

# Agenda – Legislation, Justice and Constitution Committee

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Meeting Venue:	For further information contact:
Video Conference via Zoom	Gareth Williams
Meeting date: 8 February 2021	Committee Clerk
Meeting time: 09.30	0300 200 6565
	<a href="mailto:SeneddLJC@senedd.wales">SeneddLJC@senedd.wales</a>

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

Informal pre-meeting (09.00–09.30)

- 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 – 3)  
CLA(5)–05–21 – Paper 1 – Statutory Instruments with clear reports  
Negative Resolution Instruments
  - 2.1 SL(5)730 – The Education (Student Support) (Miscellaneous Amendments)  
(Wales) Regulations 2021  
  
Affirmative Resolution Instruments
  - 2.2 SL(5)733 – The Partnership Arrangements (Amendment) and Regulated  
Services (Market Stability Reports) (Wales) Regulations 2021



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

09.35–09.40

Negative Resolution Instruments

#### **3.1 SL(5)737 – The Local Government (Coronavirus) (Postponement of Elections) (Miscellaneous Amendments) (Wales) Regulations 2021**

(Pages 4 – 13)

CLA(5)–05–21 – Paper 2 – Report

CLA(5)–05–21 – Paper 3 – Regulations

CLA(5)–05–21 – Paper 4 – Explanatory Memorandum

CLA(5)–05–21 – Paper 5 – Letter from the Minister for Finance and Trefnydd, 28 January 2021

Affirmative Resolution Instruments

#### **3.2 SL(5)731 – The Representation of the People (Amendment) (Wales) (Coronavirus) Regulations 2021**

(Pages 14 – 21)

CLA(5)–05–21 – Paper 6 – Report

CLA(5)–05–21 – Paper 7 – Regulations

CLA(5)–05–21 – Paper 8 – Explanatory Memorandum

#### **3.3 SL(5)732 – The Nurse Staffing Levels (Extension of Situations) (Wales) Regulations 2021**

(Pages 22 – 45)

CLA(5)–05–21 – Paper 9 – Report

CLA(5)–05–21 – Paper 10 – Regulations

CLA(5)–05–21 – Paper 11 – Explanatory Memorandum

Made Affirmative Resolution Instruments

#### **3.4 SL(5)738 – The Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 4) (Wales) Regulations 2021**

(Pages 46 – 64)

CLA(5)–05–21 – Paper 12 – Report

CLA(5)–05–21 – Paper 13 – Regulations

CLA(5)–05–21 – Paper 14 – Explanatory Memorandum

CLA(5)–05–21 – Paper 15 – Letter from the Minister for Health and Social Services, 28 January 2021

CLA(5)–05–21 – Paper 16 – Written statement, 28 January 2021

**3.5 SL(5)739 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 2) Regulations 2021**

(Pages 65 – 82)

CLA(5)–05–21 – Paper 17 – Report

CLA(5)–05–21 – Paper 18 – Regulations

CLA(5)–05–21 – Paper 19 – Explanatory Memorandum

CLA(5)–05–21 – Paper 20 – Letter from the First Minister, 29 January 2021

CLA(5)–05–21 – Paper 21 – Written statement, 29 January 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)721 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) Regulations 2021**

(Pages 83 – 86)

CLA(5)–05–21 – Paper 22 – Report

CLA(5)–05–21 – Paper 23 – Welsh Government response

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

(Pages 87 – 91)

CLA(5)–05–21 – Paper 24 – Report

CLA(5)–05–21 – Paper 25 – Welsh Government response

**5 Subordinate legislation that raises no reporting issues under Standing Order 21.7**

09.45–09.50

(Page 92)

CLA(5)–05–21 – Paper 26 – Subordinate legislation with clear reports

**5.1 SL(5)734 – Code of Practice and Guidance under the Social Services and Well-being (Wales) Act 2014**

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

09.50–09.55

**6.1 WS–30C(5)216 – The Food and Drink (Miscellaneous Amendments Relating to Food and Wine Composition, Information and Labelling) Regulations 2021**

(Pages 93 – 97)

CLA(5)–05–21 – Paper 27 – Written statement

CLA(5)–05–21 – Paper 28 – Commentary

**7 Papers to note**

09.55–10.00

**7.1 Letter from the Equality and Human Rights Commission: Scrutiny of Welsh Government regulations and compliance with the Public Sector Equality Duty – Standing Order 21.3C(iv)**

(Pages 98 – 99)

CLA(5)–05–21 – Paper 29 – Letter from Rev Ruth Coombs, Head of Equality and Human Rights Commission Wales, 3 February 2021

**7.2 Letter from the Minister for Housing and Local Government: Welsh Elections (Coronavirus) Bill**

(Pages 100 – 104)

CLA(5)–05–21 – Paper 30 – Letter from the Minister for Housing and Local Government, 3 February 2021

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

10.00

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

(Pages 105 – 119)

CLA(5)–05–21 – Paper 31 – Draft report

## **10 Supplementary Legislative Consent Memorandum on the Domestic Abuse Bill – consideration of key issues**

(Pages 120 – 136)

### **[Supplementary Legislative Consent Memorandum](#)**

CLA(5)–05–21 – Paper 32 – Legal advice note

CLA(5)–05–21 – Paper 33 – Letter from the Deputy Minister and Chief Whip, 16 December 2020

CLA(5)–05–21 – Paper 34 – Letter from the Deputy Minister and Chief Whip, 15 October 2020

CLA(5)–05–21 – Paper 35 – Letter to the Deputy Minister and Chief Whip, 13 October 2020

CLA(5)–05–21 – Paper 36 – Letter from the Deputy Minister and Chief Whip, 6 October 2020

CLA(5)–05–21 – Paper 37 – Letter to the Deputy Minister and Chief Whip, 30 September 2020

## **11 Making Justice work in Wales – consideration of key issues**

(Pages 137 – 147)

CLA(5)–05–21 – Paper 38 – Key issues paper

## **12 United Kingdom Internal Market Act – briefing**

(Pages 148 – 155)

CLA(5)–05–21 – Paper 39 – Research Service briefing

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

(Page 156)

CLA(5)–05–21 – Paper 40 – Letter from the Minister for Finance and Trefnydd, 3 February 2021

**Date of the next meeting – 22 February 2021**

## Statutory Instruments with Clear Reports 08 February 2021

### SL(5)730 – The Education (Student Support) (Miscellaneous Amendments) (Wales) Regulations 2021

#### Procedure: Negative

These Regulations amend:

- the Education (Student Support) (Wales) Regulations 2017 (“the 2017 Regulations”);
- the Education (Student Support) (Wales) Regulations 2018 (“the 2018 Regulations”);
- the Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018; and
- the Education (Student Support) (Postgraduate Master’s Degrees) (Wales) Regulations 2019.

They apply to academic years beginning on or after 1 August 2021 and amend the existing student financial support regulations set out above to:

- increase the amount of undergraduate and postgraduate student support;
- consolidate certain disabled student grants into a single new allowance; and
- accommodate changes to the Common Aggregation Hierarchy applied to the Higher Education Classification of Subjects coding framework.

In relation to the latter point, the 2018 Regulations provide, for courses beginning on or after 1 August 2018, for a part-time student to be eligible for support despite having attained a first degree from a UK institution if studying one of the subjects listed in regulations. Similar provision is made in the 2017 Regulations for courses beginning before 1 August 2018. These subjects are defined using the Higher Education Classification of Subjects and the Common Aggregation Hierarchy which provides groupings of subject areas within that classification. The Common Aggregation Hierarchy is revised from time-to-time and has recently updated. As such, the 2017 Regulations and the 2018 Regulations need amending.

**Parent Act:** Teaching and Higher Education Act 1998

**Date Made:** 21 January 2021

**Date Laid:** 26 January 2021

**Coming into force date:** 26 February 2021



# **SL(5)733 – The Partnership Arrangements (Amendment) and Regulated Services (Market Stability Reports) (Wales) Regulations 2021**

## **Procedure: Affirmative**

These Regulations are made under powers given to the Welsh Ministers by the Social Services and Well-being (Wales) Act 2014 in relation to local market stability reports.

Part 2 of the Regulations addresses what further matters relating to the provision of regulated services are required to be included in the market stability report; the period of time within which the report considers the sufficiency of provision of care and support; the date by which the report must be published and the report's form.

Part 3 of the Regulations requires local authorities and Local Health Boards to enter into a partnership arrangement for carrying out the local authorities' functions relating to local market stability reports.

**Parent Act:** Social Services and Well-being (Wales) Act 2014

**Date Made:**

**Date Laid:** 26 January 2021

**Coming into force date:** 01 April 2021



# Agenda Item 3.1

## **SL(5)737 – Local Government (Coronavirus) (Postponement of Elections) (Miscellaneous Amendments) (Wales) Regulations 2021**

### **Background and Purpose**

These Regulations amend the Local Government (Coronavirus) (Postponement of Elections) (Wales) Regulations 2020 (“the 2020 Regulations”) and the Local Government (Coronavirus) (Postponement of Elections) (Wales) (No. 2) Regulations 2020.

Under the 2020 Regulations, postponed by-elections for county and county borough councils or town and community councils that were due to take place between the period commencing on 16th March 2020 and ending on 31st January 2021 are required to be held between 1st February 2021 and 16th April 2021.

The amendments made by these Regulations further postpone those by-elections so that postponed by-elections for county and county borough councils or town and community councils that were due to take place between the period commencing on 16th March 2020 and ending on 28th February 2021 are now required to be held between 1st March 2021 and 6th May 2021.

### **Procedure**

Negative.

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

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

### **Technical Scrutiny**

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

### **Merits Scrutiny**

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

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

We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a “made negative” instrument is laid before the Senedd and the date the instrument





comes into force), and the explanation for the breach provided by Rebecca Evans MS, Minister for Finance and Trefnydd, in a letter to the Llywydd dated 28 January 2021.

In particular, we note what the letter says regarding the previous postponement of local authority by-elections under the 2020 Regulations and the following explanation:

*"...recently, as you will be aware the Coronavirus pandemic has seen another surge and level 4 restrictions put in place. In order to protect public health at this time, it is considered necessary to further postpone these by-elections from a period between 1 March 2021 and 6 May 2021. As the postponed elections were originally due to take place from 1 February, it is necessary to bring forward this set of regulations urgently and therefore bring them in to force as soon as possible. The Local Government (Coronavirus) (Postponement of Elections) (Wales) Regulations 2020 provide that the postponement period expires on 31 January 2021. Not adhering to the 21 day convention allows these Regulations to come into force on 29th January 2021. In view of the circumstances the reduced period is thought necessary and justifiable in this case."*

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

We note there has been no formal consultation on these Regulations. In particular, we note the following paragraphs in the Explanatory Memorandum:

*"Due to the emergency nature of these Regulations the Welsh Government did not undertake a public consultation before the Regulations came into force. Returning Officers have been notified of the intention to make the Regulations to aid them in their preparations."*

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

We note there is no equality impact assessment for these Regulations and ask the Welsh Government to explain what arrangements it has made, in respect of these Regulations, to publish reports of equality impact assessments in accordance with regulation 8(1)(d) of the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011.

## **Welsh Government response**

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

### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**2 February 2021**



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

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**2021 No. 88 (W. 25)**

**LOCAL GOVERNMENT,  
WALES**

**REPRESENTATION OF THE  
PEOPLE, WALES**

The Local Government  
(Coronavirus) (Postponement of  
Elections) (Miscellaneous  
Amendments) (Wales) Regulations  
2021

**EXPLANATORY NOTE**

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

These Regulations further postpone certain local government by-elections as a result of the COVID-19 pandemic.

These postponed by-elections were due to be held during the period from 1 February 2021 to 16 April 2021, but will now take place during the period from 1 March 2021 to 6 May 2021.

Regulation 2 amends relevant dates in the Local Government (Coronavirus) (Postponement of Elections) (Wales) Regulations 2020.

Regulation 3 amends relevant dates in the Local Government (Coronavirus) (Postponement of Elections) (Wales) (No. 2) Regulations 2020.

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

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

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**2021 No. 88 (W. 25)**

**LOCAL GOVERNMENT,  
WALES**

**REPRESENTATION OF THE  
PEOPLE, WALES**

The Local Government  
(Coronavirus) (Postponement of  
Elections) (Miscellaneous  
Amendments) (Wales) Regulations  
2021

*Made* 27 January 2021

*Laid before Senedd Cymru* 28 January 2021

*Coming into force* 29 January 2021

The Welsh Ministers make these Regulations in exercise of the powers conferred by sections 67 and 68 of the Coronavirus Act 2020<sup>(1)</sup>.

**Title and commencement**

1.—(1) The title of these Regulations is the Local Government (Coronavirus) (Postponement of Elections) (Miscellaneous Amendments) (Wales) Regulations 2021.

(2) These Regulations come into force on 29 January 2021.

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(1) 2020 c. 7.

**Amendment of the Local Government (Coronavirus) (Postponement of Elections) (Wales) Regulations 2020**

2.—(1) The Local Government (Coronavirus) (Postponement of Elections) (Wales) Regulations 2020(1) are amended as follows.

(2) In regulation 2, in the definition of “the relevant period”, for “31 January 2021” substitute “28 February 2021”.

(3) In regulation 3(1), for “1 February 2021 and ending on 16 April 2021” substitute “1 March 2021 and ending on 6 May 2021”.

(4) In regulation 4(1), for “1 February 2021 and ending on 16 April 2021” substitute “1 March 2021 and ending on 6 May 2021”.

(5) In regulation 5(1)(a), for “31 January 2021” substitute “28 February 2021”.

**Amendment of the Local Government (Coronavirus) (Postponement of Elections) (Wales) (No. 2) Regulations 2020**

3.—(1) The Local Government (Coronavirus) (Postponement of Elections) (Wales) (No. 2) Regulations 2020(2) are amended as follows.

(2) In regulation 3—

(a) in the definition of “a postponed poll”, for “1 February 2021 and ending on 16 April 2021” substitute “1 March 2021 and ending on 6 May 2021”, and

(b) in the definition of “the relevant period”, for “31 January 2021” substitute “28 February 2021”.

(3) In regulation 9(1), for “31 January 2021” substitute “28 February 2021”.

*Julie James*

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

27 January 2021

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(1) S.I. 2020/461 (W. 105).

(2) S.I. 2020/1399 (W. 310).

**Explanatory Memorandum to The Local Government (Coronavirus)  
(Postponement of Elections) (Miscellaneous Amendments) (Wales)  
Regulations 2021.**

This Explanatory Memorandum has been prepared by Education and Public Services 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 (Coronavirus) (Postponement of Elections) (Miscellaneous Amendments) (Wales) Regulations 2021.

Julie James AS/MS  
Minister for Housing and Local Government  
28 January 2021

## **PART 1**

### **1. Description**

- 1.1. Under The Local Government (Coronavirus) (Postponement of Elections) (Wales) Regulations 2020, postponed by-elections for county and county borough councils or town and community councils that were due to take place between the period commencing on 16<sup>th</sup> March 2020 and ending on 31<sup>st</sup> January 2021 are required to be held between 1<sup>st</sup> February 2021 and 16<sup>th</sup> April 2021.
- 1.2. These Regulations further postpone those by-elections so that postponed by-elections for county and county borough councils or town and community councils that were due to take place between the period commencing on 16<sup>th</sup> March 2020 and ending on 28<sup>th</sup> February 2021 are required to be held between 1<sup>st</sup> March 2021 and 6<sup>th</sup> May 2021.

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

- 2.1. In accordance with section 11A(4) of the Statutory Instruments Act 1946, as inserted by Sch.10 para 3 of the Government of Wales Act 2006, the Llywydd has been informed that the Regulations will come into force less than 21 days from the date of laying.
- 2.2. The Regulations will come into force on 29<sup>th</sup> January 2021. This is necessary in order to ensure Returning Officers (ROs) have enough time to prepare for the first postponed by-elections which could take place from March onwards. If the 21 day rule was observed for these Regulations, they would not be in force by the time a RO would need to lay the notice of election in order to have the by-elections in March. Additionally, the relevant period laid out in the Local Government (Coronavirus) (Postponement of Elections) (Wales) Regulations 2020 expires on 31 January 2021. Allowing these Regulations to come into force on 29<sup>th</sup> January means there will not be a gap in the relevant period. In view of these circumstances, the reduced period is thought necessary and justifiable in this case.

### **3. Legislative background**

- 3.1. The powers to make these Regulations are in section 67 and 68 of the Coronavirus Act 2020 (CA 2020).
- 3.2. In relation to elections, Section 68 of the Coronavirus Act 2020 provides Welsh Ministers with the power to make, by regulation, any consequential, supplementary, incidental, transitional or saving provisions in connection with section 66 or regulations made under section 67 of the Act. Section 67 of the Act provides Welsh Ministers with the power to postpone the poll for a casual vacancy in the office of councillor in a county council, county borough council or community council in Wales.

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

4.1. The Regulations further postpone certain local government by-elections as a result of the COVID-19 pandemic. Under The Local Government (Coronavirus) (Postponement of Elections) (Wales) Regulations 2020, postponed by-elections for county and county borough councils or town and community councils that were due to take place between the period commencing on 16<sup>th</sup> March 2020 and ending on 31<sup>st</sup> January 2021 are required to be held between 1<sup>st</sup> February 2021 and 16<sup>th</sup> April 2021. These Regulations further postpone by-elections so that they will now take place during the period from 1<sup>st</sup> March 2021 to 6<sup>th</sup> May 2021.

4.2. Regulation 2 amends relevant dates in the Local Government (Coronavirus) (Postponement of Elections) (Wales) Regulations 2020 and Regulation 3 amends relevant dates in the Local Government (Coronavirus) (Postponement of Elections) (Wales) (No. 2) Regulations 2020.

