

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Video Conference via Zoom	P Gareth Williams
Meeting date: 6 December 2021	Committee Clerk
Meeting time: 13.30	0300 200 6565
	SeneddLJC@senedd.wales

Informal pre-meeting (13.00–13.30)

1 Introductions, apologies and substitutions

13.30

2 Tertiary Education and Research (Wales) Bill: Evidence session

13.30–14.30

(Pages 1 – 64)

Jeremy Miles MS, Minister for Education and Welsh Language

Cath Wyatt, Bill Manager, Welsh Government

Grace Martins, Lawyer, Welsh Government

[Tertiary Education and Research \(Wales\) Bill](#) (PDF 1,087KB), as introduced
[Explanatory Memorandum](#) (4.8MB)

LJC(6)–16–21 – Paper 1 – Briefing

Attached Documents:

LJC(6)–16–21 – Paper 1 – Briefing

LJC(6)–16–21 – Paper 2 – Letter from the Minister for Education and the
Welsh Language, 2 November 2021

3 Proposed negative instruments that raise no reporting issues under Standing Order 21.3B

14.30–14.35

(Page 65)



Attached Documents:

LJC(6)-16-21 – Paper 3 – Proposed negative statutory instruments with clear reports

3.1 pNeg(6)002 – The Food Information (Wales) (Amendment) Regulations 2021

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

14.35–14.45

Made Negative Resolution Instruments

4.1 SL(6)087 – The Education (European University Institute) (Wales) (Amendment) (EU Exit) Regulations 2021

(Pages 66 – 68)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-16-21 – Paper 4 – Draft report

4.2 SL(6)091 – The Development Procedure (Consultees) (Wales) (Miscellaneous Amendments) (Amendment) Order 2021

(Pages 69 – 73)

[Order](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-16-21 – Paper 5 – Draft report

LJC(6)-16-21 – Paper 6 – Letter from the Minister for Climate Change to the Llywydd, 23 November 2021

4.3 SL(6)092 – The Valuation for Rating (Wales) (Coronavirus) (Revocation) Regulations 2021

(Pages 74 – 77)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-16-21 – Paper 7 – Draft report

LJC(6)-16-21 – Paper 8 – Letter from the Minister for Finance and Local Government to the Llywydd, 25 November 2021

4.4 SL(6)093 – Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 12) Regulations 2021

(Pages 78 – 81)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-16-21 – Paper 9 – Draft report

LJC(6)-16-21 – Paper 10 – Letter from the Minister for Health and Social Services to the Llywydd, 26 November 2021

4.5 SL(6)094 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 13) Regulations 2021

(Pages 82 – 85)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-16-21 – Paper 11 – Draft report

LJC(6)-16-21 – Paper 12 – Letter from the Minister for Health and Social Services to the Llywydd, 26 November 2021

4.6 SL(6)095 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 14) Regulations 2021

(Pages 86 – 89)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-16-21 – Paper 13 – Draft report

LJC(6)-16-21 – Paper 14 – Letter from the Minister for Health and Social Services to the Llywydd, 26 November 2021

4.7 SL(6)096 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 15) Regulations 2021

(Pages 90 – 93)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-16-21 – Paper 15 – Draft report

LJC(6)-06-21 – Paper 16 – Letter from the Minister for Health and Social Services to the Llywydd, 27 November 2021

4.8 SL(6)100 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 16) Regulations 2021

(Pages 94 – 97)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-16-21 – Paper 17 – Draft report

LJC(6)-16-21 – Paper 18 – Letter from the Minister for Health and Social Services to the Llywydd, 1 December 2021

4.9 SL(6)097 – The Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) (No. 3) Regulations 2021

(Pages 98 – 102)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-16-21 – Paper 19 – Draft report

LJC(6)-16-21 – Paper 20 – Letter from the Minister for Health and Social Services to the Llywydd, 29 November 2021

Draft Affirmative Resolution Instruments

4.10 SL(6)088 – The Local Elections (Communities) (Wales) Rules 2021

(Pages 103 – 104)

[Rules](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-16-21 – Paper 21 – Draft report

4.11 SL(6)089 – The Local Elections (Principal Areas) (Wales) Rules 2021

(Pages 105 – 106)

[Rules](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-16-21 – Paper 22 – Draft report

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

14.45–14.50

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Attached Documents:

LJC(6)-16-21 – Paper 23 – Subordinate legislation with clear reports

5.1 SL(6)090 – The Curriculum for Wales – Relationships and Sexuality Education Code

(Pages 108 – 140)

Attached Documents:

LJC(6)-16-21 – Paper 24 – Letter from the Minister for Education and Welsh Language, 29 November 2021

6 Written Statements under Standing Order 30C

14.50–14.55

6.1 WS-30C(6)004 – The UK Statistics (Amendment etc.) (EU Exit) Regulations 2021

(Pages 141 – 144)

Attached Documents:

LJC(6)-16-21 – Paper 25 – Written statement by the Welsh Government, 24 November 2021

LJC(6)-16-21 – Paper 26 – Commentary

7 Common frameworks

14.55 – 15.00

7.1 Provisional common framework: Public Health Protection and Health Security

(Pages 145 – 147)

Attached Documents:

LJC(6)-16-21 – Paper 27 – Letter from the Chair of the Health and Social Care Committee to the Minister for Health and Social Services, 26 November 2021

8 Inter-Institutional Relations Agreement

15.00–15.05

8.1 Correspondence from the First Minister: British–Irish Council summit in Wales

(Page 148)

Attached Documents:

LJC(6)-16-21 – Paper 28 – Letter from the First Minister, 29 November 2021

9 Papers to note

15.05.–15.10

9.1 Correspondence from the Delegated Power and Law Reform Committee, Scottish Parliament: Inquiry into the use of the made affirmative procedure during the coronavirus pandemic

(Pages 149 – 150)

Attached Documents:

LJC(6)-16-21 – Paper 29 – Letter from the Convener of the Delegated Power and Law Reform Committee, 25 November 2021

9.2 Correspondence with the Minister for Rural Affairs and North Wales, and Trefnydd: The Animal Health, Plant Health, Seeds and Seed Potatoes (Miscellaneous Amendments) Regulations 2021

(Pages 151 – 154)

Attached Documents:

LJC(6)-16-21 – Paper 30 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 1 December 2021

LJC(6)-16-21 – Paper 31 – Letter to the Minister for Rural Affairs and North Wales, and Trefnydd, 18 November 2021

9.3 Correspondence with the Minister for Climate Change and the Counsel General and Minister for the Constitution: Legislative Consent Motion debate relating to provisions in the UK Environment Bill

(Pages 155 – 158)

Attached Documents:

LJC(6)-16-21 – Paper 32 – Letter from the Minister for Climate Change and the Counsel General and Minister for the Constitution, 2 December 2021

LJC(6)-16-21 – Paper 33 – Letter to the Minister for Climate Change and the Counsel General and Minister for the Constitution, 8 November 2021

