in paragraph (2)(c) which allows the Council a period of 10 working days to convene a hearing following receipt of an application made under paragraph (1)(c).

Welsh Government response

A Welsh Government response is required.



Legal Advisers
Legislation, Justice and Constitution Committee
4 March 2021



Draft Order laid before Senedd Cymru under section 47(2) of the Education (Wales) Act 2014, for approval by resolution of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2021 No. (W.)

EDUCATION, WALES

**The Education Workforce Council
(Interim Suspension Orders)
(Additional Functions) (Wales)
Order 2021**

EXPLANATORY NOTE

(This note is not part of the Order)

The Education Workforce Council (“the Council”) was continued in existence by section 2 of the Education (Wales) Act 2014 (“the 2014 Act”). Section 4 of the 2014 Act sets out the main functions of the Council. Section 5 of the 2014 Act allows the Welsh Ministers to make an order conferring or imposing additional functions on the Council.

This Order confers additional functions on the Council relating to the imposition, review, extension and revocation of interim suspension orders.

Article 3 of this Order provides for the making of an interim suspension order. Article 3(1) confers on the Council the function of making an interim suspension order in respect of a registered person. Article 3(2) provides that the Council must convene a hearing to consider whether the requirements for making an interim suspension order have been met. Article 3(3) provides that the Council appoint persons to an independent panel to determine any hearing it convenes under paragraph (2). Article 3(4) provides for the circumstances under which an interim suspension order is to be made. Article 3(5) provides that where an interim suspension order is made, the name of the registered person to whom it relates must be removed from the register the Council maintains. Article 3(6) provides that an interim suspension order may not have effect for a period of more than 18 months (unless it is extended by virtue of an application to the High Court pursuant to article 17).

Article 4 of this Order makes provision in relation to the minimum period of notice the Council must give the registered person of its intention to make an interim suspension order.

Article 5 of this Order gives the registered person a right to appear, to be accompanied, to be represented and to make both written and oral representations at a hearing convened to consider the making of an interim suspension order.

Article 6 of this Order provides for the content of an interim suspension order.

Article 7 of this Order provides for the effective date of an interim suspension order.

Article 8 of this Order makes provision about the content of the notice of the making of an interim suspension order and on whom the notice should be served. Article 20 makes provision as to when notice is deemed to have been served on the registered person.

Article 9 of this Order provides the registered person with the right to a public hearing in respect of the making of an interim suspension order and in respect of the review of that order pursuant to article 12 of this Order. Unless a registered person or former registered person exercises their right to a public hearing such hearings will be held in private.

Article 10 of this Order gives the former registered person a right of appeal to the High Court against the making of an interim suspension order within 28 days of the notice of the order being served.

Article 11 of this Order provides for the revocation of an interim suspension order.

Article 12 of this Order makes provision in connection with an application for review of an interim suspension order by the person to whom it relates. An application must be accompanied by the information set out in article 13 of this Order.

Article 14 of this Order gives a former registered person to whom the order relates a right to appear, to be accompanied, to be represented, and to make both written and oral representations at a hearing convened to review the interim suspension order.

Article 15 of this Order requires the Council to serve on the former registered person notice of its decision in respect of their application for review of the interim suspension order.

Article 16 of this Order provides that the Council must keep the interim suspension order under review at such intervals as it considers appropriate.

Article 17 of this Order provides for the extension or further extension of an interim suspension order beyond 18 months by the High Court.

Article 18 of this Order makes provision for rules of procedure to be made by the Council in respect of its decisions to impose, review, extend or revoke an interim suspension order.

Article 19 of this Order provides for the publication and provision of copies of documents to registered and former registered persons.

Article 20 of this Order makes provision for the service of a notice on a person under this Order.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with this Order. A copy can be obtained from the Department for Education and Public Services in the Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

Draft Order laid before Senedd Cymru under section 47(2) of the Education (Wales) Act 2014, for approval by resolution of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2021 No. (W.)

EDUCATION, WALES

**The Education Workforce Council
(Interim Suspension Orders)
(Additional Functions) (Wales)
Order 2021**

Made

Coming into force

1 April 2021

The Welsh Ministers, in exercise of the powers conferred on them by sections 5(1), 13(1), 46(1) and 47(1) of the Education (Wales) Act 2014⁽¹⁾, having consulted such persons as they consider appropriate, make the following Order.

In accordance with section 47(2) of that Act, a draft of this Order was laid before Senedd Cymru and approved by a resolution of Senedd Cymru⁽²⁾.

Title and commencement

1.—(1) The title of this Order is the Education Workforce Council (Interim Suspension Orders) (Additional Functions) (Wales) Order 2021.

(2) This Order comes into force on 1 April 2021.

(1) 2014 anaw 5. The power to make regulations under section 13 of the 2014 Act may be exercised to make an order by virtue of section 39 of the Legislation (Wales) Act 2019 (anaw 4) (“the 2019 Act”). See also section 40 of the 2019 Act for provision about the procedure that applies to this instrument.

(2) The reference in section 47(2) to the National Assembly for Wales now has effect as a reference to Senedd Cymru, by virtue of section 150A(2) of the Government of Wales Act 2006 (c. 32).

Interpretation

2. In this Order—

“the 2014 Act” (“*Deddf 2014*”) means the Education (Wales) Act 2014;

“agent” (“*asiant*”) has the meaning given in section 37 of the 2014 Act;

“category of registration” (“*categori cofrestru*”) is to be construed in accordance with section 9(3) of the 2014 Act;

“the Council” (“*y Cyngor*”) means the Education Workforce Council continued in existence by section 2(1) of the 2014 Act;

“disciplinary order” (“*gorchymyn disgyblu*”) has the meaning given in section 27(2) of the 2014 Act;

“former registered person” (“*cyn-berson cofrestredig*”) means a person who has been removed from the register maintained by the Council in accordance with this Order;

“interim suspension order” (“*gorchymyn atal dros dro interim*”) means a measure which temporarily removes a registered person from the register pending an investigation and a disciplinary hearing;

“the register” (“*y gofrestr*”) means the register established and maintained by the Council under section 9 of the 2014 Act;

“registered person” (“*person cofrestredig*”) means (subject to section 27 of the 2014 Act) a person registered in the register established under section 9 (including those registered on a provisional basis) of the 2014 Act.

Interim suspension orders

3.—(1) The Council may make an interim suspension order in respect of a registered person.

(2) The Council may not make an interim suspension order under paragraph (1) unless it has first convened a hearing to consider whether the requirements for making an interim suspension order have been met.

(3) The Council must appoint such persons as it considers appropriate to a panel to determine a hearing it convenes under paragraph (2).

(4) An interim suspension order may only be made under paragraph (1)—

- (a) before a decision whether or not to make a disciplinary order is made, and
- (b) if the Council considers it necessary in the public interest to make an interim suspension order.

(5) Where the Council makes an interim suspension order under paragraph (1), it must remove the registered person's name from the register it maintains.

(6) An interim suspension order may not have effect for a period exceeding 18 months (unless it is extended by the High Court; see article 17 (extension of interim supervision orders by the High Court)).

(7) An interim suspension order may only be made under paragraph (1) if it is in accordance with—

- (a) this Order, and
- (b) the rules of procedure made by the Council under article 18.

Notice of intention to make an interim suspension order

4.—(1) The Council must give the registered person to whom the proposed interim suspension order relates not less than 10 working days' notice of the intention to make such an order.

(2) The notice under paragraph (1) must inform the registered person—

- (a) of the nature of the allegations against them, and
- (b) of their rights under article 5.

Entitlement to appear and make representations

5. In respect of a hearing convened by the Council at which consideration is being given to the making of an interim suspension order in respect of a registered person, that person is entitled—

- (a) to make representations prior to the hearing (whether the person attends the hearing or not),
- (b) to appear before the hearing,
- (c) to make oral representations at the hearing,
- (d) to make written representations at the hearing, and
- (e) to be represented and to be accompanied, by any person or persons whom they desire, at the hearing.

Content of interim suspension order

6. An interim suspension order must record the—

- (a) decision of the Council,
- (b) date on which the order is made, and
- (c) date on which the order takes effect.

Date of effect of interim suspension order

7. An interim suspension order takes effect on the date on which notice of it is served on the person in relation to whom it is made except where the Council otherwise decides in which case it will take effect on the date set out in the order.

Notice of making of interim suspension order

8.—(1) The Council must serve a notice of the interim suspension order on the person in relation to whom it is made within 3 working days of the date on which the order is made.

(2) The notice must contain the following information—

- (a) the text of the order,
- (b) a description of the effect of the order,
- (c) the Council's reasons for making the order, and
- (d) an explanation of the registered person's right to request that the Council convene a hearing to review the order in accordance with article 12.

(3) The Council must serve notice of the order on the registered person's present or last employer or employers and, where relevant, agent or agents.

Right to request public hearing

9.—(1) Subject to paragraph (2), the panel may deliberate in private at any time and for any purpose during or after a hearing.

(2) A registered person or former registered person to whom the proposed interim suspension order relates may request that any hearing pursuant to article 3 or 12 take place in public.

(3) Where a registered person or former registered person requests the hearing take place in public, the panel may exclude the public from a hearing or any part of a hearing—

- (a) where it appears to the panel that it is necessary in the interests of justice to exclude the public, or
- (b) where it is necessary to protect the interests of children.

Appeals

10.—(1) A former registered person in respect of whom an interim suspension order has been made may appeal against the order to the High Court.

(2) An appeal under paragraph (1) must be made within the period of 28 days beginning with the date

on which notice of the order is served on the former registered person.

(3) In respect of such an appeal, the High Court may—

- (a) revoke the interim suspension order;
- (b) vary the period for which the interim suspension order is to have effect;
- (c) make no change to the interim suspension order.

(4) The decision of the High Court is final and may not be appealed.

Revocation of interim suspension order

11. An interim suspension order ceases to have effect if—

- (a) prior to carrying out an investigation pursuant to section 26(1) of the 2014 Act the Council determines that there is no case to answer in relation to the proposed interim suspension order,
- (b) the Council discontinues an investigation pursuant to section 26(3)(a) or (c) of the 2014 Act⁽¹⁾ into the conduct that is the subject of the interim suspension order,
- (c) the Council has made a decision as to whether or not to impose a disciplinary order, or
- (d) following a review pursuant to article 12, the Council determines that the interim suspension order made under article 3 is to be revoked.

Application for review of an interim suspension order

12.—(1) A former registered person may request the Council review an interim suspension order that relates to that person—

- (a) before the expiry of 6 months from the date on which—
 - (i) the interim suspension order was made, or
 - (ii) the High Court extended, or further extended, the interim suspension order under article 17(2)(b);
- (b) thereafter before the expiry of a subsequent period of 6 months;

(1) The Council may determine a registered person has no case to answer in accordance with section 26(3)(a) of the 2014 Act or that the case should be discontinued on some other basis in accordance with section 26(3)(c) of the 2014 Act.

- (c) at any time if new evidence becomes available that is relevant to the case or there is a material change of circumstances since the interim suspension order was made.

(2) Where a former registered person requests under paragraph (1) that the Council review the interim suspension order, the Council must convene a hearing to consider the case—

- (a) before the expiry of the period of 6 months from the date the order was made, where paragraph (1)(a) applies,
- (b) before the expiry of the period of 6 months from the date of the last review, where paragraph (1)(b) applies, and
- (c) within 10 working days of receipt of the request, where paragraph (1)(c) applies.

(3) Where an interim suspension order made under article 3 has been the subject of an appeal under article 10, any reference in paragraph (1) or (2) to the date on which the order was made is to be read as a reference to the date of the High Court's decision under article 10.

(4) An interim suspension order may only be reviewed by the Council in accordance with—

- (a) this Order, and
- (b) the rules of procedure made by the Council under article 18.

Information to accompany application for review

13. An application for review pursuant to article 12 must—

- (a) be made in writing,
- (b) specify the grounds on which the former registered person seeks to have the interim suspension order reviewed, and
- (c) be accompanied by every document relied upon in support of the application.

Entitlement to appear and make representations

14. In respect of any hearing convened by the Council pursuant to article 12(2) a former registered person to whom the interim suspension order relates is entitled—

- (a) to make representations prior to the hearing (whether the person attends the hearing or not),
- (b) to appear before the hearing,
- (c) to make oral representations at the hearing,
- (d) to make written representations at the hearing or prior to it, and

- (e) to be accompanied and to be represented, by any person or persons whom they desire, at the hearing.

Notice of decision following review of interim suspension order

15. The Council must serve notice on the former registered person of any decision made following a review held under article 12, and the reasons for that decision, within 3 working days of that decision being made.

Review by the Council

16.—(1) Notwithstanding article 12, the Council must keep under review an interim suspension order at such intervals as it considers appropriate.

(2) A review pursuant to paragraph (1) must be carried out in accordance with the rules of procedure made by the Council under article 18.

(3) Following a review pursuant to paragraph (1), the Council may—

- (a) revoke the interim suspension order,
- (b) make no change to the interim suspension order, or
- (c) in the event that there is a requirement to do so, make an application to the High Court for an extension in accordance with article 17.

Extension of interim suspension orders by the High Court

17.—(1) If the Council considers an interim suspension order should be extended beyond 18 months it must apply to the High Court.

(2) On an application, the High Court may—

- (a) revoke the interim suspension order,
- (b) extend, or further extend, the interim suspension order for up to 12 months, or
- (c) make no change to the order or to the period for which the order is to have effect.

(3) In this article, a reference to an interim suspension order includes a reference to an interim suspension order as extended or further extended.

Other provision about procedure to be made by the Council

18.—(1) The Council may, as it sees fit, make such other provision as to the procedure to be followed by it in connection with—

- (a) decisions to impose or not impose an interim suspension order,

- (b) consideration of the imposition of an interim suspension order, or
- (c) the review, extension and revocation of an interim suspension order.

(2) The Council may from time to time revise any rules of procedure made in accordance with this article.

Publication and provision of copies of documents

19.—(1) The Council must publish any rules of procedure made under article 18—

- (a) on a website which it maintains on the internet, and
- (b) in such other manner as it sees fit.

(2) The Council must, at the request of any person, provide that person with a copy of such rules of procedure made under article 18.

Service of notices

20.—(1) A notice required to be served on a person under this Order may be served by—

- (a) delivery to that person personally,
- (b) post to the address notified by the person to the Council or if there is no such notification to their last known address, or
- (c) electronic mail, where that person so requests it.

(2) A notice served in accordance with this article is deemed, unless the contrary is shown, to have been served—

- (a) in the case of service under paragraph (1)(a), on the day it was delivered,
- (b) in the case of service under paragraph (1)(b), the next working day, and
- (c) in the case of service under paragraph (1)(c), on the day it was sent.

Name

Minister for Education, one of the Welsh Ministers

Date

Explanatory Memorandum to the Education Workforce Council (Interim Suspension Orders) (Additional Functions) (Wales) Order 2021.

This Explanatory Memorandum has been prepared by the Schools Effectiveness Division of the Education Directorate 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 Education Workforce Council (Interim Suspension Orders) (Additional Functions) (Wales) Order 2021.

I am satisfied that the benefits justify the likely costs.

Kirsty Williams MS
Minister for Education
23 February 2021

PART 1

1. Description

1.1 The Education Workforce Council (“the Council”) was continued in existence by the Education (Wales) Act 2014 (“the 2014 Act”)¹. It was formerly known as the General Teaching Council for Wales (“GTCW”). It came into being on 1 April 2015.

1.2 The Council is the independent regulator in Wales for:

- school teachers;
- school learning support workers;
- further education teachers (lecturers);
- further education learning support workers;
- work based learning practitioners;
- qualified youth workers; and
- qualified youth support workers.

1.3 The Council is required to maintain a register (“the Register”) under section 9 of the 2014 Act and to allow the public access to that Register under regulation 14 of the Education Workforce Council (Main Functions) (Wales) Regulations 2015². The Register lists everyone registered with the Council at that point in time in the categories listed above (“Registered Persons”), and is available to the public via the Council’s website³.

1.4 Under section 26 of the 2014 Act, the Council must carry out such investigations as it thinks appropriate where it is alleged that a Registered Person is guilty of unacceptable professional conduct, professional incompetence or it is alleged the Person has been convicted of a relevant offence⁴

1.5 After carrying out such an investigation, the Council will decide what action to take. The Council may impose a disciplinary order on a Registered Person following an investigation and disciplinary hearing conducted by them in accordance with the disciplinary provisions in sections 26 to 32 of the 2014 Act and Part 5 of the 2015 Regulations.

1.6 A “disciplinary order” is defined in section 27(2) of the 2014 Act as:

- a reprimand,
- a conditional registration order,
- a suspension order, or
- a prohibition order.

¹ 2014 anaw 5.

² SI No.2015/140 (W.8).

³ <https://www.myewc.wales/en/member-of-public/qualified-teacher/list>

⁴ “Relevant Offence” means a criminal offence, unless that offence has no material relevance to an individual’s fitness to be a Registered Person (Please see section 27(1) of the Education Wales) Act 2014).

1.7 The Council's functions under the 2014 Act do not allow it to suspend a Registered Person pending the outcome of an investigation and disciplinary hearing. This is the case even if the nature of the allegations made against the Registered Person are credible, serious, and raise significant safeguarding concerns.

1.8 This Order confers additional functions on the Council so that it may:

- impose an interim suspension order ("ISO") on a Registered Person where the investigative and disciplinary process has not been completed, and the Council believes it is necessary in the public interest;
- review an ISO following a request to do so by a former Registered Person;
- keep an ISO under review at such intervals as it considers appropriate, whether or not a former Registered Person requests a review; and
- revoke an ISO following a review requested by a former Registered Person, or at any time prior to making a decision on whether or not to impose a disciplinary order.

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

2.1 This Order addresses recommendation 21 of the Children, Young People and Education Committee in their Report on the Teachers' Professional Learning and Education Inquiry, namely the "... *remit of the Education Workforce Council should be extended to provide it with power to suspend teachers in appropriate circumstances*"⁵. However, this Order enables the Council to impose ISOs on all categories of Registered Persons, not only school teachers.

2.2 The Council has the power under article 18 of this Order to set its own rules of procedure relating to decisions to impose, review, extend and revoke ISOs.

3. Legislative background

3.1 Section 5 of the 2014 Act gives the Welsh Ministers an order making power to confer or impose on the Council such additional functions as they consider appropriate.

3.2 Section 13 of the 2014 Act allows the Welsh Ministers to make, by regulations, such further provision about the register and registration as they consider necessary or expedient.

3.3 Section 46 of the 2014 Act allows the Welsh Ministers to make, by order, such incidental, consequential, supplemental, transitional, transitory or saving

⁵ Available at: <https://senedd.wales/laid%20documents/cr-ld11338/cr-ld11338-e.pdf>

provision as they consider appropriate for the purposes of, or in connection with, giving full effect to any provision made by or under this Act.

3.4 Section 47 of the 2014 Act enables the Welsh Ministers to make such incidental, consequential, supplemental, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, or in connection with, the 2014 Act.

3.5 Section 39 of the Legislation (Wales) Act 2019 (“the 2019 Act”) provides that where the Welsh Ministers have a power or duty to make subordinate legislation in the form of regulations, rules or an order made by statutory instrument, they may exercise the power or duty by making the subordinate legislation in any other of those forms by statutory instrument.

3.6 Section 40 of the 2019 Act, which relates to combining subordinate legislation subject to different Senedd procedures, has been applied in this Order.

3.7 This Order is made under the affirmative resolution procedure.

4. Purpose and intended effect of the legislation

4.1 The purpose of this Order is to add to the functions of the Council so that it may make ISOs against Registered Persons. This enables the Council to suspend the registration of a Registered Person from the public Register as an interim measure, prior to the outcome of an investigation and disciplinary hearing. The maximum initial period for which an ISO may have effect is 18 months. However, in such cases where, for example, a person is charged with a criminal offence, where it may take longer than 18 months for the criminal justice system to conclude the case, the Council can apply to the High Court for an extension to an ISO beyond 18 months. This will contribute to the transparency of the process, and provides an additional safeguard as it ensures there is independent scrutiny by the Court in lengthy cases.

4.2 The Order also gives the Council the power to review, extend and revoke ISOs, and for the person to whom the ISO relates (“the former Registered Person”) to request that the ISO be reviewed.

4.3 The intended effect of this Order is to ensure certain individuals may not use “Registered Person” status to demonstrate their suitability for educational employment pending the outcome of the Council’s investigation and disciplinary process. This is because, whenever an ISO is imposed, the former Registered Person:

- is unable to work in any role which requires registration with the Council;
- is unable to identify themselves as a “Registered Person”; and
- will not appear on the Register as a “Registered Person”.

The ISO Process

4.4 An ISO may be imposed only if the Council believes it is in the public interest to do so. This means the Council will consider imposing an ISO where a Registered Person is the subject of a referral in which serious allegations are made that raise significant safeguarding concerns. Allegations of serious sexual misconduct, or serious physical, emotional, and/or mental harm, would always be viewed as raising significant safeguarding concerns. Similarly, if the police informed the Council that they were carrying out a serious criminal investigation which raised a safeguarding concern, this too would be regarded as significant. An ISO is not a “disciplinary order”, but instead a temporary measure to be taken pending an investigation and a disciplinary hearing. The maximum period for which an ISO may have effect, without an application to the High Court for an extension, is 18 months. The decision to impose an ISO would not involve a final determination of facts relating to the allegations in the case. It would be separate from the decision to impose a final disciplinary order. Therefore, the imposition of an ISO does not necessarily mean a disciplinary order will subsequently be imposed by the Council.

4.5 The Council will also consider the credibility of the referral before considering whether to impose an ISO. Where a referral is made by the police or the Disclosure and Barring Service, that referral - and the allegations made within it - would likely be deemed sufficiently credible to allow imposition of an ISO to be considered. Whereas if a referral comes from another source, such as an employer or member of the public, the Council would make further enquiries as part of their consideration of the credibility of that referral. For example, the Council would contact the police for advice as to whether they consider there to be an “urgent pressing social need” (see para 4.34) for the Council to take action.

4.6 Whenever the Council are considering the imposition of an ISO, a notice of intention to make the ISO must be sent to the Registered Person. The notice must give the Registered Person at least 10 working days’ notice of the ISO hearing before an independent panel.

4.7 The ISO hearing will be held in private, unless the Registered Person requests a public hearing.

4.8 The Registered Person will have the right to appear and make oral representations at the ISO hearing at which their case is considered, and make written representations prior to and at that hearing. They also have the right to be accompanied and to be represented at the hearing by one or more persons (for example, a union representative or solicitor), and to make prior written representations to the panel if they do not attend the hearing.

4.9 An ISO must contain the following information:

- the decision of the Council;
- the date on which the ISO is made; and

- the date on which the ISO takes effect. (Usually the ISO will take effect on the date on which notice is served on the Registered Person, except where the Council decides otherwise).

4.10 Notice of the making of the ISO must be served within 3 working days of the date of the decision on:

- the person against whom it was made (“the former Registered Person”),
- the former Registered Person’s present or last employers; and
- any teaching agencies with which the former Registered Person is registered.

4.11 The notice of the making of the ISO must contain the following information:

- the text of the ISO;
- a description of the effect of the ISO;
- the Council’s reasons for making the ISO; and
- an explanation of the former Registered Person’s right to request the Council convene a hearing to review the ISO.

Former Registered person’s right to appeal against an order to the High Court

4.12 The former Registered Person may appeal against the ISO to the High Court. An appeal must be made within the period of 28 days beginning from the date on which notice of the ISO is served. In respect of such an appeal, the High Court may:

- revoke the ISO;
- vary the period for which the ISO is to have effect; or
- make no change to the ISO.