#### **5. Consultation**

5.1. Due to the emergency nature of these Regulations the Welsh Government did not undertake a public consultation before the Regulations came into force. Returning Officers have been notified of the intention to make the Regulations to aid them in their preparations.

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

6.1. These regulations are not considered to have any significant financial impact, and as such no regulatory impact assessment has been carried out.



Ein cyf/Our ref: MA.JJ.0260.21

Elin Jones MS  
Llywydd  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

28 January 2021

Dear Llywydd,

In accordance with section 11A(4) of the Statutory Instruments Act 1946, as inserted by Sch.10 para 3 of the Government of Wales Act 2006, I am notifying you that *The Local Government (Coronavirus) (Postponement of Elections) (Miscellaneous Amendments) (Wales) Regulations 2021* will come into force less than 21 days from the date of laying. The Explanatory Memorandum for these Regulations is attached for your information.

The Coronavirus Act 2020 was introduced to Parliament on 19 March 2020 and contained a number of miscellaneous provisions relating to elections. The Local Government (Coronavirus) (Postponement of Elections) (Wales) Regulations 2020 which came in to force on 5 May 2020 postponed any by-elections due in the immediate future, setting a new date for these by-elections to be held no later than 16 April 2021 and not before 1 February 2021. However, recently, as you will be aware the Coronavirus pandemic has seen another surge and level 4 restrictions put in place. In order to protect public health at this time, it is considered necessary to further postpone these by-elections from a period between 1 March 2021 and 6 May 2021.

As the postponed elections were originally due to take place from 1 February, it is necessary to bring forward this set of regulations urgently and therefore bring them in to force as soon as possible. The Local Government (Coronavirus) (Postponement of Elections) (Wales) Regulations 2020 provide that the postponement period expires on 31 January 2021. Not adhering to the 21 day convention allows these Regulations to come into force on 29<sup>th</sup> January 2021. In view of the circumstances the reduced period is thought necessary and justifiable in this case.

An Explanatory Memorandum has been prepared and this has been laid, together with the Regulations, in Table Office.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
0300 0604400

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1NA

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



A copy of this letter goes to Mick Antoniw AM, Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely,

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

**Rebecca Evans AS/MS**  
Y Gweinidog Cyllid a'r Trefnydd  
Minister for Finance and Trefnydd

# Agenda Item 3.2

## SL(5)731 – The Representation of the People (Amendment) (Wales) (Coronavirus) Regulations 2021

### Background and Purpose

These Regulations make provision in relation to proxy voting at certain local government by-elections.

Regulation 2 amends the Representation of the People (England and Wales) Regulations 2001, so as to provide applicants with additional grounds for applying for emergency proxy votes, or changing their nominated proxy, at these by-elections. These additional grounds relate to persons who are unable to attend a polling station in person as a result of following relevant legislation, guidance or medical advice in relation to the COVID-19 pandemic.

The provisions apply to local government by-elections that happen on or before the 4 November 2021.

### 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

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 of gives rise to issues of public policy likely to be of interest to the Senedd**

We note there has been no formal consultation on these Regulations. In particular, we note the following paragraphs in the Explanatory Memorandum:

*“Due to the emergency nature of these Regulations the Welsh Government did not undertake a public consultation before the Regulations came into force. Views have been sought from the Electoral Commission and their comments that the provisions should also extend to electors with an existing proxy were taken into consideration in the drafting of the regulations.”*



## Welsh Government response

A Welsh Government response is not required.

### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**2 February 2021**



Senedd Cymru

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

—

Welsh Parliament

**Legislation, Justice and Constitution Committee**

Pack Page 15

*Draft regulations laid before Senedd Cymru under section 201(2) of the Representation of the People Act 1983, for approval by resolution of Senedd Cymru.*

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DRAFT WELSH STATUTORY  
INSTRUMENTS

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**2021 No. (W.)**

**LOCAL GOVERNMENT,  
WALES**

**REPRESENTATION OF THE  
PEOPLE, WALES**

**The Representation of the People  
(Amendment) (Wales)  
(Coronavirus) Regulations 2021**

**EXPLANATORY NOTE**

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

These Regulations make provision in relation to proxy voting at certain local government by-elections.

Regulation 2 amends the Representation of the People (England and Wales) Regulations 2001, so as to provide applicants with additional grounds for applying for emergency proxy votes, or changing their nominated proxy, at these by-elections. These additional grounds relate to persons who are unable to attend a polling station in person as a result of following relevant legislation, guidance or medical advice in relation to the COVID-19 pandemic.

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.

*Draft regulations laid before Senedd Cymru under section 201(2) of the Representation of the People Act 1983, for approval by resolution of Senedd Cymru.*

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DRAFT WELSH STATUTORY  
INSTRUMENTS

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**2021 No. (W.)**

**LOCAL GOVERNMENT,  
WALES**

**REPRESENTATION OF THE  
PEOPLE, WALES**

**The Representation of the People  
(Amendment) (Wales)  
(Coronavirus) Regulations 2021**

*Made* \*\*\*

*Coming into force* \*\*\*

The Welsh Ministers, in exercise of the powers conferred on the Secretary of State by paragraphs 4(2)(c) and 6(7) and (8) of Schedule 4 to the Representation of the People Act 2000<sup>(1)</sup> and now exercisable by them<sup>(2)</sup>, make the following Regulations.

In accordance with section 201(2) of the Representation of the People Act 1983<sup>(3)</sup>, a draft of this instrument has been laid before and approved by a resolution of Senedd Cymru.

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- (1) 2000 c. 2; relevant amendments to Schedule 4 were made by the Electoral Administration Act 2006 (c. 22), section 14(2)(a) and (8). For the definition of “prescribed” see section 202(1) of the Representation of the People Act 1983 (c. 2) read together with paragraph 1(2) of Schedule 4 to the Representation of the People Act 2000.
- (2) Functions of the Secretary of State were transferred to the Welsh Ministers by article 45 of, and Schedule 1 to, the Welsh Ministers (Transfer of Functions) Order 2018 (S.I. 2018/644).
- (3) 1983 c. 2; paragraph 1(2) of Schedule 4 to the Representation of the People Act 2000 provides that Schedule 4 shall have effect as if it were contained in Part 1 of the Representation of the People Act 1983.

### **Title and commencement**

1.—(1) The title of these Regulations is the Representation of the People (Amendment) (Wales) (Coronavirus) Regulation 2021.

(2) These Regulations come into force the day after the day on which they are made.

### **Amendment of the Representation of the People (England and Wales) Regulations 2001**

2.—(1) The Representation of the People (England and Wales) Regulations 2001<sup>(1)</sup> are amended as follows..

(2) At the beginning of regulation 56(2)<sup>(2)</sup> insert “Subject to paragraph (3B),”.

(3) In regulation 56(3B)—

- (a) for “paragraph 4(2)” insert “paragraphs 4(2), 6(7) or 6(8)”; and
- (b) remove “, or an application under paragraph 6(8) of that Schedule made by virtue of that application,”.

(4) At the end of regulation 56(3C), after “the Local Government (Coronavirus) (Postponement of Elections) (Wales) Regulations 2020” insert “or will take place between 25 February 2021 and 4 November 2021”.

*Name*

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

*Date*

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(1) S.I. 2001/341.

(2) Relevant amendments to regulation 56 were made by S.I. 2006/752, S.I. 2006/2910, S.I. 2013/3198 and S.I. 2020/1399 (W. 310).

## **Explanatory Memorandum to The Representation of the People (Amendment) (Wales) (Coronavirus) Regulations 2021**

This Explanatory Memorandum has been prepared by Education and Public Services 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 Representation of the People (Amendment) (Wales) (Coronavirus) Regulations 2021

Julie James MS  
Minister for Housing and Local Government  
26 January 2021

## **PART 1**

### **1. Description**

- 1.1. These Regulations make provision in relation to proxy voting at certain local government by-elections held between the coming into force of these regulations and 4<sup>th</sup> November 2021
- 1.2. Regulation 2 amends the Representation of the People (England and Wales) Regulations 2001, so as to provide applicants with additional grounds for applying for emergency proxy votes at these by-elections. These additional grounds relate to persons who are unable to attend a polling station in person as a result of following relevant legislation, guidance or medical advice in relation to the Covid-19 pandemic as well as allowing those who have an existing proxy vote to change their nominated proxy in the event the nominated individual has to isolate

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

- 2.1. The Regulations will come into force on 25 February 2021, and will apply to all relevant by-elections taking place after this date.

### **3. Legislative background**

- 3.1. These Regulations are made under paragraph 4(2) and 6(7) and (8) of Schedule 4 to the Representation of the People Act 2000.

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

- 4.1. The Regulations are temporary measures designed to provide an emergency proxy vote where an individual is following government or medical advice to self-isolate in relation to Covid-19.
- 4.2. The provisions are time limited and will cease to have effect after 4<sup>th</sup> November 2021.
- 4.3. Electoral law does not currently provide for scenarios where electors may need to apply for a proxy vote because they are required to self-isolate because of COVID-19. Therefore Welsh Government must amend the legislative framework for polls taking place in the near future, when the Covid-19 virus is still likely to be prevalent in our communities.

#### Proxy voting for those shielding

- 4.4. Paragraph 4 of schedule 4 of the Representation of the People Act 2000 makes provision for absent voting at a particular election. Paragraph 4(2)(a) specifically provides that the Returning Officer shall grant an application to vote by proxy where they are satisfied that the applicant's circumstances on the date of the poll will be, or are likely to be, such that the applicant cannot reasonably be expected to vote in person at a



relevant polling station. The circumstances of individuals self-isolating would fall into this category.

- 4.5. These Regulations amend regulation 56 of the Representation of the People (England and Wales) Regulations 2001, with the effect that the categories of people that can apply for an emergency proxy are extended to include individuals who cannot vote in person because they are following relevant legislation, Welsh Government guidance or medical advice in relation to coronavirus and self-isolating.
- 4.6. The changes are temporary and will only apply to elections held until 4<sup>th</sup> November 2021.
- 4.7. An application for an emergency proxy on medical grounds must be accompanied by attestation from a relevant professional. These Regulations do not place an attestation requirement on individuals who cannot vote in person because they are following Welsh Government or medical advice to self-isolate. This reflects the difficulty that someone self-isolating or shielding may have in getting an attestation from a suitable independent person.

## **5. Consultation**

- 5.1. Due to the emergency nature of these Regulations the Welsh Government did not undertake a public consultation before the Regulations came into force. Views have been sought from the Electoral Commission and their comments that the provisions should also extend to electors with an existing proxy were taken into consideration in the drafting of the regulations.

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

- 6.1. These regulations are not considered to have any significant financial impact, and as such no regulatory impact assessment has been carried out.

# Agenda Item 3.3

## SL(5)732 – The Nurse Staffing Levels (Extension of Situations) (Wales) Regulations 2021

### Background and Purpose

Under section 25B of the National Health Service (Wales) Act 2006, a Local Health Board or NHS Trust which provides nursing services in relation to those clinical settings specified in subsection 25B(3), namely adult acute medical inpatient wards and adult acute surgical inpatient wards, is under a duty to calculate, and take steps to maintain, nurse staffing levels, and to inform patients of those nurse staffing levels.

These Regulations extend the situations to which the duties under section 25B of the National Health Service (Wales) Act 2006 apply to include paediatric inpatient wards.

### Procedure

Draft Affirmative

### 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**

The Explanatory Memorandum and the Regulatory Impact Assessment have been laid in English only.

Standing Order 15.4 requires documents to be laid bilingually where reasonably practicable.

This point has been raised recently in relation to other statutory instruments. The Welsh Government responded by explaining whilst an increasing proportion of these documents are being laid bilingually, they are having to prioritise a limited translation resource very strictly at the moment, with Covid and Brexit related legislation and guidance for the public being the top priority.

It was also explained that they have considered the relevant Welsh language standard and have considered guidance provided by the Welsh Language Commissioner's office.



## Welsh Government response

A Welsh Government response is not required.

### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**2 February 2021**



Senedd Cymru

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

—

Welsh Parliament

**Legislation, Justice and Constitution Committee**

Pack Page 23

*Draft Regulations laid before Senedd Cymru under section 203(6) of the National Health Service (Wales) Act 2006, for approval by resolution of Senedd Cymru.*

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DRAFT WELSH STATUTORY  
INSTRUMENTS

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**2021 No. (W.)**

**NATIONAL HEALTH  
SERVICE, WALES**

**The Nurse Staffing Levels  
(Extension of Situations) (Wales)  
Regulations 2021**

**EXPLANATORY NOTE**

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

Under section 25B of the National Health Service (Wales) Act 2006, a Local Health Board or NHS Trust which provides nursing services in relation to those clinical settings specified in subsection 25B(3), namely adult acute medical inpatient wards and adult acute surgical inpatient wards, is under a duty to calculate, and take steps to maintain, nurse staffing levels, and to inform patients of those nurse staffing levels.

These Regulations extend the situations to which the duties under section 25B of the National Health Service (Wales) Act 2006 apply to include paediatric inpatient wards.

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 in Wales. A copy can be obtained from Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

*Draft Regulations laid before Senedd Cymru under section 203(6) of the National Health Service (Wales) Act 2006, for approval by resolution of Senedd Cymru.*

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DRAFT WELSH STATUTORY  
INSTRUMENTS

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**2021 No. (W. )**

**NATIONAL HEALTH  
SERVICE, WALES**

**The Nurse Staffing Levels  
(Extension of Situations) (Wales)  
Regulations 2021**

*Made*

\*\*\*

*Coming into force*

*1 October 2021*

The Welsh Ministers, in exercise of the powers conferred by sections 25B(3)(c) and 203(9) of the National Health Service (Wales) Act 2006(1), make the following Regulations.

In accordance with section 203(6) of that Act, a draft of these Regulations has been laid before, and approved by resolution of, Senedd Cymru(2).

**Title and commencement**

**1.—(1)** The title of these Regulations is the Nurse Staffing Levels (Extension of Situations) (Wales) Regulations 2021.

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- (1) 2006 c. 42; see section 206(1) for the definition of “regulations”. Section 1(1) of the Nurse Staffing Levels (Wales) Act 2016 (anaw 5) (“the 2016 Act”) inserted section 25B into the National Health Service (Wales) Act 2006 (“the 2006 Act”). Section 1(2) of the 2016 Act amended section 203(6) of the 2006 Act to provide that regulations made under section 25B(3)(c) of the 2006 Act are made pursuant to the affirmative procedure. Section 1(3) of the 2016 Act inserted the definition of “nurse staffing level”, as defined in section 25B(1)(a) of the 2006 Act, into the table of defined expressions in section 207 of the same Act.
- (2) The reference in section 203(6) 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).

(2) These Regulations come into force on 1 October 2021.

**Specified situations for nursing services**

2. Paediatric inpatient wards are specified as a situation to which the duties under section 25B of the National Health Service (Wales) Act 2006 apply.

*Name*

Minister for Health and Social Services, one of the Welsh Ministers

Date

**Explanatory Memorandum to *The Nurse Staffing Levels (Extension of Situations) (Wales) Regulations 2021***".

This Explanatory Memorandum has been prepared by the Office of the Chief Nursing Officer 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 Nurse Staffing Levels (Extension of Situations) (Wales) Regulations 2021*". I am satisfied that the benefits justify the likely costs.

Vaughan Gething  
Minister for Health and Social Services  
26 January 2021

# **PART I**

## **1. Description**

These regulations extend the section 25B duty (and its associated duties under sections 25C-E) under the Nurse Staffing Levels (Wales) Act 2016<sup>1</sup> to the additional situation of paediatric inpatient wards.

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

None.

## **3. Legislative background**

The Nurse Staffing Levels (Wales) Act 2016 ('the 2016 Act') received Royal Assent in March 2016 and inserted new Sections 25A to 25E into the National Health Service (Wales) Act 2006 ('the 2006 Act'). There has been a phased approach to its initial implementation in two parts.

The first duty under section 25A sets out the 'overarching responsibility' for local health boards and NHS trusts to ensure there are sufficient nurses to care for patients sensitively and applies to any setting where nursing care is provided including commissioned services. This duty came into force in April 2017.

The second duty under section 25B (and its associated duties within sections 25C-E) requires local health boards and NHS trusts to use a prescribed methodology to calculate and maintain the nurse staffing level for adult acute medical inpatient wards and adult acute surgical inpatient wards. This duty came into force in April 2018.

At the time the 2016 Act was passed, the decision was taken to apply the second duty to adult acute medical and surgical inpatient wards only as they were the only settings with an evidence base sufficiently developed to underpin the "*evidence-based workforce planning tool*", which the 2016 Act provides is necessary for calculating the appropriate nurse staffing level.

However, section 25B(3)(c) of the 2016 Act includes a regulation making power to extend the duty to calculate and maintain nurse staffing levels to other care situations.

The All Wales Nurse Staffing Programme ('the Programme') is currently driving the development of further evidence-based workforce planning tools, with four work-streams focussing on: adult mental health inpatient wards; health visitors; district nursing; and paediatric inpatient wards. The Welsh Levels of Care tool for paediatrics inpatients has been in development and testing since January 2018 and is now fit for use in ward settings. Therefore the section 25B duty to



calculate and maintain the nurse staffing level is being extended to paediatric inpatient wards in Wales.

These Regulations are being made under the draft affirmative resolution procedure.

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

The purpose of these Regulations is to extend the duties in sections 25B - E of the Nurse Staffing Levels (Wales) Act 2016 (as inserted into the 2006 Act) to the additional situation of paediatric inpatient wards.