10 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting and from Item 1 of the meeting on 13 December 2021

15.10

11 Tertiary Education and Research (Wales) Bill – consideration of evidence

15.10–15.25

12 Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Advanced Research and Invention Agency Bill – consideration of draft report

15.25–15.35

(To Follow)

Attached Documents:

LJC(6)–16–21 – Paper 34 – Draft report

13 Legislative Consent Memoranda on the Building Safety Bill – consideration of draft report

15.35–15.45

(To Follow)

Attached Documents:

LJC(6)–16–21 – Paper 35 – Draft report

14 Legislative Consent: The Leasehold Reform (Ground Rent) Bill

15.45–16.00

14.1 Legislative Consent Memorandum on The Leasehold Reform (Ground Rent) Bill – consideration of revised draft report

(To Follow)

Attached Documents:

LJC(6)–16–21 – Paper 36 – Draft report

14.2 Supplementary Legislative Consent Memorandum (Memorandum No. 2) on The Leasehold Reform (Ground Rent) Bill

15.45–16.00

(Pages 159 – 166)

[Supplementary Legislative Consent Memorandum \(Memorandum No. 2\) – Leasehold Reform \(Ground Rent\) Bill](#)

LJC(6)–16–21 – Paper 37 – Legal advice note

Attached Documents:

LJC(6)–16–21 – Paper 37 – Legal advice note

**15 International agreements considered on 29 November 2021 –
consideration of draft report**

16.00–16.05

(Pages 167 – 171)

Attached Documents:

LJC(6)-16-21 – Paper 38 – Draft report

Document is Restricted

Jeremy Miles AS/MS
Gweinidog y Gymraeg ac Addysg
Minister for Education and Welsh Language



Llywodraeth Cymru
Welsh Government

Jayne Bryant MS
Chair
Children, Young People and Education Committee
Senedd Cymru
Ty Hywel
Cardiff Bay
Cardiff
CF99 1NA

2 November 2021

Dear Jayne,

Tertiary Education and Research (Wales) Bill

Following the introduction of the Tertiary Education and Research (Wales) Bill into the Senedd on 1 November 2021, please find attached a copy of the statement of policy intent. This document is provided to support the Committee's scrutiny of the Bill.

I look forward to providing evidence to the Committee in due course.

I am copying this letter to the Chair of the Legislation, Justice and Constitution Committee.

Yours sincerely,

Jeremy Miles AS/MS
Gweinidog y Gymraeg ac Addysg
Minister for Education and Welsh Language

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

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



Tertiary Education and Research (Wales) Bill

Statement of policy intent for secondary legislation, direction making powers and guidance

Introduction

This paper summarises the Welsh Ministers' powers for making secondary legislation, direction making powers and guidance outlined in the Tertiary Education and Research (Wales) Bill (the Bill), as introduced to the Senedd Cymru on 1 November 2021.

The paper explains why these powers have been chosen and the current government policy for use of these powers. The justification for the Senedd procedure selected is set out in table 5.1 and 5.2 of the Explanatory Memorandum.

Regulations made using these powers will be subject to consultation with key stakeholders in the tertiary education sector. This document is intended to provide stakeholders with an initial opportunity to provide feedback on the intended use of these powers so as to ensure robust and effective policy.

The Welsh Ministers have considered the use of powers in the Bill as set out below and are satisfied that they are necessary and justified.

Overview of the Bill

The Bill contains 7 Parts and 4 Schedules.

- Part 1 establishes a new arms-length Welsh public body, the Commission for Tertiary Education and Research (“the Commission”), dissolves the Higher Education Funding Council for Wales and outlines the strategic duties.
- Part 2 outlines the Commission’s regulatory functions with regards to a register of Tertiary Education Providers, registration procedure for the Tertiary Education Providers, quality assurance frameworks.
- Part 3 makes provision for the Welsh Ministers to fund the Commission and the Commission to fund tertiary education and research.
- Part 4 contains provisions in respect of Welsh Apprenticeships.
- Part 5 contains the learner protection, complaints procedures and learner engagement provisions.
- Part 6 contains the information and data-related duties and powers of the Commission.
- Part 7 contains miscellaneous provisions, including provisions relating to the dissolution of higher education corporations in Wales.

Powers inherited from existing legislation

The Bill includes 20 regulation-making powers largely inherited from existing legislation, these powers are primarily based upon, with some modification, provisions of the Higher Education (Wales) Act 2015 and the Learning and Skills Act 2000.

Policy area	Section of the Bill	Current legislation
Fees, qualifying courses and qualifying persons	30(6)	Section 5(2)(b) of the Higher Education (Wales) Act 2015
	30(8)(b)	Section 5(5)(b) of the Higher Education (Wales) Act 2015
	30(10)	Section 5(9) of the Higher Education (Wales) Act 2015
	44(6)	Section 5(3) of the Higher Education (Wales) Act 2015
	82	Section 57(1) of the Higher Education (Wales) Act 2015
Quality assurance in higher education	52(8)	Section 17(4)(a) of the Higher Education (Wales) Act 2015
Inspection of further education and training	55(1)(f)	Section 75(1)(e) of the Learning and Skills Act 2000
	55(4)	Section 77(2) of the Learning and Skills Act 2000
	59(1)	Section 76(3) of the Learning and Skills Act 2000
	61(9)	Section 83(7) of the Learning and Skills Act 2000
Regulation and decision reviews	77(3)	Section 44(3) of the Higher Education (Wales) Act 2015
Designation of other providers of tertiary education	81(4)	Section 3(4) of the Higher Education (Wales) Act 2015
HE Governance	133(2)	Paragraph 2-11 of Schedule 7A to the Education Reform Act 1988
	134(2)	Section 125(2) to (4) of the Education Reform Act 1988

Powers of the Commission for Tertiary Education and Research

The Bill also provides for direction and guidance provisions to be exercised by the Commission. The purpose and intended effect of these provisions are set out in the Explanatory Memorandum which accompanies the Bill, these powers are not included in this statement of policy intent as how they will be exercised is a matter for the Commission.

Other documentation

This document should be read in conjunction with the following:

- The Tertiary Education and Research Bill;
- The Explanatory Notes to the Bill;
- The Explanatory Memorandum to the Bill, in particular chapters 3 and 5.

Guidance and general directions to the Commission

Section	Form	Provision	Procedure
18	Guidance	In exercising its functions, the Commission must have regard to guidance given to it by the Welsh Ministers	No procedure
19	Direction	The Welsh Ministers may give the Commission general directions about the exercise of any of its functions	No procedure

Description of powers

Section 18 requires the Commission to have regard to guidance issued by the Welsh Ministers about the exercise of its functions (i.e. powers and duties) conferred by the Bill, or by Regulations made under it.