The decision of the High Court is final and may not be appealed.

Former Registered Person’s right to request a review of the ISO

4.13 As explained above, the Council must tell the former Registered Person, within 3 working days of the decision to impose the ISO, of their right to request the Council convene a hearing to review the ISO.

4.14 A former Registered Person may request the Council review an ISO within the first 6 months of the ISO’s imposition, or from the date of the High Court’s decision if the ISO has been appealed, and thereafter at 6-monthly intervals. The former Registered Person may request the Council review an ISO at any time if new evidence becomes available that is relevant to the case or there is a material change of circumstances since the ISO was made.

4.15 An application for review of an ISO must be made in writing and explain the reasons why the former Registered Person is seeking to have the ISO

reviewed. The application must be accompanied by every document the former Registered Person is relying on in support of their application.

4.16 Whenever a request for a review is received, the Council must convene a hearing to consider the case not later than 6 months from the date the ISO was made, or the High Court's decision if the ISO has been appealed, or the last review if the ISO has already been reviewed. If the former Registered Person has requested a review because new evidence has become available or there has been a material change of circumstances, the Council must convene a hearing within 10 working days of receipt of that request. The review hearing will be held in private, unless the former Registered Person requests a public hearing.

4.17 The former Registered Person will have the right to appear and make oral representations at the review hearing at which their case is considered, and make written representations prior to and at that hearing. They also have the right to be accompanied and to be represented at the hearing by one or more persons (for example, a union representative or solicitor), and to make prior written representations to the panel if they do not attend the hearing.

4.18 The Council must notify the former Registered Person in writing of the outcome of the review within 3 working days of the panel's determination, and give their reasons for that determination.

Review of an ISO by the Council

4.19 The Council is required to keep an ISO under review at such intervals as it considers appropriate, and in accordance with its rules of procedure. This review will take place whether or not a former Registered Person exercises their right to request a review.

4.20 The schedule for this review is set by the independent panel when it initially imposes the ISO. Usually this will be at intervals of 6 months unless the Council is notified of a change in circumstances, in which case the review may take place earlier than originally planned.

4.21 At this review there is not a hearing and the former Registered Person will not be asked to make representations.

Extension of ISOs by the High Court

4.22 If the Council considers an ISO should be extended beyond 18 months it must apply to the High Court. On an application, the High Court may:

- revoke the ISO;
- extend, or further extend, the ISO for up to 12 months; or
- make no change to the ISO or to the period for which the ISO is to have effect.

Revocation of an ISO by the Council

4.23 The Council may revoke an ISO if it:

- determines there is no case to answer prior to the start of the Council's own investigations, which are part of its disciplinary functions under section 26 of the 2014 Act; or
- discontinues an investigation into the alleged conduct that resulted in the imposition of an ISO, because there is no case to answer or on some other basis; or
- makes a decision as to whether or not to impose a disciplinary order; or
- carries out a review to consider a request by a former Registered Person, and that review determines the ISO should be revoked.

4.24 An ISO will cease automatically when the term for which it is imposed comes to an end. (The maximum term for which an ISO may have effect, without an application to the High Court for an extension, is 18 months).

Use of the Council's rules of procedure

4.25 The Council has the power to set its own rules of procedure relating to decisions to impose, review, extend or revoke ISOs.

4.26 For example, article 3 of this Order gives the Council the power to make ISOs if it considers it "necessary in the public interest" to do so. However, it is the rules of procedure that explain what is meant by the "public interest" test, and how it will be applied in practice when the Council is considering whether to make an ISO.

4.27 Rules of procedure may only deal with matters that are not provided for in the Order. For example, as article 4 of the proposed Order requires a Registered Person to be given not less than 10 working days' notice of the Council's intention to impose an ISO on them, rules of procedure may not change this requirement.

4.28 The Council must consult on these rules of procedure before they are made or amended, and are obliged to publish them on its website and provide copies on request to any person who requests them.

Reasons for bringing forward this Order

Safeguarding concerns

4.29 Under section 26 of the 2014 Act, the Council must carry out such investigations as it thinks appropriate where it is alleged that a Registered Person is guilty of unacceptable professional conduct, professional incompetence or it is alleged the Person has been convicted of a relevant offence. [After carrying out an investigation the Council must decide what further action to take in respect of the case. Where the Council holds a hearing or the person consents to the case being determined without a hearing, the

Council may determine that there is no case to answer or that the person is guilty of unacceptable professional conduct, serious professional incompetence or has been convicted of a relevant offence. Where the Council determines that a person is guilty of unacceptable professional conduct or serious professional incompetence, or has been convicted of a relevant offence, the Council may make a disciplinary order in relation to the person. Not all disciplinary orders lead to removal from the Register.]

4.30 A Registered Person's name must remain on the Register at all times prior to the completion of the investigative and disciplinary process by the Council. The Register is open to the public, and may be accessed online. This means that while the police are investigating a serious, credible allegation that raises significant safeguarding concerns against a Registered Person, that person remains on the Register.

4.31 This is a serious failing, as it allows an individual to continue to have the status of a "Registered Person" for possibly many months, no matter how serious and credible the allegations against them.

4.32 Whereas, if the Council had ISO powers it could suspend the name of that individual from the Register pending the outcome of police investigations and its own investigation and disciplinary process.

The Common Law Police Disclosure Scheme

4.33 In 2013, the Home Office reviewed the nature of information provided by police forces to regulatory bodies. Historically, police forces would notify the General Teaching Council for Wales (now the Education Workforce Council) when a school teacher had been arrested for, or charged with, a criminal offence.

4.34 The 2013 review changed the requirements surrounding provision of such information by police forces, and replaced it with the Common Law Police Disclosure scheme (CLPD)⁶. Under the CLPD, the information which may be provided by the police is not limited to where there has been an arrest or criminal charge. However, a referral to a regulatory body will only be made where there is an 'urgent pressing social need' to address.

4.35 Without the ability to take immediate action upon receipt of an allegation by way of an ISO, the Council is concerned that the police may not be notifying it of some of the most serious allegations made against its registrants that involve significant safeguarding concerns.

4.36 If the Council had ISO powers and could take swift action, the police may be more likely to refer serious allegations concerning Registered Persons to it under the CLPD.

⁶ Available at: <https://www.app.college.police.uk/wp-content/uploads/2016/08/NPCC-2017-Common-Law-Police-Disclosures-CLPD---Provisions-to-supersede-the-Notifiable-Occupations-Scheme-NOS.pdf>

4.37 However, some Welsh police forces have indicated that giving the Council ISO powers would not mean all serious allegations relating to Registered Persons are automatically referred to it, because decisions to refer are made on a case-by-case basis. Therefore, we cannot be certain that giving the Council ISO powers would result in more referrals under the CLPD; that decision would be for the police to make and would be taken on a case by case basis.

Limitations of other methods by which children are protected

4.38 While there are various existing methods by which children and vulnerable adults are protected from individuals who may cause them harm, these methods may not entirely address safeguarding concerns.

The Disclosure and Barring Service

4.39 The Disclosure and Barring Service (DBS) was established in 2012 and carries out the functions previously undertaken by the Criminal Records Bureau and the Independent Safeguarding Authority.

4.40 The DBS disclosure team carries out criminal record checks that result in DBS certificates being issued to individuals. Employers can then ask to see the certificates to ensure that they are recruiting suitable people to their organisation.

4.41 Once the DBS has information that an individual poses a safeguarding risk to children or vulnerable adults, it will consider placing that individual on either the children's barred list, the adults' barred list, or both. Once on the appropriate barred list a Registered Person will be automatically ineligible to work in any of the seven registered professions with the Council.

4.42 However, the experience of the Council is that an individual is not usually placed on a barred list until there has been a conviction, which means that during a criminal investigation, the protection offered by the DBS may not fully address the safeguarding risks.

Employer's duty to supply information to the Council

4.43 Section 36 of the 2014 Act and Schedule 5 to the 2015 Regulations set out the information that must be provided by an employer to the Council.

4.44 When an employer chooses to dismiss a Registered Person because of serious allegations, they are required to inform the Council. However, finding out about serious allegations against a Registered Person upon their dismissal does not address the risk of the Registered Person seeking alternative employment during any period of suspension.

Police bail conditions

4.45 If an accused person is to be released on bail, there may or may not be conditions attached to help protect children and vulnerable people.

4.46 Even where there are conditions, these conditions will not always deter an individual seeking work privately in order to gain access to children. In doing so, they could use their Registered Person status to prove that they are suitable.

Statutory duties and related guidance

4.47 Local authorities, the governing bodies of maintained schools and Further Education institutions have a duty under section 175 of the Education Act 2002⁷ to exercise their functions in a way that takes into account the need to safeguard and promote the welfare of children. When doing so, they must have regard to the statutory guidance “Keeping learners safe - the role of local authorities, governing bodies and proprietors of independent schools under the Education Act 2002”⁸. This means the guidance must be taken into account, and any decision to depart from it must be justified.

4.48 Amongst other matters, this guidance deals with the organisational and management arrangements that need to be put in place to safeguard children in the education service. It also sets out the safeguarding duties and responsibilities shared by all staff who work in an education setting when responding to safeguarding concerns in accordance with the All Wales Child Protection Procedures.

4.49 While this guidance does much to safeguard children, it does not address the issue of an individual using their Registered Person status to prove their suitability.

5. Consultation

5.50 A consultation document was issued on 07 September 2020, with a response date of 04 December 2020. An Addendum to the consultation subsequently drew attention to a revised version of the draft Order. To give time for consideration of the changes, the consultation period was extended to 11 December 2020.

5.51 67 consultation responses were received. Two of these were blank and did not reply to any of the questions. Responses included eight from schools or colleges, four from youth work organisations, four from local government bodies and eight from trade union organisations.

5.52 60 respondents agreed with the proposal to give the Council ISO powers and five disagreed. One anonymous respondent disagreed on the grounds that an ISO could damage an innocent person’s career. Another felt that the Council

⁷ 2002 c. 32.

⁸ Available here: <https://gov.wales/keeping-learners-safe>

should have fewer powers not more. Three trade unions disagreed with the proposal.

5.53 The Welsh Government carefully considered the responses to the consultation and noted that a significant majority of the responses received were in favour of the Council having ISO powers. In recognising the views of those who did not agree with the proposal, the Welsh Government acknowledged the concerns in particular of some trade unions around the risks of ISO powers being used inappropriately and also the impact an ISO could have on a Registered Person. However, the Welsh Government takes the view that these risks and concerns can be mitigated and significantly reduced through strong working links between the Council and trade unions, and therefore do not constitute a convincing argument against them.

5.54 As a result of the consultation, the Welsh Government has amended the Order in the following areas:

- Continuity of membership of review panels;
- When and by whom Orders should be reviewed;
- The timing and regularity of reviews; and
- Representation and the right to be accompanied.

5.55 The details of a number of helpful suggestions relating to processes and procedures have been anonymised, where requested, and shared with the Council so that they can be taken into account in terms of its rules of procedure.

PART 2 – REGULATORY IMPACT ASSESSMENT

Introduction

This Regulatory Impact Assessment (RIA) has been developed to consider the regulatory implications of giving the Education Workforce Council (“the Council”) the additional functions of imposing, reviewing and revoking interim suspension orders (“ISOs”).

6. Options

This RIA reviews two options:

- I. Do nothing; i.e. do not legislate to give the Council ISO powers.
- II. Bring forward this Order to enable the Council to impose, review, extend and revoke ISOs.

7. Costs benefits analysis

Option 1 – do nothing

7.1 In this option, the Council is not given ISO powers. Instead, the status quo is retained, so the Council would be unable to remove the name of a Registered Person from the Register pending completion of the investigation and disciplinary process.

Safeguarding “loophole” not addressed

7.2 If the Council is not given ISO powers, an individual would continue to have the status of a “Registered Person” during the investigative and disciplinary process. This is the case even if very serious allegations were made against that individual, and they had been suspended or dismissed by their employer.

7.3 The safeguarding risk whereby an individual could use their status as a “Registered Person” to prove their suitability would not be addressed. This is a significant risk, and a substantial failing of option 1.

The Council may be less likely to get information from the police under the Common Law Police Disclosure scheme (CLPD)

7.4 The police may be less likely to refer serious allegations concerning Registered Persons to the Council under the CLPD, as the Council would continue to be unable to take immediate action to address safeguarding concerns by removing that Person from the Register.

7.5 However, feedback from the Welsh police suggests the decision to refer serious allegations are made on a case by case basis. Therefore, we cannot be certain that giving the Council ISO powers would result in more referrals under the CLPD; that decision would be for the police to make and would be taken on a case by case basis.

7.6 As a result, this risk is not as significant as the safeguarding risk identified above.

Costs of Option 1

7.7 There are no monetary costs for option 1. However, not addressing the risk of the safeguarding “loophole” described above may come at a broader ‘cost’ to children and their families.

Benefits of option 1

No detriment to Registered Person

7.8 The main benefit of option 1 is there would be no detrimental impact on Registered Persons; this is particularly important for those individuals who are exonerated following the investigation and disciplinary process.

7.9 This is in contrast to the potentially damaging impact of ISOs on former Registered Persons, which is discussed in option 2 below.

No costs

7.10 If option 1 is chosen, the costs of implementing the ISO and, ISO review processes will not need to be met.

7.11 As the cost of these processes is expected to be modest, this is a minor benefit. (Please see the costs analysis for option 2 for an explanation of these costs).

Conclusion for option 1

7.12 As the non-monetary “cost” of not giving the Council the power to make ISOs substantially outweighs the benefits, option 1 is not the preferred option even though this option does not have a monetary cost.

Option 2 *Bring forward this Order to enable the Council to impose, review, extend and revoke interim suspension orders*

7.13 Under this option, the Council is given the power to suspend Registered Persons from the Register on a temporary basis, provided the Council believes it to be in the public interest to do so.

Detriment to Registered Person

7.14 The main risk of option 2 is the potential impact on Registered Persons who have had serious allegations made against them, particularly for those individuals who are exonerated following the completion of the investigation and disciplinary process.

7.15 The most serious potential impacts of an ISO on a former Registered Person are set out below.

a. Loss of professional and personal reputation.

7.16 Whilst suspension may be viewed as an emergency measure that is protective rather than punitive, it may damage the professional and personal reputation of a Registered Person even if they are later cleared of all wrongdoing. Recent case law supports this view, finding that suspension is not a “neutral act” if it is the start of an “inevitable” disciplinary process.⁹

7.17 However, if the police or Crown Prosecution Service decide there is no case to answer or the Registered Person is found not guilty at trial, any remaining damage to their professional or personal reputation is just as likely to have been caused by the police investigation, trial and media coverage as by the imposition of an ISO.

⁹ City of London Corporation v McDonnell (UKEAT/0196/17/JOJ).

b. Impact on employment – suspension.

7.18 The effect of temporarily suspending a Registered Person from the Register is that their employer would be obliged to take some action immediately, if they had not already taken such action. The most likely response would be to suspend the Person from their position; it is possible the Person could be dismissed but this seems less likely at this stage.

School teachers and school learning support workers

7.19 In some cases, the governing body may agree for the former Registered Person to be given other duties but remain working at the school in a non-teaching or non-teaching support capacity. As the Council would only consider using its ISO powers in the most serious of cases, it is unlikely that the employer would want the individual to continue in their usual role while investigations are ongoing. (If the individual is placed on the Disclosure and Barring Service barred list – which usually would be the case - the employer will not have the option of keeping the individual in their usual role.)

7.20 In the case of a former Registered Person who is a teacher employed at a school pursuant to the School Teachers' Pay and Conditions, such Persons would continue to be paid whilst suspended. This is due to regulations 16 and 28 of the Staffing of Maintained Schools (Wales) Regulations 2006¹⁰ ("the 2006 Regulations").

7.21 In all other cases where the School Teachers' Pay and Conditions do not apply (for example, school learning support workers) whether that Person continues to be paid during the period of suspension is determined by the terms and conditions of employment negotiated with their employer. While suspension would suspend the Person's ability to practise their profession and could potentially last many months, provided that Person is employed under a contract of employment they will often continue to be paid in full during their suspension.

7.22 The impact is harder on supply staff, as they are often self-employed rather than employed under a contract of employment and find work via an agency. Therefore, suspension from the Register means they will not receive an income in the same way as those who are employed under a contract of employment to work in a school. This may have an economic impact on their families as well as on the Registered Person themselves.

7.23 However, given that imposing an ISO will only be considered in the most serious of cases, it is likely that a former Registered Person who works on a "supply" basis would be barred from their usual work pending the outcome of a police investigation by the Disclosure and Barring Service. Therefore, the Person would be placed in the same predicament regarding their finances whether or not an ISO is made.

¹⁰ SI No. 2006/873 (W. 81).

Further education teachers, qualified youth workers, work-based learning practitioners, further education learning support workers and youth support workers

7.24 Our understanding is the impact of suspension on the above persons is similar to those who are employed to work in schools, but are not employed pursuant to School Teachers Pay and Conditions.

7.25 This means where the above persons are employed under a contract of employment, whether they will continue to be paid during the period of suspension is determined by their terms and conditions of employment. It is often the case that persons with a contract of employment continue to be paid in full during their suspension.

7.26 Again, the impact is harder on supply staff and their families as they will usually not have a contract of employment and so will not receive an income during their suspension. As with supply staff working in schools, it is likely that such persons would be placed in the same predicament regarding their finances whether or not an ISO is made.

c. Impact on employment – dismissal

School teachers and school learning support workers

7.27 In the most serious cases, dismissal may be considered. However, the 2006 Regulations require the governing body to convene a staff disciplinary committee in order to determine whether a member of the school staff should be dismissed. In such cases the governing body would need to be satisfied that the evidence justified such a step.

7.28 The member of staff has the right to appeal the decision to dismiss to a staff appeals committee, and if they remain unhappy they may pursue a claim for unfair dismissal against the governing body in an Employment Tribunal. The evidence against the former Registered Person would need to be very strong indeed for dismissal to be considered, as employers would not wish to dismiss and then later have to fight an unfair dismissal claim where a person is later exonerated - and perhaps be required to make a large pay out compensating for loss of earnings and reputation et cetera.

Further education teachers, qualified youth workers, work-based learning practitioners, further education learning support workers and youth support workers

7.29 Our understanding is most of the above persons will be employed by organisations that have their own internal disciplinary and appeals procedures in place. In these instances, these procedures will need to be followed before a former Registered Person is dismissed.

7.30 All the above categories of Registered Persons, whether or not their former employer has a disciplinary and appeals process, may pursue a claim for unfair dismissal against their former employer in an Employment Tribunal.

7.31 As with school staff, the evidence in support of dismissal would need to be very strong indeed, as employers would not wish to dismiss and then be required to make a large pay out if the Registered Person is later exonerated.

d. Impact on health and well-being

7.32 The impact on the health and well-being of a former Registered Person who has serious allegations made against them - but who is later exonerated - cannot be underestimated. It is also possible that the mental health and well-being of the families of Registered Persons may suffer.

7.33 However, an ISO is just one of several possible measures which may be taken - such as being barred by the Disclosure and Barring Service or being charged with serious criminal offences - and it is the wrongful allegations rather than the imposition of the ISO which is the main cause of the distress.

Costs of option 2

Cost of the ISO & ISO review process.

7.34 The cost of the ISO & ISO review process is believed to be relatively modest.

7.35 Currently, the fee for registration with the Council as stipulated in the Education Workforce Council (Registration Fees) Regulations 2017 is £46 per annum for all registrants. Welsh Government subsidises this fee so that the amounts paid by registrants is £45 a year for schoolteachers, FE teachers, qualified youth workers and work-based learning practitioners; and £15 a year for school learning support workers, FE learning support workers and youth support workers. The Council has advised that it will not need to seek an increase in the fee payable by its registrants in order to finance the imposition, review, extension and revocation of ISOs.

No transitional costs

7.36 There are no transitional costs associated with this proposal. This is because members of the independent panels which impose ISOs, and members of independent review panels, will be drawn from the existing "pool" of individuals who have already been selected as potential members of the Council's investigation and disciplinary committees.

7.37 The work surrounding the drafting of the Council's rules of procedure on the imposition, review and revocation of ISOs would be covered within the Council's existing team. The position is the same for any guidance the Council may wish to issue on the ISO process. No additional staff would be required.

Cost of imposing an ISO

7.38 The Council received 15 referrals in the last 3 years that made very serious allegations against Registered Persons, and would have posed sufficient safeguarding risks to merit the Council considering the imposition of ISOs. Of these referrals, 10 came from the police and 5 from employers. This

is an average of 5 relevant referrals a year. Even if referrals to the Council double as a result of having ISO powers, we would be looking at an average of 10 relevant referrals a year.

7.39 There is a cost to the employer (school or college) if a Registered Person continues to be paid in full during their suspension and the employer also has to recruit cover for the duration of the suspension. However, this would be the case whether or not an ISO was made.

Uncontested ISOs

7.40 The reason why the Council does not anticipate a need to increase fees to support its ISO powers is mainly because it expects 80-90% of ISO cases to proceed with little or no engagement from the Registered Person.

7.41 Of the remaining 10-20%, the Council anticipates that while these Registered Persons may respond or engage with the ISO process, less than 5% of cases will result in a contested hearing.

7.42 Therefore, we expect at least 95% of those persons who are told that the Council are considering imposing an ISO on them would not contest it at a hearing - probably because they admitted the allegations. This means a full hearing before an independent panel would not be needed in the great majority of cases, although the panel would still need to be convened and a short hearing held to confirm the imposition of the ISO.

7.43 Current referral rates suggest there would be 4 or perhaps 5 uncontested ISOs per year; given the low numbers of past referrals, it may be that there are no contested ISOs in a particular year if the expected rate of uncontested ISOs is at least 95%. Even if referral numbers double we are looking at no more than 9 or possibly 10 uncontested referrals a year, so the additional work caused by the uncontested ISO making process would be minimal.

7.44 While the exact cost of an uncontested ISO hearing is difficult to quantify, the Council is content it would equate to only a small amount of staff time, which would be covered within the existing Council team. No additional staff would be required.

Contested ISOs

7.45 If a Registered Person contests the ISO and requests a hearing, unlike normal disciplinary hearings that cost an average of £20,000 each, the Council has advised that contested ISO hearings would probably only cost around £2,500. This is because these hearings will not test the evidence of witnesses, and it is the calling of witnesses to "full" disciplinary hearings that often costs the most money and adds to the hearing's length.

7.46 As there have been 15 referrals to the Council in 3 years, making an average of 5 a year, if less than 5% of cases are fully contested this would mean at most 1 contested hearing a year if referral numbers stay the same; in some years there may be no contested hearings at all.

7.47 Referral numbers would need to increase eight-fold to 40 a year for there to be 2 contested cases a year. Even if this happens, the expected cost of contested ISO hearings is expected to be only £5,000 per annum.

7.48 As the number of contested cases is currently estimated to be less than one a year, the number of instances that are likely to result in an appeal to the High Court will be even fewer. This is especially the case given that the High Court is unlikely to revoke an ISO whilst an investigation is ongoing. In light of the likely number of instances, the Council has advised that it will not need to seek an increase in the fee payable by its registrants in order to finance this element of the process.

Review at the request of a former Registered Person

7.49 Once an ISO is made, the former Registered Person may request the Council review it. The first request may be made within 6 months of the imposition of the ISO, or of the High Court's decision if there is an appeal, and thereafter at intervals of 6 months. The Council's best estimate is that there will be 1- 2 review hearings a year, which will cost the same as an ISO hearing. This would make the cost of review hearings no more than £5000 per annum.

The Council to keep an ISO under review

7.50 The Council is required to keep an ISO under review at appropriate intervals. This requirement is additional to a former Registered Person's right to request a review hearing.