Namely, these duties are:

- 25B is the duty to calculate nurse staffing levels and to take all reasonable steps to maintain those levels. It also includes the duty to inform patients of those calculated levels.
- 25C is the duty to use a prescribed method of calculation for nurse staffing levels. This triangulated method uses: nurses' professional judgement; patient acuity through the evidence-based workforce planning tool; and nurse-sensitive quality indicator data.
- 25E is the duty to report every three years on the extent to which nurse staffing levels have been maintained on the wards to which these duties apply, and the impact that health board or trust considers that not maintaining those levels has had on care.

Section 25D places a duty on the Welsh Ministers to issue guidance about the duties under sections 25B and C, and how local health boards and NHS trusts are to comply with those requirements. The original statutory guidance document<sup>2</sup> published in October 2017 has been revised to include reference to paediatric inpatient wards and undergone a 13 week public consultation process.

The primary aim of these duties is ultimately to improve patient safety and quality of care in the clinical settings to which they apply. The available evidence (expanded in the RIA below) clearly indicates that having the appropriate number of registered nurses reduces morbidity, improves patient outcomes and saves bed-days. Having a standardised, evidence-based means of calculating what that appropriate levels of nursing staff is for each ward – accompanied by a statutory obligation to maintain those levels – will make it possible to articulate more clearly and consistently the staffing needs within paediatric inpatient wards and ensure the funding is made available by health boards and NHS trusts to meet those staffing needs.

The 2016 Act also ensures that the NHS more widely recognises the professional judgement of nurses in identifying how sick their patients are and their holistic care needs, and supports nurses from ward to board to have the necessary and sometimes difficult conversations about the resource requirements of their patients based on those clinical needs.

These Regulations will extend the scope of those aims to include paediatric inpatient wards and the young people treated on them.

## 5. Consultation

There is no statutory obligation to consult on regulations made under section 25B(3)(c) of the 2016 Act (as inserted into the 2006 Act). Therefore, there was no formal consultation on the Regulations themselves. However, the proposal to extend the duty to paediatric inpatient wards, and the consequent amendments to the statutory guidance, have been the subject of stakeholder engagement. The amended guidance was also subject to a 13 week consultation as explained below.

Section 25D stipulates that the Welsh Ministers must issue guidance about the duties under sections 25B and 25C (which supplement section 25B on the method of calculating nurse staffing levels). It also states that before issuing the guidance, the Welsh Ministers must conduct a formal public consultation process.

The original (current) statutory guidance was subject to a 12 week consultation in 2017. Amendments were required to the guidance to reflect the decision to extend the section 25B duty to paediatric inpatient wards. Before issuing the revised statutory guidance, another public consultation was required on the amendments made.

A 13-week consultation ran from 16 September 2020 to 16 December 2020 seeking views on the amendments that had been made to the guidance. The consultation was drawn to the attention of a wide audience of key stakeholders including Executive Nurse Directors, Chief Executives and Heads of Paediatric Nursing of each health board and NHS trust, the chairs of the All Wales Nurse Staffing Group and its key sub groups, the All Wales Senior Nurse Forum, the All Wales Ward Managers Forum, the Royal College of Nursing, the Nursing and Midwifery Council, youth patient groups, Community Health Council and the Childrens' Commissioner for Wales.

The consultation specifically sought views on the amended ward definitions, the list of ward exclusions, and the minor linguistic amendments that had been made throughout the document.

There was broad agreement to the revisions made to the statutory guidance document with a majority of respondents agreeing that the definitions were clear and easy to understand and that exclusions list was appropriate. A summary report of the consultation responses was published on 15 January 2021<sup>3</sup>. A small number of further minor revisions will be made to the statutory guidance based on respondents' observations, and the document will be published in spring 2021.

# PART 2 – REGULATORY IMPACT ASSESSMENT

## 6. Options

Three options have been identified and are summarised here and referred to at various points throughout the document in terms of comparing the costs, risks and benefits of each.

### Option 1: Status quo – Do not extend the section 25B duty to paediatric inpatient wards.

This option would mean no change to current practice as the section 25B duty would not apply to paediatric inpatient wards. In practice, this means health boards will continue to calculate staffing levels in those settings based largely on bed numbers and available resources rather than triangulating patient acuity, professional judgement and quality indicator data as prescribed by the 2016 Act.

### Option 2:– Do not extend the section 25B duty to paediatric inpatient wards, but publish new non-statutory guidance to encourage health boards to use the 2016 Act’s triangulated methodology for calculating more appropriate nurse staffing levels in paediatric inpatient wards.

This option would look to achieve as many of the benefits of the Act’s second duty as possible to paediatric inpatient wards without enforcing it as a statutory obligation. As the evidence-based workforce planning tool for paediatric inpatient wards already exists, those wards could in theory practice the same triangulated methodology in calculating nurse staffing levels as has happened on adult acute medical and surgical wards for the last three years. This would have to be accompanied by non-statutory guidance to try to maintain a consistent approach across the different health boards.

### Option 3: Extend the Act’s second duty to paediatric inpatient wards through regulations

This option would use the powers granted by section 25B(3)(c) to extend the section 25B duty to calculate and maintain nurse staffing levels to paediatric inpatient wards in Wales through regulations.

This would put the same legal obligation on health boards and NHS trusts to calculate and maintain nurse staffing levels on paediatric inpatient wards as has applied to adult medical and surgical wards since April 2017. It also makes it a legal requirement to then publically report on the maintenance of those nurse staffing levels at the end of every three year reporting period.

## 7. Costs, risks and benefits

### Costs

#### Option 1

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

#### Options 2 and 3

##### Additional staffing costs

Until the first triangulated calculations are undertaken on Wales' paediatric wards (which would likely take place in August/September 2021), it is not possible to say with absolute certainty what the cost to the NHS will be. This is due to the fact that the triangulated methodology takes into account actual ward data on acuity, quality indicators and the nurses' professional judgement on factors specific to their wards and staff. Indeed, the purpose of the 2016 Act is to provide staffing levels that more accurately reflect the patients' needs than fixed staffing ratios can.

However we have some sources of data that help us form an idea of an estimated range of cost. Prior to the 2016 Act passing through the Senedd in 2016, a similar Regulatory Impact Assessment<sup>4</sup> cost estimation exercise used a rough calculation based on several average variables applicable to adult medical and surgical wards established by NICE safe staffing guidance from 2014<sup>5</sup>.

Those variables were:

Average nursing care hour needs per patient per 24h	5.32 hours
Average bed occupancy for an adult acute ward per 24h	30 patients
Average additional non-patient care workload per 24h	5.6 hours
Skill mix ratio	RN 65:35 HCSW
Number of hours worked by a full time equivalent nurse annually (37.5 hours per week x 52 weeks)	1950 hours
Number of acute patients in Wales per 24h (based on Stats Wales information from 2012)	7674 patients

By using these rough averages and nursing salary amounts from the time, a very broad estimate was calculated for the total cost of nursing staff to care for adult acute medical and surgical patients *safely*. Given the large number of adult wards, these broad average estimates were a pragmatic approach. There was also no comparison made to the funding for those wards at the time to give a sense of financial gap.

The above variables are mostly specific to adult care settings, and to use them for paediatric inpatient wards would not give an accurate picture of the estimated cost of this legislation. Currently there are no analogous NICE publications for paediatric inpatient wards, however it has been established through other reputable standards and guidance that paediatric patients require more care hours on average than their counterparts on adult acute wards.

With that in mind, we have used paediatric-specific variables from the RCN's *Defining Staffing Levels for Children and Young People's Services* guidance<sup>6</sup> for our calculations.

We have also been able to use more relevant data for our paediatric inpatient wards rather than applying a single average for all. This is due in part because of the far smaller number of wards compared to adult acute wards, and also because of the health boards' data returns on the Chief Nursing Officer's interim paediatric nurse staffing principles.

In July 2019, the Chief Nursing Officer published a set of interim nurse staffing principles for paediatric inpatient wards, following the model established by the adult medical and surgical interim principles (2012) and then the district nursing interim principles (2017). The principles were largely informed by the above-mentioned RCN guidelines.

The purpose of these principles was to:

- establish a detailed baseline picture of the existing nursing workforce in our paediatric inpatient wards;
- identify the resource gap between the current position and full compliance with those principles; and
- close that gap over time with gradually increasing compliance to lessen the impact to the system if/when the 2016 Act's second duty is implemented to paediatrics inpatient areas.

There are some important caveats to bear in mind when considering the data submitted thus far by health boards on their compliance with the principles:

- the audits take place over a single week per data-capture exercise and comprise two measures per calendar day (day shift and late shift), meaning the sample size from each return is fairly limited and not necessarily reflective of demand throughout the year;
- the Covid19 pandemic interrupted the second audit exercise of compliance with these principles in March 2020, therefore we only have data for November 2019 and November 2020. This means the overall sample size is also very limited;
- the demand on paediatric inpatient services has seen a notable decrease since the Covid19 pandemic, and thus the November 2019 data is likely to be more reflective of "normal" demand going into the future than the November 2020 data;

- the data returned by health boards is not rigorously verified and is therefore open to human error; and
- bed occupancy levels in paediatric inpatient wards are more prone to frequent fluctuation than adult acute inpatient wards.

With that in mind, the returned data still helps to paint a picture of the nurse staffing landscape in Wales' paediatric inpatient wards and inform thinking around potential cost to the NHS.

The variables used in this costing exercise are as follows:

Average RN nursing care hour needs per patient per 24h (based on 1:4 ratio suggested by RCN's guidance).	6 hours
Average peak bed occupancy for each paediatric inpatient ward i.e. the mean average of the occupancy high point on each shift over the course of the available data period (based on ward-specific data submitted by health boards, attached at <b>Annex 1</b> ).	Varies according to ward
100% bed occupancy rate (based on ward-specific data submitted by health boards, attached at <b>Annex 1</b> ).	Varies according to ward
Skill mix ratio (as per ratio suggested by RCN's guidance).	RN 70:30 HCSW
Number of hours worked by a full time equivalent nurse annually (37.5 hours per week x 52 weeks).	1950
The addition of 26.9% uplift added to all RN and HCSW costs (as per the requirement in the 2016 Act's statutory guidance)	Varies according to individual costs
The addition of a supernumerary band 7 ward manager (as per the requirement in the 2016 Act's statutory guidance).	£57,853 per ward
Existing funded RN and HCSW establishments (based on ward-specific data submitted by health boards).	Varies according to ward
Annual salary of band 7 RN based on high-point of scale + 30% NHS on-costs	£57,853
Annual salary of band 5 RN based on mid-point of scale + 30% NHS on-costs	£35,640
Annual salary of band 6 RN based on mid-point of scale + 30% NHS on-costs (as per suggestion of having at least one band 6 nurse per 24h from the RCN guidance).	£43,128
Annual salary of band 3 HCSW based on mid-point of scale + 30% NHS on-costs	£25,138

From those various pieces of data, we are able to calculate a gap between existing funding levels and estimated costs of appropriately staffing paediatric inpatient wards following the coming-into-force of these regulations.

Using a nameless example ward with 21 beds, the calculation would look as follows:

Total RN staffing hours required per 24h	21 beds x 6 nursing hours per patient = <b>126 hours</b>
Annual RN staffing hours including one band 6 per 24h	126 x 365 = <b>45,990 hrs</b> (37,230hrs band 5 + 8,760hrs band 6)
Annual RN cost using a skill mix of band 5 and band 6 salaries + 30% NHS on-costs + 26.9% uplift as per the Act	Band 5: (37,230hrs/1,950hrs) x £35,640 + 26.9% = £863,490 Band 6: (24 x 365) x £43,128 + 26.9% = £245,861 Total: <b>£1,109,351</b>
Annual HCSW costs based on 70:30 skill mix of RN required hours + 30% NHS on-costs + 26.9% uplift as per the Act	Total RN annual required hours 45,990 / 70 * 30 ratio of HCSW = 19,710 annual hours (19,710/1,950hrs) x £25,138 + 26.9% = <b>£322,437</b>
Total nurse staffing costs based on 100% occupancy	£1,109,351 + £322,437 + £57,853 (supernumerary band 7) = <b>£1,489,641</b>
<b>Total nurse staffing gap based on 100% occupancy</b>	£1,489,641 - £884,913 (existing nurse staffing funding) = <b>£604,728</b>

Therefore for this particular ward, the gap is calculated as **~£605,000**. This represents the maximum possible gap on the assumption that all beds are occupied 100% of the time.

However, we know that bed occupancy in paediatric inpatient wards fluctuates regularly, and is very rarely as high as 100%.

We therefore also ran the exact same calculation as above using the ward's *average peak bed occupancy*. That is the average occupancy high point for the ward based on the available shift data. For the above ward, the average peak bed occupancy is 17.79, meaning on a typical shift during that period, the highest number of patients at one time was ~18. That shift would therefore require the appropriate number of nursing staff for 18 people. This calculation results in a more modest funding gap of **~£392,000**, representing an approximate minimum threshold gap.

Using these upper and lower calculations gives us a useful approximate range for this ward. However when extrapolated out across all 16 paediatric inpatient wards in Wales for a global view, this range becomes less useful with a lower calculation gap of **~£380,000** (suggesting there is enough money in the system already to fund the necessary posts) and an upper calculation of **~£6,832,000** (suggesting there is notable shortfall in funding). This is a range of over £7m, and not especially helpful in estimating the cost of this legislation.

The true cost will almost certainly fall somewhere between the two, and using a formula of normal distribution, we are able to estimate where that is likely to be. In short, the *empirical rule* (also known as the 68–95–99.7 rule) is a statistical rule which plots the percentage of values that lie within bands of standard deviation on a normal distribution graph. It is used often in statistics for forecasting rough estimates of final outcomes and used in health services and delivery units in calculating estimated fluctuating demand and capacity.

In this context that translates into taking the mean peak bed occupancy as a minimum requirement and then adding 2/3 of the difference between that and 100% maximum bed occupancy to produce a staffing complement that would meet demand ~95% of the time.

This calculation gives a more realistic sense of the actual staffing requirements for a ward and is more analogous to the flexible, reactive calculations that would be produced using the triangulated methodology outlined in section 25B of the Act.

<b>Total nurse staffing gap for all 16 paediatric inpatient wards based on average peak bed occupancy</b>	<b>Total nurse staffing gap for all 16 paediatric inpatient wards based on 100% bed occupancy</b>	<b>Total nurse staffing gap for all 16 paediatric inpatient wards based on three-sigma calculation.</b>
~£380,000	~£6,832,000	<b>~£4,428,000</b>

Utilising the best available data we have (acknowledging the aforementioned caveats) in conjunction with the principles from the RCN guidance on appropriate staffing in this setting, the estimated additional staffing cost to the NHS in Wales of extending the Act's second duty to paediatric inpatient wards would be approximately **~£4,428,000**. As with the equivalent costing exercise from the Nurse Staffing Levels (Wales) Act 2016's RIA, it is acknowledged that this is a rough estimate. However, given the more ward-specific data in place of broader averages, it is likely to be a significantly more accurate methodology than used previously for the adult acute medical and surgical wards.

This estimation is the *additional* cost to health boards in appropriately staffing their paediatric inpatient wards for the initial 12 month period, and would then become part of recurrent spend in subsequent financial years. However, the actual costs would be constantly changeable based on biannual calculations and any significant changes in ward structure or capacity.

It is worth noting that this cost is not shared evenly throughout the six health boards in Wales that service the 16 wards. There is significant variation, ranging from one health board's gap calculated as ~ £20,000 (indicating that they likely have roughly enough funding in the system already) up to another with a gap of ~£1,750,000.

Paragraph 11 of the statutory guidance stipulates that maintenance of the nurse staffing levels will be "*funded from the LHB's (or Trust's) revenue allocation*". Given the relatively small sums of money at play within these estimations, it is not envisaged at this point that additional funding would be provided to health boards following the coming-into-force of these regulations.

You will find a comprehensive view of the full data-sets for each ward and detailed calculations which have been briefly summarised above attached at **Annex 1**.



### Monitoring, reporting and administrative costs

There are several administrative processes involved in complying with the second duty of the Act:

- the triangulated calculation process for each ward undertaken twice a year or every time the purpose of the ward changes;
- monitoring the maintenance of the calculated staffing levels;
- producing two board papers a year informing the Board of the results of the biannual calculation and an annual report;
- producing a report to Welsh Ministers every three years which is largely an amalgamation of the three annual reports.

The processes of calculating and maintaining nurse staffing levels are not significantly more labour-intensive than current management of nurse staffing on paediatric inpatient wards, therefore there would be **no estimated additional administrative costs** in that respect.

Despite concerns raised in the consultation process, the original RIA at stage 2 of the Bill fundamentally underestimated the ICT infrastructure that would be necessary for capturing and analysing all the data points necessary to articulate the extent to which nurse staffing levels have been maintained, and the impact not maintaining them has had on patients (as required by section 25E of the Act). In the first three year reporting period under the Act, health boards have grappled with the lack of a single, All-Wales ICT solution to enable this process and allow them to produce comparative reports as required. This has been especially onerous and has consumed innumerable hours of senior nurse time. Thankfully, NWSSP has been overseeing an All-Wales contract for a single e-rostering product, and a ward management module that is being specifically modified to provide health boards with exactly the solution required to allow continuous data capture around patient acuity and nurse staffing levels, and click-button reporting. It had been hoped that this software would be in place within all health boards by the time these regulations come into force on paediatric inpatient wards in October 2021, however due to the interruption of the Covid19 pandemic, this may in fact be delayed to early 2022. Once available, the software will create less of an administrative burden on nursing staff than current practice and likely produce a net cost saving.

As the purchase of the e-rostering software is taking place irrespective of extending the scope of the section 25B duty to paediatric inpatient wards, there is **no additional estimated cost** to the NHS due to these regulations in that respect.