Section 19 enables the Welsh Ministers to issue directions to the Commission about the performance of any of its functions, subject to certain limitations to protect the institutional autonomy of tertiary education and research providers, the academic freedom of higher education providers and the ability of the Commission to determine funding allocations to individual providers. The limitations do not prevent any direction issued under this section from being framed by reference to a course of study, or parts of courses of study, being provided and assessed through the medium of Welsh.

The Welsh Ministers are required to consult the Commission before issuing a general direction under these powers. They are also required to keep any general direction given to the Commission under review. The Welsh Ministers must also publish any general direction given to the Commission under this section and report any such directions to the Senedd and lay a copy of the direction before the Senedd

This is a continuation of an existing power whereby the Welsh Ministers are able to give general directions to HEFCW about the exercise of its functions.

Policy purpose and intent

The guidance provision is a general power needed so that the Welsh Ministers are able to issue relevant guidance when the need requires.

The power to direct the Commission is necessary to ensure that the Welsh Ministers are able, should the need arise, to direct the Commission in the exercise of its functions.

For example, the Welsh Ministers might want to direct the Commission to plan for the provision of a particular type of education, such as part-time or distance learning provision, or in respect of a broad area of education, such as STEM subjects. In addition, the Covid-19 pandemic has highlighted the need to consider the circumstances under which the Welsh Ministers may require the Commission to take timely and specific action to deal with events that have significant implications for tertiary education and research in Wales.

Additional functions of the Commission

Section	Form	Provision	Procedure
20(1)	Regulations	Power for the Welsh Ministers to confer supplementary functions on the Commission.	Affirmative
20(4) & (5)	Direction	Power for the Welsh Ministers to direct that their functions in relation to the land or other property of a higher or further education institution in Wales, may be exercised by the Commission where the Welsh Ministers are entitled to a right or interest in respect of that property	No procedure

Description of powers

Section 20 enables the Welsh Ministers, by way of regulations, to confer supplementary functions on the Commission. A supplementary function conferred on the Commission under these powers must be a function that is exercisable by the Welsh Ministers and relate to the provision, or proposed provision of tertiary education, or to the carrying out, or proposed carrying out of research and innovation. The power to confer supplementary functions on the Commission is a continuation of current arrangements that are in place for the Welsh Ministers to confer supplementary functions on HEFCW under section 69(5) of the Further and Higher Education Act 1992.

This section also enables the Welsh Ministers to direct that their functions in relation to the land or other property of an institution in Wales within the higher or further education sector, may be exercised by the Commission, where the Welsh Ministers are entitled to a right or interest in respect of that property. The Commission is required to exercise these functions in accordance with directions given by the Welsh Ministers.

Policy purpose and intent

Regulations provide the Welsh Ministers with appropriate flexibility to ensure the Commission is enabled to exercise all relevant functions in relation to tertiary education, research and innovation should the sector evolve in the future.

Currently the Welsh Ministers are able to direct HEFCW where any property or land is, or was, held or used for the purposes of an institution in the higher education sector in Wales where the Welsh Ministers are entitled to any right or interest in respect of the property or land. The Bill makes provision for the Welsh Ministers to direct the Commission in relation to any of their interests in property or land of an institution in either the higher or further education sectors in Wales so that the Commission exercises the Welsh Ministers functions on

their behalf. This is appropriate as the Commission will in future have regulatory oversight of both further and higher education institutions in Wales.

For example if the Welsh Ministers provide funds to support investment in the further education estate under the 21st Century Schools and Colleges programme there could be legal charges arising from such investments. In future, the Welsh Ministers may wish the Commission to be able to manage such funding arrangements on their behalf.

Categories of registration

Section	Form	Provision	Procedure
23(2)	Regulations	Requires the Welsh Ministers to specify one or more categories of registration for which provision must be made in the register of tertiary education providers.	Affirmative
23(5)	Regulations	Allows the Welsh Ministers to prohibit the registration of a provider in one category of the register at the same time that it is registered in one or more of the other categories.	Negative
23(8)	Regulations	Power to make provision about the information which must be contained in a provider's entry in the register.	Negative

Description of powers

These powers allow secondary legislation to set out different categories of registration, whether providers are prohibited from registering in multiple categories of registration, and the information which must be contained on the register.

Policy purpose and intent

The register of tertiary education providers is intended to be a flexible mechanism for proportionate and accountable regulation of the tertiary education sector in Wales. In particular, the register is intended to enable appropriate regulation for tertiary education providers in Wales, whose courses are designated for the purposes of Welsh Government student support under the Teaching and Higher Education Act 1998.

The regulation making power in section 23(2) will enable categories of registration to be created, applicable to different types of tertiary education providers as appropriate. The specification of different categories of registration may become necessary if new forms of student support funding are introduced by Welsh Government to support expansion of post-compulsory education opportunities, such as in non-degree higher technical and vocational education and training.

Furthermore, the funding structure (and hence appropriate regulation) of tertiary education (particularly higher education) across the UK has changed frequently in recent years, with changes in other UK administrations often having an effect on funding policy in Wales.

These changes have occurred at a rate faster than is appropriate or practicable for the Welsh Government to respond with primary legislation regarding the details of regulation in each and every instance. The Bill enables details of the regulatory framework to be changed in response to any future changes in the structure or funding of the tertiary sector in Wales.

The categories of registration to be prescribed in regulations will be informed by engagement and consultation with stakeholders, the current government policy proposal is to prescribe two categories of registration:

- Higher Education Providers (Core) – Providers registered in this category will be eligible for automatic designation for Welsh Government student fee and maintenance support for higher education courses at the higher fee level, currently £9000 per year, provided under the Teaching and Higher Education Act 1998. Providers registered in this category will also be eligible for higher education grant funding from the Commission (see ‘Funding’). Providers in this category will be subject to registration conditions outlined in the Bill and in regulations (see ‘Conditions of registration’).
- Higher Education Providers (Alternative) – Providers registered in this category will be eligible for automatic designation for Welsh Government student fee and maintenance support for higher education courses at the lower fee level, currently £6165 per year, provided under the Teaching and Higher Education Act 1998. Providers in this category will be subject to registration conditions outlined below (see ‘Conditions of registration’).

It is not current government policy to create any categories for providers which do not provide higher education. These providers will continue to be primarily regulated through the terms and conditions attached to grant funding received from the Commission. The specification of registration categories, and associated conditions, in regulations provides the flexibility that categories for further education providers (that are not providing higher education), apprenticeship and training providers, and other forms of tertiary education provider, could be provided for in the event of future changes in funding and regulatory priorities in the sector.

It is also intended, subject to there being the two proposed categories of registration, to prescribe in regulations under section 23(6) that providers can only register in one of the categories.