7.51 These reviews by the Council will not take the form of a hearing. The former Registered Person will not be asked to make representations.

7.52 The independent panel will set the schedule for these reviews at the same time the ISO is imposed. This schedule will usually require a review to be held every 6 months, although a review may take place sooner if appropriate (for example, if new evidence comes to light that the allegations made against the former Registered Person are false).

7.53 ISOs may not have effect for longer than 18 months without an application to the High Court for an extension. The current average number of relevant referrals is 5 a year. Even supposing all ISOs last the maximum 18 month period, if referral numbers stay the same the Council would have no more than 7 or 8 ISOs to be kept under review at any one time. A doubling of referral numbers would mean the Council has no more than 15 ISOs to keep under review.

7.54 A formal justice impact assessment is not required for this secondary legislation. However, the Welsh Government has notified the Lord Chief Justice's Department of the following draft provisions:

- A right for a former registered person to appeal to the High Court against the imposition of an ISO; and
- A requirement for the Council to make an application to the High Court if

they wish to extend an ISO beyond 18 months.

7.55 Our current estimate is that approximately 1-2 ISOs per annum will be contested at a Council hearing. It is more difficult to assess how many applications for extension would be required as this will largely occur where there are delays in the criminal justice system. However, as ISOs are only expected to be imposed in very serious cases, we expect the overall numbers of ISOs to be low and we therefore assess the impact on the court to be minimal.

7.56 As the Council will review a typical ISO twice a year, there would be no more than 14-16 review meetings every year if referral numbers were to stay the same. If referral numbers doubled, there would be no more than 30 meetings a year.

7.57 As with the cost of uncontested ISOs, the exact cost of review by the Council is difficult to quantify. However, the Council is content it would equate to only a small amount of staff time. The Council anticipates that the extra work connected with keeping ISOs under review would be covered by the existing Council team, so there would be no additional costs.

Costs - conclusion

7.58 As all the monetary costs relating to the imposition and review of ISOs are modest, and the Council does not expect to seek to raise the registration fee for Registered Persons as a result, the cost of the ISO and ISO review process is viewed as a minor consideration in this costs-benefits analysis.

“Cost” to the former Registered Person

7.59 As explained in the “Option 2” paragraphs above, there is an impact on a former Registered Person whenever an ISO is imposed. Their families may suffer too. There is potential for this impact to be most damaging for a former Registered Person who is later exonerated on completion of the investigation and disciplinary process.

7.60 While the impact on former Registered Persons will come at a “cost” to those individuals – and perhaps also their families - we do not believe it is sufficient to outweigh the benefit of addressing the safeguarding “loophole” described in the “Benefits of option 2” section below.

7.61 Should the former Registered Person decide to appeal an ISO to the High Court they would have to bear the costs. However, they would be able to make representations to the High Court for an order for costs to be made against the Council if they were successful.

Benefits of option 2

Safeguarding “loophole” addressed

7.62 If the Council is given ISO powers, an individual who has very serious allegations made against them would not continue to have the status of a

“Registered Person” while the investigative and disciplinary process is being carried out.

7.63 As noted above, there are expected to be an average of 5 referrals made to the Council each year. Under this option, the safeguarding risk whereby those individuals could use their status as a “Registered Person” to prove their suitability would be addressed. This is a very significant benefit of option 2.

The Council may be more likely to get information from the police under the CLPD scheme

7.64 As explained in the “Risks” paragraphs of option 1 above, it is not certain that more referrals from the police would result from the Council getting ISO powers.

7.65 Therefore, this benefit is not as substantial as the safeguarding benefit identified above.

Conclusion for option 2

7.66 The monetary cost of the ISO & ISO review process is modest, and an increase in the Council’s registration fees is not expected.

7.67 Whilst the “cost” of the detrimental impact of an ISO on a Registered Person is acknowledged, in our view it does not outweigh the substantial benefit of addressing the safeguarding “loophole” described in the “Benefits of option 2” paragraphs above.

7.68 As the Council will only use their ISO powers in the most serious of cases - and where they believe to be in the public interest - option 2 is the preferred option.

8. Consultation

8.1 As a result of the public consultation, this RIA has been changed in order to include the impact of the following additional safeguards to the ISO process:

- a. A right of appeal for a former Registered Person to the High Court; and
- b. A requirement that the Council make an application to the High Court for any extension of an ISO beyond 18 months.

9. Competition Assessment

<i>The competition filter test</i>	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector categorised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

9.1 The filter test shows that it is not likely that this Order will have any detrimental effect on competition; therefore, we do not consider it necessary to undertake a detailed competition assessment for this Order since it will not affect the business sector in any significant way.

10. Post implementation review

10.1 The Welsh Government will work with the Council to monitor the use of ISO powers following the coming into force date of this Order.

Agenda Item 3.4

SL(5)769 – The Agricultural Support (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021

Background and Purpose

These Regulations make amendments to retained EU law and domestic law governing the rural development programme to put in place a domestic framework to fund new rural development schemes in Wales following the end of the EU Implementation Period and to ensure that framework is efficient and effective.

In addition, these Regulations makes minor, technical amendments to retained EU law in relation to direct payment schemes to address errors and ensure that it functions efficiently and effectively.

These Regulations also incorporate references to the Well-being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016 into the aim of the support for rural development.

Procedure

Draft Affirmative.

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

Technical Scrutiny

The following 9 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

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

The draft text at the head of these Regulations explain that they are laid before the Senedd *"under section 50(6)(c) and (8) of the Agriculture Act 2020 and paragraph 1(9) of Schedule 7 to the European Union (Withdrawal) Act 2018"*.

Paragraph 1(8) of Schedule 7 to the European Union (Withdrawal) Act 2018, provides for instruments falling under paragraph 1(2) of the Schedule 8 to be subject to the draft affirmative procedure. Paragraph 1(9) of Schedule 7 applies to all other instruments not within the scope of paragraph 1(8) and provides for them to be subject to the negative procedure.

The reference to paragraph 1(9) of Schedule 7 should therefore instead refer to paragraph 1(8) of Schedule 7.



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

These Regulations make a number of amendments to retained EU law, including omitting definitions and other provisions contained in retained EU law in so far as they relate to domestic support for rural development. Although certain provisions have been omitted, some reference to those omitted provisions remain in the relevant retained EU law.

The relevant provisions are:

Regulation (EU) No. 1306/2013, amended by Regulation 2 of these Regulations:

- Regulation 2(17) of these Regulations omits Article 108. A reference to the omitted Article 108 remains in Article 105.

Commission Implementing Regulation (EU) No. 809/2014, amended by Regulation 4 of these Regulations:

- Regulation 4(15) of these Regulations omits Article 40a. A reference to the omitted Article 40a remains in Articles 15(1b), 15(2b), 15(3) and 34(2).
- Regulation 4(29) of these Regulations omits Article 70a. A reference to the omitted Article 40a remains in Articles 34(2) and 70b.

Regulation (EU) No. 1303/2013, amended by Regulation 6 of these Regulations:

- The definition of “Fund-specific rules”, omitted by regulation 6(3)(a), remains in Article 70(1).
- The definition of “public expenditure”, omitted by regulation 6(3)(e), remains in Articles 35(2) and 132(1). A cross-reference to the definition also remains in Article 2(1) of Regulation (EU) No 1305/2013.
- The definition of “public law body”, omitted by regulation 6(3)(e), remains in Articles 63(1)(a), 63(2), 63(3) and 64(1).
- The definition of “SME”, omitted by regulation 6(3)(h), is used in the substituted text of Article 71(2) provided for by regulation 6(28)(b).
- The definition of “accounting year”, omitted by regulation 6(3)(h), remains in Article 127(1).
- The definition of “Financial Regulation”, omitted by regulation 6(3)(i), remains in Articles 2(11), 37(3), 38(4), 126(b), 127(1) and 127(5).
- The definition of “direct payment support”, omitted by regulation 6(3)(i), remains in Articles 4(2) and 65(11).
- Regulation 6(19) of these Regulations omits Articles 47 and 50 (amongst other Articles). References to the omitted Articles 47 and 50 remain in Article 125(2)(a) and 125(2)(b) respectively.



Regulation (EU) No. 1305/2013, amended by Regulation 7 of these Regulations:

- The definition of “SME” is omitted from Article 2 and is replaced in a number of places throughout Regulation (EU) No. 1305/2013, but references remain in Articles 26(1) and 27(2).
- Regulation 7(8) of these Regulations omits Article 8. A reference to the omitted Article 8 remains in Article 82.

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

These Regulations make a number of amendments to retained EU Law to replace references to Euros with Pounds.

One such amendment, contained in regulation 5(8)(c), seeks to replace “EUR 40 000”, in each place it occurs, with “£40 000” within Annex XI to Commission Implementing Regulation (EU) No. 908/2014. In Sheet B of Annex XI, reference is made to “40000 EUR”, which would not be amended by virtue of regulation 5(8)(c).

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

These Regulations omit text from the full name of two instruments – “the European Social Fund, the Cohesion Fund,” is missing from the reference to Regulation (EU) No. 1303/2013 in regulation 6(1) and “(Wales)” is missing from the reference to “the Well-being of Future Generations Act 2015” in the substituted text within regulation 7(4).

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

Regulations 6(11)(e)(i)(bb) and 6(20)(e) amend Regulation (EU) No. 1303/2013, but those amendments are not effective as the relevant provisions of Regulation (EU) No. 1303/2013 were amended by the State Aid (Revocations and Amendments) (EU Exit) Regulations 2020.

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

Regulation 6(21) seeks to amend the heading of Chapter II of Title VI of Regulation (EU) No. 1303/2013. There is no Chapter II of Title VI. It is presumed that the reference should be to Chapter II (Special rules on support from the ESI Funds to PPPs) of Title VII (Financial Support from the ESI Funds).

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

The substituted text within regulation 7(4) refers to the sustainable management of natural resources, as set out in Part 2 of the Environment (Wales) Act 2016. Part 2 of that Act relates



to Climate Change. The sustainable management of natural resources is set out in Part 1 of that Act.

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

These Regulations substitute wording by referring to “both places it occurs” in a number of places. With two of those references, more than two relevant references appear in the relevant provisions. It is therefore unclear where the substitutions should be made.

Regulation 7(24)(b) seeks to substitute “their rural development programmes” in “both places it occurs” in paragraph 3 of Article 29. Those words appear twice in the first sub-paragraph, once in the second sub-paragraph and once in the fourth sub-paragraph.

Further, regulation 8(7) seeks to substitute “ex ante” in “both places it occurs” in Article 8 of Commission Delegated Regulation (EU) No 480/2014. Those words appear twice in paragraph (b) and once in the paragraph (c).

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

Regulation 7(29)(b) amends paragraph 1 of Article 34. Whilst the amendments set out in paragraphs (i) and (ii) relate to paragraph 1 of Article 34, paragraph (iii) relates to paragraph 3 of Article 34. The numbering for regulation 7(29)(b)(iii) should be regulation 7(29)(c).

Merits Scrutiny

The following two points are identified for reporting under Standing Order 21.3 in respect of this instrument.

10. 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 substituted text within regulation 7(7) uses “shall” when “must” is used on an earlier and later occasion in the substituted Article 6.

11. 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

It is noted that the Explanatory Memorandum states that these Regulations are considered by Officials:

“to be routine technical amendments to the rural development legislative framework that, for example, remove requirements for the approval and amendment of rural development programmes by the European Commission as this will no longer be operable post the end of the EU Implementation Period. This aligns the administrative and governance process for rural development support with standard Welsh Government procedures and Senedd scrutiny. The Instrument will have no significant effect on public or private sectors, charity or voluntary sectors.”



However, the Explanatory Memorandum also explains that these Regulations “*put in place a domestic framework to fund new rural development schemes in Wales following the end of the EU Implementation Period*”, simplify “*the governance and administration of support for rural development*” and incorporate “*references to the Well-being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016 into the current mission, objectives and priorities for rural development support as set out in the legislation*”.

The Code of Practice on the carrying out of Regulatory Impact Assessments includes the following exception to carrying out a regulatory impact assessment:

“where routine technical amendments or factual amendments are required to update regulations, etc. that have no major policy impact”.

Although this exception appears to apply to some of the amendments made by these Regulations, other provisions, particularly given the explanation referenced above, appear to constitute more than routine or factual amendments. It is not clear that any of the other exceptions under the Code apply to these Regulations.

The Welsh Government is asked to confirm which exception under the Code applies to the decision not to produce a regulatory impact assessment.

Welsh Government response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

9 March 2021



Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 50(6)(c) and (8) of the Agriculture Act 2020 and paragraph 1(9) of Schedule 7 to the European Union (Withdrawal) Act 2018 for approval of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2021 No. (W.)

**EXITING THE EUROPEAN
UNION, WALES**

AGRICULTURE, WALES

**The Agricultural Support
(Miscellaneous Amendments)
(Wales) (EU Exit) Regulations 2021**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by section 46 of, and paragraphs 2(1), 4(1) and 6(1) of Schedule 5 to, the Agriculture Act 2020 (c. 21) and paragraph 1 of Schedule 2 to the European Union (Withdrawal) Act 2018 (c. 16), in order to address operability issues and deficiencies arising from the withdrawal of the United Kingdom from the European Union and to make provision in retained EU law governing rural development programmes for securing domestic support for rural development in Wales.

Regulations 2, 3, 4 and 5 modify Regulations (EU) No. 1306/2013, 640/2014, 809/2014, and 908/2014 to the extent necessary to provide for a framework to allow the creation of a new domestic rural development support scheme.

Regulations 6 to 12 modify Regulations (EU) No. 1303/2013, 1305/2013, 480/2014, 807/2014, 808/2014, 821/2014, and 964/2014 to the extent necessary for rural development support to function effectively and to address operability issues. Those EU Regulations contain some of the rules governing rural development support. These Regulations amend that body of law

insofar as it relates to domestic support for rural development programmes only.

Part 4 of these Regulations amends domestic legislation which relates to support for rural development. The changes ensure that the domestic legislation aligns with the changes made by Parts 2 and 3 of these Regulations to the retained EU law governing support for rural development.

Part 5 of these Regulations amends Regulations (EU) No. 1306/2013, 640/2014 and 809/2014, insofar as they relate to the direct payment schemes only. The amendments are minor and technical in nature and address errors to ensure that the legislation is accurate and functions effectively.

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 section 50(6)(c) and (8) of the Agriculture Act 2020 and paragraph 1(9) of Schedule 7 to the European Union (Withdrawal) Act 2018 for approval of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2021 No. (W.)

**EXITING THE EUROPEAN
UNION, WALES**

AGRICULTURE, WALES

**The Agricultural Support
(Miscellaneous Amendments)
(Wales) (EU Exit) Regulations 2021**

Made

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

The Welsh Ministers make these Regulations in exercise of the powers conferred on them by section 46 of, and paragraphs 2(1), 4(1) and 6(1) of Schedule 5 to, the Agriculture 2020⁽¹⁾, and paragraph 1 of Schedule 2 to the European Union (Withdrawal) Act 2018⁽²⁾.

In accordance with section 50(6)(c) and (8) of the Agriculture Act 2020 and paragraph 1(9) of Schedule 7 to the European Union (Withdrawal) Act 2018, a draft of this instrument has been laid before, and approved by a resolution of Senedd Cymru.

⁽¹⁾ 2020 c. 21.

⁽²⁾ 2018 c. 16. See section 20(1) for the definition of “devolved authority”.

PART 1

Introductory

Title, commencement and application

- 1.**—(1) The title of these Regulations is the Agricultural Support (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021.
- (2) These Regulations come into force on the day after the day on which these Regulations are made.
- (3) These Regulations apply in relation to Wales.

PART 2

Rural Development: Horizontal Legislation

Amendment of Regulation (EU) No. 1306/2013

2.—(1) Regulation (EU) No. 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy⁽¹⁾, is amended, insofar as it relates to domestic support for rural development, as follows.

- (2) For the heading of Article 8 substitute “Powers”.
- (3) In Article 12—
- (a) in paragraph 1—
- (i) for “must” substitute “may”;
- (ii) for “shall”, in the second sentence, substitute “may”;
- (b) in paragraph 2—
- (i) after point (a) insert—
- “(aa) maintenance of the agricultural area as referred to in point (c) of Article 4(1) Regulation (EU) No 1307/2013;”;
- (ii) omit point (e);
- (c) omit paragraph 3.
- (4) Omit Articles 13 to 15.
- (5) Omit Article 32.
- (6) Omit Article 46.
- (7) In Article 54—
- (a) in paragraph 1, omit “within 18 months”;
- (b) in paragraph 3(a)—

(1) EUR 2013/1306, amended in relation to support for rural development by S.I. 2020/90 and 576. EUR 2013/1306 is amended by S.I. 2019/748 (as amended by S.I. 2019/831), 763 (as amended by S.I. 2019/812), 831 and 1402. However, by virtue of the amendments in S.I. 2020/1445, these amendments do not have effect in relation to rural development support.

- (i) in point (i), for “EUR 100” substitute “£100”;
- (ii) in point (ii)—
 - (aa) for “EUR 100” substitute “£100”;
 - (bb) for “EUR 250” substitute “£250”.
- (8) Omit Article 56.
- (9) In Article 59(4), for “retained direct EU legislation regarding agricultural aid and rural development support” substitute “sectoral agricultural legislation”.
- (10) In Article 67(4)(a), after “continuous area of land” insert “within Wales”.
- (11) In Article 69—
 - (a) omit the final sentence of paragraph 1;
 - (b) omit paragraph 2.
- (12) In Article 70(1)—
 - (a) omit “and, as from 2016, at a scale of 1:5 000,”;
 - (b) omit the second subparagraph.
- (13) In Article 72(5), for “By way of derogation from Council Regulation (EEC, Euratom) No 1182/71, the” substitute “The”.
- (14) In Article 84(6), for “EUR 40 000” substitute “£40 000”.
- (15) In Article 91(3)(a), for “the United Kingdom” substitute “Wales”.
- (16) In Article 97(3), for “EUR 100” substitute “£100”.
- (17) Omit Article 108.
- (18) Omit the final subparagraph of Article 111(1).
- (19) In Article 112, in the first paragraph, for “EUR 1250” substitute “£1250”.
- (20) In Article 114, for the heading substitute “Powers”.
- (21) Omit Annex I.
- (22) In Annex II, in the row “Landscape, minimum level of maintenance”, in the fourth column, after “measures for avoiding invasive plant species” insert—
 - “. Restrictions on converting, ploughing or reseeded environmentally sensitive permanent grassland.”

Amendment of Commission Delegated Regulation (EU) No. 640/2014

3.—(1) Commission Delegated Regulation (EU) No. 640/2014 supplementing Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to the integrated administration

and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance⁽¹⁾, is amended, insofar as it relates to domestic support for rural development, as follows.

(2) Omit Article 1(j).

(3) In Article 9—

- (a) in paragraph 1, omit the final subparagraph;
- (b) in paragraph 3, omit the final subparagraph.

(4) Omit Article 10.

(5) In Article 13—

- (a) in paragraph 1—
 - (i) omit the second subparagraph;
 - (ii) after the final subparagraph insert—

“All documents in support of an aid application or payment claim must be submitted by 31 December of that calendar year.”;
- (b) in paragraph 3, in the final subparagraph, for “third” substitute “second”.

(6) Omit the final subparagraph of Article 16(1).

(7) In Article 19a—

- (a) in the heading, after “of areas for” insert “agri-environment climate, organic farming.”;
- (b) in paragraph 1, after “Articles” insert “28, 29”;
- (c) for paragraph 2 substitute—

“2. The administrative penalty referred to in paragraph 1 shall be reduced by 50% if the difference between the area declared and the area determined does not exceed 10% of the area determined.”;
- (d) omit paragraphs 3 and 4.

(8) In Article 35—

- (a) in paragraph 1, for “shall” substitute “may”;
- (b) in paragraph 2—
 - (i) for “shall” substitute “may”;
 - (ii) omit “State aid”;
- (c) in paragraph 3—
 - (i) in the first subparagraph—
 - (aa) for “shall” substitute “may”;

(1) EUR 2014/640, amended in relation to rural support by S.I. 2020/90 and in relation to England by S.I. 2020/551. EUR 2014/640 is also amended by S.I. 2019/765. However, by virtue of the amendments in S.I. 2020/1445, these amendments do not have effect in relation to support for rural development.

- (bb) for “extent, duration and reoccurrence” substitute “extent and duration”;
- (ii) omit the final subparagraph;
- (d) in paragraph 5, omit the final sentence;
- (e) omit paragraph 7.
- (9) Omit Chapter I of Title IV.
- (10) Omit the final sentence of Article 38(1).
- (11) Omit Title V.

Amendment of Commission Implementing Regulation (EU) No. 809/2014

4.—(1) Commission Implementing Regulation (EU) No. 809/2014 laying down rules for the application of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance⁽¹⁾, is amended, in so far as it relates to domestic support for rural development, as follows.

- (2) In Article 4, omit the final paragraph.
- (3) In Article 6(2), in point (c), for “Articles 13 and 14” substitute “Article 13”.
- (4) In Article 17—
 - (a) omit paragraph 2;
 - (b) omit paragraph 5;
 - (c) omit paragraph 6.
- (5) In Article 25, omit “and shall not exceed 14 days”.
- (6) In Article 26—
 - (a) omit paragraph 2;
 - (b) omit paragraph 4.
- (7) In Article 27, omit the second and third paragraphs.
- (8) In Article 32—
 - (a) in paragraph 1—
 - (i) in the first subparagraph, omit the last sentence;
 - (ii) omit the second subparagraph;
 - (b) omit paragraph 2;
 - (c) omit paragraph 2a;
 - (d) omit paragraph 4.

(1) EUR 2014/809, amended in relation to direct payment schemes by S.I. 2020/90 and 576. EUR 2014/809 is also amended in relation to rural development schemes in Wales by S.I. 2020/510 and 575. EUR 2014/809 is also amended by S.I. 2019/765. However, by virtue of the amendments in S.I. 2020/1445, these amendments do not have effect in relation to rural development support.

(9) After Article 32 insert—

“Article 32a

For animal aid schemes, the control sample for on-the-spot checks carried out each year shall for each of the aid schemes cover at least 5% of all beneficiaries applying for that respective aid scheme.”

(10) In Article 34—

- (a) omit paragraphs 3, 4 and 4a;
- (b) in paragraph 5—
 - (i) for “shall” substitute “may”;
 - (ii) in point (d), after “that” insert “may”.

(11) In Article 35, omit “or in a region or part of a region”.

(12) In Article 36(4), omit the second subparagraph.

(13) In Article 38—

- (a) omit the final sentence in paragraph 5;
- (b) omit paragraph 9;
- (c) in paragraph 10, omit “or permanent pastures”.

(14) In Article 39, omit paragraph 4.

(15) Omit Article 40a.

(16) In Article 41—

- (a) omit the final subparagraph of paragraph 1;
- (b) in the final subparagraph of paragraph 2—
 - (i) omit “or by means of monitoring in accordance with Article 40a,”;
 - (ii) omit “or by monitoring” in both places that it occurs;
 - (iii) omit the final sentence.

(17) In Article 42(1), in the second subparagraph—

- (a) omit “at least 50% of”;
- (b) for “shall”, in both places it occurs, substitute “may”.

(18) In Article 43(2), for “shall” substitute “may” in the first place it occurs.

(19) In Article 46, omit “, Article 39b and Article 51(2)”.

(20) In Article 47(2), omit “and 19(1)(c),”.