### Welsh Government costs

Section 25D of the 2016 Act (as inserted into the 2006 Act) places a duty on Welsh Ministers to issue guidance about the duties under sections 25B and C, and how local health boards and NHS trusts are to comply with those requirements. The original statutory guidance document published in October 2017 has been revised to include reference to paediatric inpatient wards and

undergone a 13 week public consultation process. Further minor revisions will be made informed by those consultation responses.

This work is being undertaken as part of the day-to-day duties of a permanent member of staff in the Chief Nursing Officer's team, and therefore **does not represent an additional cost** to the Welsh Government.

### **Cost implications for the different options**

As it would not seek to change current practice of nurse staffing levels calculation, Option 1 would not result in any additional costs.

In theory, the estimated costs set out above would be the same for both Option 2 and Option 3. The same triangulated method of calculating the appropriate nurse staffing levels would be used in both, so the same estimated gap calculations would be applicable.

The difference between the two would be the statutory obligation for health boards and NHS trusts to actually make the funding available for those calculated nurse staffing levels. The importance of this obligation was highlighted during the first year of implementation of the Act in 2018-19.

One health board's first calculations presented to their Executive Board in April 2018 concluded an additional £4.5m was required to maintain the nurse staffing levels that had been calculated on their adult acute medical and surgical wards. However, it became apparent in November 2018 that the Executive Board had not released that funding, despite the Act leaving no doubt about the obligation to do so. When the Chief Nursing Officer highlighted this statutory obligation, the funding was promptly made available for the additional nurse staffing.

The inherent risk of Option 2 is that health boards would not prioritise the release of that funding in the face of other cost pressures, and that maintenance of the calculated nurse staffing levels would be incomplete, inconsistent across different health boards and incredibly difficult to compare in a meaningful way.

Paragraph 11 of the statutory guidance stipulates that maintenance of the nurse staffing levels will be "*funded from the LHB's (or Trust's) revenue allocation*". Therefore, Option 3 would place the same statutory obligation as illustrated in the above example for Executive Boards to ensure the required funding is available to maintain the calculated nurse staffing levels on paediatric inpatient wards.

### **Benefits**

Given that these regulation merely seek to extend the existing second duty of the Act to paediatric inpatient wards, and that those wards are analogous care settings to adult inpatient wards, the assumed benefits that would be achieved by this legislation would be the same as those asserted when the 2016 Act was passed for adult acute medical and surgical wards.

There has been a recent history of austerity-driven spending constraints in Europe which has had an inevitable impact on the health system and the operating of hospitals, despite concerns from professional bodies about the adverse outcomes for quality and safety of health care. Health system strategies are slowly shifting resources to provide more care in community settings while shortening hospital length of stay and reducing inpatient beds, resulting in increased care intensity for inpatients. Cost containment in hospitals results in higher intensity of services delivered in less time and more rapid patient throughput from admission to discharge. It is argued by the RCN that these changes require more nurses per patient, not fewer, to prevent deterioration in care quality and safety that can harm patients and lead to higher costs if expensive complications such as infections result.

There has been a growing consensus in recent years - supported by several systematic reviews - that the number of nurses available for patient care directly impacts patient outcomes in inpatient wards. More specifically, that *more* nurses equates to *improved* patient outcomes. As well as established legislation in California and the State of Victoria in Australia, this is reflected by guidance produced by NICE and the Royal College of Nursing and the Chief Nursing Officer recommending the implementation of appropriate staffing levels in such wards.

In California, United States of America, fixed ratios were set in 1999 (e.g. 1:5 on medical and surgical wards). To date, fifteen states in the US have legislation aimed at addressing safe nurse staffing but California is the only state to have specific ratios applying to each speciality in all hospitals. Evidence of reported impact in California includes:

- No evidence that ratios have increased costs.<sup>7</sup>
- Hospital nurses typically care for one patient fewer than nurses in other states, the lower caseload is significantly related to lower patient mortality.<sup>8</sup>

In Victoria, Australia minimum nurse to patient ratios were legally mandated in the public sector in 2001 (1:4, plus one in charge on medical/surgical wards). In 2004 the way in which the registered nurse-to-patient ratio was expressed was changed to 5:20, to give more flexibility on registered nurse deployment across the ward.<sup>9</sup> The Australian Nursing Federation (ANF) reports that ratios have led to:

- Better recruitment and retention of nurses and greater workforce stability.
- Adequate numbers of nurses rostered six weeks in advance.
- Directors of Nursing having fully funded budgets to provide safe staffing levels, and a reduced reliance on agency staff.
- Better patient care; beds are not kept open unless there are sufficient staffing levels.
- More manageable nursing workloads.
- Increased job satisfaction for nurses, more workplace stability, and reduced stress.<sup>10</sup>

In terms of the UK and Welsh context, appropriately calculated nurse staffing levels have the potential to significantly reduce costs to the NHS in the long term. At this stage, the information needed to make a quantified estimate of the potential cost-savings is not available. The main benefits are listed below:

- Reduced risk of healthcare acquired infections: the cost to the NHS of surgical site infections is estimated to be around £700 million a year.
- Potential reduction in mortality rates.
- Improved patient experience: potential reduction in adverse events and associated costs.
- Reduced risk of litigation claims due to poor care: the average cost of a claim classed by the NHSLA under the 'nursing' category was £75,000 plus the claim excess and legal advice costs. Dr Goodall, Director General, Health and Social Services, Welsh Government stated the impact within any individual financial year within the Welsh risk pool is around £70 million a year.
- Potential reduced incidence of IV fluid-associated complications by better management of fluids: patients with complications appeared to spend an additional 2.5 days in hospital compared with patients without complications.<sup>11</sup>
- Reduced levels of falls, with a saving of approximately £1,400 per fall avoided.
- Potential reduction in bed days due to providing more effective care, with the associated potential release of resources as a result of a reduced hospital length of stay estimated at £236 per bed day (national tariff, 2014-15).
- Reduction in readmissions within 30 days.

It has also been shown that inadequate staffing levels can lead to a reliance on overtime and temporary (agency and bank) staffing, which can be costly and inefficient. Patients – especially children and young people - demonstrably benefit from continuity of care, but with wards relying upon agency staff for the delivery of care out of necessity, there is an implied increased risk to patients of having members of staff unfamiliar with local processes and procedures, as well as impacting upon the patient experience of care<sup>12</sup>.

The 2016 Act's accompanying statutory guidance states that planned rosters "*...should be met with permanent staff, however-temporary workers can be deployed-if required.*" Naturally, bank and agency spend is not going to be eradicated in the short term, and it plays an important role in maintaining nurse staffing levels in certain instances. However the statutory instruction should result in a long term trend away from over-reliance on temporary staff.

A 2011 study<sup>13</sup> found that hospital wards with temporary staff had poorer staffing levels, higher workloads, more sickness absence and lower ward quality scores than wards that were staffed by permanent nurses only. The Keogh mortality review<sup>14</sup> in 2013 found an over-reliance on temporary nursing staff in the hospital trusts it reviewed, noting that there were often restrictions in place on the clinical tasks that temporary staff could undertake.

The *Perfectly Resourced Ward* pilot in Aneurin Bevan in 2012<sup>15</sup>, whilst a small study, showed a reduction of 64% in bank and agency staffing costs over the pilot period, compared to the previous six months.

In terms of mortality, a study of nurse staffing and education and the impact on hospital mortality in nine European countries concluded that: an increase in a nurses' workload by one patient increased the likelihood of an inpatient dying within 30 days of admission by 7% (odds ratio 1.068, 95% CI 1.031—1.106), and every 10% increase in bachelor's degree nurses was associated with a decrease in this likelihood by 7% (0.929, 0.886—0.973). These associations imply that patients in hospitals in which 60% of nurses had bachelor's degrees and nurses cared for an average of six patients would have almost 30% lower mortality than patients in hospitals in which only 30% of nurses had bachelors' degrees and nurses cared for an average of eight patients.<sup>16</sup>

### **Benefit implications for the different options.**

As with the estimated costs, as it would not change current practice, none of the above-identified potential benefits would be achieved directly by selecting Option 1.

Similarly, as with the costs, the above-mentioned assumed benefits would be applicable to both Option 2 and Option 3.

The difference would be the probability of those benefits being realised and to what degree.

As Option 3 mandates a consistent approach in Wales, bound by a statutory obligation, the scale of the benefits would be more uniform nationally, and easier to measure, compare and draw causal associations. Further, this option would ensure the highest possible probability of achieving those assumed benefits in the long term.

Conversely, without that statutory obligation dictating practice, Option 2 is shrouded in uncertainty. The extent to which the calculated nurse staffing levels are funded and maintained would be entirely unpredictable, almost certainly inconsistent between different health board areas, and likely prone to regular fluctuation even within the same health board based on periodic finance trends.

As the assumed benefits outlined above are long term aims, they are more likely to be realised following long periods of consistent practice and gradual cultural change in organisations. That kind of long term *critical mass* cultural change would be far less likely under Option 2 where there are near infinite potential scenarios of varying organisational practice, and shifting levels of inconsistency over time.

## Risks

### Option 1

The main risk of maintaining the status quo is that the potential assumed benefits of options 2 and 3 (as outlined above) would remain unachieved.

### Option 2

The risk outlined above would also be applicable to this option.

#### Variability

Firstly, as touched upon above, adherence to the various duties set out by the Act without the weight of the statutory obligation would be massively variable. This includes the extent to which:

- the triangulated methodology would be used to calculate appropriate nurse staffing levels and how frequently this is undertaken;
- all reasonable steps are taken to maintain those calculated nurse staffing levels;
- funding is released by the health board for the calculated additional staff needs;
- patients and the public are kept informed of the calculated nurse staffing levels.

The scope for inconsistency and variation multiplied across the six health boards that service paediatric inpatient wards means that the likely effects of Option 2 are entirely unpredictable. The potential costs and benefits could range from: none whatsoever if the non-statutory guidance was not adhered to at all; to exactly the same as Option 3 if the guidance were adhered to as consistently as if it were statutory.

#### Health outcome inequalities

This likely variation in practice would risk exasperating health outcome inequalities in Wales. It would be reasonable to assume that health boards facing acute financial strain would be most likely to refuse to fund the nurse staffing levels calculated by their senior nurses. That could mean children and young people in Wales could be receiving demonstrably different quality of care based on geography.

Further, the scope for variable practice when applying the triangulated calculation process at ward level (if not led by statutory guidance) could reasonably lead to different quality of care even within a single health board.

### Option 3

The risks linked to variability of application outlined above would be almost entirely reduced by the statutory obligation of Option 3. Based on experiences

of the first three years of implementation of the 2016 Act in adult settings, some minor local variation is inevitable. However the degree of variation is negligible due to the national standards and templates coordinated by the All Wales Nurse Staffing Group (which consists of membership from all health boards), the authority of which is entirely underpinned by statutory requirements.

As already referred to on page 12, the most egregious example of local variation during that period was a health board's refusal at executive level to fund the calculated nurse staffing levels. The authority of the statutory requirement is what remedied this variation almost immediately.

A risk posed by Option 3 mirrors one of the main risks to passing the Act in 2016. That is an inadequate number of qualified registered paediatric nurses within Wales to maintain the nurse staffing levels that would be calculated.

The issue of registered nurse staffing shortage is well publicised, and affects every healthcare service in the developed world. The 2016 Act was not seen as an immediate solution to that issue, but it is conceivable that in the long term, the greater authority of nurses' professional judgement in determining appropriate staffing levels, and the more detailed reporting of nurse staffing data underpinned by the duties of the 2016 Act would be a driver for greater commissioning of registered nurses.

Whether a direct result of the 2016 Act or not, commissioning of adult RN training places has risen steadily and significantly from 876 places in 2016 to 1,210 in 2020. Similarly, commissioning of child RN training places has risen from 100 places in 2016 to 154 in 2020<sup>17</sup>. Additional targeted commissioning of paediatric nurses alongside the passing of these regulations would further mitigate this risk.

There is also flexibility within the 2016 Act itself to help mitigate this risk in the short term. Health boards and trusts are required to take "all reasonable steps" to maintain their nurse staffing levels. This could include utilising bank/agency staff and reducing bed capacity of wards where considered necessary for that purpose, as listed in the 2016 Act's statutory guidance.

### **Options conclusion**

Given the unpredictable likelihood of variation in application, and the resulting possible health outcome inequalities resulting from Options 1 and 2. Option 3 is strongly recommended as preferable.

## **8. Consultation**

As per section 5 in Part I of this explanatory memorandum, there was no statutory obligation to consult on these regulations themselves as the 2016 Act (which underwent multiple public consultations) grants Ministers the power to use them for this purpose without prior consultation.

As also explained above, the proposed extension of the section 25B duty to paediatric inpatient wards, and consequential necessary amendments to the

statutory guidance, were the subject of [significant] stakeholder engagement. Further, a 13 week public consultation<sup>3</sup> was undertaken on the revised statutory guidance as required by section 25D(4) and as summarised in Part I.

## 9. Competition Assessment

Not applicable.

## 10. Post implementation review

Under section 25E of the Act, health boards and NHS trusts have a duty to report to Welsh Ministers every three years on the extent to which nurse staffing levels have been maintained on the wards to which these duties apply, the impact those organisations consider that *not* maintaining those levels has had on care, and any actions taken in response to not maintaining nurse staffing levels.

Following the extension of this section to paediatric inpatient areas, this duty to report would also be applied to those wards. Health boards will be submitting their first such reports under 25E in May 2021.

It was originally intended that these regulations would come into force in April 2021, however the Covid19 pandemic in 2020 disrupted health board preparations for the extension to the extent that the Chief Nursing Officer deemed that date to be an unreasonable expectation. The coming into force date was therefore delayed by six months to 1 October 2021.

The 2016 Act defines the *reporting period* under section 25E as 3 years from the commencement of section 25B. This means that the reporting period for paediatric inpatient wards will not begin with the coming-into-force date of the regulations, but will be synchronised with that of adult medical and surgical wards.

In practice this would mean that the first reports on paediatric inpatient wards would be submitted to the Welsh Ministers in May 2024 at the same time as the second three year report for adult inpatient wards despite containing only two and a half years' worth of data.

As well as these tri-annual statutory reports, health boards and NHS trusts submit an annual report to their boards based on the same requirements. They then amalgamate those to form the three year report. These annual reports are monitored by the office of the Chief Nursing Officer in partnership with the All Wales Nurse Staffing programme to ensure a more regular periodic review of the Act's implementation on the ground.

There is an intention to commission an independent review of the implementation and costs/benefits impact of the Nurse Staffing Levels (Wales) Act 2016, however the Covid19 pandemic has delayed the development and



commissioning of a brief. This will be revisited and pursued in due course following the end of the first three-year reporting period in April 2021.

## References

- <sup>1</sup> [Nurse Staffing Levels \(Wales\) Act 2016](#)
- <sup>2</sup> [Nurse Staffing Levels \(Wales\) Act 2016 Statutory Guidance](#), Welsh Government, 2017
- <sup>3</sup> [Consultation summary report on 2020 revised statutory guidance](#)
- <sup>4</sup> [Nurse Staffing Levels \(Wales\) Bill stage 2 explanatory memorandum](#) 2015
- <sup>5</sup> [Safe staffing for nursing in adult inpatient wards in acute hospitals](#) NICE guidance, 2014
- <sup>6</sup> [Defining Staffing Levels for Children and Young People's Services](#) RCN guidance, 2013
- <sup>7</sup> McGillis Hall, L. & Buch, E (2009). *Skill mix decision-making for nursing*. International Centre for Human Resources in Nursing. Geneva: ICN
- <sup>8</sup> Aiken L, Sloane D et al (2010) *Implications of the California Nurse Staffing Mandate for Other States*. Health Services Research. 45 (4) 904-21.
- <sup>9</sup> Gerdtz M, Nelson S (2007) 5-20 *A model of minimum nurse-to-patient ratios in Victoria, Australia*. Journal of Nursing Management. 15, 64-71.
- <sup>10</sup> ANF Victoria Work/Time/Life Survey (2003) – reported on p148-150 Gordon S, et al (2008) *Safety in numbers. Nurse-to-patient ratios and the future of health care*. Cornell University Press.
- <sup>11</sup> Walsh SR, Cook EJ, Bentley R et al. *Perioperative fluid management: prospective audit*. *International Journal of Clinical Practice*. 2008; 62(3):492-497
- <sup>12</sup> Consultation response MNS13 Royal College of Physicians
- <sup>13</sup> <https://www.nursingtimes.net/roles/nurse-managers/are-temporary-ward-staff-cost-effective-19-09-2011/>
- <sup>14</sup> Professor Sir Bruce Keogh KBE, Review into the quality of care and treatment provided by 14 hospital trusts in England, July 2013
- <sup>15</sup> <http://docplayer.net/189902186-Aneurin-bevan-health-board-perfectly-resourced-ward.html>
- <sup>16</sup> The Lancet, [Nurse staffing and education and hospital mortality in nine European countries: a retrospective observational study](#), 24 May 2014
- <sup>17</sup> NHS Wales Education Commissioning and Training Plan. 2020

# Agenda Item 3.4

## **SL(5)738 – The Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 4) (Wales) Regulations 2021**

### **Background and Purpose**

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (the “International Travel Regulations”) and the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (the “Restrictions Regulations”).

The Explanatory Memorandum to the Regulations notes that, in light of advice received from the Joint Biosecurity Centre, the current restrictions in place in response to the new strain of coronavirus first identified in South Africa in December 2020 should remain in place and that, as a precautionary approach, these measures should be further extended to the Republic of Burundi, the Republic of Rwanda and the United Arab Emirates.

Part 2 of these Regulations amends Schedule 3A to the International Travel Regulations. Regulation 2 adds the Republic of Burundi, the Republic of Rwanda and the United Arab Emirates to the list of countries and territories in Schedule 3A that are subject to additional measures by virtue of regulations 12E and 12F of those Regulations.