Conditions of registration

Section	Form	Provision	Procedure
25(3)	Regulations	Power for the Welsh Ministers to provide for further initial conditions of registration	Affirmative
30(2)(b)	Regulations	Power for the Welsh Ministers to specify a category of registration in relation to which a fee limit condition is to apply	Affirmative
31(1)	Regulations	Power for the Welsh Ministers to specify categories of registration which are to be subject to mandatory ongoing registration conditions in respect of equal opportunities	Affirmative
32	Regulations	Power for the Welsh Ministers to provide for further mandatory ongoing registration conditions	Affirmative

Description of powers

Section 25(1) outlines initial conditions of registration which a tertiary education provider in Wales must satisfy to become registered. The Welsh Ministers may make regulations under section 25(3) providing for further initial conditions of registration which could apply to one or more categories of registration.

Section 29 outlines mandatory ongoing registration conditions which a provider must satisfy to remain registered. The Welsh Ministers may make regulations under section 32 providing for further mandatory ongoing registration conditions which may apply to one or more categories of registration.

The regulatory system created by the Bill is designed to be fit for the future and therefore must be allowed to adapt to changing circumstances. There may be a need to create new initial and ongoing registration conditions applying to different categories of registration in addition to those specified in primary legislation from time to time, in response to changing regulatory needs.

Section 30(2) enables the Welsh Ministers may also specify categories of registration in relation to which the Commission must impose an ongoing registration condition on fee limits, whilst section 31(1) allows the Welsh Ministers to specify the registration categories to be subject to the ongoing registration conditions on equal opportunity.

Policy purpose and intent

In addition to the initial conditions of registration outlined in section 25(1), Welsh Government intends that the following initial conditions of registration should apply to the respective categories of registration. These categories are provided for in regulations rather than on the face of the Bill in order to retain the flexibility to alter or amend these provisions.

Type of condition	Condition	Category
Initial	Consumer law compliance – It is intended that regulations will provide for an initial registration condition for these categories that relate to the information provided to prospective students about a provider, its courses, and its terms and conditions of contracts with students. This registration condition will enable the Commission to require that providers seeking to register demonstrate their compliance with their obligations under consumer law, and in particular with any guidance published for higher education providers by the Competition and Markets Authority.	Core and Alternative
Initial	Charitable status – It is intended that regulations will provide for an initial registration condition for this category that requires providers to be a charity. This would continue current policy established by the Higher Education (Wales) 2015 Act, which requires ‘regulated institutions’ in Wales to be charitable providers.	Core

It is also intended, subject to there being the two proposed categories of registration, to prescribe in regulations under section 31(1) that both categories are subject to the mandatory ongoing registration conditions in respect of equal opportunities.

It is not currently intended to specify any further mandatory ongoing registration conditions for any category of registration.

De-registration

Section	Form	Provision	Procedure
39(2)	Regulations	Power to set out further circumstances where the Commission must remove an institution from one or more categories in the register or all categories of the register	Affirmative
39(6)	Regulations	Power for Welsh Ministers to make transitional or saving provisions in connection with the removal of an institution from a category of the register.	No procedure
41(13)	Regulations	Power to make transitional or saving provisions in connection with the voluntary or consensual removal of an institution from a category of the register.	No procedure

Description of powers

These powers enable secondary legislation to provide for specific circumstances, additional to those set out in the Bill, where an institution is removed from the register or from a category of the register, and for transitional and savings provisions to be made when a provider is removed from the register, whether mandatorily or voluntarily.

Policy purpose and intent

The power under section 39(2) is intended to ensure that any emerging circumstances which might require that a registered provider be removed from the register or a particular category of the register can be specified in subordinate legislation.

The powers under sections 39(6) and 41(13) are intended to ensure that public funds and students' interests are protected in the event that a provider ceases to be on the register. This may include ensuring that the Commission retains certain regulatory powers in respect of a de-registered provider, or that certain funding streams remain temporarily available to students at a de-registered provider in order to ensure course continuation and completion.

These powers should be considered as contingency powers and are only expected to be used in rare and exceptional circumstances.

Fees, qualifying courses, and qualifying persons

Section	Form	Provision	Procedure
30(4)	Regulations	Power for the Welsh Ministers to specify a qualifying course.	Negative
30(8)(b)	Regulations	Power for the Welsh Ministers to specify who is a qualifying person for the purposes of paying regulated course fees.	Negative
30(10)	Regulations	Power for the Welsh Ministers to set out when fees payable to a provider in respect of a course it provides on behalf of a registered provider are to be treated as payable to the registered provider for the purposes of fee limits.	Negative
44(6)	Regulations	Power for the Welsh Ministers to set the maximum amount that the fee limit specified in a fee limit statement may not exceed.	Affirmative
82	Regulations	Power for the Welsh Ministers to specify further exceptions to the definition of 'fees' for the purposes of Part 2.	Negative

Description of powers

These powers enable the Welsh Ministers to specify a description of 'qualifying courses' and 'qualifying persons' for the purposes of regulating the maximum tuition fee limit of qualifying courses provided by, or behalf of registered providers.

They also enable regulations to specify circumstances where fees paid to a person providing a course on behalf of a registered provider are to be treated as paid to the registered provider for the purposes of fee limits.

The Welsh Ministers currently hold similar powers under sections 5 and 57 of the Higher Education (Wales) Act 2015.

Policy purpose and intent

These regulations enable the Welsh Ministers to provide for fee limits to apply to different courses or different groups of students in response to any future changes to the ways in which higher education providers charge fees in Wales, and also any changes in the form of student support offered by Welsh Government.

Qualifying courses are currently prescribed in the Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provision) (Wales) Regulations 2015. These Regulations provide that qualifying persons are those persons who, on the first day of the relevant academic year, fall within the Schedule to the Regulations, save for those persons who are not eligible for support under the exceptions listed.

Section 30(10) of the Bill ensures that when registered providers have courses delivered on their behalf, through a sub-contracting or franchise arrangement, providers are not able to circumvent the statutory tuition fee limit. Regulations will be made under this section to ensure that the variety of complicated franchise arrangements which may exist in the higher education sector do not create any circumstances where the fee limit may be circumvented.

Prescribing descriptions of 'qualifying courses' and 'qualifying persons' is a technical matter which will likely require updating from time-to-time. Any regulations made under section 30(10) will be only required in response to evolving forms of franchise and sub-contracting arrangements between tertiary education providers.

Maximum tuition fee

The Higher Education (Amounts) (Wales) Regulations 2015 currently set out the maximum amount of fees that may be payable for qualifying courses by providers regulated under the Higher Education (Wales) Act 2015. Welsh Government policy regarding the maximum tuition fee for qualifying higher education courses remains unchanged.

Quality assurance in higher education

Section	Form	Provision	Procedure
52(5)	Regulations	Power to make regulations to require higher education assessments and reports at specified intervals.	Negative
52(8)	Regulations	Power to make provision about the circumstances in which a person is to be treated as responsible for providing a course.	Negative

Description of powers

Section 52 places a duty on the Commission to assess, or make arrangements to assess, the quality of education provided by registered higher education providers. This duty includes the quality of education provided on behalf of a registered higher education provider, such as under a franchise or sub-contracting arrangement.