(21) In Article 48—

- (a) in paragraph 2—
 - (i) in the first subparagraph, omit “State aid”;
 - (ii) in point (e)—

- (aa) for “EUR 5 000” substitute “£5 000”;
- (bb) omit “ex ante”;
- (b) in paragraph 5—
 - (i) at the end of the first subparagraph insert—

“Those checks shall, to the extent possible, be carried out before the final payment is made for an operation.”;
 - (ii) omit point (a).
- (22) Omit Articles 49 to 51.
- (23) In Article 52(3), for the final sentence substitute “A sample shall be selected randomly.”
- (24) Omit Article 62.
- (25) In Article 63—
 - (a) in paragraph 1, for “calculated” substitute “adjusted”;
 - (b) omit paragraph 2.
- (26) In Article 68—
 - (a) in paragraph 1—
 - (i) in the first subparagraph, omit “and the other beneficiaries receiving direct payment support”;
 - (ii) omit the second and third subparagraphs;
 - (b) in paragraph 4, for “shall” substitute “may”.
- (27) In Article 69(1), omit the final sentence of the first subparagraph.
- (28) In Article 70—
 - (a) in paragraph 3, omit the words from “or by using” to the end;
 - (b) omit paragraph 4.
- (29) Omit Article 70a.
- (30) In Article 72—
 - (a) in paragraph 1, omit the final subparagraph;
 - (b) in paragraph 2, omit “checked by monitoring in accordance with Article 70a,”;
 - (c) in paragraph 3, omit the final sentence in the first subparagraph;
 - (d) in paragraph 4, omit the second sentence of the first subparagraph.

Amendment of Commission Implementing Regulation (EU) No. 908/2014

5.—(1) Commission Implementing Regulation (EU) No. 908/2014 laying down rules for the application of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management,

clearance of accounts, rules on checks, securities and transparency⁽¹⁾ is amended, insofar as it relates to domestic support for rural development, as follows.

(2) In Article 4(1)—

- (a) omit point (i);
- (b) in point (ii), omit “on a single website”.

(3) In Article 27(1), for “EUR 5” substitute “£5.00”.

(4) For Article 41(1) substitute—

“1. The relevant authorities may decide to reduce the minimum level of on-the-spot checks in accordance with Article 59(5) of Regulation (EU) No 1306/2013. For the reduced control rate to apply, the paying agency must confirm that—

- (a) the internal control system is functioning correctly; and
- (b) the error rate for the population concerned was below the materiality threshold of 2.0%.”

(5) In Article 42—

- (a) in paragraph 1, for “EUR 150 000” substitute “£150 000”;
- (b) in paragraph 3, for “EUR 350 000” substitute “£350 000”.

(6) In Article 56(1), for “EUR 1 000” substitute “£1 000”.

(7) Omit Article 62.

(8) In Annex XI—

- (a) for “EUR 150, 000” substitute “£150,000”;
- (b) for “EUR 350 000” substitute “£350 000” in each place it occurs;
- (c) for “EUR 40 000” substitute “£40 000” in each place it occurs;
- (d) in the table at sheet B, for “(EUR)” substitute “£” in each place it occurs.

PART 3

Rural Development: Retained Direct Legislation

Amendment of Regulation (EU) No. 1303/2013 of the European Parliament and of the Council of 17 December 2013

6.—(1) Regulation (EU) No. 1303/2013 of the European Parliament and of the Council of 17

(1) EUR 2014/908, amended by S.I. 2020/90.

December 2013 laying down common provisions on the European Regional Development Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EU) No 1083/2006⁽¹⁾, is amended, insofar as it relates to domestic support for rural development, as follows.

(2) For Article 1 substitute—

“Article 1

Subject-matter

This Regulation lays down the common rules applicable to support for rural development.”

(3) In Article 2—

- (a) omit paragraph 4;
- (b) omit paragraph 5;
- (c) in paragraph 10—
 - (i) omit point (a);
 - (ii) in point (b), omit “or the fund of funds as appropriate”;
- (d) omit paragraph 13;
- (e) omit paragraphs 15 and 16;
- (f) omit paragraph 21;
- (g) in paragraph 26, omit “point (c) of Article 42(1), Article 42(2), Article 42(3) and”;
- (h) omit paragraphs 27, 28, 29, 30 and 33;
- (i) omit paragraphs 38, 39, 40 and 42.

(4) In Article 4—

- (a) in paragraph 1, omit “Fund-specific”;
- (b) in paragraph 2, omit “, taking account of the specific context of each constituent nation,”;
- (c) in paragraph 4—
 - (i) omit “, in partnership with the relevant partners referred to in Article 5,”;
 - (ii) omit “and the Fund-specific rules”;
- (d) in paragraph 9, for “the relevant authority” substitute “The relevant authority”;
- (e) in paragraph 10, for “the relevant authority” substitute “The relevant authority”.

(5) Omit Article 5.

(6) For Article 8(2) substitute—

(1) EUR 2013/1303, amended by 2019/785, 2018/1046, 2019/785, 2019/748, and 2019/1422.

“2. The relevant authority must ensure that the environmental protection requirements, resource efficiency, climate change mitigation and adaptation, biodiversity, disaster resilience, and risk prevention and management are promoted in the preparation and implementation of programmes.

The appropriate authority may make regulations setting out uniform conditions for support for rural development.”

(7) Omit Title II.

(8) Omit Chapter I of Title III.

(9) In Article 32—

(a) for paragraph 1 substitute—

“1. Support for rural development must be provided by the relevant authority for community-led local development. For the purposes of this Chapter, “the support concerned” means support for rural development.”;

(b) in paragraph 5, omit “Fund-specific”.

(10) In Article 34(3), omit “in accordance with the Fund-specific rules” in the final subparagraph.

(11) In Article 37—

(a) omit “ex ante” in each place it occurs;

(b) in paragraph 1—

(i) omit “, including when organised through fund of funds,”;

(ii) omit “, the bodies implementing funds of funds,”;

(c) in paragraph 2, in point (a), omit “and thematic objectives”;

(d) in paragraph 3, omit the final subparagraph;

(e) in paragraph 4—

(i) in the first subparagraph—

(aa) omit “, including SMEs”;

(bb) omit “and in accordance with the Fund-specific rules”;

(ii) in the second subparagraph, for “SMEs” substitute “businesses”;

(f) in paragraph 9, for “paragraphs 7 and 8” substitute “paragraph 7”;

(g) in paragraph 11, for “paragraphs 7 and 8” substitute “paragraph 7”.

(12) In Article 38—

(a) omit paragraph 5;

(b) in paragraph 7—

(i) omit point (a);

- (ii) in point (b), omit “, or where applicable, the body that implements the fund of funds,”;
 - (c) omit paragraph 8;
 - (d) in paragraph 9—
 - (i) omit “fund of funds, at the level of the”;
 - (ii) omit “Fund-specific”;
 - (e) in paragraph 10, omit “and in Article 39a(5)”.
- (13) In Article 40—
- (a) in paragraph 1—
 - (i) in the first subparagraph—
 - (aa) for “authorities designated” substitute “designated authorities”;
 - (bb) omit “in accordance with Article 65 of the Regulation (EU) No 1305/2013”;
 - (ii) in the third subparagraph, omit “as set out in Article 46(1) and (2) of this Regulation”;
 - (iii) omit the fourth and fifth subparagraphs;
 - (b) in paragraph 2, for “Without prejudice to Article 127 of this Regulation and Article 9 of Regulation (EU) No 1306/2013, the” substitute “The”;
 - (c) omit paragraph 5A.
- (14) In Article 41—
- (a) in paragraph 1—
 - (i) in the first subparagraph, omit “during the eligibility period laid down in Article 65(2) (the ‘eligibility period’)”;
 - (ii) for point (a) substitute—
 - “(a) the amount of the programme contribution paid to the financial instrument included in each application for interim payment shall not exceed 25% of the total amount of programme contributions committed to the financial instrument under the relevant funding agreement;”;
 - (iii) in point (b), omit the words from “, or at the level of final recipients” to the end;
 - (iv) omit point (c);
 - (v) in point (d), omit “and the amounts paid as eligible expenditure within the meaning of points (a), (b) and (d) of Article 42(1)”;
 - (vi) omit the second subparagraph;
 - (b) omit paragraph 2.
- (15) Omit Article 42.

(16) In Article 43, for paragraph 2 substitute—

“2. Interest and other gains attributable to support for rural development paid to financial instruments shall be used for the same purposes, including the reimbursement of management costs incurred or payment of management fees of the financial instrument as the initial support for rural development either within the same financial instrument or, following the winding up of the financial instrument, in other financial instruments or forms of support in accordance with the specific objectives set out under a priority, until the end of the eligibility period.”

(17) In Article 44, for the heading substitute “Re-use of resources attributable to the support for rural development”.

(18) In Article 45—

- (a) for the heading substitute “Re-use of resources”;
- (b) omit “after the end of the eligibility period”;
- (c) omit “or programmes”.

(19) Omit Articles 46 to 59.

(20) In Article 61—

- (a) in paragraph 3, in the third subparagraph, omit “, including subsectors for sectors in Annex V, falling under the thematic objectives defined in the first paragraph of Article 9 and funded by support for rural development”;
- (b) omit paragraph 5;
- (c) in paragraph 6—
 - (i) for “paragraphs 3 or 5” substitute “paragraph 3”;
 - (ii) omit “, or by the deadline for the submission of documents for programme closure fixed in the Fund-Specific rules, whichever is the earlier,”;
- (d) in paragraph 7—
 - (i) in point (b), for “EUR 1000 000” substitute “£1,000,000”;
 - (ii) omit point (d);
 - (iii) omit point (h);
 - (iv) omit the final subparagraph;
- (e) omit paragraph 8.

(21) For the heading of Chapter II of Title VI substitute “Special rules on support to PPPs”.

(22) In Article 64(1), omit “, by way of derogation from Article 65(2),”.

(23) In Article 65—

- (a) in paragraph 1, for “Fund-specific” substitute “rural development”;
 - (b) omit paragraph 2;
 - (c) omit paragraph 4;
 - (d) in paragraph 8—
 - (i) omit point (a);
 - (ii) in point (f), omit “ex ante”;
 - (iii) in point (g), omit “ex ante”;
 - (iv) omit point (h);
 - (e) in paragraph 9, omit the final subparagraph;
 - (f) in paragraph 10, omit the final subparagraph.
- (24) In Article 66, omit “, or to another competent authority,”.
- (25) In Article 67—
- (a) in paragraph 1, for the second subparagraph substitute—

“Rules may limit the forms of grants or repayable assistance applicable to certain operations.”;
 - (b) omit paragraph 2;
 - (c) in paragraph 5—
 - (i) in point (aa)—
 - (aa) omit “ex ante”;
 - (bb) for “EUR 100 000” substitute “£100 000”;
 - (ii) in point (d), omit “or the Fund-specific rules”;
 - (iii) in point (e), omit “in accordance with Fund-specific rules”.
- (26) In Article 68a(1)—
- (i) for “the relevant authority” substitute “The relevant authority”;
 - (ii) for “point (a) of Article 4 of Directive 2014/24/EU” substitute “regulation 5 of the Public Contracts Regulations 2015(1)”.
- (27) In Article 70—
- (a) in paragraph 1, omit the final subparagraph;
 - (b) in paragraph 2, omit point (c);
 - (c) in paragraph 3—
 - (i) omit “technical assistance or”;
 - (ii) omit “, and for operations concerning the thematic objective referred to in point (1) of the first paragraph of Article 9,”.

(1) S.I. 2015/102.

(28) In Article 71—

(a) in paragraph 1—

(i) for the first subparagraph substitute—

“An operation comprising investment in infrastructure or productive investment shall repay the contribution from support for rural development if within five years of the final payment to the beneficiary it is subject to any of the following:”;

(ii) omit the final subparagraph;

(b) for paragraph 2 substitute—

“**2.** An operation comprising investment in infrastructure or productive investment shall repay the contribution from support for rural development if within 10 years of the final payment to the beneficiary the productive activity is subject to relocation outside the United Kingdom and its territorial sea, except where the beneficiary is an SME.”;

(c) in paragraph 4, for “Paragraphs 1, 2 and 3” substitute “Paragraphs 1 and 2”.

(29) Omit Chapters I and II of Title IX.

(30) In Article 132, omit paragraph 2(a).

(31) Omit Article 154.

(32) Omit Annex I.

(33) In Annex IV—

(a) in paragraph 1—

(i) omit point (d);

(ii) in point (e), omit “(and at the level of the fund of funds where appropriate)”;

(iii) in point (k), omit “, including the fund of funds where applicable”;

(iv) omit the final subparagraph;

(b) omit paragraph 2.

(34) Omit Annex XI.

Amendment of Regulation (EU) No. 1305/2013

7.—(1) Regulation (EU) No. 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005⁽¹⁾ is amended, insofar as it relates to domestic support for rural development, as follows.

(2) In Article 1(1), omit the final sentence.

(1) EUR 2013/1305, amended by S.I. 2019/748, S.I. 2019/764, and S.I. 2019/1422.

(3) In Article 2—

(a) in paragraph 1—

(i) in the first subparagraph, omit
““SMEs”,”;

(ii) in point (f), omit “permanent pasture or”;

(iii) omit point (o);

(iv) omit point (p);

(v) for point (v) substitute—

““appropriate authority” means the relevant
authority for the constituent nation in which
the regulations apply.”;

(b) omit paragraph 4.

(4) For Article 3 substitute—

“Article 3

Aim

Support for rural development shall
contribute to the development of rural
economies and sectors that are more
resilient, competitive and innovative and
which support the achievement of the well-
being goals as set out in section 4 of the
Well-being of Future Generations Act
2015⁽¹⁾, the sustainable management of
natural resources as set out in Part 2 of the
Environment (Wales) Act 2016⁽²⁾ and
climate resilience.”

(5) For Article 4 substitute—

“Article 4

Objectives

Support for rural development, must
contribute to achieving the following
objectives:

(a) fostering the competitiveness of
agriculture;

(b) contributing towards the sustainable
management of natural resources as set
out in Part 1 of the Environment
(Wales) Act 2016;

(c) ensuring climate resilience;

(d) achieving a balanced territorial
development of rural economies and
communities including the creation and
maintenance of employment.”

(6) For Article 5 substitute—

“Article 5

Priorities for rural development

(1) 2015 c. 2.

(2) 2016 c. 3.

Support for rural development must support the following priorities:

(1) fostering knowledge transfer and innovation in agriculture, forestry, and rural areas;

(2) enhancing farm viability and competitiveness of all types of agriculture in all regions and promoting innovative farm technologies and the sustainable management of forests;

(3) promoting food chain organisation, including processing and marketing of agricultural products, animal welfare and risk management in agriculture;

(4) restoring, preserving and enhancing ecosystems dependent on agriculture and forestry;

(5) promoting resource efficiency and supporting the shift towards a low carbon and climate resilient economy in the agriculture, food and forestry sectors;

(6) promoting social inclusion, poverty reduction and economic development in rural areas.

Each of these priorities shall contribute to the cross-cutting objectives of innovation, environment and climate change mitigation and adaptation.”

(7) For Article 6 substitute—

“Article 6

The rural development programme

Support for rural development must be provided in accordance with the rural development programme. This programme shall implement a strategy to meet the priorities for rural development through a set of measures as defined in Title III. Support for rural development must be provided to further the objectives and the priorities of rural development.”

(8) Omit Articles 8 to 12.

(9) In Article 13, omit the final sentence.

(10) In Article 14(2)—

(a) after “land managers” insert “, animal health and welfare sector”;

(b) for “SMEs” substitute “businesses”.

(11) In Article 15—

(a) in paragraph 1—

(i) in point (a), for “SMEs” substitute “businesses”;

- (ii) in paragraph 1(b), for “Articles 12 to 14” substitute “Article 12”;
 - (b) in paragraph 3, omit the final subparagraph;
 - (c) omit paragraph 3a;
 - (d) in paragraph 4—
 - (i) in point (b), omit “the agricultural practices beneficial for the climate and the environment as laid down in Chapter 3 of Title III of Regulation (EU) No 1307/2013 and”;
 - (ii) in the final subparagraph, omit “as laid down in Annex I to Regulation (EU) No 1306/2013”;
 - (e) in paragraph 6, for “SMEs” substitute “businesses”;
 - (f) in paragraph 8, omit the first sentence.
- (12) In Article 16—
- (a) in paragraph 1—
 - (i) for “shall” substitute “may”;
 - (ii) after “groups of farmers” insert “and food processors”;
 - (b) in paragraph 3, omit the final subparagraph;
 - (c) omit paragraph 4.
- (13) In Article 17—
- (a) in paragraph 1—
 - (i) for “shall” substitute “may”;
 - (ii) in point (a), after “holding” insert “, or those involved in food processing”;
 - (iii) in point (c), at the end, omit “or”;
 - (iv) after point (d) insert—
 - “; or
 - (e) are investments linked to activities to protect, conserve, promote and enhance the historic environment as a resource for the general well-being of present and future generations.”;
 - (b) in paragraph 2, after “groups of farmers” insert “or those involved in food processing”;
 - (c) omit paragraphs 3 and 4.
- (14) Omit Article 18(5).
- (15) In Article 19—
- (a) omit paragraph 1(c);
 - (b) in paragraph 2, omit the final subparagraph;
 - (c) in the third subparagraph of paragraph 4, omit “, as applicable in the relevant authority concerned,”;
 - (d) in paragraph 6, omit the first sentence;

(e) omit paragraph 7.

(16) In Article 20—

(a) in paragraph 1—

(i) in point (g), after “conversion” insert
“and adaptive reuse”;

(ii) after point (g) insert—

“(h) investments in infrastructure or activities to protect, conserve, promote and enhance the historic environment as a resource for the general well-being of present and future generations.”;

(b) for paragraph 2 substitute—

“2. Support under this measure shall only concern small-scale infrastructure and services, as defined by each relevant authority. However, the rural development programme may provide for specific derogations from this rule for investments in broadband and renewable energy.”

(17) In Article 21(1)—

(a) for point (d) substitute—

“(d) investments in the sustainable management of woodlands;”;

(b) for point (e) substitute—

“(e) investments which contribute to the development of a National Forest in Wales;

(f) investments improving the resilience and environmental value as well as the mitigation potential of forest ecosystems;

(g) investments in forestry technologies and in the processing, the mobility and marketing of forest products;

(h) investments to protect, conserve, promote and enhance the historic environment within forest areas.”

(18) For Article 22(1) substitute—

“1. Support under point (a) of Article 21(1) shall be granted to public and private landholders and their associations and may cover the costs of establishments (including planning costs) and an annual premium per hectare to cover the costs of agricultural income foregone and maintenance, including early and late cleanings and/or payments for the public benefits derived from woodlands for a maximum period of twelve years. In the case of state owned land, support may only be granted if the body managing such land is a private body or municipality.”

(19) In Article 23—

(a) in paragraph 1—

- (i) for “shall”, in the second place it occurs, substitute “may”;
- (ii) for “for a maximum period of five years” substitute “and/or payments for the public benefits derived from the woodlands”;

(b) omit paragraph 3.

(20) In Article 25(2), after “enhancement of the” insert “historic environment and the”.

(21) Omit Article 26(3) and (4).

(22) In Article 27—

(a) in paragraph 1—

- (i) for “shall” substitute “may”;
- (ii) after “agriculture” insert “, food processing”;

(b) omit paragraph 4.

(23) In Article 28—

(a) in paragraph 1—

- (i) for “their territories” substitute “Wales”;
- (ii) omit “their” in the second place it occurs;
- (iii) for “rural development programmes” substitute “the rural development programme”;
- (iv) omit “at national and/or regional level”;

(b) in paragraph 5—

- (i) for “their rural development programmes” substitute “the rural development programme” in both places it occurs;
- (ii) omit the third to fifth subparagraphs;

(c) in paragraph 6, omit the second subparagraph;

(d) in paragraph 8, omit the first sentence;

(e) omit paragraph 11.

(24) In Article 29—

(a) in paragraph 1, omit “and who are active farmers within the meaning of Article 9 of Regulation (EU) No 1307/2013, as applicable in the relevant authority concerned”;

(b) in paragraph 3, for “their rural development programmes” substitute “the rural development programme” in both places it occurs;

(c) in paragraph 4, omit the final subparagraph;

(d) omit paragraphs 5 and 6.

(25) In Article 30—

- (a) in paragraph 1, omit the final subparagraph;
 - (b) in paragraph 4—
 - (i) in point (a), omit “as it applies in the constituent nation”;
 - (ii) in point (c), omit “as it applied in the constituent nation existing”;
 - (c) omit paragraphs 7 and 8.
- (26) In Article 31—
- (a) in paragraph 1, omit “, taking into account payments pursuant to Chapter 4 of Title III of Regulation (EU) No 1307/2013”;
 - (b) in paragraph 2, omit “and are active farmers within the meaning of Article 9 of Regulation (EU) No 1307/2013”;
 - (c) omit paragraph 3;
 - (d) in paragraph 4—
 - (i) omit “, except if the grant covers only the minimum payment per hectare per year as laid down in Annex II”;
 - (ii) in point (a), omit “as it applies in the constituent nation”;
 - (e) omit paragraph 5.
- (27) In Article 32, in paragraph 4, omit the final subparagraph.
- (28) In Article 33—
- (a) for “animal welfare” substitute “animal health and welfare” in the heading and in each place it occurs;
 - (b) in paragraph 1, omit “and who are active farmers within the meaning of Article 9 of Regulation (EU) No 1307/2013,”;
 - (c) in paragraph 3, omit the final subparagraph.
- (29) In Article 34—
- (a) for the heading substitute “Forest-environmental, climate commitments and forest historic environment commitments”;
 - (b) in paragraph 1—
 - (i) for “forest environment and climate commitments” substitute “forest-environmental, climate commitments and forest historic environment commitments”;
 - (ii) for “their rural development programmes” substitute “the rural development programme”;
 - (iii) in paragraph 3, in the first subparagraph, omit the final sentence.
- (30) In Article 35—
- (a) omit paragraph 1(c);

- (b) in paragraph 5(b), omit “or a project to be carried out by an operational group of the EIP for Agricultural Productivity and Sustainability as referred to in Article 56”;
 - (c) in paragraph 6, omit “or support under Regulation 508/2014, CMO support or direct payment support”.
- (31) Omit Article 36(2) and (5).
- (32) Omit Article 37(5).
- (33) In Article 38—
- (a) in paragraph 3, for the second subparagraph substitute—

“Support under point (b) of Article 36(1) shall only be granted to cover for loss caused by the outbreak of adverse climatic events, an animal or plant disease, a pest infestation, or a measure adopted in accordance with Directive 2000/29/EC to eradicate or contain a plant disease or pest or an environmental incident, which destroy more than 30% of the average annual production of the farmer in the preceding three-year period or a three-year average based on the preceding five-year period, excluding the highest and lowest entry. Indexes may be used in order to calculate the annual production of the farmer. The calculation method used shall permit the determination of the actual loss of an individual farmer in a given year.”;
 - (b) omit paragraph 5.
- (34) In Article 39—
- (a) for paragraph 1 substitute—

“1. Support under point (c) of Article 36(1) shall only be granted where the drop in income exceeds 30% of the average annual income of the individual farmer in the preceding three-year period or a three-year average based on the preceding five-year period excluding the highest and lowest entry. Income for the purposes of point (c) of Article 36(1) shall refer to the sum of revenues the farmer receives from the market, including any form of public support, deducting input costs. Payments by the mutual fund to farmers shall compensate for less than 70% of the income lost in the year the producer becomes eligible to receive this assistance. Indexes may be used to calculate the annual loss of income of the farmer.”;
 - (b) in paragraph 5, omit the first sentence.
- (35) Omit Article 39b.
- (36) In Article 41(c), omit “other than those used in Annex II,”.