Part 3 of these Regulations amends the Restrictions Regulations to impose more stringent isolation requirements on people who have been in those countries within the period of 10 days before the Regulations come into force, and on people within the same household.

Part 4 of these Regulations makes minor technical updates and corrections to the International Travel Regulations.

These Regulations came into force at 4.00 a.m. on 29 January 2021.

### **Procedure**

Made Affirmative.

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

The Senedd must approve the Regulations within 28 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were made for them to continue to have effect.

### **Technical Scrutiny**

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



## Merits Scrutiny

The following 2 points are identified for reporting under Standing Order 21.3 in respect of this instrument.

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

We note the Welsh Government's justification for any potential interference with human rights. In particular, we note the following paragraph in the Explanatory Memorandum:

*"The amendments contained in these Regulations do not change the engagement under the International Travel Regulations or the Restriction Regulations of individual rights under the Human Rights Act 1998 and the European Convention on Human Rights; the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health, and are proportionate."*

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

We note there has been no formal consultation on these Regulations. In particular, we note the following paragraphs in the Explanatory Memorandum:

*"Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, there has been no public consultation in relation to these Regulations."*

## Welsh Government response

A Welsh Government response is not required.

### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**2 February 2021**



*Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.*

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

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**2021 No. 95 (W. 26)**

**PUBLIC HEALTH, WALES**

**The Health Protection  
(Coronavirus, International Travel  
and Restrictions) (Amendment)  
(No. 4) (Wales) Regulations 2021**

**EXPLANATORY NOTE**

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

Part 2A of the Public Health (Control of Disease) Act 1984 enables the Welsh Ministers, by regulations, to make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Wales.

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (S.I. 2020/574 (W. 132)) (the “International Travel Regulations”) and the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (S.I. 2020/1609) (W. 335)) (the “Restrictions Regulations”).

The International Travel Regulations have been previously amended by:

- the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 (S.I. 2020/595) (W. 136);

- the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020 (S.I. 2020/714) (W. 160);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) Regulations 2020 (S.I. 2020/726) (W. 163);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/804) (W. 177);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 3) Regulations 2020 (S.I. 2020/817) (W. 179);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 4) Regulations 2020 (S.I. 2020/840) (W. 185);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 5) Regulations 2020 (S.I. 2020/868) (W. 190);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 6) Regulations 2020 (S.I. 2020/886) (W. 196);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 7) Regulations 2020 (S.I. 2020/917) (W. 205);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 8) Regulations 2020 (S.I. 2020/944) (W. 210);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 9) Regulations 2020 (S.I. 2020/962) (W. 216);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 10) Regulations 2020 (S.I. 2020/981) (W. 220);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 11) Regulations 2020 (S.I. 2020/1015) (W. 226);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 12) Regulations 2020 (S.I. 2020/1042) (W. 231);

- the Transfer of Functions (Secretary of State for Foreign, Commonwealth and Development Affairs) Order 2020 (S.I. 2020/942);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 13) Regulations 2020 (S.I. 2020/1080) (W. 243);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 14) Regulations 2020 (S.I. 2020/1098) (W. 249);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 15) Regulations 2020 (S.I. 2020/1133) (W. 258);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 16) Regulations 2020 (S.I. 2020/1165) (W. 263);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 17) Regulations 2020 (S.I. 2020/1191) (W. 269);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 18) Regulations 2020 (S.I. 2020/1223) (W. 277);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 19) Regulations 2020 (S.I. 2020/1232) (W. 278);
- the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (Wales) Regulations 2020 (S.I. 2020/1237) (W. 279);
- the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 2) (Wales) Regulations 2020 (S.I. 2020/1288) (W. 286);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 20) Regulations 2020 (S.I. 2020/1329) (W. 295);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 21) Regulations 2020 (S.I. 2020/1362) (W. 301);
- the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 3) (Wales) Regulations 2020 (S.I. 2020/1477) (W. 316);

- the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/1521) (W. 325);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 22) Regulations 2020 (S.I. 2020/1602) (W. 332);
- the Health Protection (Coronavirus, South Africa) (Wales) Regulations 2020 (S.I. 2020/1645) (W. 345);
- the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (Wales) Regulations 2021 (S.I. 2021/20) (W. 7);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) Regulations 2021 (S.I. 2021/24) (W. 8);
- the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 2) (Wales) Regulations 2021 (S.I. 2021/46) (W. 10);
- the Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021 (S.I. 2021/48) (W. 11);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 2) Regulations 2021 (S.I. 2021/50) (W. 12); and
- the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 3) (Wales) Regulations 2021 (S.I. 2021/66) (W. 15).

The Restrictions Regulations have been previously amended by:

- the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) Regulations 2020 (S.I. 2020/1610) (W. 336);
- the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/1623) (W. 340);
- the Health Protection (Coronavirus, South Africa) (Wales) Regulations 2020 (S.I. 2020/1645) (W. 345);
- the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (Wales) Regulations 2021 (S.I. 2021/20) (W. 7);

- the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 2) (Wales) Regulations 2021 (S.I. 2021/46) (W. 10);
- the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) Regulations 2021 (S.I. 2021/57) (W. 13); and
- the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 3) (Wales) Regulations 2021 (S.I. 2021/66) (W. 15).

The International Travel Regulations impose requirements on persons entering Wales after having been abroad. They include a requirement for persons arriving in Wales to isolate for a period determined in accordance with those Regulations.

The requirements imposed by the International Travel Regulations are subject to exceptions, and certain categories of person are exempt from having to comply.

Schedule 3A to the International Travel Regulations list those countries and territories subject to additional measures by virtue of regulations 12E and 12F of those Regulations. Regulation 12E provides that when a person has been in a specified country or territory listed in Schedule 3A, that person and members of their household are required to isolate. Further, the categories of exempt persons as detailed at Schedule 2 to the International Travel Regulations do not apply, and there are more limited circumstances in which a person may leave isolation. Regulation 12F imposes restrictions on the arrival of aircraft and vessels arriving directly from a country listed in Schedule 3A to the International Travel Regulations.

Part 2 of these Regulations amends Schedule 3A to the International Travel Regulations. Regulation 2 adds the Republic of Burundi, the Republic of Rwanda and the United Arab Emirates to the list of countries and territories in Schedule 3A. Regulation 3 makes transitional provision in relation to the addition of those countries to the list of countries and territories in Schedule 3A. The transitional provision addresses a potential area of doubt in terms of the effect on the operation of the International Travel Regulations, of the amendments made by regulation 2 of these Regulations.

Part 3 of these Regulations amends the Restrictions Regulations to impose more stringent isolation requirements on people who have been in the Republic of Burundi, the Republic of Rwanda or the United Arab Emirates within the period of 10 days prior to 4.00 a.m. on 29 January 2021 and on anyone in the same household as such people. These are countries



where there is evidence of community spread of a new variant of coronavirus.

Part 4 of these Regulations makes miscellaneous amendments to the International Travel Regulations.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has not been prepared as to the likely cost and benefit of complying with these Regulations.

*Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.*

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

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**2021 No. 95 (W. 26)**

**PUBLIC HEALTH, WALES**

**The Health Protection  
(Coronavirus, International Travel  
and Restrictions) (Amendment)  
(No. 4) (Wales) Regulations 2021**

*Made at 1.57 p.m. on 28 January 2021*

*Laid before Senedd  
Cymru at 4.45 p.m. on 28 January 2021*

*Coming into force at 4.00 a.m. on 29 January  
2021*

The Welsh Ministers, in exercise of the powers conferred on them by sections 45B, 45C(1) and (3), 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984(1), make the following Regulations.

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

The Welsh Ministers consider that restrictions and requirements imposed by these Regulations are

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(1) 1984 c. 22. Part 2A was inserted by section 129 of the Health and Social Care Act 2008 (c. 14). The function of making regulations under Part 2A is conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister as respects Wales, is the Welsh Ministers.

proportionate to what they seek to achieve, which is a public health response to that threat.

In accordance with section 45R of that Act the Welsh Ministers are of the opinion that, by reason of urgency, it is necessary to make this instrument without a draft having been laid before, and approved by a resolution of, Senedd Cymru.

## PART 1

### General

#### **Title, coming into force and interpretation**

**1.**—(1) The title of these Regulations is the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 4) (Wales) Regulations 2021.

(2) These Regulations come into force at 4.00 a.m. on 29 January 2021.

(3) In these Regulations—

- (a) the “International Travel Regulations” means the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020<sup>(1)</sup>;
- (b) the “Restrictions Regulations” means the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020<sup>(2)</sup>.

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(1) S.I. 2020/574 (W. 132), as amended by S.I. 2020/595 (W. 136), S.I. 2020/714 (W. 160), S.I. 2020/726 (W. 163), S.I. 2020/804 (W. 177), S.I. 2020/817 (W. 179), S.I. 2020/840 (W. 185), S.I. 2020/868 (W. 190), S.I. 2020/886 (W. 196), S.I. 2020/917 (W. 205), S.I. 2020/942, S.I. 2020/944 (W. 210), S.I. 2020/962 (W. 216), S.I. 2020/981 (W. 220), S.I. 2020/1015 (W. 226), S.I. 2020/1042 (W. 231), S.I. 2020/1080 (W. 243), S.I. 2020/1098 (W. 249), S.I. 2020/1133 (W. 258), S.I. 2020/1165 (W. 263), S.I. 2020/1191 (W. 269), S.I. 2020/1223 (W. 277), S.I. 2020/1232 (W. 278), S.I. 2020/1237 (W. 279), S.I. 2020/1288 (W. 286), S.I. 2020/1329 (W. 295), S.I. 2020/1362 (W. 301), S.I. 2020/1477 (W. 316), S.I. 2020/1521 (W. 325), S.I. 2020/1602 (W. 332), S.I. 2020/1645 (W. 345), S.I. 2021/20 (W. 7), S.I. 2021/24 (W. 8), S.I. 2021/46 (W. 10), S.I. 2021/48 (W. 11), S.I. 2021/50 (W. 12) and S.I. 2021/66 (W. 15).

(2) S.I. 2020/1609 (W. 335) as amended by S.I. 2020/1610 (W. 336), S.I. 2020/1623 (W. 340), S.I. 2020/1645 (W. 345), S.I. 2021/20 (W. 7), S.I. 2021/46 (W. 10), S.I. 2021/57 (W. 13) and S.I. 2021/66 (W. 15).

## PART 2

### Amendments to Schedule 3A to the International Travel Regulations

#### **Addition of countries to the list of countries and territories subject to additional measures in Schedule 3A**

2. In Schedule 3A to the International Travel Regulations (countries and territories subject to additional measures), at the appropriate place insert—

“Republic of Burundi”

“Republic of Rwanda”

“United Arab Emirates”.

#### **Transitional provision in connection with regulation 2**

3. Regulation 12F of the International Travel Regulations does not apply in respect of any flight or voyage that commenced before these Regulations came into force.

## PART 3

### Amendments to the Restrictions Regulations

#### **Amendments to the Restrictions Regulations**

4.—(1) The Restrictions Regulations are amended as follows.

(2) In regulation 11AA—

- (a) in the heading, for “15 January” substitute “29 January”;
- (b) in paragraph (1)—
  - (i) in sub-paragraph (a), for “15 January” substitute “29 January”;
  - (ii) in sub-paragraph (b), for “15 January” substitute “29 January”;
- (c) for paragraph (4) substitute—

“(4) For the purposes of this regulation, the following are listed countries—

  - (a) Republic of Burundi;
  - (b) Republic of Rwanda;
  - (c) United Arab Emirates.”;
- (d) omit paragraph (5).

## PART 4

### Miscellaneous Amendments to the International Travel Regulations

#### **Amendments to the International Travel Regulations**

**5.**—(1) The International Travel Regulations are amended as follows.

(2) In paragraph 3(1) of Schedule 1A—

(a) for “6A(4)(a)” substitute “6A(4)(c)”;

(b) omit paragraph (a).

(3) In paragraph 7(2) of Schedule 2, omit “and paragraph 8”.

*Vaughan Gething*

Minister for Health and Social Services, one of the  
Welsh Ministers

At 1.57 p.m. on 28 January 2021

## **Explanatory Memorandum to the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 4) (Wales) Regulations 2021**

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

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 4) (Wales) Regulations 2021.

**Vaughan Gething**  
**Minister for Health and Social Services**

28 January 2021

## **1. Description**

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”) and the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (the “Restrictions Regulations”).

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

### *Coming into force*

These Regulations are made under the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984 (c. 22) (“the 1984 Act”). The Regulations are made without a draft having been laid and approved by the Senedd. It is the opinion of the Welsh Ministers that, by reason of urgency, it is necessary to make the Regulations without a draft being so laid and approved so that public health measures can be taken in order to quickly respond to the threat to human health from coronavirus. The Welsh Ministers are of the opinion that the restrictions and requirements as set out in these Regulations are necessary and proportionate as a public health response to the current threat posed by coronavirus.

These Regulations will come into force at 4.00 a.m. on 29 January 2021.

### *European Convention on Human Rights*

The amendments contained in these Regulations do not change the engagement under the International Travel Regulations or the Restriction Regulations of individual rights under the Human Rights Act 1998 and the European Convention on Human Rights; the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health, and are proportionate.

## **3. Legislative background**

The Public Health (Control of Disease) Act 1984 (“the 1984 Act”), and regulations made under it, provide a legislative framework for health protection in England and Wales. The Regulations are made in reliance on the powers in sections 45B, 45C (1) and (3) 45F(2) and 45P(2) of the 1984 Act.

The Explanatory Memoranda to the International Travel Regulations and the Restriction Regulations provide further information on these powers.

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

The International Travel Regulations were made on 5 June 2020 and came into force on 8 June 2020 in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

The International Travel Regulations are kept under review. Following advice received from the Joint Biosecurity Centre (JBC) regarding the emergence of a new strain of coronavirus first identified in South Africa, in December 2020 the Welsh Government decided to impose additional measures on travellers who returned to Wales from that country and members of their household. The enhanced isolation requirements were also applied to travellers from South Africa already in Wales that had recently returned. The Welsh Government subsequently extended those additional measures to a number of other Southern African countries as well as Tanzania and the Democratic Republic of the Congo following advice subsequently received from the Joint Biosecurity Centre regarding risks associated with this new variant.

Further advice which has now been received from the JBC indicates that the current restrictions in place in response to the spread of the new variant should remain in place and that, as a precautionary approach, these measures should be extended to the Republic of Burundi and the Republic of Rwanda because the JBC have low confidence that the variant will be detected if it spreads into these countries given the limited testing and sequencing capacity.

The JBC have also identified a small number of confirmed cases of VOC202012/02 in the UK, which include reported travel from United Arab Emirates or a contact with travellers from the United Arab Emirates. Therefore, following a precautionary approach, these additional measures should be extended to United Arab Emirates

The International Travel Regulations are therefore being amended so that any person arriving into Wales from the Republic of Burundi, the Republic of Rwanda or the United Arab Emirates will be required to isolate in accordance with the enhanced restrictions regime and that isolation requirement will also apply to all members of the household of any person entering Wales from those countries as of 4.00 a.m. on Friday 29 January 2021.

The International Travel Regulations disapply all sectoral exemptions in Schedule 2 of the International Travel Regulations to travellers from countries that are subject to additional measures. Therefore, no person arriving into Wales who has been in these countries in the previous 10 days can be exempted from the requirements to provide passenger information or isolate. A more limited list than is usual of reasons for temporarily leaving isolation will also apply, as part of the response to the threat to public health.

These changes are necessary because of emerging health risks being reported from these countries that a new strain of coronavirus with high levels of transmissibility has been identified.

To effectively respond to the emerging situation, amendments have also been made to the No. 5 Regulations, which will require a person who entered Wales before 4.00 a.m. on 29 January having been in these countries in the previous 10 days to isolate for 10 days from the date they were last in those countries, and a more limited list than is usual of reasons for temporarily leaving isolation will also apply. This requirement will also extend to any members of that person's household.



To effectively support the implementation of these new requirements, Public Health Wales is now urgently contacting all residents in Wales who have been in these countries in the past 10 days to explain the new isolation requirements.

The Welsh Ministers consider that these amendments are proportionate to what they seek to achieve, which is to respond to a serious and imminent threat to public health.

## **5. Consultation**

Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, there has been no public consultation in relation to these Regulations.

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

There has been no regulatory impact assessment in relation to these Regulations due to the need to put them in place urgently to deal with a serious and imminent threat to public health.



Ein cyf/Our ref MA/VG/0394/21

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

28 January 2021

Dear Elin,

**The Health Protection (Coronavirus, International Travel and Restrictions)  
(Amendment) (No. 4) (Wales) Regulations 2021**

I have today made these Regulations under sections 45B, 45C(1) and (3), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984. These Regulations come into force in at 4.00am on 29 January 2021. I attach a copy of the statutory instrument and I intend to lay this and an accompanying Explanatory Memorandum once the statutory instrument has been registered.

In accordance with the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984, this instrument must be approved by the Senedd by 3 March 2021 in order for it to remain in effect. In these circumstances I understand Standing Order 21.4A is relevant and the Business Committee may establish and publish a timetable for the responsible committee or committees to report. I intend to schedule these Regulations for debate in Plenary on 9 February 2021.

I am copying this letter to the Minister for Finance and Trefnydd, Mick Antoniw MS as Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely,

**Vaughan Gething AS/MS**  
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol  
Minister for Health and Social Services

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
0300 0604400

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

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



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**WRITTEN STATEMENT**  
**BY**  
**THE WELSH GOVERNMENT**

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**TITLE** Amendments to the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020  
**DATE** 28 January 2021  
**BY** Vaughan Gething, Minister for Health and Social Services

Members will be aware that the Welsh Government made provision in the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 to ensure that travellers entering Wales from overseas countries and territories must isolate for 10 days and provide passenger information, to prevent the further spread of coronavirus. These restrictions came into force on 8 June 2020.