Section 52(5) enables the Welsh Ministers to determine the minimum intervals at which registered higher education providers should be required to undergo a quality assessment, and to prescribe the period within which assessment reports must be published.

Section 52(8) allows the Welsh Ministers to specify circumstances where an external provider should or should not be treated as providing all or part of a course on behalf of a registered institution. The Welsh Ministers have an equivalent power to that in section 52(8) under section 17(4) (a) of the Higher Education (Wales) Act 2015.

These powers cover largely technical and detailed matters related to quality assurance in higher education.

Policy purpose and intent

Higher education assessment intervals

It is currently anticipated that regulations made using these powers shall specify that higher education assessments should take place at least once every six years. This is consistent with HEFCW's current Quality Assurance Framework, and also with Estyn's usual cycle of inspections in other parts of the post-compulsory education sector.

The minimum interval between higher education quality assessments (section 52(5)) may need to be changed from time to time in response to changing resource availability or assessments of risk regarding quality in the higher education sector.

External providers

Whilst there is no immediate intention to make such regulations, section 52(8) provides the Welsh Ministers with appropriate flexibility to make the necessary provision should any novel forms of partnership arrangements for the delivery of higher education courses develop in the future.

Inspection of further education and training

Section	Form	Provision	Procedure
55(1)(f)	Regulations	Power to specify education and training which the Chief Inspector of Education and Training (the “Chief Inspector”) must inspect, in addition to education and training set out on the face of the Bill.	Negative
55(4)	Regulations	Power to make provision about inspection and report interval periods.	Negative
59(1)	Regulations	Power to confer further functions on the Chief Inspector in connection with the education and training described in section 55(1).	Negative
61(9)	Regulations	Power to make further provision in relation to the obligations to provide the Chief Inspector with information in connection with an area inspection; and to require area inspection reports to be published before the end of a certain period.	Negative

Description of powers

Section 55 of the Bill sets out the inspection remit of the Chief Inspector of Education and Training in Wales. The regulation making powers under section 55(1)(f) and section 59(1) are intended to extend or clarify the remit of the Chief Inspector in response to changing forms of provision in the education and training sector.

Section 55(4) enables the Welsh Ministers to:

- specify the minimum interval between inspections, and
- prescribe the period within which inspection reports must be published.

Section 59 enables the Welsh Ministers to specify any other functions of the Chief Inspector in respect of education and training listed in section 55(1).

Section 61 sets out provision for area inspections, including the requirements for bodies listed in section 61(7) to provide information to the Chief Inspector. Section 61(9) enables the Welsh Ministers to make:

- further provision with respect of the duty to provide information ,
- provision as to the time period before the end of which reports of area inspections must be published.

The Welsh Ministers currently hold similar regulation making powers to all of the above listed powers under Part 4 of the Learning and Skills Act 2000.

Policy purpose and intent

Sections 55(1)(f) and section 59(1) - Remit and further functions of the Chief Inspector

The Welsh Government does not currently intend to use the powers in section 55(1)(f) and 59(1) of the Bill..

These powers are necessary for future-proofing. For example, regulations may be required to provide for the inspection of initial teacher education for post-compulsory providers, in a similar way to current duties to inspect youth and community worker training or initial teacher education for schools.

Section 55(4) and section 61(9)(b) - Inspection intervals and reports

The Inspection of Education and Training (Wales) Regulations 2001 (“the 2001 Regulations”), as amended (most recently by the Education (Amendments Relating to the Intervals for Inspection of Education and Training) (Wales) Regulations 2020) require that:

- following the conclusion of the inspection period ending on 31st August 2024, inspections will be conducted once every six years,
- inspection reports be made within the period of 70 working days from the date on which the inspection or area inspection is completed . Welsh Government policy on inspection reports remains unchanged.

Welsh Government policy in respect of inspection intervals and the timing of reports, in respect of both inspections under section 55(1) of the Bill and area inspections under section 61 of the Bill remains unchanged, and regulations will be made under section 55(4) and 69(9)(b) restating existing provision as set out in the 2001 Regulations.

Section 69(9)(a) - Obligation to provide the Chief Inspector with information

It is not currently intended to make regulations under section 69(9)(a), the power provides the Welsh Ministers with the necessary flexibility to make provision in respect of practical matters such as the way in which the duty in 61(7) may be satisfied.

Intervention in the conduct of further education institutions

Section	Form	Provision	Procedure
68(1)	Direction	Power for the Welsh Ministers to intervene in the conduct of a further education institution if they are satisfied that one or more grounds for intervention exist.	No procedure

Description of powers

If the Welsh Ministers are satisfied that one or more of the grounds for intervention (as set out in section 67 of the Bill) exist, they may, pursuant to section 68 of the Bill, give a direction to the governing body of a further education institution, requiring the governing body to, amongst other things:

- collaborate with such persons and on such terms as may be specified in the direction;
- make a resolution for the body to be dissolved on a date specified in the direction.

Further detail on these intervention powers are provided in paragraphs 3.196 – 3.204 of the Explanatory Memorandum.

Policy purpose and intent

The intervention functions serve an important role in effecting the policy to protect the provision of further education in Wales. However, it is intended that in most cases the functions will be used only when the Commission has exhausted its intervention functions or where the issue is so serious that more urgent action is required.

Regulation and decision reviews

Section	Form	Provision	Procedure
77(3)	Regulations	A duty on the Welsh Ministers to make provision in connection with decision reviews. For example, details regarding the role of the decision reviewer and procedure to be followed (see subsection (4)).	Negative

Description of powers

Section 77 sets out the Welsh Ministers' functions in respect of appointing a person or panel to conduct decision reviews under sections 43 and 76 of the Bill.

A provider may request a review where the Commission makes use of the following powers:

- Refusing to register a provider (section 23).
- Imposing or varying a specific ongoing registration condition (section 27).
- Directing a provider in respect of failure to comply with ongoing registration conditions (section 37).
- Removing a provider from a category of the register (section 39).
- Specifying the date on which a provider is to be removed from a category of the register (sections 40 and 41).
- Giving a notice rejecting a fee limit statement (section 45).
- Directing a provider in respect of failing to co-operate with the Commission or a designated body as required under section 71.

Section 77(3) requires the Welsh Ministers to make provision through regulations in connection with the form, content and process of carrying out reviews. The Welsh Ministers currently hold a similar duty to make such provision in respect of reviews of HEFCW decisions under section 44 of the Higher Education (Wales) Act 2015.

Policy purpose and intent

Section 77(4) sets out the matters that regulations made under section 77(3) may, among other things, provide for:

- the grounds upon which a decision reviewer may make recommendations
- the kinds of recommendations that might be made
- the period within which an application for review might be made

- the procedure to be followed by the reviewer(s)
- the steps to be taken by the Commission and/or the Welsh Ministers following a review

The regulations would adopt an approach broadly similar to the arrangements currently provided for in the Higher Education (Fee and Access Plans)(Notices and Directions)(Wales) Regulations 2015, in respect of decision reviews under the Higher Education (Wales) Act 2015.