(37) In Article 42, for paragraph 1 substitute—

“1. In addition to the tasks referred to in Article 34 of Regulation (EU) No 1303/2013 local action groups may also perform additional tasks delegated to them by the Managing Authority and/or the paying agency.”

(38) Omit Article 43.

(39) In Article 45(5), for “EUR 200 000” substitute “£200 000”.

(40) In Article 46(2)—

(a) omit “in each of the constituent nations”;

(b) omit “, or, before IP completion day, to the Commission.”.

(41) In Article 47(6), after “public money,” insert “the”.

(42) In Article 48—

(a) omit the last sentence of the first subparagraph;

(b) omit the second subparagraph.

(43) In Article 49—

(a) in paragraph 1, omit “following consultation with the Monitoring Committee” in both places that it occurs;

(b) in paragraph 2, for “39b” substitute “39a”.

(44) Omit Articles 51 to 59.

(45) In Article 60—

(a) in paragraph 2, omit “an” in the first subparagraph;

(b) omit paragraph 3.

(46) In Article 63(1), in the first sentence, for “shall” substitute “may”.

(47) Omit Articles 65 to 80.

(48) For the heading of Chapter I of Title IX substitute “Powers”.

(49) In Article 86—

(a) in paragraph 1, omit “respective”;

(b) omit paragraph 2.

(50) Omit Articles 88 to 90.

(51) Omit Annexes I, Ia and II.

(52) In Annex III, for “Member States” substitute “The relevant authority”.

(53) Omit Annexes V and VI.

Amendment of Commission Delegated Regulation (EU) No. 480/2014

8.—(1) Commission Delegated Regulation (EU) No 480/2014 supplementing Regulation (EU) No

1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund⁽¹⁾, is amended, insofar as it relates to domestic support for rural development, as follows.

(2) In Article 1(a), omit “and support under Regulation 508/2014”.

(3) In Article 1A, omit “and support under Regulation 508/2014”.

(4) In the Chapter II heading, omit “and support under Regulation 508/2014”.

(5) In Article 6(3)(a), omit the words from “or, in the case of a fund” to the end.

(6) Omit Article 7(3).

(7) In Article 8, omit “ex ante” in both places it occurs.

(8) In Article 9—

(a) for the heading substitute “Management and control of financial instruments set up at national or regional level”;

(b) in paragraph 1—

(i) for “national, regional transnational or cross border” substitute “national or regional”;

(ii) omit “referred to in Article 38(1)(b) of Regulation (EU) No 1303/2013”;

(iii) in point (c), omit the words from “in accordance with Article 125(4)” to “Regulation (EU) No 1305/2013”;

(iv) for point (d)(i) substitute—

“(i) kept for the operation by the managing authority or the financial intermediary in order to provide evidence of the use of the funds for the intended purposes, of compliance with applicable law and of compliance with the criteria and the conditions for funding under the relevant programmes;”;

(v) in point (e)—

(aa) in point (ii), omit “axis”;

(1) EUR 2014/480, amended by S.I. 2019/783, 2015/616 and 2019/625.

- (bb) in point (ii), omit “and support under Regulation 508/2014”;
 - (cc) omit point (ix);
- (c) in paragraph 2, omit the first subparagraph.
- (9) In the second subparagraph of Article 10, omit the final sentence.
- (10) In Article 11—
 - (a) in paragraph 1, omit “referred to in Article 42(1)(c) of Regulation (EU) No 1303/2013”;
 - (b) omit paragraph 2.
- (11) In Article 12—
 - (a) in paragraph 1, omit “pursuant to Article 42(1)(d) of Regulation (EU) No 1303/2013”;
 - (b) omit paragraph 2.
- (12) In Article 13—
 - (a) omit paragraph 1;
 - (b) in paragraph 2—
 - (i) omit “pursuant to Article 42(1)(d) of that Regulation”;
 - (ii) in point (a)—
 - (aa) in point (i), omit “or to the fund of funds,”;
 - (bb) in point (ii), omit “ , or to the fund of funds,”;
 - (iii) in point (b)—
 - (aa) in point (i), omit “within the meaning of Article 42(1)(a) of Regulation (EU) No 1303/2013”;
 - (bb) in point (ii), omit “within the meaning of Article 42(1)(a) of Regulation (EU) No 1303/2013”;
 - (cc) in point (iii), omit “within the meaning of Article 42(1)(b) of Regulation (EU) No 1303/2013”;
 - (dd) in point (iv), omit “within the meaning of Article 42(1)(a) of Regulation (EU) No 1303/2013”;
 - (ee) in point (v), omit “within the meaning of Article 42(1)(a) of that Regulation”;
 - (iv) omit the final subparagraph;
 - (c) in paragraph 3—
 - (i) omit “laid down in Article 65(2) of Regulation (EU) No 1303/2013”;
 - (ii) omit paragraph 3(a);
 - (d) omit paragraph 4;
 - (e) in paragraph 6—
 - (i) omit “1,”;

- (ii) omit “, including, where applicable, when it implements the fund of funds,”.

(13) In Article 14—

(a) in paragraph 1—

- (i) omit “in accordance with Article 42(2) of Regulation (EU) No 1303/2013”;
- (ii) omit “for the period laid down in Article 42(2) of that Regulation,”;

(b) in paragraph 2—

- (i) omit “within the meaning of Article 42(1)(a) of Regulation (EU) No 1303/2013”;
- (ii) omit “or the period referred to in Article 42(2) of that Regulation,”;

(c) in paragraph 3—

- (i) omit “within the meaning of Article 42(1)(a) of Regulation (EU) No 1303/2013”;
- (ii) for “, the end of the recovery procedure in the case of defaults or the period referred to in Article 42(2) of that Regulation,” substitute “or the end of the recovery procedure in the case of defaults,”;

(d) omit paragraph 4.

(14) In Article 16(b), omit “or regional budgets or national public insurance”.

(15) In Article 19(3), omit “or support under Regulation 508/2014”.

(16) In Article 20—

- (a) in point (c), omit the final sentence;
- (b) omit point (d).

(17) In Article 21—

- (a) omit “(EU, Euratom)” in the heading and the first subparagraph;
- (b) omit point (d).

Amendment of Commission Delegated Regulation (EU) No. 807/2014

9.—(1) Commission Delegated Regulation (EU) No 807/2014 of 11 March 2014 supplementing Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and introducing transitional provisions⁽¹⁾, is amended, insofar as relates to domestic support for rural development, as follows.

(1) EUR 2014/807, amended by S.I. 2019/770.

(2) In Article 1—

- (a) in paragraph 1, in point (i), after “animal” insert “health and”;
- (b) omit paragraph 2.

(3) In Article 3, for “in their rural development programmes” substitute “in the rural development programme”.

(4) Omit Article 9.

(5) In Article 10, for “animal welfare” substitute “animal health and welfare” in each place it occurs (including the heading).

(6) In Article 13(1)(c), omit “, where such standards exist at national level”.

(7) In Article 14(1)(a), for “animal welfare” substitute “animal health and welfare”.

(8) Omit Articles 16, 19 and 20.

(9) Omit Annexes I and II.

Amendment of Commission Implementing Regulation (EU) No. 808/2014 of the European Parliament and of the Council

10.—(1) Commission Implementing Regulation (EU) No. 808/2014 of the European Parliament and of the Council of 17 July 2014 laying down rules for the application of Regulation (EU) No 1305/2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) **(1)**, is amended, insofar as it relates to domestic support for rural development, as follows.

- (2) Omit Articles 2 and 4.
- (3) In Article 11(1), omit the final sentence.
- (4) Omit Articles 12 and 14 to 17.
- (5) Omit Annex I.
- (6) Omit Annex IV, V and VII.

Amendment of Commission Implementing Regulation (EU) No. 821/2014

11.—(1) Commission Implementing Regulation (EU) No 821/2014 laying down rules for the application of Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards detailed arrangements for the transfer and management of programme contributions, the reporting on financial instruments, technical characteristics of information and communication measures for operations and the system to record and store data**(2)**, is amended, insofar

(1) EUR 2014/808, amended by S.I. 2019/770.

(2) EUR 964/2014, amended by 2019/783 and 2016/1157.

as it relates to domestic support for rural development, as follows.

(2) In Article A1, omit “and support under Regulation 508/2014”.

(3) In Article 1—

- (a) in paragraph 1, omit “axis” in both places it occurs;
- (b) in paragraph 2—
 - (i) omit “Fund-specific”;
 - (ii) omit “constituting national co-financing and”;
- (c) in paragraph 3, omit “constituting national co-financing” in each place it occurs;
- (d) in paragraph 4, for “contributions from the programmes” substitute “contribution from the programme”;
- (e) in paragraph 5, omit “constituting national co-financing”;
- (f) in paragraph 6, omit “constituting national co-financing”.

(4) Omit Article 2.

(5) Omit Annex I.

Amendment of Commission Implementing Regulation (EU) No. 964/2014

12.—(1) Commission Implementing Regulation (EU) No. 964/2014 laying down rules for the application of Regulation (EU) No. 1303/2013 of the European Parliament and of the Council as regards standard terms and conditions for financial instruments, is amended, insofar as it relates to domestic support for rural development, as follows.

(2) In Article 1A, omit “and support under Regulation 508/2014”.

(3) In Article 3(1), omit the words from “or support under Regulation 508/2014” to the end.

(4) In Article 4—

- (a) in paragraph 1, omit “or, if applicable, the fund of funds manager”;
- (b) in paragraph 2, omit the final sentence;
- (c) in paragraph 4—
 - (i) omit “fund of funds manager and the”;
 - (ii) omit “fund of funds manager or of the”.

(5) In Article 5—

- (a) in paragraph 1, omit “which shall contain the terms and conditions in accordance with Annex I.”;
- (b) in paragraph 2, omit point (a).

- (6) Omit Article 6(2).
- (7) Omit Article 7(2).
- (8) Omit Article 8(3).
- (9) In Article 8a—
 - (a) in paragraph 1—
 - (i) for “small and medium-sized enterprises (SMEs)” substitute “businesses”;
 - (ii) for “investments in SMEs” substitute “investments in businesses”;
 - (b) omit paragraph 2.
- (10) Omit Annexes I to V.

PART 4

Rural Development: Domestic Legislation

Amendment of the Rural Development Programmes (Wales) Regulations 2014

13. Omit regulation 2(3) of the Rural Development Programmes (Wales) Regulations 2014⁽¹⁾.

Amendment of the Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014

14.—(1) The Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014⁽²⁾ are amended, in so far as they relate to domestic support for rural development, as follows.

(2) In Schedule 1, after paragraph 15 insert—

“Converting, ploughing or reseeded land designated as environmentally sensitive permanent grassland

16.—(1) A beneficiary may only convert, plough or reseed certain areas of environmentally sensitive permanent grassland if—

- (a) the site of special scientific interest notification requires or allows the beneficiary to plough or convert certain areas of the site of special scientific interest; or

(1) S.I. 2014/3222 (W. 327), amended by S.I. 2019/688 (W. 132).

(2) S.I. 2014/3223 (W. 328), amended by S.I. 2016/217 (W. 86), S.I. 2016/1154, S.I. 2017/565 (W. 134), S.I. 2019/688 (W. 132), S.I. 2020/104 (W. 17) and S.I. 2020/1556 (W. 328).

- (b) consent to do so has been provided by Natural Resources Wales.

(2) In this paragraph—

“environmentally sensitive permanent grassland” (“*glaswelltir parhaol amgylcheddol-sensitif*”) means—

- (a) grassland located in a site of special scientific interest; and

- (b) grassland in relation to which written consent to plough is required in accordance with section 28E(1) of the Wildlife and Countryside Act 1981⁽¹⁾ but such consent has not been obtained;

“site of special scientific interest” (“*safle o ddiddordeb gwyddonol arbennig*”) has the meaning given in section 52(1) of the Wildlife and Countryside Act 1981.”

PART 5

Direct Payments: Horizontal Legislation

Amendment of Regulation (EU) No. 1306/2013

15.—(1) Regulation (EU) No. 1306/2013, is amended, insofar as it relates to direct payments, as follows.

(2) In Article 63(5)(b), after “as well as” insert “in respect of unduly allocated payment entitlements and”.

(3) After Article 76(2)(a) insert—

“(aa) the basic features, technical rules and quality requirements of the system for the identification and registration of payment entitlements provided for in Article 71;”.

(4) In Article 78(b), after “Article 72,” insert “and applications for payment entitlements,”.

Amendment of Commission Delegated Regulation (EU) No. 640/2014

16.—(1) Commission Delegated Regulation (EU) No. 640/2014, insofar as it relates to direct payments, is amended as follows.

(2) Omit the final subparagraph of Article 9(1).

(3) In Article 12(b), for “third of” substitute “second subparagraph of”.

(1) 1981 c. 69.

Amendment of Commission Implementing Regulation (EU) No. 809/2014

17.—(1) Commission Implementing Regulation (EU) No. 809/2014 is amended, insofar as it relates to direct payments, as follows.

(2) In the second subparagraph of Article 36(2), omit the words from “in accordance” to the end.

Name

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

Date

The Agricultural Support (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021

Explanatory Memorandum

This Explanatory Memorandum has been prepared by Rural Economy and Legislation division within the Department for Environment, Skills and Natural Resources 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 Agricultural Support (Miscellaneous Amendments)(Wales) (EU Exit) Regulations 2021.

Lesley Griffiths MS

Minister for Environment, Energy and Rural Affairs

23 February 2021

1. Description

The Agricultural Support (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 (“the Instrument”) make amendments to retained EU law and domestic law governing the rural development programme to put in place a domestic framework to fund new rural development schemes in Wales following the end of the EU Implementation Period and to ensure that framework is efficient and effective.

In addition, the Instrument makes minor, technical amendments to retained EU law in relation to direct payments schemes to address errors and ensure that it functions efficiently and effectively.

The Instrument has five Parts. Part 1 makes introductory provisions for the Instrument. Parts 2 to 5 contain the substantive amendments, detailed below.

Rural Development: Horizontal Legislation

Part 2 of the Instrument amends the following, insofar as they relate to domestic support for rural development:

- Regulation (EU) No. 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy (“the Horizontal Regulations”);
- Commission Delegated Regulation (EU) No. 640/2014 supplementing Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance;
- Commission Implementing Regulation (EU) No. 809/2014 laying down rules for the application of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance; and
- Commission Implementing Regulation (EU) No. 908/2014 laying down rules for the application of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to paying agencies

and other bodies, financial management, clearance of accounts, rules on checks, securities and transparency.

Rural Support: Retained Direct Legislation

Part 3 of the Instrument amends:

- Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EU) No 1083/2006;
- Regulation (EU) No. 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005;
- Commission Delegated Regulation (EU) No 480/2014 supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund;
- Commission Delegated Regulation (EU) No. 807/2014 of 11 March 2014 supplementing Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and introducing transitional provisions;
- Commission Implementing Regulation (EU) No. 808/2014 of the European Parliament and of the Council of 17 July 2014 laying down rules for the application of Regulation (EU) No 1305/2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD);
- Commission Implementing Regulation (EU) No 821/2014 laying down rules for the application of Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards detailed arrangements for the transfer and management of programme contributions, the reporting on financial instruments, technical characteristics of information and communication measures for operations and the system to record and store data; and

- Commission Implementing Regulation (EU) No 964/2014 laying down rules for the application of Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards standard terms and conditions for financial instruments.

Rural Development: Domestic Legislation

Part 4 of the Instrument amends the following, insofar as they relate to rural development:

- the Rural Development Programmes (Wales) Regulations 2014; and
- the Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014.

Direct Payments: Horizontal Legislation

Part 5 of the Instrument amends the following, insofar as they relate to Direct Payments only:

- the Horizontal Regulations;
- Commission Delegated Regulation (EU) No. 640/2014; and
- Commission Implementing Regulation (EU) No. 809/2014.

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

The Instrument comes into force on the day after the day on which the Instrument is made.

The Instrument is made in exercise of the powers conferred by section 46 of, and paragraphs 2(1), 4(1) and 6(1) of Schedule 5 to, the Agriculture Act 2020 (c.21), and paragraph 1 of Schedule 2 to the European Union (Withdrawal) Act 2018 (c.16).

In accordance with section 50(6)(c) and (8) of the Agriculture Act 2020 and paragraph 1(9) of Schedule 7 to the European Union (Withdrawal) Act 2018, a draft of the Instrument has been laid before, and is subject to approval by a resolution of Senedd Cymru.

3. Legislative background

Section 46 and Schedule 5 of the Agriculture Act 2020 provide the Welsh Ministers with powers to modify retained direct EU legislation relating to support for rural development and direct payments and subordinate legislation relating to that legislation so far as it has effect in relation to Wales.

The Instrument is subject to the affirmative procedure pursuant to section 50(6)(c) and (8) of the 2020 Act, and paragraph 1(9) of Schedule 7 to the European Union (Withdrawal) Act 2018.

In accordance with the requirements of the European Union (Withdrawal) Act 2018 the Minister for Environment, Energy and Rural Affairs 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 provides a legislative framework to enable the provision of financial support for new domestic rural development schemes from 2021.

Support for rural development was previously provided through the European Agricultural Fund for Rural Development (EAFRD) and delivered through the second pillar of the Common Agricultural Policy. Following the end of the Implementation Period, support for new rural development schemes will be domestically funded and will not be subject to EU law. Existing and ongoing activities delivered through the Welsh Government Rural Communities - Rural Development Programme 2014-20 will continue to operate under EU law.

The purpose of the legislation being amended by the Instrument is as follows:

Part 2 – Rural Development: Horizontal Legislation

- Regulation (EU) No. 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy (“the Horizontal Regulations”) lays down the rules on: the financing of expenditure under the Common Agricultural Policy (CAP), including expenditure on rural development; the farm advisory system; the management and control systems to be put in place by the Member States; the cross-compliance system; clearance of accounts.
- Commission Delegated Regulation (EU) No. 640/2014 supplementing Regulation (EU) No. 1306/2013 of the European Parliament and of the Council lays down provisions supplementing certain non-essential elements of Regulation (EU) No 1306/2013 in relation to: refusal or withdrawal of aid or support; administrative penalties; rules for submission of applications or amendments on a public holiday, a Saturday or a Sunday; specific definitions to ensure a harmonised implementation of the integrated system; basic features and technical rules and quality requirements; the basis for the calculation of aid; additional rules for intermediaries involved in the procedure for granting the aid or support; cross-compliance.
- Commission Implementing Regulation (EU) No. 809/2014 laying down rules for the application of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council lays down rules for the application of Regulation (EU) No 1306/2013 in relation to: notifications to the Commission

to protect the financial interests of the Union; administrative and on-the-spot checks; control measures and methods for determining tetrahydrocannabinol levels in hemp; inter-branch organisations for the purposes of the crop-specific payment for cotton; aid applications and payment claims; administrative penalties; non-compliance; the transfer of holdings; the payment of advances.

- Commission Implementing Regulation (EU) No. 908/2014 lays down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, rules on checks, securities and transparency.

Part 3 – Rural Development: Retained Direct Legislation

- Regulation (EU) No. 1303/2013 of the European Parliament and of the Council of 17 December 2013 lays down the common rules applicable to the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund, the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund (EMFF), which operate under a common framework (the 'European Structural and Investment' - 'ESI Funds'). It also lays down the provisions necessary to ensure the effectiveness of the ESI Funds and their coordination with one another and with other Union instruments;
- Regulation (EU) No. 1305/2013 of the European Parliament and of the Council of 17 December 2013 lays down general rules governing Union support for rural development, financed by the European Agricultural Fund for Rural Development ("the EAFRD") and established by Regulation (EU) No 1306/2013. It sets out the objectives to which rural development policy is to contribute and the relevant Union priorities for rural development; outlines the strategic context for rural development policy; defines the measures to be adopted in order to implement rural development policy; lays down rules on programming, networking, management, monitoring and evaluation on the basis of responsibilities shared between the Member States and the Commission and rules to ensure coordination of the EAFRD with other Union instruments.
- In terms of support for rural development, Commission Delegated Regulation (EU) No 480/2014 of 3 March 2014 supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council sets out: provisions as regards the criteria for determining the level of financial correction to be applied under the performance framework; rules in relation to financial instruments; the method for calculating the discounted net revenue of operations generating net revenue after completion; and the flat rate for indirect costs and the related methods applicable in other Union policies.
- Commission Delegated Regulation (EU) No 807/2014 of 11 March 2014 lays down provisions supplementing Regulation (EU) No 1305/2013 as regards:

young farmers; farm and forest exchange schemes and visits; quality schemes — promotion; farm and business development; afforestation and creation of woodland; agri-environment-climate; conservation of genetic resources in agriculture and in forestry; exclusion of double-funding; animal welfare; cooperation; commercial loans to mutual funds; investments; conversion or adjustment of commitments; extended or new commitments.

- Commission Implementing Regulation (EU) No 808/2014 of 17 July 2014 lays down rules for the implementation of Regulation (EU) No 1305/2013 as regards the presentation of rural development programmes, procedures and timetables for approval and amendment of rural development programmes and national frameworks, the content of national frameworks, information and publicity for rural development programmes, implementation of certain rural development measures, monitoring and evaluation and reporting.
- Commission Implementing Regulation (EU) No 821/2014 of 28 July 2014 lays down rules for the application of Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards detailed arrangements for the transfer and management of programme contributions, the reporting on financial instruments, technical characteristics of information, communication and visibility measures for operations and the system to record and store data.
- Commission Implementing Regulation (EU) No 964/2014 of 11 September 2014 lays down rules for the application of Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards standard terms and conditions for financial instruments.

Part 4 – Rural Development: Domestic Legislation

- The Rural Development Programmes (Wales) Regulations 2014 regulate new programmes administered by the Welsh Ministers and provide a domestic legal framework for the operation of the EU legislation in Wales.
- The Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014 make provision in relation to Wales, for the implementation of European Regulations (including the Horizontal Regulations and Direct Payments Regulations and the accompanying Delegated and Implementing Regulations) relating to the administration of the EU CAP. These Regulations include provisions on control and enforcement in relation to payments granted directly to farmers under Direct Payments, eligible dates for applications, minimum holding size, procedures for debts, powers of entry, offences and penalties and rules on cross-compliance.

Part 5 - Direct Payments: Horizontal Legislation

- Regulation (EU) No. 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy (“the Horizontal Regulations”) is amended, insofar as it relates to direct payments.
- Commission Delegated Regulation (EU) No.640/2014 supplementing Regulation (EU) No. 1306/2013 of the European Parliament and of the Council is amended insofar as it relates to direct payments.
- Commission Implementing Regulation (EU) No. 809/2014 laying down rules for the application of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council is amended, insofar as it relates to direct payments.

Why is it being changed?

This Instrument allows the continuation of support for new rural development schemes in Wales beyond the end of the EU Implementation Period.

This Instrument simplifies the governance and administration of support for rural development as well as removing from the retained EU law provisions that are not applicable in Wales post the end of the EU Implementation Period. For example, the Instrument removes rules concerning the content and amendment of rural development programmes which were previously approved and monitored by the European Commission. This aligns the requirements for approving and monitoring the content and amendment of rural development programmes with standard Welsh Government procedures and Senedd scrutiny.

This Instrument also incorporates references to the Well-being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016 into the current mission, objectives and priorities for rural development support as set out in the legislation.

In addition, the Instrument makes amendments to legislation governing the direct payments scheme in Wales to address errors and to ensure it continues to operate effectively and efficiently.

5. Consultation

The amendments in Parts 2 – 4 of the Instrument have been subject to formal public consultation. ‘Sustainable Farming and Our Land: Proposals to continue and simplify Agricultural Support for Farmers and the Rural Economy’ was open between 31 July and 23 October 2020.