On 10 July, the Welsh Government amended these Regulations to introduce exemptions from the isolation requirement for a list of countries and territories, and a limited range of people in specialised sectors or employment who may be exempted from the isolation requirement or excepted from certain provisions of the passenger information requirements.

Since then these Regulations have been kept under review and a number of changes to the list of exempt countries and territories have been made, most recently to remove all countries and territories from this list on 18 January 2021.

Members will also be aware that enhanced isolation requirements have been introduced in relation to persons arriving into Wales from countries where public health concerns have identified in relation to the transmission of variant strains of coronavirus

Today I reviewed the latest JBC assessments and I have decided that the enhanced isolation requirements applying to South Africa, Namibia, Zimbabwe, Botswana, Eswatini, Zambia, Malawi, Lesotho, Mozambique, Angola, Mauritius, Seychelles, the Democratic Republic of the Congo and the United Republic of Tanzania should be maintained and reviewed in a further three weeks. In addition, I have decided that a precautionary approach should be taken and that the Republic of Burundi, Republic of Rwanda and the United Arab Emirates will be added to the list of countries subject to enhanced isolation requirements.

All travellers arriving into Wales who have been in the Republic of Burundi, Republic of Rwanda or the United Arab Emirates in the previous 10 days will be required to isolate

for 10 days and will only be able to leave isolation in very limited circumstances. The same isolation requirements will also apply to all members of their household. These enhanced isolation requirements will also apply to persons already in Wales who have been in these countries in the last 10 days and members of their households.

New exceptions have also been introduced to the ban on the arrival in Wales of aircrafts and vessels travelling directly from a country or territory subject to enhanced isolation measures, so that their arrival is permitted in the following circumstances:

- (1) aircraft which are landing for the purpose of refuelling or maintenance where no passengers board or disembark,
- (2) aircraft which are an air ambulance and landing for the purpose of transporting a person for medical treatment, and
- (3) vessels are required to moor pursuant to a safety direction issued as the result of an accident (under Schedule 3A to the Merchant Shipping Act 1995).

The necessary regulations will be made today and the additional measures applying to the Republic of Burundi, Republic of Rwanda and the United Arab Emirates will come into force at 04:00 on Friday 29 January 2021.

## **SL(5)739 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 2) Regulations 2021**

### **Background and Purpose**

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (“the principal Regulations”) to –

- permit a person living in an Alert Level 4 area (which currently includes the whole of Wales) to leave the place where they are living to exercise with one other person (this is in addition to the existing provision which permits a person to leave their home to exercise with a member of the person’s household or extended household or the person’s carer);
- provide that automatic car washes may continue to be open in an Alert Level 4 area;
- in all Alert Levels, permit a household that has ceased to be treated as part of an extended household to form a new extended household, provided that at least 10 days have passed since any member of the household last participated in a gathering with a member of any other household in the previous extended household;
- make consequential and other minor changes to ensure consistency with the new provisions. This includes correcting a minor drafting point in the principal Regulations identified by this Committee in the report on the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) Regulations 2021.

These Regulations came into force on 30 January 2021.

### **Procedure**

Made Affirmative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd must approve the Regulations within 28 days (excluding any days when the Senedd is dissolved or in recess for more than four days) of the date they were made for them to continue to have effect.

### **Technical Scrutiny**

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



## Merits Scrutiny

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

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

We note the Welsh Government's justification for any potential interference with human rights. The Explanatory Memorandum provides that these Regulations reduce the extent in which the restrictions and requirements in the principal Regulations interfere with individual rights. In particular, we note the following paragraphs in the Explanatory Memorandum which provide that:

*"Whilst the principal Regulations, as amended by these Regulations, engage individual rights under the Human Rights Act 1998 and the European Convention on Human Rights, the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health and are proportionate.*

*Article 5 (right to liberty), Article 8 (right to respect for private and family life), Article 9 (freedom of thought, conscience and religion), Article 11 (freedom of assembly and association) and Article 1 of the First Protocol (protection of property) are engaged by the principal Regulations.*

*Each of these are qualified rights, which permit the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health and are proportionate. Any interference with these rights also needs to be balanced with the State's positive obligations under Article 2 (right to life). The adjustment of the restrictions and requirements under the principal Regulations by these Regulations is a proportionate response to the spread of the coronavirus. It balances the need to maintain an appropriate response to the threat posed by the coronavirus against the rights of individuals and businesses, in a manner which remains proportionate to the need to reduce the rate of transmission of the coronavirus, taking into account the scientific evidence.*

*These amending Regulations reduce the extent in which the restrictions and requirements under the principal Regulations interfere with those individual rights."*



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

We note that there has been no formal consultation on these Regulations. In particular, we note the following paragraphs in the Explanatory Memorandum:

*"Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, there has been no public consultation in relation to these Regulations."*

### **Welsh Government response**

A Welsh Government response is not required.

#### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**2 February 2021**



*Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.*

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W E L S H S T A T U T O R Y  
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**2021 No. 103 (W. 28)**

**PUBLIC HEALTH, WALES**

**The Health Protection (Coronavirus  
Restrictions) (No. 5) (Wales)  
(Amendment) (No. 2) Regulations  
2021**

**EXPLANATORY NOTE**

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

Part 2A of the Public Health (Control of Disease) Act 1984 enables the Welsh Ministers, by regulations, to make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Wales.

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (S.I. 2020/1609 (W. 335)) (“the Restrictions Regulations”) to—

- (a) permit a person living in an Alert Level 4 area (which currently includes the whole of Wales) to leave the place where they are living to exercise with 1 other person (this is in addition to the existing provision which permits a person to leave their home to exercise with a member of the person’s household or extended household or the person’s carer);



- (b) provide that automatic car washes may continue to be open in an Alert Level 4 area;
- (c) in all Alert Levels, permit a household that has ceased to be treated as part of an extended household to form a new extended household, provided that at least 10 days have passed since any member of the household last participated in a gathering with a member of any other household in the previous extended household;
- (d) make consequential and other minor changes to ensure consistency with the new provisions.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has not been prepared as to the likely cost and benefit of complying with these Regulations.

*Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.*

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W E L S H   S T A T U T O R Y  
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**2021 No. 103 (W. 28)**

**PUBLIC HEALTH, WALES**

**The Health Protection (Coronavirus  
Restrictions) (No. 5) (Wales)  
(Amendment) (No. 2) Regulations  
2021**

*Made* at 2.19 p.m. on 29 January 2021

*Laid* before Senedd  
*Cymru* at 5.30 p.m. on 29 January 2021

*Coming into force* 30 January 2021

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 45C(1) and (3)(c), 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984(1).

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

The Welsh Ministers consider that restrictions and requirements imposed by these Regulations are proportionate to what they seek to achieve, which is a public health response to that threat.

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(1) 1984 c. 22. Sections 45C, 45F and 45P were inserted by section 129 of the Health and Social Care Act 2008 (c. 14). The functions under these sections are conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister, as respects Wales, is the Welsh Ministers.

In accordance with section 45R of that Act the Welsh Ministers are of the opinion that, by reason of urgency, it is necessary to make this instrument without a draft having been laid before, and approved by a resolution of, Senedd Cymru.

#### **Title and coming into force**

**1.**—(1) The title of these Regulations is the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 2) Regulations 2021.

(2) These Regulations come into force on 30 January 2021.

#### **Amendment of the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020**

**2.**—(1) The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020<sup>(1)</sup> are amended as follows.

(2) In regulation 16(4)(a), omit “and by Part II of the Fire Precautions (Workplace) Regulations 1997”.

(3) In paragraph 3 of Schedule 1—

- (a) in sub-paragraph (4), after “1 extended household” insert “at any one time”;
- (b) in sub-paragraph (6), in the English language text, for “being in” substitute “part of” in both places it occurs;
- (c) in sub-paragraph (7)—
  - (i) in the English language text, for “being in” substitute “part of” in both places it occurs;
  - (ii) after “any other household” insert “unless a period of at least 10 days has expired since any member of the household last participated in a gathering with any member of another household in reliance on being treated as part of an extended household with that household”.

(4) In paragraph 3 of Schedule 2—

- (a) in sub-paragraph (4), after “1 extended household” insert “at any one time”;
- (b) for sub-paragraph (5) substitute—

“(5) Where a household has agreed to be treated as an extended household with other households under paragraph 3 of Schedule 1 (“the previous extended household”), it may

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(1) S.I. 2020/1609 (W. 335) as amended by S.I. 2020/1610 (W. 336), S.I. 2020/1623 (W. 340), S.I. 2020/1645 (W. 345), S.I. 2021/20 (W. 7), S.I. 2021/46 (W. 10), S.I. 2021/57 (W. 13), S.I. 2021/66 (W. 15) and S.I. 2021/95 (W. 26).

make an agreement under this paragraph only with those other households, unless a period of at least 10 days has expired since any member of the household last participated in a gathering with a member of those households in reliance on being treated as part of the previous extended household.”;

- (c) in sub-paragraph (7), in the English language text, for “being in” substitute “part of” in both places it occurs;
  - (d) in sub-paragraph (8)—
    - (i) in the English language text, for “being in” substitute “part of” in both places it occurs;
    - (ii) after “any other household” insert “unless a period of at least 10 days has expired since any member of the household last participated in a gathering with any member of another household in reliance on being treated as part of an extended household with that household”.
- (5) In paragraph 3 of Schedule 3—
- (a) in sub-paragraph (4), after “1 extended household” insert “at any one time”;
  - (b) for sub-paragraph (5) substitute—

“(5) Where a household has agreed to be treated as an extended household with other households under paragraph 3 of Schedule 1 (“the previous extended household”), it may make an agreement under this paragraph only with those other households, unless a period of at least 10 days has expired since any member of the household last participated in a gathering with a member of those households in reliance on being treated as part of the previous extended household.”;
  - (c) in sub-paragraph (7), in the English language text, for “being in” substitute “part of” in both places it occurs;
  - (d) in sub-paragraph (8)—
    - (i) in the English language text, for “being in” substitute “part of” in both places it occurs;
    - (ii) after “any other household” insert “unless a period of at least 10 days has expired since any member of the household last participated in a gathering with any member of another household in reliance on being treated as part of an extended household with that household”.
- (6) In Schedule 4—

- (a) in paragraph 1(4)(f)—
  - (i) in paragraph (ii), omit “or” in the second place it occurs;
  - (ii) in paragraph (iii), for “;” substitute “, or”;
  - (iii) after paragraph (iii) insert—
    - “(iv) with 1 other person who is not a member of the person’s household or extended household or the person’s carer, and any children under the age of 11 who are members of either person’s household;”;
- (b) in paragraph 2(4), at the end insert—
  - “(i) exercising outdoors, except in a private dwelling, with—
    - (i) members of the person’s extended household, or
    - (ii) 1 other person and any children under the age of 11 who are members of either person’s household,
  - together with any carer of a person participating who is present.”;
- (c) in paragraph 3—
  - (i) in sub-paragraph (3), after “1 extended household” insert “at any one time”;
  - (ii) in sub-paragraph (4), in the words after paragraph (b)(ii)—
    - (aa) before “an agreement” insert “(“the previous extended household”), ”;
    - (bb) after “other households” insert “unless a period of at least 10 days has expired since any member of the single adult household last participated in a gathering with a member of those households in reliance on being treated as part of the previous extended household”;
  - (iii) in sub-paragraph (5), in the English language text, for “being in” substitute “part of” in both places it occurs;
  - (iv) in sub-paragraph (6)—
    - (aa) in the English language text, for “being in” substitute “part of” in both places it occurs;
    - (bb) after “any other household” insert “unless a period of at least 10 days has expired since any member of the household last participated in a gathering with any member of

another household in reliance on being treated as part of an extended household with that household”;

(d) after paragraph 62 insert—

“**62A.** Automatic car washes.”

*Mark Drakeford*

First Minister, one of the Welsh Ministers

At 2.19 p.m. on 29 January 2021

## **Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 2) Regulations 2021**

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

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 2) Regulations 2021.

**Mark Drakeford**  
**First Minister**

29 January 2021

## **1. Description**

The Regulations amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (“the principal Regulations”).

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

These Regulations are made under the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984 (c. 22) (“the 1984 Act”). The Regulations are made without a draft having been laid and approved by the Senedd. It is the opinion of the Welsh Ministers that, by reason of urgency, it is necessary to make the Regulations without a draft being so laid and approved so that public health measures can be taken in order to quickly respond to the threat to human health from coronavirus. The Welsh Ministers are of the opinion that the restrictions and requirements as set out in the principal Regulations, as amended by these Regulations, are necessary and proportionate as a public health response to the current threat posed by coronavirus.

### *European Convention on Human Rights*

Whilst the principal Regulations, as amended by these Regulations, engage individual rights under the Human Rights Act 1998 and the European Convention on Human Rights, the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health and are proportionate.

Article 5 (right to liberty), Article 8 (right to respect for private and family life), Article 9 (freedom of thought, conscience and religion), Article 11 (freedom of assembly and association) and Article 1 of the First Protocol (protection of property) are engaged by the principal Regulations.

Each of these are qualified rights, which permit the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health and are proportionate. Any interference with these rights also needs to be balanced with the State’s positive obligations under Article 2 (right to life). The adjustment of the restrictions and requirements under the principal Regulations by these Regulations is a proportionate response to the spread of the coronavirus. It balances the need to maintain an appropriate response to the threat posed by the coronavirus against the rights of individuals and businesses, in a manner which remains proportionate to the need to reduce the rate of transmission of the coronavirus, taking into account the scientific evidence.

These amending Regulations reduce the extent in which the restrictions and requirements under the principal Regulations interfere with those individual rights.



### 3. Legislative background

The 1984 Act, and regulations made under it, provide a legislative framework for health protection in England and Wales. These Regulations are made under sections 45C(1) and (3), 45F(2) and 45P(2) of the 1984 Act. Further information on these powers is set out in the Explanatory Memorandum to the principal Regulations.

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

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) which causes the disease known as COVID-19.

The principal Regulations made on 18 December set out restrictions and requirements which will apply to four different Alert Levels with the determination of applicable Alert Levels as set out in the updated [Coronavirus Control Plan](#). Wales has been in Alert Level Four since the beginning of the day on 20 December 2020.

The principal Regulations were reviewed on 28 January 2021, in accordance with regulation 2(b) of those Regulations, and the Welsh Ministers agreed that the current level of restrictions (Alert Level 4) should continue. However the following changes are now being made to the principal Regulations:

- a. permitting a household that has ceased to be treated as part of an extended household to form a new extended household, provided that at least 10 days have passed since any member of the household last participated in a gathering with a member of their previous extended household; and
- b. permitting a person to leave the place they are living to exercise with one other person from any household together with any children under 11 from either of those households (this affects Alert Level Four only).

Additionally, these Regulations also make minor, consequential and technical amendments to the principal Regulations.

#### *Extended households*

In all Alert Levels, the principal Regulations permit extended households to be formed, subject to specific restrictions and requirements set out in the relevant Schedule to the Regulations. In Alert Level 4 the Regulations permit "single adult households" to form an extended household (generally known as a support bubble) with one other household. However, it has been the case – in all Alert levels – that if any adult member of the extended household no longer wishes to be part of an extended household, then the extended household came to an end and no future extended household could be formed<sup>1</sup>.

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<sup>1</sup> Although extended households or support bubbles have been reformed in different configurations each time the principal regulations have been replaced. Since Boxing Day, a person can only be part of an exclusive support bubble.

It is recognised that relationships and circumstances may change over time, and the Regulations are now being amended to provide that where one extended household comes to an end, a new extended household may be formed provided that at least 10 days have passed since any member of the household last participated in a gathering with a member of the previous extended household. Despite this, people are urged not to change support bubbles unless absolutely necessary.

#### *Leaving the place where a person lives for the purposes of exercise (in Alert Level 4)*

A person living in an Alert Level 4 area (which is currently the whole of Wales), may currently leave the place where they are living for the purposes of exercise, if they conduct that exercise (a) alone; (b) with another member of their household; or (c) with their carer. These Regulations will now permit a person to also exercise with one other person (outside of their household), together with any children under the age of 11 from those households.

This change is being made to help people with issues of loneliness and isolation and to support well-being more widely through increased exercise.

#### *Automatic car washes*

These Regulations provide that automatic car washes may continue to be open in an Alert Level 4 area.

#### *Consequential and technical amendments*

In light of the amendments made above, a number of minor consequential amendments are also required to the principal Regulations. Additionally, the opportunity is being taken to correct a minor drafting point in the principal Regulations identified by the Legislation, Justice and Constitution Committee in their report on the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) Regulations 2021.

### **5. Consultation**

Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, there has been no public consultation in relation to these Regulations.

### **6. Regulatory and other impact assessments**

A regulatory impact assessment has not been prepared in relation to these Regulations due to the need to put them in place urgently to deal with a serious and imminent threat to public health.



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

29 January 2021

Dear Elin

**The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 2) Regulations 2021**

I have today made these Regulations under sections 45C(1) and (3)(c), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984. These Regulations come into force on 30 January 2021. I attach a copy of the statutory instrument and I intend to lay this and an accompanying Explanatory Memorandum once the statutory instrument has been registered.

In accordance with the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984, this instrument must be approved by the Senedd by 4 March 2021 in order for it to remain in effect. In these circumstances I understand Standing Order 21.4A is relevant and the Business Committee may establish and publish a timetable for the responsible committee or committees to report. I intend to schedule these Regulations for debate in Plenary on 9 February 2021.