Subject to consultation with stakeholders, the current policy intention about the detail to be prescribed in these regulations is summarised below:

Topic Area	Description
Grounds on which decision reviewer(s) may make recommendations to the Commission	<ul style="list-style-type: none"> • that the governing body of a provider provides evidence in support of the matter for which it is seeking a review that has not previously been presented to the Commission; • that the reviewer considers the Commission has disregarded a material factor which it should have considered in the process of informing its decision; or • that the reviewer considers the Commission’s decision to be disproportionate in light of the evidence submitted to it.
Kinds of recommendations that might be made	<ul style="list-style-type: none"> • that the Commission should reassess its original decision taking into account - <ul style="list-style-type: none"> ○ any additional evidence provided to the decision reviewer(s) by the governing body of the institution requesting a review; ○ any material factors which the decision review considers it has not previously considered; or ○ any reasons the decision reviewer may have for considering the decision previously reached to be disproportionate.
Period within which an application for review might be made	<ul style="list-style-type: none"> • Within 40 days of the provider being notified by the Commission of its intended course of action.
Procedure to be followed	<ul style="list-style-type: none"> • The reviewer(s) should be required to provide the Commission with (i) details of the decision to be reviewed; (ii) details of the grounds on which the application for review has been made; and (iii) a copy of the information provided by the provider in support of the application for review. • The reviewer(s) should be required to provide both the provider and the Commission with an anticipated timetable for completing the decision review;

Topic Area	Description
	<ul style="list-style-type: none"> • The reviewer(s) may request additional information from both the Commission and the provider and if doing so they should be required to inform both the Commission and the provider about such a request; • To ensure that decision reviews are conducted in a timely manner a cut-off point of 28 days should apply in respect of the provision of further information to the decision reviewer(s) from either the Commission or the provider; • To ensure that all parties are updated about the progress with the review the decision reviewer(s) should be required to supply any additional information provided by the provider to the Commission and vice versa; • The reviewer(s) should be required to consider whether it is appropriate in the context of a specified review to accept representations from the Commission in response to additional information received from the provider in and from the provider in response to additional information received from the Commission and to notify both parties accordingly; • The reviewer(s) should be required to take account of any additional information provided by either the provider or the Commission; • The reviewer(s) should be required to prepare a report of their findings, setting out recommendations which should be sent to both the provider and the Commission.
Steps to be taken by the Commission and/or the Welsh Ministers following a review	<ul style="list-style-type: none"> • The Commission should be required to take account of the decision reviewer(s)' report and reconsider their decision to take the specified action which forms the subject of the decision review; • The Commission should be required to notify the provider about whether the proposed notice or direction has effect within a period of 40 days from the issue of the decision reviewer(s)' report and set out reasons for their confirmed course of action.

Monitoring financial sustainability

Section	Form	Provision	Procedure
78(1)(c)	Regulations	Power to specify education providers (in addition to those set out on the face of the Bill) in respect of which the Commission must monitor financial sustainability.	Negative
78(2)	Regulations	Power to provide for exceptions to the duty to monitor the financial sustainability of registered providers and providers in Wales within the FE sector funded by the Commission.	Negative

Description of powers

Section 78 places a duty on the Commission to monitor and report on the financial sustainability of certain tertiary education providers. Under the duty, the Commission must monitor the financial sustainability of registered providers and providers in Wales in the further education sector that are not registered but are funded by the Commission.

The powers under section 78(2) enable the Welsh Ministers to make exceptions in the application of the monitoring duty for providers or types of providers in these categories.

Section 78(1) (c) enables the Welsh Ministers to extend the monitoring duty to other kinds of tertiary education provider not specified on the face of the Bill.

Policy purpose and intent

These powers will ensure that the Commission's duty to monitor and report on the financial sustainability can be extended, if considered necessary, to tertiary education providers other than registered providers or providers in Wales within the further education sector that are not registered but are funded by the Commission. This would allow any providers or groups of providers that may be in receipt of significant amounts of funding from the Commission but fall outside of these categories to be brought within the scope of the duty.

The powers also allow the Welsh Ministers to make exceptions in the application of the duty for providers or types of providers within the categories specified on the face of the Bill. This might, for example, allow the duty to be dis-applied to the Open University who would, should they register with the Commission, be subject to equivalent monitoring by the Office for Students by virtue of its status as a

registered higher education provider in England. This would avoid unnecessary duplication and potential conflicts in monitoring arrangements.

These regulation powers provide a means to future proof the provisions set out under section 78 of the Bill and ensure that there are no gaps in the application of the duty.

Designation of other providers of tertiary education

Section	Form	Provision	Procedure
81(4)	Regulations	Power to make provision about the designation of providers which would not be regarded as an institution for the purposes of the Bill. This includes provision about applications for designation, the making of designations, withdrawal of a designation and the effect of withdrawals.	Affirmative

Description of powers

Section 81 enables the Welsh Ministers to designate a provider of higher education in Wales as an ‘institution’ for the purposes of the Bill and any subordinate legislation made under it. Such a provider would not normally be regarded as an ‘institution’ under the Bill.

A designation may be made on an application by the provider concerned. Section 81(4) enables the Welsh Ministers to make regulations about applications for designation, the making and withdrawal of designations, including matters to be taking into account when considering whether to make or withdraw a designation, and the effect of a withdrawal of designation.

Policy purpose and intent

The power under section 81 may be exercised to designate an organisation which provides courses of higher education, but might not regard itself as an “institution” for the purposes of the Bill, and may nevertheless wish to be registered. These regulations will require providers applying to the Welsh Ministers for such a designation to provide certain information or documentation alongside their application. The regulations may also specify how an application is to be made (for example in writing).

Securing and funding tertiary education

Section	Form	Provision	Procedure
85(3)	Regulations	Power to specify categories of registered provider to which the Commission may provide financial support in respect of expenditure incurred for the purposes of the provision of higher education and facilities or activities connected with the provision of higher education.	Affirmative
85(4)	Regulations	Power to specify the requirements to be met by a course of initial teacher training before the Commission can provide an institution with financial support in respect of the provision of that course.	Negative
86(1)	Regulations	Power to specify a particular course of higher education or description of course of higher education in respect of which the Commission can provide financial resources.	Negative
91(3)	Regulations	Duty to specify a description of relevant education and training for the purposes of the Commission's duty to secure proper facilities for person aged 19 and over.	Affirmative
91(7)(b)	Regulations	Power to specify a description of an eligible person in relation to the Commission's duty to secure proper facilities for persons aged 19 and over.	Affirmative
95(2)	Regulations	Power to provide that financial support for specified purposes for further education and training can only be secured under section 94(1)(a) or (b) to providers registered in specified categories. Regulations may provide for exceptions for specified courses or specified descriptions of courses. to the requirement to be registered.	Affirmative
96(6)	Regulations	Power to provide exceptions to the prohibition on providers of further education and training from charging (i) persons over compulsory school age and under the age of 19 who are receiving the further education and training; and (ii) eligible persons who are receiving relevant education and training.	Affirmative