6. Regulatory Impact Assessment (RIA)

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments has been considered in relation to these Regulations. Officials consider these amendments to be routine technical amendments to the rural

development legislative framework that, for example, remove requirements for the approval and amendment of rural development programmes by the European Commission as this will no longer be operable post the end of the EU Implementation Period. This aligns the administrative and governance process for rural development support with standard Welsh Government procedures and Senedd scrutiny. The Instrument will have no significant effect on public or private sectors, charity or voluntary sectors.

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.

Annex
Statements under the European Union (Withdrawal) Act 2018
Part 1

Table of Statements under the 2018 Act

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	An RIA must be completed for proposed legislation that could affect the public or private sectors, charities and the voluntary sector.
Appropriateness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly 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	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	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	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2020.

Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA 2018 SIs.	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	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence.	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in	Statement of the reasons for the Minister's opinion that the SI is urgent.

		paragraphs 4 or 14, Schedule 7.	
Explanation where amending regulations under s. 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA 1972	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA 1972, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under s.2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA 1972.	Statement setting out: <ul style="list-style-type: none"> a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) Act 2018

1. Sifting statement(s)

Not applicable.

2. 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 Agricultural Support (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 do no more than is appropriate.”

This is the case because the Instrument corrects deficiencies, which arise from withdrawal, and ensures there is a legislative framework in place to fund new rural development schemes effectively in Wales following the end of the Implementation Period. The Instrument makes small but impactful changes allowing a tailored approach to the delivery of new rural development funding in Wales after the end of the Implementation Period. It ensures that the legislation remains up to date and continues to operate effectively in Wales following the end of the Implementation Period. This is in line with government policy.

3. 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.”

This is because the provisions ensure the legislation amended by this Instrument will allow for a smooth transition out of the Implementation Period and until the future reform of agricultural and rural development support.

4. Equalities

The Minister for Environment, Energy and Rural Affairs has made the following statement:

“The Instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the Instrument, 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.”

5. Explanations

The explanations statement has been made in paragraph 4 (Purpose and intended effect of the legislation) of the main body of this Explanatory Memorandum.

6. Criminal offences

Not applicable/required.

7. Legislative sub-delegation

Not applicable/required.

8. Urgency

Not applicable/required.

SL(5)783– The Land Transaction Tax (Temporary Variation of Rates and Bands for Residential Property Transactions) (Wales) (Amendment) Regulations 2021

Background and Purpose

These Regulations amend the Land Transaction Tax (Temporary Variation of Rates and Bands for Residential Property Transactions) (Wales) Regulations 2020 (“the 2020 Regulations”). The purpose of these Regulations is to specify an extension to the current temporary variation to the land transaction tax (“LTT”) rates and bands provided for in the 2020 Regulations that will apply to purchases of certain residential property transactions. This extension commences on 1 April 2021 and ends on 30 June 2021; providing a continuous temporary change period from 27 July 2020 to 30 June 2021, with the rates and bands reverting back to those in force prior to 27 July 2020, after that date.

The table below shows the rates and bands as they applied before 27 July 2020 (when the temporary rates came into effect under the 2020 Regulations) and the temporary rates that will now be extended by these regulations until 30 June 2021.

<i>Relevant consideration</i>	<i>Percentage tax rate (Set by the 2018 Regulations)</i>	<i>Temporary rates Set by the 2020 Regulations and extended by the 2021 Regulations</i>
Not more than £180,000	0%	0%
More than £180,000 but not more than £250,000	3.5%	
More than £250,000 but not more than £400,000	5%	No change
More than £400,000 but not more than £750,000	7.5%	No change
More than £750,000 but not more than £1,500,000	10%	No change
More than £1,500,000	12%	No change

In her letter dated 3 March 2021 to the Llywydd, the Minister for Finance and Trefnydd stated her intention for these regulations to be debated in plenary on 23 March 2021.



Procedure

Provisional Affirmative Procedure.

This instrument contains regulations made under the provisional affirmative procedure set out in section 25(2) of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 ("the 2017 Act"). These Regulations are therefore made without a draft having been laid before, and approved by 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. The Senedd must vote to approve the Regulations by 8 May 2021 (due to recess and Senedd elections).

Technical Scrutiny

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

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

The Explanatory Memorandum states that "this targeted tax reduction will support taxpayers who are paying the main rates of LTT (broadly, those buying their homes) and who may need additional support in deciding to buy their homes as a result of the uncertainty as we move from the peak of the pandemic and towards our economic recovery." The Explanatory Memorandum states that "the tax bands and percentage tax rates applicable to residential property transactions will revert back to those in force before 27 July 2020 on 1 July 2021."

2. Standing Order 21.3(i) – that it imposes a charge on the Welsh Consolidated Fund or contains provisions requiring payments to be made to that Fund or any part of the government or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payment

Section 25 of the Tax Collection and Management (Wales) Act 2016 provides that the Welsh Revenue Authority must pay amounts collected in the exercise of its functions into the Welsh Consolidated Fund. These Regulations revise tax bands and percentage tax rates for certain transactions subject to land transaction tax collected by the WRA.

Welsh Government response

A Welsh Government response is not required.



Legal Advisers
Legislation, Justice and Constitution Committee
10 March 2021



Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 25(2) of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017, for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the Regulations were made, disregarding any 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. 238 (W. 61)

**LAND TRANSACTION TAX,
WALES**

**The Land Transaction Tax
(Temporary Variation of Rates and
Bands for Residential Property
Transactions) (Wales)
(Amendment) Regulations 2021**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Land Transaction Tax (Temporary Variation of Rates and Bands for Residential Property Transactions) (Wales) Regulations 2020 (S.I. 2020/794 (W. 174) (“the 2020 Regulations”). The 2020 Regulations provide for a temporary variation to the tax bands and percentage tax rates of land transaction tax applicable to residential property transactions with an effective date on or after 27 July 2020, but before 1 April 2021. These Regulations extend the application of the temporary variation to residential property transactions with an effective date on or after 27 July 2020 but before 1 July 2021.

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 Welsh Government, Cathays Park, Cardiff, CF10 3NQ and on the Welsh Government’s website at www.gov.wales.

Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 25(2) of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017, for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the Regulations were made, disregarding any 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. 238 (W. 61)

**LAND TRANSACTION TAX,
WALES**

**The Land Transaction Tax
(Temporary Variation of Rates and
Bands for Residential Property
Transactions) (Wales)
(Amendment) Regulations 2021**

Made 3 March 2021

Laid before Senedd Cymru 4 March 2021

Coming into force 1 April 2021

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by sections 24(1) and 78(1) of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017(1).

Title and commencement

1.—(1) The title of these Regulations is the Land Transaction Tax (Temporary Variation of Rates and Bands for Residential Property Transactions) (Wales) (Amendment) Regulations 2021.

(2) These Regulations come into force on 1 April 2021.

(1) 2017 anaw 1.

**Amendment of the Land Transaction Tax
(Temporary Variation of Rates and Bands for
Residential Property Transactions) (Wales)
Regulations 2020**

2. In the Land Transaction Tax (Temporary Variation of Rates and Bands for Residential Property Transactions) (Wales) Regulations 2020⁽¹⁾, in regulation 2 (application), for “1 April 2021”, in each place it occurs, substitute “1 July 2021”.

Rebecca Evans

Minister for Finance and Trefnydd, one of the Welsh
Ministers

3 March 2021

⁽¹⁾ S.I. 2020/794 (W.174).

Explanatory Memorandum to The Land Transaction Tax (Temporary Variation of Rates and Bands for Residential Property Transactions) (Wales) (Amendment) Regulations 2021

This Explanatory Memorandum has been prepared by the Permanent Secretary's Group of the Welsh Government and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Land Transaction Tax (Temporary Variation of Rates and Bands for Residential Property Transactions) (Wales) (Amendment) Regulations 2021. I am satisfied that the benefits justify the likely costs.

Rebecca Evans MS
Minister for Finance and Trefnydd

4 March 2021

1. Description

- 1.1 The purpose of this instrument is to specify an extension to the current temporary variation to the land transaction tax (“LTT”) rates and bands that will apply to purchases of certain residential property transactions. This extension commences on 1 April 2021 and ends on 30 June 2021; providing a continuous temporary change period from 27 July 2020 to 30 June 2021, with the rates and bands reverting back to those in force prior to 27 July 2020, after that date.

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

- 2.1 This instrument contains regulations made under the provisional affirmative procedure set out in section 25(2) of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“the 2017 Act”). These Regulations are therefore made without a draft having been laid before, and approved by the Senedd. Further details about this procedure can be found in paragraph 3.2 below.
- 2.2 This instrument will amend the Land Transaction Tax (Temporary Variation of Rates and Bands for Residential Property Transactions) (Wales) Regulations 2020 (“the 2020 Regulations”). This instrument contains regulations made under section 78(1) of the 2017 Act to maintain transitional provision in connection with certain transactions where substantial performance takes place before 1 July 2021, but completion takes place on or after that date. Section 79(3) of the 2017 Act provides that regulations made under section 78(1) are subject to the negative procedure, unless the Welsh Ministers consider the regulations have the effect of imposing or increasing liability to tax. The transitional rule made under section 78(1) does not have the effect described in section 79(3) on the basis that it reduces the amount of tax that will otherwise be chargeable on those specified transactions. However, as a result of section 40 of the Legislation (Wales) Act 2019, this instrument is subject to the provisional affirmative procedure.

3. Legislative background

- 3.1 Section 24 of 2017 Act provides the Welsh Ministers with powers to vary the tax rates and tax bands for LTT through regulations.
- 3.2 Regulations made under this section are subject to a provisional affirmative procedure, which means the regulations are made (signed) by the Ministers and can come into force immediately. Once the Regulations have been made, they must be laid before the Senedd and will have temporary effect until they are voted on by the Senedd. That vote must happen within 28 calendar days of the regulations being made, not counting days when the Senedd is in recess. If the

vote does not occur, or is lost, the former tax rates and tax bands again apply and any taxpayer who paid a higher amount of tax under the regulations that failed to achieve Senedd approval can reclaim the difference between that payable under those regulations and the rates previously in force. This means that the risk of the regulations failing to achieve Senedd approval will rest with the Welsh Government and not Welsh taxpayers.

3.3 The 28 day period commences on Wednesday 3 March 2021 and the vote to approve the Regulations must occur by Saturday 8 May 2021 (due to recess and Senedd elections).

3.4 If approved, the regulations will have effect until 30 June 2021.

4. Purpose & intended effect of the legislation

4.1 The purpose of these regulations is to amend the 2020 Regulations so as to extend the current temporary variation to the tax bands and percentage tax rates of LTT applicable to certain residential property transactions with an effective date¹ on or after 27 July 2020 and before 1 April 2021, to on or after 27 July 2020 and before 1 July 2021. The original period for the temporary variation was announced by the Minister for Finance and Trefnydd on 14 July 2020. This will be used to calculate the amount of LTT chargeable in respect of a residential land transaction and is restricted to those paying the main rates only. The tax bands and percentage tax rates applicable to residential property transactions will revert back to those in force before 27 July 2020 on 1 July 2021.

4.2 The effect of the 2020 Regulations is to increase the threshold between the zero rate band and first tax band applicable to residential property transactions. The temporary rates introduced in the 2020 regulations increased the zero rate band from £180,000 to £250,000 from 27 July 2020, and these latest regulations provide for those rates to continue until 30 June 2021. The temporary threshold is £70,000 higher than the permanent starting threshold for residential property transactions subject to the main rates and it will effectively remove the permanent first band, charging 3.5% on consideration of more than £180,000 but not more than £250,000. It will also mean that in terms of price, only around the top 25% of those liable to the main LTT rates will pay any tax at all. Those buying properties costing more than £250,000 will make a saving of £2,450 over that which would be payable under the permanent rates.

4.3 These Regulations do not make any changes to the tax bands and percentage tax rates applicable to higher rates residential property transactions, non-residential property transactions, or transactions where the chargeable consideration consists of rent². The higher rates and thresholds for buyers of

¹ The 'effective date' is, broadly, the date of completion of the contract to purchase the property.

² The Land Transaction Tax (Tax Bands and Tax Rates) (Wales) Regulations 2018 (S.I. 2018/128 (W. 32)) makes provision as to the rates and bands of LTT applicable to higher rates residential property transactions, non-residential property transactions, and transactions where chargeable consideration consists of rent. These rates were most recently amended with effect from 22 December 2020 by the Land Transaction Tax (Tax Bands and Tax Rates) (Wales) (Amendment) Regulations 2020.

properties such as buy to let or as a second home therefore remain unchanged. This targeted tax reduction will support taxpayers who are paying the main rates of LTT (broadly, those buying their homes) and who may need additional support in deciding to buy their homes as a result of the uncertainty as we move from the peak of the pandemic and towards our economic recovery.

- 4.4 As a result of the amendments made by this instrument, the LTT residential property main rates for transactions completed on or after 27 July 2020 until 30 June 2021, will temporarily be:

Table 1: Residential Property Transactions - Rates and Bands from 27 July 2020 until 30 June 2021

Main rates Residential property transactions		
<u><i>Tax band</i></u>	<u><i>Relevant consideration</i></u>	<u><i>Percentage tax rate</i></u>
Zero rate band	Not more than £250,000	0%
First tax band	More than £250,000 but not more than £400,000	5%
Second tax band	More than £400,000 but not more than £750,000	7.5%
Third tax band	More than £750,000 but not more than £1,500,000	10%
Fourth tax band	More than £1,500,000	12%

5. Consultation

- 5.1 There is no statutory requirement to consult on this instrument. The extension of the temporary variation period was announced by the Minister for Finance and Trefnydd on 3 March 2021. The timing takes account of calls from certain stakeholders and taxpayers for the temporary rates and bands to apply for a further three months. However, the setting of rates and thresholds for taxes is not an area of policy where consultation is undertaken, as any such consultation with a 'live' tax is highly likely to have a distortive effect on behaviours and, in relation to transaction taxes, the timing of those transactions. The intention is to continue to provide a temporary economic stimulus to support the housing market and broader economy in Wales. It also recognises that some homebuyers in Wales seeking to benefit from the original temporary tax reduction period have encountered difficulties in completing transactions during this time and this extension will provide support to many of those Welsh taxpayers impacted.

6. Regulatory Impact Assessment

- 6.1 The revenue impact of these changes will be provided by the Office for Budget Responsibility and included as part of its next forecast of LTT revenues for the Welsh Government.
- 6.2 The Welsh Government considered a number of options in relation to an extension to the temporary LTT rates. This assessment covers a no change option and the policy within these regulations.
- 6.3 Recent data suggests the outlook for the property market is now more favourable than was expected at the time the original measure was announced. Residential transactions in Wales have returned to previous years' levels. House prices have also been rising recently, annually up 10.7% in Wales in December – higher than in England (8.5%), and are expected to continue to rise over the next few months. However, the economy is still in a fragile state and with lockdowns over the winter months, this is likely to have negatively impacted the smooth completion of transactions and delayed some.
- 6.4 This suggests appropriate action at this stage is to either end the temporary reduction on 31 March or provide a short term extension to the current policy.

No change

- 6.5 The no change option would return the main residential rates from 1 April to those which applied before 27 July 2020. These rates and thresholds mean that, in relation to the main residential rates, just over half of homebuyers do not pay any tax when buying their home, including the vast majority of first time buyers.

- 6.6 Following the extension of the temporary increase to £500,000 for the zero rate threshold for stamp duty land tax (“SDLT”) introduced from 8 July 2020, not matching the extension to 30 June 2021 with a similar one for LTT would result in some relatively large differences in tax between England and Wales. This is particularly the case for very high priced property in Wales. This may affect some local property markets which straddle the England and Wales border, creating market distortion in those areas. In the period August to January, around a quarter of properties liable to the main rates for residential properties in Wales were transacted for £250,000 or more. At that price without the extension, the difference in tax between SDLT and LTT will be £2,450. During the same period, around 5% of properties liable to the main rates residential rates in Wales were transacted for £400,000 or more. At that price the difference in tax would be around £9,950 without the LTT extension.
- 6.7 There would be no cost to the Welsh Government from this option in terms of changes to LTT revenues compared to those published by the Office for Budget Responsibility in its Welsh Taxes Outlook, which included the temporary reduction to LTT until 1 April 2021.

Three month extension to the temporary £250,000 threshold which is applied only to the main rates

- 6.8 This option is an extension to the period in which the increase to the residential main rate threshold from £180,000 to £250,000 applies in Wales. It would apply to transactions before 1 July 2021 instead of before 1 April 2021.
- 6.9 The option to extend the existing temporary relief will result in more transactions being subject to the tax reduction. Some of these transactions may have been planned for completion ahead of 1 April, but have been subject to delays in the conveyancing process, or the construction of new builds which have occurred as a result of Covid. This option creates a fairer temporary reduction, as it looks to cover those transactions which have been delayed and would miss out on the tax reduction otherwise.
- 6.10 As a result of this change around 75% of Welsh homebuyers will continue to pay no LTT until 1 July 2021. For properties costing £250,000 or more, there will continue be a tax reduction of £2,450 until 1 July.
- 6.11 As with the current policy, this option does not provide a temporary tax reduction for those properties which are subject to the higher residential rates LTT. The higher residential rates apply to companies buying any dwellings and to individuals, broadly, who are buying residential properties when they, or an individual they are buying with, already own an interest in another dwelling. This is most likely to apply to the purchases of second homes and buy-to-let properties.
- 6.12 This option is expected to benefit around 4,000 transactions in Wales subject to the main rates of LTT. However, the number of transactions this year which will benefit from the extended tax reduction period is particularly uncertain due to the effects of the pandemic on the property market and the wider economy.

These transactions are expected to receive an average tax reduction of £2,000. The reduction in tax may then be used to increase household spending, which in turn may have positive economic effects. However, the evidence on this and how it may apply to the current economic and policy situation is relatively uncertain. The extension of the tax decrease may also slightly increase house prices.

- 6.13 The extension of the tax reduction is expected to have a very slight effect on transactions overall from that which would otherwise have occurred. It is also likely that some transactions will be brought forward from the period after 30 June 2021 to take advantage of the extended temporary tax reduction.
- 6.14 Even with the extension to the temporary changes introduced to LTT, there will continue to be some relatively large tax differences in tax between England and Wales for some very high priced property in Wales. This may affect some local property markets which straddle the England-Wales border, creating a degree of property market distortion in those areas.
- 6.15 With this option, around 75% of properties in Wales which are liable to the main residential rates will pay no tax. Only for homes bought for more than £250,000 will there be differences in tax payable between SDLT and LTT. In the period August to January, around 5% of properties transacted for £400,000 or more. At that price with the extension to LTT, the difference in tax between SDLT and LTT will be £7,500, £2,450 less than without the extension in LTT. As this option reduces the difference in tax between SDLT and LTT compared to the no change option, it should result in less local market distortion between England and Wales than that option.
- 6.16 Whilst reductions to residential property transaction taxes generally increase the number of transactions overall, as this is a three month extension, the effect is expected to be small.
- 6.17 There will be little additional administrative cost to the Welsh Revenue Authority ("WRA") as a result of updating its online tax calculators and responding to taxpayer queries about the change. These costs will be met within its current budget. Businesses involved in the various stages of house purchases, especially estate agents and conveyancers and solicitors have dealt with many rate (and method of calculation) changes before through SDLT and the introduction of LTT in Wales. As this is an extension of an existing policy, there should be few issues with adapting or integrating the change to existing systems and process. There has been clear communication of the changes and the WRA has provided a revised LTT calculator to establish liability. The additional costs to these businesses should therefore be minimal.
- 6.18 Extending the temporary rates for a further three months matches the SDLT extension in England and Northern Ireland. This should also support the

messaging and awareness of how long the temporary rates will now apply for in Wales.

7. Post Implementation review

- 7.1 Section 77 of the 2017 Act provides that the Welsh Ministers must make arrangements for an independent review of land transaction tax to be completed within six years of the day after the day of the 2017 Act receiving Royal Assent. A review of LTT will encompass all of the subordinate legislation made under the 2017 Act.



Ein cyf/Our ref: MA-RE-0943-21

Elin Jones MS
Llywydd
Senedd Cymru

3 March 2021

Dear Llywydd,

The Land Transaction Tax (Temporary Variation of Rates and Bands for Residential Property Transactions) (Wales) (Amendment) Regulations 2021

I have today made the Land Transaction Tax (Temporary Variation of Rates and Bands for Residential Property Transactions) (Wales) (Amendment) Regulations 2021 under sections 24(1) and 78(1) of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 ('the 2017 Act') which comes into force on 1 April 2021. I attach a copy of the statutory instrument and the accompanying Explanatory Memorandum, which I intend to lay once the statutory instrument has been registered.

In accordance with the procedure set out in sections 25(2) of the 2017 Act, this instrument must be approved by the Senedd within 28 days of it being made, not including days when the Senedd is in recess of four days or more or dissolved, 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 23 March 2021.

I am copying this letter to Mick Antoniw MS, Chair of the Legislation, Justice and Constitution Committee, Llyr Gruffydd MS, Chair of the Finance Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely,

Rebecca Evans AS/MS
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Correspondence.Rebecca.Evans@gov.wales
Gohebiaeth.Rebecca.Evans@llyw.cymru

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

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

SL(5)764 – The Corporate Joint Committees (Amendment of Schedule 6 to the Welsh Language (Wales) Measure 2011) Regulations 2021

Background and Purpose

The Welsh Language (Wales) Measure 2011 (“the 2011 Measure”) makes provision for the specification of standards of conduct in relation to the Welsh language. Schedule 6 lists the persons and organisations to which the 2011 Measure applies and sets out the potentially applicable standards.

These Regulations amend Schedule 6 to the 2011 Measure by adding corporate joint committees established under Part 5 of the Local Government and Elections (Wales) Act 2021. The effect is that the following standards will potentially be applicable to corporate joint committees:

- service delivery standards,
- policy making standards,
- operational standards,
- promotion standards, and
- record keeping standards.

These Regulations are connected with other regulations made under Part 5 of the Local Government and Elections (Wales) Act 2021 which establish certain corporate joint committees.

Procedure

Draft Affirmative.

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

Technical Scrutiny

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

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

The subject heading of the Regulations should include “LOCAL GOVERNMENT, WALES” in addition to “WELSH LANGUAGE”, to indicate the area of law to which the instrument relates.



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

The preamble provides that “a draft of this instrument has been laid before and approved by a resolution of Senedd Cymru in accordance with section 174(4) and 5(1) (*sic*) of [the Local Government and Elections (Wales) Act 2021].”

It appears that the reference should be to section 174(4) and 5(k) [*emphasis added*], as paragraph (k) of subsection (5) provides that subsection (4) applies to a statutory instrument containing regulations made under section 83 (corporate joint committees: supplementary etc.).

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument:

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

The ‘Legislative background’ section of the Explanatory Memorandum provides:

“These Regulations will be subject to the affirmative resolution procedure in the Senedd by virtue of paragraph 35 of Schedule 11 to the Government of Wales Act 2006.”

However, the preamble to the Regulations correctly cites section 174 of the Local Government and Elections (Wales) Act 2021 as being the provision that sets out the parliamentary procedure applicable to this instrument. It is unclear why reference is made in the Explanatory Memorandum to paragraph 35 of Schedule 11 to the Government of Wales Act 2006, as the provision does not appear to be relevant.

Welsh Government response

A Welsh Government response is required.

Committee Consideration

The Committee considered the instrument at its meeting on 8 March 2021 and reports to the Senedd in line with the reporting points above.