I am copying this letter to the Minister for Finance and Trefnydd, Mick Antoniw MS as Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely

**MARK DRAKEFORD**

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

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

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



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## WRITTEN STATEMENT BY THE WELSH GOVERNMENT

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**TITLE**            **Review of the Health Protection (Coronavirus Restriction) (No.5) (Wales) Regulations 2020**

**DATE**            **29 January 2021**

**BY**                **Mark Drakeford MS, First Minister**

The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 provide for a system of alert levels in Wales, as set out in the Welsh Government's updated *Coronavirus Control Plan*. They require a review of restrictions is undertaken every three weeks.

The most recent review was completed on 28 January and concluded the whole of Wales should remain at Alert Level 4. This means everyone must stay at home and work from home wherever possible. All non-essential retail, hospitality venues, licensed premises and leisure facilities must remain closed.

Cases of coronavirus are falling in all parts of Wales but they remain too high to consider a relaxation of the restrictions. The number of people testing positive is high and the intense pressure on our NHS remains. We can all be proud of excellent progress of the vaccination programme in Wales, but there is still a considerable way to go. We must not let the virus re-establish itself by moving to a lower alert level too soon.

At the last review of the restrictions, I said that unless there was a significant reduction in cases of coronavirus before today's review, schools and colleges would continue to provide remote learning until February half term. As a result of the people of Wales adhering to current restrictions, there are positive signs that collectively we are helping to drive down transmission in our communities. However, in light of the wider NHS indicators such as ICU bed occupancy, a cautious approach is still required so there will be no further opening up of education this side of half term and current arrangements remain in place.

Opening up education remains a top priority. If we continue to see numbers fall over the next month then our intention would be to see primary school pupils return in a phased and flexible way from 22 February. This recognises that our youngest learners find it more difficult to learn remotely; the evidence of the long-term impact, particularly for our youngest learners and the scientific evidence on transmission in younger children.

If there is sufficient headroom, we will bring back small numbers of secondary and college learners at the same time. We are working with schools, post-16 providers and unions to determine how that would be best achieved. Our priority will be vocational learners, including apprentices, who need access to training or workplace environments in order to undertake practical qualifications.

In the meantime, we will continue to work closely with unions and local authorities to discuss what further measures we can all take to ensure education settings are Covid secure environments. These discussions will be informed by health and science advice.

Education provision will continue after half term for vulnerable learners, children of critical workers, and learners undertaking essential exams or assessments and special schools and PRUs will continue to remain open where possible.

The restrictions currently provide for support bubbles to be formed to help single people and single parents. I recognise people's relationships and circumstances may change over time and we will amend regulations and guidance to allow for a support bubble to be changed provided both households do not see any other household for a period of 10 days before forming the new support bubble. This should be a last resort as it is safest if we do not change any support bubble we are in.

The restrictions will also be amended in Wales to allow a maximum of two people from two different households to exercise together, although they should make every effort to maintain social distancing. People must still start and finish exercise from their home unless a person needs to travel for health reasons. This means that, for now, if two people are meeting they will need to live nearby each other as travel for exercise is generally not allowed.

Finally, automatic car washes will be listed alongside petrol stations and garages as allowed to open to provide legal clarity.

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

### **Background and Purpose**

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”) to implement changes identified by the Joint Biosecurity Centre in the public health risk status of certain countries or territories, as is necessary for the protection of public health.

The International Travel Regulations impose requirements on persons entering Wales after having been abroad. They include a requirement for persons arriving in Wales to isolate for a period determined in accordance with the International Travel Regulations.

The requirements imposed by the International Travel Regulations are subject to exceptions, and certain categories of person are exempt from having to comply.

Persons entering Wales after being in one or more of the countries and territories listed in Schedule 3 to the International Travel Regulations (“exempt countries and territories”) are not required to isolate. Part 2 of these Regulations amends the list of exempt countries and territories.

Regulation 2 amends the International Travel Regulations to remove the entry for the United Arab Emirates. Regulation 3 makes transitional provisions in this regard.<sup>1</sup>

These Regulations came into force at 4.00 am on 12 January 2021.

### **Procedure**

Negative.

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

### **Technical Scrutiny**

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

### **Merits Scrutiny**

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<sup>1</sup> It is noted that the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 2) Regulations 2021 have since removed all countries from the list of exempt countries and territories.



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

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

We note the Welsh Government's justification for any potential interference by these Regulations with human rights. In particular, we note the following paragraph in the Explanatory Memorandum:

*"The amendments contained in these Regulations do not change the engagement under the International Travel Regulations of individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights; the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health, and are proportionate."*

Section 5(5) of the European Union Withdrawal Act 2018 states that the European Charter of Fundamental Rights ("the Charter") is not part of domestic law on or after IP completion day, which was at 23:00 on 31 December 2020. The Charter therefore no longer forms part of domestic law. In light of this, it would assist the Committee to receive an explanation as to why reference to the Charter is made in the Explanatory Memorandum.

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

We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a "made negative" instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Rebecca Evans MS, Minister for Finance and Trefnydd, in a letter to the Llywydd dated 11 January 2021.

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

*"It has been necessary to urgently remove the United Arab Emirates (UAE) from the list of exempted countries and territories that are set out in the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020, following advice which indicates the risk to public health of inbound travel from UAE has risen.*

*Not adhering to the 21 day convention, and bringing them into force before they are laid, allows these Regulations to come into force at the earliest opportunity, and in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case."*

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

We note there has been no formal consultation on these Regulations. In particular, we note the following paragraph in the Explanatory Memorandum:



*“Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, there has been no public consultation in relation to these Regulations.”*

We also note that the letter from Rebecca Evans MS, Minister for Finance and Trefnydd to the Llywydd dated 11 January 2021 states that:

*“Due to the immediacy of the Regulations they have not been subject to consultation.”*

## **Welsh Government response**

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

## **Committee Consideration**

The Committee considered the instrument at its meeting on 25 January 2021 and reports to the Senedd in line with the reporting points above.





**Government Response: *The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) Regulations 2021***

**Merit Scrutiny point 1:**

**Response:**

The reference in the Explanatory Memorandum to the European Charter of Fundamental Rights is incorrect, and was intended to refer to the European Convention on Human Rights. The Government will ensure that any references to the European Convention on Human Rights are correct in the explanatory memoranda to any further amendment regulations.

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

### **Background and Purpose**

The Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021 (“the Regulations”) are made in reliance on the powers in sections 45B, 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984.

The Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”) were made on 5 June 2020 and came into force on 8 June 2020 in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). The Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 were made on 15 June, and came into force on 17 June. They place obligations on operators of international passenger services arriving into Wales from outside the Common Travel Area (i.e. the open borders area comprising the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland) to ensure that passengers travelling on those services are made aware of their obligations under the International Travel Regulations to provide information and, where relevant, isolate on their return to Wales.

The Regulations amend the International Travel Regulations so as to introduce further measures to protect public health, in the form of a pre-departure testing scheme, which will require all arrivals into Wales from outside the Common Travel Area to possess notification of a negative coronavirus test. They also introduce a new requirement on operators of international passenger services arriving into Wales from outside the Common Travel Area to ensure that passengers on such services possess notification of a negative test result, which it will be a criminal offence to breach.

The new requirements in relation to pre-departure testing came into effect for any travellers arriving in Wales from 4.00 am on Monday 18 January.

### **Procedure**

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd



is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

## Technical Scrutiny

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

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

Paragraph 3(1) of new Schedule 1A, as inserted by regulation 3(6) of the Regulations, incorrectly references regulation 6A(4)(a). The correct reference appears instead to be regulation 6A(4)(c).

Paragraph 3(1)(a) of new Schedule 1A, as inserted by regulation 3(6) of the Regulations, incorrectly references paragraph 8 of Schedule 2. The correct reference appears instead to be paragraph 7 of Schedule 2.

## Merits Scrutiny

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

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

We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a "made negative" instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Rebecca Evans MS, Minister for Finance and Trefnydd, in a letter to the Llywydd dated 15 January 2021.

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

*"These Regulations introduce further measures to protect public health, in the form of a pre-departure testing scheme, which will require all arrivals into Wales from outside the common travel area to possess notification of a negative coronavirus test. The Regulations also introduce a new requirement on operators of international passenger services arriving into Wales from outside the common travel area to ensure that passengers on such services possess notification of a negative test result, which it will be a criminal offence to breach.*

*Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity, and in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case."*

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



We note the Welsh Government's justification for any potential interference with human rights. In particular, we note the following paragraph in the Explanatory Memorandum:

*"The amendments to the International Travel Regulations and operator requirement provisions contained in these Regulations remain consistent with the engagement under the International Travel Regulations of individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights; the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health, and are proportionate. ."*

Section 5(5) of the European Union Withdrawal Act 2018 states that the European Charter of Fundamental Rights ("the Charter") is not part of domestic law on or after IP completion day, which was at 23:00 on 31 December 2020. The Charter therefore no longer forms part of domestic law. In light of this, it would assist the Committee to receive an explanation as to why reference to the Charter is made in the Explanatory Memorandum.

It is noted also that section 4 of the Explanatory Memorandum asserts the proportionality of the Regulations, and the Regulations themselves impose safeguards on information sharing in regulations 9(4) and (6).

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

We note there has been no formal consultation on these Regulations. In particular, we note the following paragraph in the Explanatory Memorandum:

*"Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, there has been no public consultation in relation to these Regulations."*

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

The Explanatory Memorandum provides that a regulatory impact assessment has not been carried out in relation to these Regulations due to the need to put them in place urgently to deal with a serious and imminent threat to public health.

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

The references to regulations 3(2), 3(3) and 3(4) in the third, fourth and fifth paragraphs respectively of the Explanatory Note are incorrect and should instead refer to regulations 3(3), 3(4) and 3(5) respectively.

It is accepted that the Explanatory Note does not form part of the Regulations. However, its inclusion is to assist citizens in accessing and understanding the new law implemented by the Regulations and, as such, it is desirable the correct references are used.



## Welsh Government response

A Welsh Government response is required in relation to the technical reporting point and the second merits reporting point.

## Committee Consideration

The Committee considered the instrument at its meeting on 25 January 2021 and reports to the Senedd in line with the reporting points above.



**Government Response: *Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021***

**Technical Scrutiny point 1**

The Welsh Government notes the technical scrutiny point and will address this at the next available opportunity.

**Merit Scrutiny point 2:**

**Response:**

The reference in the Explanatory Memorandum to the European Charter of Fundamental Rights is incorrect, and was intended to refer to the European Convention on Human Rights. The Government will ensure that any references to the European Convention on Human Rights are correct in the explanatory memoranda to any further amendment regulations.

# Agenda Item 5

## Subordinate Legislation with Clear Reports 08 February 2021

### SL(5)734 – Code of Practice and Guidance under the Social Services and Well-being (Wales) Act 2014

#### Background and Purpose

This document is in two parts.

Part 1 of this document is a code of practice for local authorities on the exercise of their functions in relation to market stability reports. It sets out the approach that local authorities must take, in collaboration with Local Health Boards and Regional Partnership Boards, to prepare and publish a market stability report for their Regional Partnership Boards area.

Part 2 of this document is statutory guidance for local authorities and Local Health Boards on partnership working through Regional Partnership Boards to prepare and publish market stability reports.

#### Procedure: Draft Negative

The Welsh Ministers have laid a draft of the code before the Senedd. If, within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the draft being laid, the Senedd resolves not to approve the draft code then the Welsh Ministers must not issue the code.

If no such resolution is made, the Welsh Ministers must issue the code (in the form of the draft) and the code comes into force on a day specified in an order made by the Welsh Ministers.

(There is no Senedd procedure for the statutory guidance part of this document.)

**Parent Act:** Social Services and Well being (Wales) Act 2014

**Date Made:**

**Date Laid:** 26 January 2021

**Coming into force date:**



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**WRITTEN STATEMENT  
BY  
THE WELSH GOVERNMENT**

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**TITLE**        **The Food and Drink (Miscellaneous Amendments Relating to Food and Wine Composition, Information and Labelling) Regulations 2021**

**DATE**        **29 January 2021**

**BY**            **Rebecca Evans MS, Minister for Finance and Trefnydd**

**SO30C –SI laid in Parliament which amends legislation in a devolved area**

**The Food and Drink (Miscellaneous Amendments Relating to Food and Wine Composition, Information and Labelling) Regulations 2021**

The 2021 Regulations amend the following legislation:

Retained direct EU legislation

- Regulation (EU) 1169/2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC)
- Commission Implementing Regulation (EU) 1337/2013 laying down rules for the application of Regulation (EU) No 1169/2011 of the European Parliament and of the Council as regards the indication of the country of origin or place of provenance for fresh, chilled and frozen meat of swine, sheep, goats and poultry
- Commission Implementing Regulation (EU) 2018/775 laying down rules for the application of Article 26(3) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, as regards the rules for indicating the country of origin or place of provenance of the



primary ingredient of a food

- Commission Delegated Regulation (EU) 2019/33 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards applications for protection of designations of origin, geographical indications and traditional terms in the wine sector, the objection procedure, restrictions of use, amendments to product specifications, cancellation of protection, and labelling and presentation
- Commission Delegated Regulation (EU) 2019/934 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards wine-growing areas where the alcoholic strength may be increased, authorised oenological practices and restrictions applicable to the production and conservation of grapevine products, the minimum percentage of alcohol for by-products and their disposal, and publication of OIV files
- Commission Implementing Regulation (EU) 2019/935 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards analysis methods for determining the physical, chemical and organoleptic characteristics of grapevine products and notifications of Member States decisions concerning increases in natural alcoholic strength
- The 2021 regulations also amend certain EU derived domestic law that applies in relation to England only.

### **Any impact the SI may have on the Senedd Cymru's legislative competence and/or the Welsh Ministers' executive competence**

The 2020 Regulations do not impact on the Senedd's legislative competence or the Welsh Ministers' executive competence.

The instrument will, as far as possible, provide that retained EU law and existing domestic law has the same effect as current legislation, ensuring that consumers and businesses are able, after the end of the Transition Period, to provide and make use of the same information, presented in the same way as before. This instrument provides for the changes that will need to be made as a result of the UK no longer being in the EU.

### **The purpose of the amendments**

This instrument amends relevant retained direct EU legislation, concerning food information to consumers, to address deficiencies in retained EU law arising from the UK's departure from the EU. It also ensures the operability of certain domestic pieces of food legislation in England on Caseins and Honey after the end of the transition period.

The amendments in the instrument apply after the end of the transition period following the UK's exit from the EU.

There are no changes to policy, however, there are substitutions which arise as a result of the UK no longer being in the EU and which will have 'real world' effects on the information and the way in which it is presented to consumers. This instrument provides for transition to changes in the domestic SIs and also provides for enforcement arrangements that concern how geographical indication (GI) designations on labelling of products can be used when the UK is no longer in the EU.

The SI makes amendments to regulations which ensure the wine regime as a whole can operate effectively across the UK, in the way in which it does prior to the end of the transition period. Functions which sat with the EU or Member states have been transferred back to the Secretary of State or the Welsh Ministers as appropriate.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here:

<https://statutoryinstruments.parliament.uk/timeline/7pvsITeQ/ProposedNegative/>

### **Why consent was given**

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency and expediency and to ensure consistency and coherence of the statute book. The amendments have been considered fully and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU.

## UK MINISTERS ACTING IN DEVOLVED AREAS

### **216 - The Food and Drink (Miscellaneous Amendments Relating to Food and Wine Composition, Information and Labelling) Regulations 2021**

*Laid in the UK Parliament: 11 January 2021*

#### **Sifting**

Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	26 January 2021
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	26 January 2021
Date sifting period ends in UK Parliament	27 January 2021
SICM under SO 30A (because amends primary legislation)	Not required

#### **Scrutiny procedure**

Outcome of sifting	Not known
Procedure	Negative or Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

#### **Background**

These Regulations are proposed to be made by the UK Government under section 8 of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

#### **Summary**

These Regulations amend retained direct EU legislation relating to food information to consumers, to address deficiencies in retained EU law arising from the UK's departure from the EU. The Welsh Ministers' statement says "There are no changes to policy, however, there are substitutions which arise as a result of the UK no longer being in the EU and which will have 'real world' effects on the information and the way in which it is presented to consumers".

For example:

- Food placed on the GB market will need to bear the UK address of the food business responsible for the food information on the label. Currently, this address may be in any of the 27 EU Member States or

the UK. This change is needed to ensure there is a direct and simple way for consumers and enforcement officers (Trading Standards) to contact those responsible for the information provided on food labels.

- For minced meat (excluding beef), indicators of origin such as “EU” and “Non-EU” will change to “UK” and “Non-UK”. But this does not preclude the use of country specific origin labelling instead.

The Regulations also provide that failure to comply with Geographical Indications labelling requirements will not be enforced during a 3-year transition period if the relevant food product was placed on the market during that 3-year period and would have complied with the Geographical Indication rules immediately before 31 December 2020. (However, for wine products, the 3-year transition period does not apply and instead they can continue to be marketed until stocks are exhausted. This approach recognises the longer shelf-life that is typical for wine products.)

This 3-year transition period aligns with the 3-year period until use of the new UK Geographical Indicators logo becomes mandatory.

#### **Statement by Welsh Government**

Legal Advisers agree with the statement laid by the Welsh Government dated 29 January 2021 regarding the effect of these Regulations.

#### **Intergovernmental Agreement on the European Union (Withdrawal) Bill**

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

# Agenda Item 7.1

Mick Antoniw MS Chair of the  
Legislation, Justice and Constitution  
Committee

By email

[Mick.Antoniw@senedd.wales](mailto:Mick.Antoniw@senedd.wales)

Wednesday 03 February 2021

Dear Chair,

**Subject: Scrutiny of Welsh Government regulations and compliance with the Public Sector Equality Duty: Standing order 21.3C (iv)**

We write further to our letter to you of 3<sup>rd</sup> July 2020 and your positive response of 9<sup>th</sup> July 2021. We have been pleased to see that the Committee has since been considering whether Welsh Government has or has not complied with the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 when publishing subordinate legislation. In particular regulation 8 which requires that equality impact assessments are published with regulations.