Section	Form	Provision	Procedure
101(3)	Regulations	Power to provide that the Commission can only provide financial resources in respect of expenditure incurred in connection with the provision of an approved Welsh apprenticeship to providers registered in categories specified in the regulations.	Affirmative
102(4)	Regulations	Power to specify categories of registration which a provider must be registered in before the Commission can provide financial resource to the provider in respect of expenditure for the purpose of (or in connection with) research or innovation.	Affirmative

Description of powers

Section 85 allows the Commission to fund certain categories of registered providers (the “specified providers”), for the purpose of supporting higher education provided by or on behalf of such providers. Section 85(3) enables the Welsh Ministers to specify these categories, whilst section 85(4) enables the Welsh Ministers to specify that funding must not be provided by the Commission under this section in respect of expenditure incurred in relation to the provision of courses of initial teacher training unless the course satisfies requirements set out in regulations.

Section 86 allows the Commission to fund the provision of specified higher education courses wholly or mainly in Wales or to persons who are ordinarily resident in Wales. Section 86(1) enables the Welsh Ministers to specify such courses in regulations. Regulations may describe a course by way of reference to, amongst other matters, the requirements to be met by the course; the description of the person providing the course; and the qualification to which the course leads.

Section 91(3) requires the Welsh Ministers to specify relevant further education and training for the purposes of the Commission’s duty to secure proper facilities for such education and training in section 91(1). Section 91(7)(b) enables the Welsh Ministers to specify eligible persons for whom such facilities must be secured.

Section 95(2) enables the Welsh Ministers to make regulations requiring providers to be registered in a specified category in order to be eligible to receive funding from the Commission under section 94(1)(a) (provision of further education or training wholly or mainly in Wales) or section 94(1)(b) (provision of further education and training to learners ordinarily resident in Wales).

Where the Welsh Ministers or the Commission provide funding under section 94, section 96 allows them to impose terms and conditions. Section 96(4) and (5) provide that those terms and conditions must prohibit:

- a provider of further education or training suitable to the requirements of learners who are over compulsory school age but have not attained the age of 19 from charging those learners who are receiving the further education or training ; and
- a provider of relevant education and training suitable to the requirements of eligible persons from charging those eligible persons who are receiving that education or training. “Relevant education and training” and “eligible persons” are defined in regulations made under section 91 of the Bill.

Section 101(1)(a) allows the Commission to provide funding to providers of approved Welsh apprenticeships, under section 101(3) the Welsh Ministers can make regulations requiring the recipient of such funding be registered in a specified category on the register..

Section 102 allows the Commission to fund certain categories of registered provider, for the purpose of supporting research or innovation. Section 102(4) enables the Welsh Ministers to specify these categories.

Policy purpose and intent

Section 85(3) and section 102(4)

It is intended, subject to the proposed regulations under section 23(2) (see Categories of Registration) being made and specifying the proposed two categories of registration, to prescribe in regulations:

- under section 85(3) specifying that higher education providers must be registered in the “core” category in order to be eligible to receive funding from the Commission under section 85 (financial support to specified providers for higher education), and
- under section 102(4) specifying that higher education providers must be registered in the “core” category in order to be eligible to receive funding from the Commission under section 102 (financial support for research and innovation).

Section 85(4)

It is intended to make regulations under section 85(4) of the Bill providing that initial teacher training courses must not be funded by the Commission unless they are accredited by the Education Workforce Council (ECW).

Section 86(6)

It is not currently intended to make regulations under section 86(6). This power is intended to ensure that gaps in provision could be addressed should the need arise. Gaps in provision may arise due to a lack of specified higher education providers (as defined in regulations made under section 85(3)) being able to fulfil an identified need. For example, a need for a specialist course to be delivered in

Wales or to be undertaken by small numbers of students ordinarily resident in Wales, which may not be cost effective for specified providers to deliver. These powers should be considered as contingency powers.

Section 91

Section 91(3) and 91(7)(b) enable the Welsh Ministers to determine the scope of, and eligibility for, a new duty to fund further education for adults, and are intended to ensure that the Welsh Government's commitment to providing lifelong learning opportunities, particularly for those who stand most to benefit from them. The use of secondary legislation to determine the scope of relevant education and eligibility for the purpose of the funding duty is intended to enable a progressive expansion of the funded adult further education and training offer over time to address evolving patterns of need.

The policy for these regulations will take account of the following forthcoming considerations:

- Recommendations of a report due to be published by the Wales Centre for Public Policy regarding lifelong learning.
- Outcomes of a planned review of adult education as promised in the Programme for Government.
- The views and representations of relevant stakeholders.

Section 95(2) and section 101(3)

As set out in Categories of Registration above, it is not current government policy to create any categories for providers which do not provide higher education. However, regulatory arrangements may change over time and the register may, in the future, include categories, in respect of providers of further education, training or approved Welsh apprenticeship. .

Should the need arise the Welsh Ministers will be able to make regulations:

- under section 95(2) to specify the categories of registered providers eligible to receive funding from the Commission under section 94, or
- under section 101(3) to specify the categories of registered providers eligible to receive funding from the Commission under section 101.

Section 96(6)

The development of any policy in respect of regulations under section 96(6) will be subject to engagement and consultation with stakeholders.

Consent for payments to collaborating bodies

Section	Form	Provision	Procedure
105(1)	Regulations	Power to specify the matters to be taken into account by the Commission in deciding whether to give to consent for the passage of funds from directly funded persons to collaborating bodies under sections 85, 86, 94, 101 or 102.	Negative

Description of powers

The Bill provides for a person in receipt of financial resources from the Commission under sections 85(3)(a), 86(4)(a), 94(3)(a), 101(2)(a) or 102(4) to be able to pass all, or some, of this funding to a collaborating body. For a person to be a collaborating body the Commission must have given its consent for financial resources to be paid to it by the person receiving funds directly from the Commission.

The power under section 105(1) allows the Welsh Ministers, by way of regulations, to specify matters to be taken into account by the Commission when determining whether to give consent for a directly funded person to pass funding to a collaborating body under the specified powers.

Purpose, Policy and Intent

This regulation making power will allow the Welsh Ministers to set out those matters that the Commission must take into account when deciding to consent to a directly funded person passing resources to a collaborating body. Subject to consultation, it is anticipated that such matters might initially include

- The reasons for and the appropriateness of the collaboration arrangement;
- How the collaboration arrangement fits with the Commission's strategic plan;
- The effectiveness of the governance and financial management arrangements of the collaborating body;
- That the funded body's learner protection plan has adequate provision should the collaboration cease for any reason;
- The adequacy of the assurance arrangements between the funded provider and the collaborating body;
- Financial position of a proposed collaborating body;
- The ability of the proposed collaborating body to deliver what is proposed; and
- Adequacy of facilities or education provision available at the proposed collaborating body.