Ymateb y Llywodraeth: Rheoliadau Cyd-bwyllgorau Corfforedig (Diwygio Atodlen 6 i Fesur y Gymraeg (Cymru) 2011) 2021

Pwynt craffu technegol 1: *Hepgor pennawd pwnc ychwanegol*

Mae'r Llywodraeth yn ddiolchgar am gael gwybod am y mater hwn. Cytunwn y byddai'n dda o beth categoreiddio'r offeryn hwn o dan bennawd pwnc "LLYWODRAETH LEOL, CYMRU" yn ogystal â phennawd pwnc "Y GYMRAEG". Os bydd y Senedd yn cymeradwyo'r Rheoliadau caiff y pennawd pwnc ychwanegol ei gynnwys yn y fersiwn i'w llofnodi gan y Gweinidog.

Pwynt craffu technegol 2: *Cyfeiriad anghywir at bŵer galluogi yn y rhaglith*

Mae'r Llywodraeth o'r farn bod y pwerau a enwir yn gywir. Mae ail baragraff y rhaglith yn cyfeirio at is-adrannau (4) a (5)(l) (yn hytrach na "5(1)") o adran 174 o Ddeddf Llywodraeth Leol ac Etholiadau (Cymru) 2021. Mae paragraff (l) o is-adran (5) o adran 174 yn darparu bod rheoliadau o dan adran 84(2) o'r Ddeddf (rheoliadau sy'n diwygio deddfiadau eraill at ddibenion Rhan 5, Cyd-bwyllgorau Corfforedig) yn ddarostyngedig i'r weithdrefn gadarnhaol yn unol ag is-adran (4) o'r adran honno. Adran 84(2) yw'r prif bŵer galluogi a enwir ym mharagraff cyntaf y rhaglith.

Pwynt craffu ar rinweddau 1: *Cyfeiriad anghywir at yr awdurdod ar gyfer defnyddio'r weithdrefn gadarnhaol yn y Memorandwm Esboniadol*

Mae'r Llywodraeth yn ddiolchgar am gael gwybod am yr amryfusedd hwn. Mae'r Memorandwm Esboniadol wedi ei ddiweddarau er mwyn newid y cyfeiriad gwallus.

Government Response: The Corporate Joint Committees (Amendment of Schedule 6 to the Welsh Language (Wales) Measure 2011) Regulations 2021

Technical Scrutiny point 1 : *Omission of additional subject heading*

The Government is grateful for notice of this issue. We agree that there would be merit in this instrument being categorised under the subject heading of “LOCAL GOVERNMENT, WALES” in addition to the subject heading “WELSH LANGUAGE”. If the Regulations are approved by the Senedd the additional subject heading will be included in the version to be signed by the Minister.

Technical Scrutiny point 2 : *Incorrect citation of enabling power in the preamble*

The Government considers the cited powers to be correct. The second paragraph of the preamble refers to subsections (4) and (5)(l) (as opposed “5(1)”) of section 174 of the Local Government and Elections (Wales) Act 2021. Paragraph (l) of subsection (5) of section 174 provides that regulations under section 84(2) of the Act (regulations amending other enactments for the purposes of Part 5, Corporate Joint Committees) are subject to the affirmative procedure in accordance with subsection (4) of that section. Section 84(2) is the main enabling power cited in the first paragraph of the preamble.

Merit Scrutiny point 1 : *Incorrect reference to the authority for use of affirmative procedure in the Explanatory Memorandum*

The Government is grateful for notice of this oversight. The Explanatory Memorandum has been updated to replace the erroneous reference.

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **The Greenhouse Gas Emissions (Kyoto Protocol Registry) (Amendments) (EU Exit) Regulations 2021**

DATE **26 February 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 Senedd.

The Greenhouse Gas Emissions (Kyoto Protocol Registry) (Amendments) (EU Exit) Regulations 2021

The 2021 Regulations make amendments to the following:
EU legislation

Commission Regulation (EU) No 389/2013

Amendments to Domestic Legislation

The Greenhouse Gas Emissions Trading Scheme (Amendment) and National Emissions Inventory Regulations 2005

The Environment Act 1995

The Greenhouse Gas Emissions Trading Scheme Regulations 2012

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

The 2021 Regulations amend domestic legislation which largely falls within the legislative competence of the Senedd and the Welsh Ministers' executive powers in relation to greenhouse gas emissions, as established in legislation.

The purpose of the amendments

The 2021 Regulations amend retained EU law related to the UK's Kyoto Protocol ("KP") registry, and to KP projects, to ensure that it will be operable in the UK. The KP is a protocol

to the United Nations Framework Convention on Climate Change (“the UNFCCC”), which is an international climate change treaty. The KP sets out carbon emission reduction obligations for certain countries, including the EU Member States and the UK.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here:

<https://www.legislation.gov.uk/ukdsi/2021/9780348220551>

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency and expediency. These amendments are to ensure that the statute book remains functional following the UK’s exit from the EU, by amending or revoking provisions that would otherwise be inoperable.

UK MINISTERS ACTING IN DEVOLVED AREAS

217 – The Greenhouse Gas Emissions (Kyoto Protocol Registry) Regulations 2021

Laid in the UK Parliament: 25 February 2021

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	N/A
Date sifting period ends in UK Parliament	N/A
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	9 March 2021

Background

These Regulations are proposed to be made by the UK Government under section 8 of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

Summary

The United Kingdom is a party to the United Nations Framework Convention on Climate Change (the UNFCCC). The UNFCCC has near universal membership and recognises that climate change is an important issue, which can be combatted by stabilising greenhouse gas emissions.

The Kyoto Protocol is a protocol to the UNFCCC, under which certain countries have agreed to emission reduction commitments. Those countries include the United Kingdom and the European Union. Before 31 December 2020, the UK's Kyoto Protocol registry operated within the EU platform (the Consolidated System of European Union Registries, CSEUR).

These Regulations amend retained EU law relating to the UK's Kyoto Protocol registry, to ensure that the UK's Kyoto Protocol Registry works within the new domestic platform (i.e. independently of the CSEUR). This will allow the UK to hold and trade Kyoto units, helping the UK comply with its international obligations under the Kyoto Protocol.

The Regulations also remove a requirement for the Environment Agency to comply with EU law when considering applications regarding Kyoto Protocol projects. Instead, the Environment Agency will have to comply with the UK's relevant international climate law obligations.

Statement by Welsh Government

Legal Advisers agree with the statement laid by the Welsh Government dated 26 February 2021 regarding the effect of these Regulations.

However, we note that the software platform for the new UK Kyoto Protocol registry is still in development and is due to be operational in Spring 2021. A consequence of this is summarised in section 7.3 of the UK Government's Explanatory Memorandum to the Regulations:

"The UK's access to the EU's KP Registry system ended at the end of the Transition Period (TP). The IT platform for the new UK KP registry is currently in development and is due to be operational in Spring 2021. For the period between the end of the TP and Spring 2021, businesses with accounts in the UK KP registry will temporarily lose access to them and have been advised to open KP accounts in other countries' registries if they wish to trade KP units during this time."

It also appears that the Welsh Government's written statement incorrectly cites the name of the Regulations. The correct name is the Greenhouse Gas Emissions (Kyoto Protocol Registry) Regulations 2021.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas.

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.

Consent motion under Standing Order 30A.10

The Regulations amend the Environment Act 1995 as it applies to “charging authorities”. The Natural Resources Body for Wales is a charging authority.

The Committee may wish to seek clarification from the Welsh Government as to why no Statutory Instrument Consent Memorandum has been laid before the Senedd under Standing Order 30A, insofar as the Regulations amend the Environment Act 1995 in devolved areas.

Agenda Item 6.1



Dr Edward Hayes
Head of Public Affairs
The Kennel Club
Clarges Street
London
W1J 8AB

Legislation, Justice and Constitution Committee
Welsh Parliament
Cardiff Bay
CF99 1SN

9 March 2021

Dear Chair,

We are writing with regard to The Animal Welfare (Licensing of Activities Involving Animals) (Wales) Regulations 2021. We are aware that the Regulations will be going back to the Committee on 22nd March and are very concerned by their potential unintended consequences.

The Kennel Club firmly believes that, due to the drafting of the regulations, their scope of impact will be much wider than the Government's stated aim to prohibit commercial third party sales of puppies and kittens in Wales and will introduce a new licensing threshold for one to two litter breeders. Legitimate low volume breeders who are explicitly out of scope of The Animal Welfare (Breeding of Dogs) (Wales) Regulations 2014 – i.e. breeders with one or two bitches, producing one or two litters in a 12 month period – could reasonably fall within the scope of the new regulations. If they are deemed to be selling their puppies as pets in the course of a business, as outlined in Schedule 1, (1) and (2), the regulations as drafted would surely necessitate the acquisition of a 'pet vending' licence. Since the introduction of an identically worded 'business test' licensing threshold in England in 2018, we have seen a number of one and two litter dog breeders being deemed to be operating a business by overzealous local authorities.

The Welsh Government did not consult on the introduction of a de facto new licensing threshold for dog breeders in either the 2019 or 2020 consultations, nor has this been taken into account in the legislation's accompanying explanatory memorandum or accompanying regulatory impact assessment. As such, we are highly concerned that the Regulations' implications – in terms of the general puppy buying public, breeders and licensing authorities – will not have been duly considered.

We believe that the implementation of a licensing regime whereby some dog breeders would need to adhere to the conditions set out within the 2014 breeding regulations, others by these new 'pet vending' conditions, and a third group of unlicensed breeders would introduce excessive and unnecessary complications for all relevant stakeholders.

Furthermore, we do not believe the implementation of this licensing threshold for dog breeders would be in line with the recommendations of the recent independent review of Welsh dog breeding regulations. The expert panel, commissioned by the Welsh Government, highlighted that the extension of 'full licensing' (i.e. inspections) to one and two litter dog breeders, as being introduced in practice by this legislation, would require a significant increase in local



authority resources to enable effective implementation, which was a major factor as to why they did not support such a measure.

The panel also highlighted the significant unintended and unwanted consequences that such a step could result in: “Many of the best welfare conditions for the breeding of dogs occur in low volume, home breeding situations with an owner who may wish to have one or two litters from a well looked after, well socialised, pet dog. There is therefore a legitimate argument that full licensing of all breeders, regardless of size, could deter the best small-scale breeders from continuing. This reduction of supply in the face of ongoing demand for puppies could inadvertently lead to an increase in the sourcing of dogs from lower welfare situations including large-scale licensed breeding establishments, illegally unlicensed establishments, or those imported from overseas.”

In the Welsh Government’s formal response to the Group’s recommendations, there was no indication that the Government felt that one and two litter dog breeders should come under the scope of a licensing regime. Whilst we clearly note that these new regulations do not amend the 2014 breeding regulations, we believe that they will have an equivalent effect in practice.

The Kennel Club fully supports the principle aim of the legislation to prohibit the commercial third party sale of puppies and kittens in Wales. However, we firmly believe that the draft regulations exceed what the Welsh Government has consulted upon and assessed within the accompanying explanatory memorandum and impact assessment. As such, we believe that the scope of the Regulations, in their current form, far exceeds what the Welsh Government stated they hoped to achieve by introducing a new licensing threshold for one and two litter breeders in Wales.

We urge you to consider these points when the Regulations come before your Committee and to seek further clarification from the Welsh Government on this matter.

Yours sincerely,

Dr Edward Hayes
Head of Public Affairs
The Kennel Club



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA/LG/0854/12

Mick Antoniw MS
Chair of Legislation, Justice and Constitution Committee

9 March 2021

Dear Mick,

Legislation, Justice and Constitutional Committee Report on the Supplementary Legislative Consent Memorandum for the UK Environment Bill.

Thank you for your report of 19 February 2021 by the Legislation, Justice and Constitutional Committee covering scrutiny of the Supplementary Legislative Consent Memorandum for the UK Environment Bill.

I am grateful for the Committee's consideration and recommendations. I am pleased to accept the Committee's recommendations and provide my response at Annex A.

Regards

Lesley Griffiths AS/MS

Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Gohebiaeth.Lesley.Griffiths@llyw.cymru
Correspondence.Lesley.Griffiths@gov.wales

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

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

Annex A:

<p>Recommendation 1. The Minister should advise the Committee whether the outcome of Welsh Government consultation exercises has resulted in her seeking any amendments to the UK Bill. If so, the Minister should explain the reasons for her proposed amendments.</p>	<p>Accept There has been no requirement to request amendments to the Bill as a result of any Welsh Government consultation exercises.</p> <p>Financial Implications – There are no financial implications as a result of accepting this recommendation.</p>
<p>Recommendation 2. The Minister should provide the Committee with the collated document referred to in her response to recommendation 12 of our first report.</p>	<p>Accept The supplementary document is provided at Annex B.</p> <p>Financial Implications – There are no financial implications as a result of accepting this recommendation.</p>
<p>Recommendation 3. The Minister should provide full and detailed information about all of the provisions in section 37B of the Water Industry Act 1991 that are being removed by the UK Environment Bill and what is happening to them.</p>	<p>Accept Clause 77(3) omits section 37B (and 37C) of the Water Industry Act 1991 (“WIA 1991”) which contains the current requirements for the publication of a draft and final water resources management plan and the handling of consultation responses on the draft plan.</p> <p>The new sections 39F and 39G are inserted by clause 77(7) of the Bill.</p> <p>Further information can be found at Annex B.</p> <p>Financial Implications – There are no financial implications as a result of accepting this recommendation.</p>
<p>Recommendation 4. The Minister should clarify which powers of direction are being replicated by virtue of proposed sections 39F and 39G of the Water Industry Act 1991 (to be inserted by clause 75 of the UK Environment Bill)</p>	<p>Accept All powers of direction in section 37B are effectively being removed and are replaced by powers of direction if they are provided for under regulations made under new sections 39F and 39G.</p>

	Financial Implications – There are no financial implications as a result of accepting this recommendation.
Recommendation 5. The Minister should provide copies of correspondence between the Welsh and UK Government's related to clause 107 and Schedule 16 of the UK Bill, as requested in our letter of 23 December 2020, by 4 March 2021.	Accept I am pleased to assist the Committee in their considerations by providing correspondence relating to the now agreed policy approach underpinning section 107 and Schedule 16. However, I am unable to provide further correspondence on the topic as their contents relate to other areas in the Bill which remain under development and cover the ongoing formulation of UK Government Policy. Financial Implications – There are no financial implications as a result of accepting this recommendation.
Recommendation 6. The Minister should respond to all the conclusions and recommendations contained in this report by 4 March 2021.	Accept Financial Implications – There are no financial implications as a result of accepting this recommendation.

Annex B:

<p>Recommendation 3</p> <p>The Minister should provide full and detailed information about all of the provisions in section 37B of the Water Industry Act 1991 that are being removed by the UK Environment Bill and what is happening to them.</p>	<p>Clause 77(3) omits section 37B (and 37C) of the Water Industry Act 1991 ("WIA 1991") which contains the current requirements for the publication of a draft and final water resources management plan and the handling of consultation responses on the draft plan.</p> <p>The new sections 39F and 39G are inserted by clause 77(7) of the Bill.</p> <p>Section 39F- Plans and joint proposals: regulations about procedure</p> <p>The newly inserted section 39F(1) provides powers under which the Secretary of State or Welsh Ministers may make regulations setting the procedure for preparing and publishing joint proposals, water resources management plans and drought plans. It is likely that the regulations will largely cover similar requirements as the existing regulations for water resources planning (the Water Resources Management Plan Regulations 2007) and drought planning (the Drought Plan Regulations 2005). The existing Regulations set out publication requirements and how responses to the consultations should be considered, as well as procedural requirements for inquiries or hearings. It is also likely that the new regulations may include provisions that permit the use of modern consultation platforms and improve the existing requirements for the sharing of information and the handling of confidential information.</p> <p>Section 39F(2) provides that the regulations may include requirements for sharing information, including requirements that water supply licensees must share with water undertakers such information as the water undertaker may reasonably request.</p> <p>Section 39F(3) provides that the regulations may include requirements on how water undertakers should consult with other bodies, who they should consult, the timing of any consultation and the publication of statements relating to any consultation.</p> <p>Section 39F(4) provides that the regulations may include the procedures for preparing and circulating drafts, including provision for the Minister to require changes to a draft plan or proposal.</p> <p>Section 39F(5) provides that the regulations may include requirements to ensure that people likely to be affected by the plan or proposal have a reasonable opportunity to make representations to the Minister.</p> <p>Section 39F(6) provides that the regulations may include requirements about how water undertakers should handle the responses they receive and that the Secretary of State or Welsh Ministers may cause a public local inquiry or other hearing to be held in connection with a water resources management plan or drought plan.</p> <p>Section 39F(7) provides that the regulations may include requirements about how water undertakers should handle commercially confidential information.</p> <p>Section 39F(8) provides that references to the Minister in that section, including the power to make regulations, is conferred on the Secretary of State for water undertakers whose areas are wholly or mainly in England and Welsh Ministers in relation to water undertakers whose areas are wholly or mainly in Wales.</p> <p>Section 39G - Regulations under section 39F: directions</p>
--	---

	<p>Section 39G(1) provides that regulations made under new section 39F may also confer on the Secretary of State or Welsh Ministers a power to make directions. This power is required because some administrative requirements – for example, around the timetables for preparation, revision and publication – are likely to change from planning round to planning round. The Secretary of State or Welsh Ministers may also need to be able to direct specific water undertakers on when and how water resources management plans, drought plans and joint proposals should be prepared and revised. Under the existing legislation relating to water resources management plans and drought plans, the Secretary of State can give such directions to water undertakers and those directions are not subject to parliamentary procedure.</p> <p>Section 39G(2) provides that the directions must be set out in writing.</p> <p>Section 39G(3) provides that a direction could apply generally to all water undertakers or to one or more undertakers.</p> <p>Section 39G(4) provides that each water undertaker must comply with a direction.</p> <p>Section 39G(5) provides that the directions would be enforceable by the Secretary of State or Welsh Ministers under the section 18 of the Water Industry Act 1991.</p> <p>Section 39G(6) provides that “Minister” has the same meaning as in new section 39F, with the effect that the power to make directions under new section 39G is conferred on the Secretary of State for water undertakers whose areas are wholly or mainly in England, and Welsh Ministers in relation to water undertakers whose areas are wholly or mainly in Wales.</p>
--	---

Summary of powers to make subordinate legislation in the UK Environment Bill

Section or schedule of the Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Clause 49 Schedule 4 Producer responsibility obligations	Welsh Ministers (Concurrent plus powers)	Regulations	Confers a power to make Regulations to impose producer responsibility obligations on specified persons and in relation to specified products or materials	Affirmative procedure with the exception of the regulations under 47(4) which make provision for variation of targets and are subject to the negative procedure	Provides the flexibility to state, in regulations, which producer or business to impose producer responsibility obligations on and on what products or materials and what steps are required in order to achieve those obligations.
Clause 50 Schedule 5 Producer responsibility for disposal costs	Welsh Ministers (Concurrent plus powers)	Regulations	Confers a power to make Regulations that require those involved in manufacturing, processing, distributing or supplying products or materials to meet, or contribute to, the disposal costs of those products.	Affirmative procedure	Facilitates the making of separate provision about enforcement for Wales. It will also provide flexibility to make different provision in relation to particular types of products, for example by specifying different bodies as enforcement authorities in different cases.

Section or schedule of the Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Clause 51 Schedule 6 Resource efficiency information	Welsh Ministers (Concurrent plus powers)	Regulations	Confers a power to make regulations that set requirements for manufacturers and producers to provide information about the resource efficiency of their products.	Affirmative procedure	Allows the Welsh Government to develop policy proposals for, and make separate regulations for each type of product regulated. It will also provide flexibility to make different provision in relation to particular types of products, for example by specifying different bodies as enforcement authorities in different cases.
Clause 52 Schedule 7 Resource efficiency requirements	Welsh Ministers	Regulations	Confers a power on the relevant national authority to make regulations that set resource efficiency requirements that products are required to meet.	Affirmative procedure	Product-specific information requirements may be detailed and technical and thus more suitable for inclusion in regulations than in primary legislation.
Clause 53 Schedule 8 Deposit schemes	Welsh Ministers	Regulations	Confers a power on the relevant national	Affirmative procedure if these	Allows Welsh Government to develop policy proposals for, and

Section or schedule of the Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
			authority to make regulations establishing deposit schemes	are the first regulations to: a) establish deposit schemes under paragraph 1, or with regards to enforcement under paragraph 5; (b) provide for conduct to be a criminal offence which is not a criminal offence under existing regulations; (c) provide for conduct to be subject to a civil sanction; (d) increase the amount or maximum amount of a fine or monetary penalty, or change the basis on which such an	make, separate regulations for each product group regulated.

Section or schedule of the Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
				<p>amount or maximum is to be determined.</p> <p>Otherwise, regulations under Schedule 8 are subject to the negative procedure.</p>	
Clause 54 Schedule 9 Charges for single use plastic items	Welsh Ministers	Regulations	Regulation making power to make provision about charging by sellers of goods for the supply of single-use items.	<p>Affirmative procedure if they—</p> <p>(a) are the first regulations made by the authority under that Schedule;</p> <p>(b) contain provision about charging for a new item;</p> <p>(c) provide for conduct to be subject to a civil sanction which is not subject to a civil sanction under existing regulations</p>	Having this devolved power allows Welsh Ministers to define items subject to any charge, the amount charged and the requirements and the appointment of any administrator to oversee the charge which reflect Welsh priorities.

Section or schedule of the Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
				made by the authority under that Schedule; (d) increase the amount or maximum amount of a monetary penalty, or change the basis on which such an amount or maximum is to be determined. Otherwise, regulations under Schedule 9 are subject to the negative procedure.	
Clause 57 Electronic waste tracking: Great Britain	Welsh Ministers	Regulations	Confers powers on Welsh Ministers to introduce electronic (digital) waste tracking and to establish an electronic system for that	Clause 55(3) makes amendments to section 160A(2) of the Environmental Protection Act 1990 (as inserted by clause 60), to provide the	The waste tracking regulations will provide essential data to help develop a circular economy and future waste policy. Gathering data on wastes and those who are managing it will make it easier to determine who is (or was) responsible for the waste at any given time. This will support regulation of wastes and help

Section or schedule of the Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
			purpose by regulations	procedure for the new regulation making powers included in s.160A. Regulations under new sections 34CA and 34CB are subject to negative procedure, except for the situations specified in new section 160A(2), in which case affirmative procedure applies	identify those responsible for any illegal waste. Aligns waste tracking legislation with legislation for waste management, which is currently controlled through secondary legislation
Clause 59 Hazardous waste: England and Wales	Welsh Ministers	Regulations	Confers a power to make regulations to make provision about, or connected with, the regulation of hazardous waste.	Regulations under new section 62ZA of the Environmental Protection Act 1990 are subject to negative procedure, except for the situations	Aligns with the current regulatory system for hazardous waste, which is currently controlled through secondary legislation.