However, we note that in the committee's report [SL\(5\)726](#) The Health Protection

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Bydd y Comisiwn yn croesawu gohebiaeth yn y Gymraeg a'r Saesneg.

The Commission welcomes correspondence in Welsh or English.

**Ff/T:** 029 2044 7710

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(Coronavirus Restrictions) (No. 5) (Wales) (Amendment) Regulations 2021 states with reference to Standing Order 21.3(ii) that “a Children’s Rights Impact Assessment and Equality Impact Assessments have been completed.” Although there are earlier equality impact assessments and a Children’s Rights Assessment dated 21<sup>st</sup> December 2020 published at <https://gov.wales/impact-assessments-coronavirus>, there are none in relation to these amendment regulations, or the regulations that they amend. We would ask that the Committee reconsiders and requests further clarification.

I am happy to discuss this matter further or to meet with you if you would find it helpful. My email address [ruth.coombs@equalityhumanrights.com](mailto:ruth.coombs@equalityhumanrights.com).

Yours sincerely,

Rev Ruth Coombs

Head of Wales

EHRC Wales | EHRC Cymru

Cc [SeneddLJC@senedd.wales](mailto:SeneddLJC@senedd.wales) [legislation@senedd.wales](mailto:legislation@senedd.wales)

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Llywodraeth Cymru  
Welsh Government

Mick Antoniw MS  
Chair, Legislation, Justice and Constitution Committee  
Senedd Cymru  
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By e-mail to: [SeneddLJC@senedd.wales](mailto:SeneddLJC@senedd.wales)

3 February 2021

Dear Mick,

I was pleased to give evidence to the Committee on Monday, 1 February. I am extremely grateful to the Members of the Committee and Senedd Commission officials who produced, in little over 24 hours, such a thorough and comprehensive report on the Welsh Elections (Coronavirus) Bill enabling me to respond to the recommendations before the Senedd in the Stage 1 debate.

As I said in the debate, I am pleased to accept the majority of the Committee's recommendations. The Government's response to each recommendation is set out in the accompanying schedule and we will lay this letter and the response in the Senedd.

Yours sincerely

**Julie James AS/MS**  
Y Gweinidog Tai a Llywodraeth Leol  
Minister for Housing and Local Government

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

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

**Welsh Government response to the  
Legislation, Justice and Constitution Committee report on the Welsh Elections (Coronavirus) Bill**

	<b>Recommendation:</b>	<b>Welsh Government Response</b>
<b>1</b>	<i>The Minister should publish the Welsh Government's assessment of the impact of the Bill's provisions on human rights as soon as possible and no later than 5 February 2021.</i>	<p>We reject this recommendation.</p> <p>The Welsh Government does not publish its assessments of compatibility with human rights legislation. But we are satisfied that the Bill is within competence and does not breach the Human Rights Act.</p>
<b>2</b>	<i>The Bill should be amended to expressly time limit the contingency measures set out in the Bill, in particular, to provide that the provisions which relate to the 2021 Election cease to apply on the day following the first meeting of the new Senedd.</i>	<p>We reject this recommendation.</p> <p>To the extent that the Bill requires time limits they are already built into the text.</p>
<b>3</b>	<i>The Bill should be amended to remove "or appropriate" from section 5(1).</i>	<p>We reject this recommendation.</p> <p>In the current circumstances of the pandemic, we want to maintain the flexibility that "appropriate" affords, and we draw to Members' attention that the same wording appears in the equivalent Act of the Scottish Parliament.</p>
<b>4</b>	<i>The Bill should be amended so that the First Minister must consult the Electoral Commission, the Chief Medical Officer, and such other persons considered to be appropriate, before exercising the power in section 5(1) of the Bill.</i>	<p>We accept this recommendation in part.</p> <p>We will bring forward an amendment to require the First Minister to consult the Welsh Government's Chief Medical Officer. The Electoral Commission is already under a duty in the Bill to provide advice. The Welsh Government is in continuous dialogue with partners about the</p>



		election, but we do not want to create any ambiguity about who must be consulted and so will not include a general duty to consult other persons.
5	<i>The Minister should clarify during the Stage 1 debate the implications of the drafting of sections 5(2), 5(3), 5(4) and 5(6) of the Bill by confirming our understanding as set out in paragraph 65 and addressing each of the questions in paragraph 66.</i>	<p>We accept this recommendation.</p> <p>The Committee's understanding as set out in paragraph 65 of the report is broadly correct. The Llywydd does have discretion to propose a date. However, it is the Llywydd who fixes the date, but only if the date is agreed by a supermajority.</p> <p>In response to the Committee's questions:</p> <p>The Bill does not make provision for whether or not a motion can be amended. Such provision could be made in Standing Orders, and we have initiated a discussion with Business Committee about the procedures which may be appropriate. In the absence of specific provision in Standing Orders, tabling and selection of amendments would be a matter for the Llywydd.</p> <p>If the Senedd does not vote in favour of a date proposed by the Llywydd, the Llywydd can in principle propose an alternative date. Again, provision about this could be made in Standing Orders. Proposing a new date would not require a fresh proposal by the First Minister. The First Minister's power relates to proposing that the election be postponed, not to the date.</p> <p>The Llywydd cannot fix a date for a postponed election under section 5 other than one expressly approved by a supermajority of the Senedd.</p>

<b>6</b>	<i>Section 6 of the Bill should be amended to include a requirement that the Llywydd make a statement confirming the day fixed for the holding of the poll and explaining why it was necessary to vary the date previously fixed under section 5.</i>	<p>We accept this recommendation.</p> <p>Although there is no equivalent requirement in the power under section 4 of the Government of Wales Act 2006 (GoWA), we will bring forward an amendment to give effect to this, and thus improve transparency in these unprecedented circumstances.</p>
<b>7</b>	<i>The Minister should explain to Members during the course of the Stage 1 debate what measures are to be put in place to specifically provide for the form, manner of preparation and publication of the royal proclamation under section 6 of the Bill, to ensure that the Llywydd is able to fully exercise the power under section 6.</i>	<p>We accept this recommendation.</p> <p>A section 116 Order has been prepared – the Senedd Cymru (Letters Patent and Proclamations) Order 2021 – which is due to be made by Her Majesty in Council on 10 February. The Order includes a form of wording for a proclamation under Section 4(2) and 5(4) of GoWA. We propose that the form of wording can be used as a precedent / template for a proclamation under section 6 of the Bill. We would arrange for the proclamation to be published in the Gazettes. And we would of course work with the Llywydd to draw the attention of everyone involved in the election to a change in the date immediately. We are working with Buckingham Palace on this.</p>
<b>8</b>	<i>The Bill should be amended so that where the regulation making power in section 8 is used to amend primary legislation, the made affirmative procedure should apply.</i>	<p>We accept this recommendation.</p> <p>We will bring forward an amendment to this effect.</p>
<b>9</b>	<i>The Bill should be amended so that regulations made under section 12 that amend primary legislation are subject to the made affirmative procedure.</i>	<p>We accept this recommendation.</p> <p>We will bring forward an amendment to this effect.</p>
<b>10</b>	<i>The Minister should confirm to Members during the course of the Stage 1 debate what type of amendments the Welsh Government may</i>	<p>We accept this recommendation.</p>

	<i>introduce at Stage 2 in respect of contingency arrangements for postal voting.</i>	The type of amendments under consideration at present relate to adjustments to how postal vote applications are processed to minimise rejection of such applications.
<b>11</b>	<i>The Minister should confirm to Members during the course of the Stage 1 debate how and when the Welsh Government may introduce contingency arrangements for early voting.</i>	We accept this recommendation.  We intend to table an amendment at Stage 2 which would confer a power on the Welsh Ministers to provide for additional voting days in the week before polling day for the Senedd election, if the poll is postponed and as long as the poll is not combined with the Police and Crime Commissioner elections.

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

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# Agenda Item 10

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted

Jane Hutt AS/MS  
Y Dirprwy Weinidog a'r Prif Chwip  
Deputy Minister and Chief Whip



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref MA/JH/4157/20

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John Griffiths MS  
Chair  
Equality, Local Government and Communities Committee  
Senedd Cymru  
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16 December 2020

Dear Mick and John,

I wrote to you on 15 October with regards to the UK Government's Domestic Abuse Bill ("the Bill") and informed you that the Bill's progression through the House of Lords is delayed, with the Lords' Second Reading now not expected to commence until January.

I also stated that my officials have been involved in ongoing discussions with their UK Government counterparts with regards to c73(1)(b) which, as currently drafted, significantly encroaches on devolved matters as it allows the Secretary of State (SoS) to issue guidance across the whole range of devolved and non-devolved matters related to domestic abuse and in particular its effect on children.

I am pleased to confirm that collective UK Government agreement has been reached to bring forward amendments to c73 of the Bill to ensure the SoS's power to issue guidance is respectfully limited to matters which are reserved and do not encroach on devolved Welsh matters. We will continue to work closely with the UK Government through implementation of c73(6) (*Duty on the SoS to consult with the Welsh Ministers*), to ensure that the guidance issued takes full account of the devolved position.

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

It remains my position that consent is required for clauses 65, 66 and 68 and Part 1 of Schedule 2 because they fall within the legislative competence of the Senedd. They contain modifications to criminal offences which could be made, in part, by the Senedd. Legislation to observe and implement international obligations, such as those required for the Istanbul convention also fall within the competence of the Senedd where necessary legislation falls within devolved areas.

I hope my letter is helpful and clarifies these matters.

A handwritten signature in black ink that reads "Jane Hutt". The signature is written in a cursive style with a long horizontal stroke above the first letter 'J'.

**Jane Hutt AS/MS**

Y Dirprwy Weinidog a'r Prif Chwip  
Deputy Minister and Chief Whip

Jane Hutt AS/MS  
Y Dirprwy Weinidog a'r Prif Chwip  
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15 October 2020

Dear Chair,

Thank you for your joint letter of 13 October, in response to my letter of 30 September, about the Legislative Consent Memorandum laid on 3 August with regards to the UK Government's Domestic Abuse Bill ("the Bill").

The Bill's progression through the House of Lords is being delayed, with Lords Second Reading not expected to commence until December, and subsequent stages of the Parliamentary scrutiny process to follow in the New Year. Consequently, the plenary debate scheduled to take place on 10 November has been postponed.

In the meantime, my officials are actively continuing discussions with their UK Government counterparts with regards to us seeking amendments to certain provisions within the Bill. I will write to update you on any agreements reached on these matters, and addressing the substantive points in your most recent letter as the discussions progress.

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



Yours sincerely,

A handwritten signature in black ink that reads "Jane". The signature is written in a cursive style with a long horizontal stroke above the first letter.

**Jane Hutt AS/MS**

Y Dirprwy Weinidog a'r Prif Chwip  
Deputy Minister and Chief Whip

Jane Hutt, MS  
Deputy Minister and Chief Whip

13 October 2020

Dear Jane

### **Domestic Abuse Bill LCM**



In our letter to you of 30 September 2020 we stated that:

*"We have noted that the LCM itself does not provide an analysis as to how the provisions listed in the LCM are within the Senedd's legislative competence. Given that the UK Government states in the Explanatory Notes to the Bill that the matters to which the provisions in the Bill relate "are not within the legislative competence of Senedd Cymru" and therefore consent is not required, we would be grateful if you would provide the analysis you undertook in order to determine that clauses 3, 65, 66, 68 and 73 fall within the Senedd's competence.*



*We also note that clause 3, where consent is sought, has a connection with the definition of "domestic abuse" in clause 1, which in turn is connected to the definition of "personally connected" in clause 2. Why you do consider that clauses 1 and 2 do not require the Senedd's consent when you believe that clause 3 does require consent?"*



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Your response of 6 October said:

*"It remains my view that there are good arguments as to why the provisions identified are within the legislative competence of the Senedd Cymru. The overall purpose of the Bill is to raise awareness and understanding of domestic abuse and its impact on victims, the prevention of domestic abuse, including strengthening support for victims of abuse and their families; this has a clear impact on devolved matters."*

However, we do not consider that this response provides our Committees with the appropriate level of information.

We would therefore be grateful if you could provide the analysis requested in our letter of 30 September, which is customary for inclusion in Welsh Government Legislative Consent Memoranda. In essence, this should amount to detailed information about how specific clauses in the Bill (that you identify) fall within the Senedd's legislative competence and accordingly the reasons why consent is being sought.


In view of our reporting deadline, **we would be grateful to receive this analysis by no later than 2pm on Thursday 15 October 2020.**

Yours sincerely



**Mick Antoniw**

Chair, Legislation, Justice  
and Constitution Committee



**John Griffiths**

Chair, Equality, Local Government and  
Communities Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.  
We welcome correspondence in Welsh or English.



Jane Hutt AS/MS  
Y Dirprwy Weinidog a'r Prif Chwip  
Deputy Minister and Chief Whip



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref MA/JH/3258/20

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John Griffiths MS  
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06 October 2020

Dear Chair,

Thank you for your joint letter of 30 September about the Legislative Consent Memorandum (LCM) that was recently laid with regards to the UK Government's Domestic Abuse Bill (the Bill). You asked me three questions in relation to the LCM.

You have asked for an explanation as to why there was a delay in laying the LCM before the Senedd, when the Bill was introduced to the House of Commons on 3 March but the LCM was not laid before the Senedd until 3 August. The Bill was introduced before the UK Parliament for its first reading on 3 March and my officials were involved in ongoing discussions with their counterparts in the UK Government; specifically regarding the powers for the proposed Domestic Abuse Commissioner and the ability of the Senedd to scrutinise the same. Further work on reviewing the Bill in its totality was then halted as both Legal Services and policy officials responded to the unprecedented and fast moving work as a result of COVID-19. The scrutiny of the Bill has only recently restarted and my officials have resumed dialogue with UK Government officials and are considering the Bill as a whole. It is unfortunate that the LCM was not laid from the outset due to the huge volume of work created by COVID -19, however, I believe that now presents an opportune time to scrutinise

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the Bill, given that the UK Government amendments have been recently notified to us and that the Bill is now proceeding before the House of Lords.

You have also asked for details of the analysis undertaken in order to determine that clauses 3, 65, 66, 68 and 73 fall within the Senedd's competence, and why clause 1 and 2 are not included in the LCM. You highlight that the UK Government's Explanatory Notes to the Bill states that the Bill is not within legislative competence of Senedd Cymru, and therefore consent is not required. It remains my view that there are good arguments as to why the provisions identified are within the legislative competence of the Senedd Cymru. The overall purpose of the Bill is to raise awareness and understanding of domestic abuse and its impact on victims, the prevention of domestic abuse, including strengthening support for victims of abuse and their families; this has a clear impact on devolved matters.

The Legislative Consent Motion process must be viewed in the context of the Sewell convention as set out in section 107(6) of the Government of Wales Act 2006 and the Devolution Guidance Note, 'Parliamentary and Assembly Primary Legislation Affecting Wales', which provides that Parliament will not legislate "with regard to devolved matters" without the consent of the Senedd Cymru. Domestic abuse in general is a devolved area, as highlighted by the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015.

I hope my letter clarifies these matters. I look forward to receiving your report next month and, as you know, I remain committed to eliminating all elements of domestic abuse and look forward to discussing this Bill with Members of the Senedd during the debate on 10 November.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jane', with a horizontal line above it.

**Jane Hutt AS/MS**

Y Dirprwy Weinidog a'r Prif Chwip  
Deputy Minister and Chief Whip

Jane Hutt, MS  
Deputy Minister and Chief Whip

30 September 2020

Dear Jane



The recent Domestic Abuse Bill Legislative Consent Memorandum (LCM) has been referred to both of our committees for consideration. We each had our initial consideration of the LCM at our respective meetings on Monday 28 September and have agreed to write to you on a joint basis to seek clarity on a number of issues.

While the Bill was introduced in the House of Commons on 3 March 2020, the LCM was not laid before the Senedd until 3 August 2020. Standing Order 29.2(i) states that a LCM should be laid "normally no later than 2 weeks after introduction". While we note that clauses 3 and 65 (which are relevant clauses for the purpose of the LCM) were included at report stage in the House of Commons, it is unclear why there was a delay in laying the LCM in relation to clauses 66, 68 and 73. We would value your explanation as to why there was a delay in laying an LCM in relation to these clauses?



We have noted that the LCM itself does not provide an analysis as to how the provisions listed in the LCM are within the Senedd's legislative competence. Given that the UK Government states in the Explanatory Notes to the Bill that the matters to which the provisions in the Bill relate "are not within the legislative competence of Senedd Cymru" and therefore consent is not required, we would be grateful if you would provide the



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analysis you undertook in order to determine that clauses 3, 65, 66, 68 and 73 fall within the Senedd's competence.

We also note that clause 3, where consent is sought, has a connection with the definition of "domestic abuse" in clause 1, which in turn is connected to the definition of "personally connected" in clause 2. Why do you consider that clauses 1 and 2 do not require the Senedd's consent when you believe that clause 3 does require consent?

As we need to report on the LCM by 5 November, we would appreciate a response by Monday 12 October.

We look forward to hearing from you.

Yours sincerely



Mick Antoniw

Chair, Legislation, Justice  
and Constitution Committee



John Griffiths

Chair, Equality, Local Government and  
Communities Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



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# Agenda Item 12

By virtue of paragraph(s) vi of Standing Order 17.42

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# Agenda Item 13

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