Section or schedule of the Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
				specified in new section 160A(2) of that Act (as inserted by clause 60 and amended by clause 57), in which case affirmative procedure applies.	
Clause 67 Littering enforcement	Welsh Ministers	Regulations Guidance	Amends Part 4 of the Environmental Protection Act 1990 in relation to enforcement against littering, and other offences of littering from a vehicle and the unauthorised distribution of free printed material. Confers a new Regulation	Negative procedure. Any guidance issued under these powers would be subject to no procedure.	Welsh Ministers will need the flexibility to be able to change or update the prescribed conditions an authorised officer of a litter authority must meet to reflect changing needs and developments within the sector, meaning primary legislation would not be an appropriate vehicle for this power. Whilst the existing regulations to deal with littering operate on an England & Wales basis and our guidance is broadly the same, there are some differences in how we implement our policies which warrants Welsh Ministers having

Section or schedule of the Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
			<p>making power on the Welsh Ministers in section 88 of the 1990 Act to prescribe conditions that must be met by an authorised officer operating on behalf of a litter authority, and to make provision requiring a litter authority to revoke an officer's authorisation if that officer fails to meet the prescribed conditions.</p> <p>Also confers guidance making powers on the Welsh Ministers.</p>		<p>delegated powers. For example, the Welsh Government works very closely with Local Authorities and the Third Sector to help develop and implement the educational and behavioural change aspects of tackling littering. We may, therefore, wish to have the flexibility to incorporate this type of approach into any new enforcement guidance we develop.</p> <p>The power to issue statutory guidance is necessary to ensure the various litter authorities undertake littering enforcement functions in a consistent and proportionate way.</p>

Section or schedule of the Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Clause 68 Fixed Penalty Notices	Welsh Ministers	Regulations	Amends sections 33ZA, 33ZB, 34ZA and 34ZB of the EPA 1990 to provide powers to vary Fixed Penalty Notice levels and how payment can be made	Negative procedure	Taking a power to amend penalties in secondary legislation, allows for them to be kept under review, see if they are working effectively and amend them if needed.
Clause 69 Regulation of polluting activities	Welsh Ministers	Regulations	Regulation of polluting activities	Negative procedure	Allows for the detailed conditions for any exemption (from the prohibition on carrying out an activity without a permit) to be set and amended by the regulator.
Clause 77 Water resources management plans, drought plans and joint proposals	Welsh Ministers (in relation to water undertakers wholly or mainly in Wales)	Direction	Newly inserted section 39E allows Welsh Ministers to give a direction to two or more water undertakers to publish a joint proposal. Newly inserted section 39F gives Welsh	Negative procedure	Allows flexibility to consider which undertakers should be directed to prepare joint proposals and when.

Section or schedule of the Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
			<p>Ministers a power to make Regulations about the procedure for preparing and publishing water resources management plans, a drought plan and a joint proposal.</p> <p>Newly inserted section 39G says that the Regulation making power under section 39F may confer on the Minister powers to make provisions by direction.</p> <p>Newly inserted section 39H makes various miscellaneous supplementary</p>		

Section or schedule of the Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
			provision about the aforementioned regulation making powers.		
Clause 78 Drainage and sewerage management plans	Welsh Ministers (in relation to water undertakers wholly or mainly in Wales)	Direction	<p>This clause makes provision in relation to drainage and sewerage management plans and the preparation and review of such.</p> <p>The newly inserted section 94A(7) includes a power for Welsh Ministers to issue directions specifying the form in which a drainage and sewerage management plan must take or the planning</p>	Negative procedure	Allows Welsh Ministers to intervene to ensure drainage and sewerage management plans address emerging challenges which may arise and therefore remain efficacious.

Section or schedule of the Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
			<p>period to which such a plan must relate.</p> <p>Further, newly inserted s.94B includes a power for Welsh Ministers to, by Order, amend the period of time by which a sewerage undertaker must publish a plan (that provision is in s.94A(6)(c))</p> <p>The newly inserted section 94C gives Welsh Ministers a regulation making power to make provision about the procedure for preparing and publishing drainage and</p>		

Section or schedule of the Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
			<p>sewerage management plans. This includes allowing provision to be made for information sharing, consultation on draft plans and responses to such, circulation of draft plans, and a provision conferring a power on Ministers to make any (further) provision by directions- see s.94C(8).</p> <p>The newly inserted section 94D makes supplementary provision for the regulations</p>		

Section or schedule of the Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
			made under s.94C. Newly inserted section 94E make provision regarding the form of any directions made under s.94C(8).		
Clause 84 Water quality: powers of Welsh Ministers	Welsh Ministers	Regulations	Power to amend legislation to make technical updates in the field of water quality, following the departure from the EU.	Negative procedure	Required to ensure substances and standards in relation to those substances or in relation to the chemical status of surface water or groundwater do not remain fixed after the UK withdraws from the EU. The power would enable action to be taken legislatively to tackle those new priority substances most accurately representing harm to the water environment.
Clause 89 Valuation of other land in drainage district: Wales	Welsh Ministers	Regulations	Amendment to the Environment (Wales) Act 2016 which amends the Land Drainage Act 1991. Restates	Affirmative procedure	It is necessary to revise and update the methodology of calculating the split of income between special levies and drainage rates. The provisions within the Bill would allow the value of other land to be calculated via an alternative

Section or schedule of the Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
			existing Regulation making powers in light of amendments to the 1991 Act, including the related regulation making power introduced in clause 88.		methodology (as IDBs will be able to make use of alternative data for these calculations), which will be set out in secondary legislation subject to the affirmative procedure. Setting out the valuation calculation in regulations is appropriate and proportionate, because these provisions deal with details of a subsidiary and technical matter.
Clause 90 Valuation of agricultural land in drainage district: England and Wales	Welsh Ministers	Regulation	Confers power to make regulations providing an alternative methodology for the calculation of drainage rates	Affirmative procedure	The Bill makes provision to allow the secondary legislation to provide an alternative methodology for calculation of the value of chargeable land (agricultural land and buildings) to avoid the potential distortion of the apportionment calculation. Setting out the valuation calculation in regulations is appropriate and proportionate, because these provisions deal with details of a subsidiary and technical matter.
Clause 91	Welsh Ministers	Regulation	This provision amends the Land Drainage	Affirmative procedure	The power to add to the list of qualifying persons set out under new section 37A(3)(h) is needed

Section or schedule of the Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Disclosure of Revenue and Customs information			Act 1991 to allow HMRC to share information to qualifying persons for qualifying purposes. A regulation making power is conferred to enable the list of 'qualifying persons' to be added to.		in order to ensure other persons requiring access to HMRC information for a qualifying purpose, who are identified at a later date, may be added to the list in secondary legislation, in circumstances where the framework of regulatory bodies operating in this area changes.
Schedule 20 para 1(1) Amendment of the REACH regulation	Welsh Ministers (Concurrent powers)	Regulation	Confers a power on Welsh Ministers in relation to amending the REACH Enforcement Regulations under this provision to the extent that the exercise of that power would be within legislative competence.	Affirmative procedure.	<p>Section 1 of the European Union (Withdrawal) Act 2018 repeals the European Communities Act 1972. This means after exit day the only way to amend the REACH Enforcement Regulations 2008 and REACH EU Exit Regulations would be through primary legislation.</p> <p>This power is needed to ensure the REACH EU Exit Regulations can be kept up to date.</p>

Section or schedule of the Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Schedule 20 2(1) Amendment of the REACH Enforcement Regulations 2008 (S.I. 2008/2852).	Welsh Ministers (Concurrent plus)	Regulation	Confers a powers on Welsh Ministers to amend the REACH Enforcement Regulations 2008 (S.I. 2008/2852) under this provision to the extent that the exercise of that power would be within legislative competence.	Affirmative procedure	This power is needed to ensure the REACH Enforcement Regulations 2008 can be kept up to date.



Ein cyf/Our ref IM/LG/02066/20

Rebecca Pow MP

defra.helpline@defra.gov.uk

8th September 2020

Dear Rebecca Pow

Thank you for your letter of 17 August to inform me you were seeking clearance from the Domestic and Economy Implementation Committee to launch a consultation on the introduction of a due diligence requirements on companies trading in the UK, to reduce the risk of illegal deforestation and land conversion within their supply chains.

I understand the consultation was launched on 25 August and appreciate the need for this consultation to be undertaken as a priority to allow the UK Government to consider whether and how to respond through legislation before COP26. I agree with the importance of the UK providing a powerful signal of our commitment to preventing deforestation as dry season fires in the Amazon are likely to reach their worst levels of more than a decade.

I fully recognise failure to accelerate the shift to more sustainable production of key commodities, including cocoa, palm oil, rubber and soy, will threaten the security of global supply chains, the health and economic security of those who rely on them, as well as the ability to achieve our ambitions on either climate or nature.

I agree the UK should respond through an ambitious campaign on sustainable land use and commodities. I support the aim which is to broker a dialogue between major producers and consumers of these commodities and agree a shared roadmap for action.

I note a due diligence obligation on companies using forest risk commodities in their supply chains is one of the key recommendations from the Global Resource Initiative (GRI) report into this issue.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Gohebiaeth.Lesley.Griffiths@llyw.cymru
Correspondence.Lesley.Griffiths@gov.wales

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

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

I note whilst the proposal being consulted on predominantly relates to the creation, operation, regulation and dissolution of types of business association, which is reserved under the Government of Wales Act 2006, the environment generally and the importation of food into Wales are both within the Senedd's competence. Therefore I would request my officials are involved in reviewing any future legislative requirements to ensure the issue of devolved competence is fully considered.

Regards



Lesley Griffiths AS/MS

Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Gohebiaeth.Lesley.Griffiths@llyw.cymru
Correspondence.Lesley.Griffiths@gov.wales

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

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



Department
for Environment
Food & Rural Affairs

Rebecca Pow MP
From the Parliamentary Under Secretary of State for
the Environment

Seacole Building
2 Marsham Street
London SW1P 4DF

T 03459 335577
defra.helpline@defra.gov.uk
www.gov.uk/defra

Lesley Griffiths MS
Minister for Environment, Energy and Rural Affairs
Welsh Government
5th Floor
Tŷ Hywel
Cardiff Bay
CF99 1NA

17 August 2020

Dear Lesley,

CONSULTATION ON DUE DILIGENCE ON FOREST RISK COMMODITIES

I am writing to inform you that I am seeking clearance from the Domestic and Economy Implementation Committee to launch a consultation on the introduction of a due diligence requirement on companies trading in the UK to reduce the risk of illegal deforestation and land conversion in their supply chains.

Our aim is to launch the consultation as soon as possible, to allow the Government to consider whether and how to respond through legislation before COP26. It would also provide a powerful signal of the UK's commitment to preventing deforestation as dry season fires in the Amazon are likely to reach their worst levels of more than a decade.

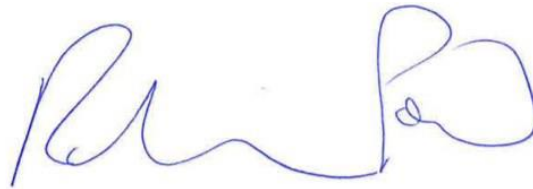
As you will know, failure to accelerate the shift to more sustainable production of key commodities, including cocoa, palm oil, rubber and soy, will threaten the security of global supply chains, the health and economic security of those who rely on them, as well as the ability to achieve our ambitions on either climate or nature.

As COP26 President, we are responding through our ambitious campaign on sustainable land use and commodities. The aim is to broker a dialogue between major producers and consumers of these commodities and agree a shared roadmap for action. The UK's credibility on this issue internationally will also be shaped in part by the actions we take at home. In 2019, the UK Government set up an independent task force to review the issue and recommend practical measures that could be taken to tackle the problem. That taskforce – the Global Resource Initiative (GRI) – issued its final recommendations report in March 2020 and the Government will be publishing its response to the report later this year. A due diligence obligation on companies using forest risk commodities in their supply chains is one of the key recommendations from the GRI report.

Further detail is set out in the attached draft consultation document. I would be grateful if this is held in confidence. The results of the consultation will inform our decision as to whether to introduce a due diligence requirement. It, together with more detailed feedback from direct engagement with developing country governments in major producer countries, will provide an opportunity to refine our thinking on whether and how to legislate on this issue.

We consider the proposal being consulted on relates to policy that in Wales is reserved to the UK Government. This is because it relates to the creation, operation, regulation and dissolution of types of business association, which is reserved under the Government of Wales Act 2006 (Schedule 7A Part 2, Section C1). As normal we will keep this under review when drafting any legislation. I have asked my officials to liaise with yours to keep them up to date with progress.

I am copying this letter to the Secretary of State for Wales. I am also writing to Roseanna Cunningham MSP, Cabinet Secretary for Environment, Climate Change and Edwin Poots MLA, Minister of the Department of Agriculture, Environment and Rural Affairs in Northern Ireland.

A handwritten signature in blue ink, appearing to read 'Rebecca Pow', with a stylized flourish at the end.

Rebecca Pow MP



Llywodraeth Cymru
Welsh Government

Mick Antoniw MS
Chair Legislation, Justice and Constitution Committee

SeneddLJC@senedd.wales

12 March 2021

Dear Mick

The Official Controls (Temporary Measure) (Covid-19) (Amendments) Regulations 2021 The Organics (Amendment) Regulations 2021

Thank you for your letter of 11 February regarding the above regulations and the consent given to UK Government to legislate on behalf of Wales.

The Official Controls (Temporary Measure) (Covid-19) (Amendments) Regulations 2021

This regulation allows all competent authorities in Great Britain (GB) to carry out electronic document checks on some imported goods, for a temporary period, including at locations other than Border Control Posts, instead of checking hard copies. Additionally, it permits official control checks to be carried out by appropriately authorised, trained and qualified natural persons under the supervision of the authorities. These easements are in line with other existing Covid-19 related easements to Official Controls Regulations and are intended to prevent disruption to the system of official controls due to the pandemic, permitting social distancing and dealing with staff shortages, without compromising standards of official controls to protect human and animal health and welfare. The regulation amended retained Commission Implementing Regulation (EU) 2020/466, which expired on 1 February 2021, to allow the continuation and reintroduction of certain easements to the system of official controls in GB until 1 July 2021.

Officials were first alerted to this regulation on 21 December 2020. I gave my consent to the Secretary of State to make this regulation in relation to Wales because it was the best option to ensure the continuation of the temporary easements under the current circumstances. Not proceeding with or delaying this emergency legislation would mean competent authorities in Wales, already struggling with various other pressures, including Covid-19, Avian Influenza and the implications of EU Exit, would not benefit from the easements, potentially compromising their ability to deliver official controls while minimising risks to staff from Covid-19 and adhering to social distancing guidelines.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Gohebiaeth.Lesley.Griffiths@llyw.cymru
Correspondence.Lesley.Griffiths@gov.wales

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

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

The Organics (Amendment) Regulations 2021

This regulation was made in a reduced timescale, as the derogation for allowing document checks to replace on-site organic inspections was due to expire at the start of February 2021. Originally, this derogation was due to be extended by EU legislation coming into force before the end of the Transition Period. This legislation was delayed, resulting in the need for similar legislation to be made either at the GB level, or in Wales. There was a risk the legislation would not be made in time in the Senedd because officials were not alerted to it until 6 January, and a draft SI was not received until 21 January.

This could have put organic Control Bodies (CBs) at risk of not meeting their statutory obligations should they not conduct on-site inspections before Welsh legislation could be implemented. In such a scenario, Wales would have also been at variance with the rest of GB in granting a derogation. CBs operate across the UK's internal borders, so differing rules on Covid-19 derogations would have caused unnecessary confusion. All CBs supported these regulations being made, as they reduced the risk of their staff and producers transmitting or contracting Covid-19 and no objection was raised to them by any other stakeholder. The lack of controversy around the regulations reduced the impetus for the regulations to be made at a Wales level, as it is unlikely any objection would have been made to them.

The principles applied in agreeing to exercise concurrent functions for both these statutory instruments are at Annex A.

In these exceptional circumstances when officials are required to consider and correct an unprecedented volume of legislation within a tight timeframe and with finite resources, the Welsh Government's general principle is that it is appropriate for the UK Government to legislate on our behalf in a large number of statutory instruments.

There were a number of deficiencies in EU Law which were not remedied through operability amendments in 2020. The 2021 Regulations have been prepared as a result of ongoing discussions between UK and Welsh Government officials. There has been a long history of joint working in this area and this has been reflected during the current pandemic.

As these regulations were made using concurrent-plus powers, I felt it necessary to inform the Legislation, Justice and Constitution Committee I had granted consent to them. I also informed the Climate Change, Environment and Rural Affairs Committee of my decision, due to these regulations' subject matter being within their purview.

Regards



Lesley Griffiths AS/MS

Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

The Official Controls (Temporary Measure) (Covid-19) (Amendments) Regulations 2021

Principles Ministers have agreed for the exercise of concurrent functions	Comment
<p><i>Principle 1: There must be robust governance arrangements – i.e. clearly defined processes covering detailed policy negotiations at official level right through to oversight by Ministerial forums – to enable intergovernmental agreement about the exercise of functions.</i></p>	<p>There are clearly defined governance processes for this matter. This policy was agreed at the Animal Disease Policy Group (attended by the FSA and APHA as well), which is the governance body of the Common UK Animal Health and Welfare Framework.</p>
<p><i>Principle 2: If we are recommending consent for expediency in the absence of fully developed governance arrangements, or if we are not certain about how the functions will be exercised at the point when consent is sought, we should ensure that our consent is as narrowly defined as possible in terms of:</i></p> <ol style="list-style-type: none"> <i>1. exactly what exercise of what functions we are consenting to;</i> <i>2. the period for which we are giving consent – preferably a short period, with a defined review mechanism, and without prejudice to longer term arrangements;</i> <i>3. the minimum requirements for ongoing intergovernmental engagement.</i> 	<p>This is not applicable as defined governance arrangements have been, fully developed. In addition, the functions and the extent of their application is well defined (as these easements have been exercised for several months since the onset Covid-19 pandemic and the EU regulation coming into force in 2020). Regular discussions continue to take place between Animal Health and Welfare policy leads, CVOs and the executive agencies to discuss these matters and agree policy direction.</p>
<p><i>Principle 3: Officials must be able to provide assurance to Ministers that they have:</i></p> <ol style="list-style-type: none"> <i>1. carefully considered the longer term policy rationale and wider constitutional principle that the Welsh Ministers exercise functions in relation to Wales, in the expectation that capacity issues are only material in the short term;</i> <i>2. evaluated the Wales only option and found it undesirable in this case;</i> <i>3. considered whether or not the governance arrangements are robust enough to protect Wales' interests;</i> <i>4. designed the best possible terms and process for giving consent which safeguards our position in the UK.</i> 	<ol style="list-style-type: none"> 1. There are no long-term commitments, with the retained Regulation 2020/466 expiring in July. However, the experiences and lessons learnt from this approach may inform future ways of enhancing the way official controls are delivered, in line with wider trends for the use of technology and remote working, which can create efficiencies. 2. It would be possible, but undesirable to legislate separately in Wales due to various resource pressures. Additionally, there should be a consistent approach to official controls across the whole of GB and there is no interest in cross-border divergence. Variations in the way official controls are conducted could

<p><i>term (with clearly defined scope and duration as well as full involvement at all stages of policy development and implementation); and</i></p> <p>5. <i>taken a consistent approach to decision making, so that the Welsh Government overall is acting coherently – at both portfolio level and more widely.</i></p>	<p>lead to market distortion if businesses and traders felt a differential treatment across borders.</p> <p>3. The governance arrangements are satisfactory and include a working Common Framework.</p> <p>4. The approval of this SI followed a detailed analysis by officials, and on the basis that the easements are time limited. If there is a need to legislate further, a thorough analysis would once again be undertaken by officials; and include the option of separate Welsh legislation, or consent once again, as appropriate.</p> <p>5. The Welsh Government is adhering to the principles set out within this table.</p>
<p><i>Principle 4: A decision on whether to give consent for the UK Government to exercise a concurrent function in relation to Wales for the first time should be presented to the Counsel General and the portfolio Minister at the earliest possible stage in the process.</i></p>	<p>Actioned via the Ministerial Advice sent by officials on 21 January.</p>
<p><i>Principle 5: Ministers should write to the relevant policy committees to inform them of an intention to consent to the UK Government exercising a concurrent plus legislative function in relation to Wales, and where time allows provide an opportunity for the Senedd to express a view before Ministers give consent.</i></p>	<p>We intend to write to CCERA and LJCC to notify them of the intention to consent to UK Government.</p>
<p><i>Principle 6: The same principles around intergovernmental working, Ministerial agreement and notifying the Senedd apply to both providing and withdrawing consent to exercise a concurrent function.</i></p>	<p>Adhered to as stated above.</p>

The Organics Amendment Regulations 2021

Principles Ministers have agreed for the exercise of concurrent functions	Comment
<p><i>Principle 1: There must be robust governance arrangements – i.e. clearly defined processes covering detailed policy negotiations at official level right through to oversight by Ministerial forums – to enable intergovernmental agreement about the exercise of functions.</i></p>	<p>There are clearly defined governance processes for this matter. This policy was agreed at the Organics Four Nations Working Group, which is governed by the Common UK Organics Provisional Framework Outline Agreement.</p>
<p><i>Principle 2: If we are recommending consent for expediency in the absence of fully developed governance arrangements, or if we are not certain about how the functions will be exercised at the point when consent is sought, we should ensure that our consent is as narrowly defined as possible in terms of:</i></p> <ol style="list-style-type: none"> <i>1. exactly what exercise of what functions we are consenting to;</i> <i>2. the period for which we are giving consent – preferably a short period, with a defined review mechanism, and without prejudice to longer term arrangements;</i> <i>3. the minimum requirements for ongoing intergovernmental engagement</i> 	<p>This is not applicable as defined governance arrangements have been, fully developed. In addition, the functions and the extent of their application is well defined (as these easements have been exercised for several months since the onset Covid-19 pandemic and the EU regulation coming into force in 2020). Regular discussions continue to take place between officials working on organic policy across the Four Nations to discuss these matters and agree policy direction.</p>
<p><i>Principle 3: Officials must be able to provide assurance to Ministers that they have:</i></p> <ol style="list-style-type: none"> <i>1. carefully considered the longer term policy rationale and wider constitutional principle that the Welsh Ministers exercise functions in relation to Wales, in the expectation that capacity issues are only material in the short term;</i> <i>2. evaluated the Wales only option and found it undesirable in this case;</i> <i>3. considered whether or not the governance arrangements are robust enough to protect Wales' interests;</i> <i>4. designed the best possible terms and process for giving consent which safeguards our position in the longer term (with clearly defined scope and duration as well as full information)</i> 	<ol style="list-style-type: none"> 1. There are no long-term commitments, as this easement shall only remain in place while the risk of Covid-19 remains high. 2. It would be possible, but undesirable to legislate separately in Wales due to the short timescale. Additionally, there is the potential for disruption should Welsh legislation come into force later or differ in its contents. Control Bodies work across the internal borders of the UK, and differing rules on official controls coming into force at short notice could significantly disrupt their operations. 3. The governance arrangements are satisfactory and include a working Common Framework. 4. The approval of this SI followed a detailed analysis by officials, and on

<p><i>all stages of policy development and implementation); and</i></p> <p>5. <i>taken a consistent approach to decision making, so that the Welsh Government overall is acting coherently – at both portfolio level and more widely.</i></p>	<p>the basis that the easements are limited to the duration of the Covid-19 pandemic. When the threat has subsided and the easements could be lifted, a thorough analysis would once again be undertaken by officials; and include the option of separate Welsh legislation, or consent once again, as appropriate.</p> <p>5. The Welsh Government is adhering to the principles set out within this table.</p>
<p><i>Principle 4: A decision on whether to give consent for the UK Government to exercise a concurrent function in relation to Wales for the first time should be presented to the Counsel General and the portfolio Minister at the earliest possible stage in the process</i></p>	<p>Actioned via the Ministerial Advice sent by officials on 26 January.</p>
<p><i>Principle 5: Ministers should write to the relevant policy committees to inform them of an intention to consent to the UK Government exercising a concurrent plus legislative function in relation to Wales, and where time allows provide an opportunity for the Senedd to express a view before Ministers give consent.</i></p>	<p>We intend to write to CCERA and LJCC to notify them of the intention to consent to UK Government</p>
<p><i>Principle 6: The same principles around intergovernmental working, Ministerial agreement and notifying the Senedd apply to both providing and withdrawing consent to exercise a concurrent function.</i></p>	<p>Adhered to as stated above.</p>

Agenda Item 8

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted

Document is Restricted

Document is Restricted