It is likely that the nature of matters to be taken into account by the Commission in giving its consent will need to be revised over time as new collaborative arrangements develop or in light of any issues that may have arisen with existing consent arrangements. This regulation power will provide flexibility for the Welsh Ministers to amend the specified matters should this be necessary.

Financial support directions

Section	Form	Provision	Procedure
106(1)	Direction	The Welsh Ministers may give the Commission financial support directions in relation to a relevant person.	No procedure

Description of powers

Section 106 enables the Welsh Ministers to direct the Commission in respect of the provision of financial support provided to a relevant person under section 85, 86, 94, 98, 100, 101 or 102, where it appears to the Welsh Ministers that the financial affairs of the relevant person have been, or are being mismanaged. The Commission is required to comply with a financial support direction given by the Welsh Ministers.

A relevant person is a registered provider or a person (other than a registered provider or the governing body of a maintained school) funded by the Commission under section 85(2), 86, 94, 98, 100, 101 or 102(2).

Before issuing a financial support direction to the Commission, subsection (5) requires the Welsh Ministers to consult the Commission and the relevant person to which the direction relates unless the Welsh Ministers are satisfied that it is not practical to do so because of the urgency with which the direction needs to be given, or the specific circumstances mean that consultation would defeat the object of the direction.

Any financial support direction given to the Commission under this section must be kept under review. Additionally, the Welsh Ministers must publish a financial support direction given to the Commission and report any such directions to the Senedd.

Policy purpose and intent

The Welsh Ministers are currently able to give directions to HEFCW in relation to the provision of financial support to a provider of higher education if it appears that the financial affairs of that provider have been, or are being mismanaged. Section 106 builds on existing arrangements and ensure that the Welsh Ministers can take appropriate action in circumstances where it might be necessary to protect the interests of students, safeguard public funds or prevent reputational damage to the tertiary education sector in Wales.

This power should be considered as contingency powers and are only expected to be used in rare and exceptional circumstances.

Apprenticeships

Section	Form	Provision	Procedure
107(4)	Regulations	Power of the Welsh Ministers to specify the conditions that an apprenticeship must satisfy to be an approved Welsh apprenticeship.	Affirmative
108(1)(c)	Regulations	Power of the Welsh Ministers to specify further conditions that an apprenticeship agreement must satisfy to be an approved Welsh apprenticeship agreement.	Affirmative
109(1)	Regulations	Power of the Welsh Ministers to specify the description of what is categorised as an alternative Welsh apprenticeship.	Affirmative
114(6)	Regulations	Power of the Welsh Ministers to require the Commission to include further information in the register of apprenticeship frameworks.	Negative
115(4)	Regulations	Power for the Welsh Ministers to authorise the Commission to charge a fee for issuing an apprenticeship certificate.	Negative
120 (5)	Regulations	Power to make provision applying any provision of Part 4 (apprenticeships) with modifications to an apprenticeship agreement where a person undertakes Crown employment or to a person working (or proposing to work) under such an agreement.	Negative

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Description of powers

The powers above enable the Welsh Ministers to determine the parameters necessary for the operation of the new apprenticeship system. They confer an ability on the Welsh Ministers to specify and amend:

- the conditions that an apprenticeship must satisfy to be an *approved Welsh apprenticeship*;
- the further conditions than an apprenticeship agreement must satisfy to be an *approved Welsh apprenticeship agreement*; and
- the description of an *alternative Welsh apprenticeship*.

Additionally, the Welsh Ministers are enabled to:

- add new information requirements to the register of approved Welsh Apprenticeships maintained by the Commission;
- authorise the Commission to charge a fee for issuing of apprenticeship certificates; and

- apply any provision of Part 4 of the Bill with modifications to an apprenticeship agreement where a person undertakes Crown employment or to a person working or proposing to work under such an agreement.

Policy purpose and intent

Section 107 of the Bill provides for the definition of an approved Welsh Apprenticeship. The power under section 107(4) allows the Welsh Ministers to make regulations providing further requirements that must be met in order that an apprenticeship is an approved Welsh apprenticeship. The purpose of this power is to ensure that what constitutes an approved Welsh Apprenticeship can be revised over time and remains appropriate in light of changes in the delivery of Welsh apprenticeships. It could for instance be used to respond to changes to the economy or delivery of apprenticeships.

Section 108 provides for the definition of an approved Welsh apprenticeship agreement. Section 108(1)(c) enables the Welsh Ministers to specify further conditions that an approved Welsh apprenticeship agreement must satisfy beyond those specified on the face of the Bill. This power is intended to ensure that the definition of what constitutes an approved Welsh apprenticeship agreement remains up to date, it could for example be used to specify that such an agreement include or refer to a statement of employment particulars issued under section 1 of the Employment Rights Act 1996.

Section 109 provides for the meaning of an alternative Welsh apprenticeship. The power under section 109(1) enables the Welsh Ministers to make regulations that provide for what is meant by an alternative Welsh apprenticeship. This power could be used, to specify alternative working arrangements to take account of self-employment or to deal with situations where individuals working under an apprenticeship agreement have been made redundant during the course of their apprenticeship replicating (in part) equivalent provisions underpinning the operation of the current apprenticeship system.

Section 114 requires that the Commission must maintain a register of the apprenticeship frameworks published under section 113 of the Bill. The power under section 114(6) will enable the Welsh Ministers to add new information requirements to the register of published apprenticeship frameworks this enables the register maintained by the Commission to be adapted over time to respond to economic or social changes.

Section 115 of the Bill enables the Commission to issue a certificate if a person has completed an approved Welsh apprenticeship, and applies to the Commission for a certificate. It also provides that the Commission may charge a fee for issuing an apprenticeship certificate or copy of a certificate but only if regulations made by the Welsh Ministers allow for a fee to be charged. The power under section 115(3) will enable the Welsh Ministers to authorise the charging of fees by the Commission for issue of apprenticeship certificates or copy certificates and to specify the fee that may be charged. The Welsh Ministers are currently able to charge a fee to issue an apprenticeship certificate or copy certificates, and this power enables the Commission to continue to do likewise.

Section 120 of the Bill provides that a person who is employed as a Crown servant may undertake an approved Welsh apprenticeship agreement. The power under section 120(5) enables the Welsh Ministers to make regulations in relation to an approved Welsh apprenticeship agreement and Crown servants. This power allows for regulations to make provision in light of the differing employment status of Crown servants and allows for elements of Part 4 of the Bill to apply to Crown servants with modifications.

Apprenticeships need to be able to respond flexibly to changing technology and market needs. The regulation making powers under sections 107(4), 108(1)(c) and 109(1) are necessary to allow the Welsh Ministers to maintain a strategic oversight of what constitutes an approved Welsh apprenticeship, an approved Welsh apprenticeship agreement and an alternative Welsh apprenticeship. These powers will ensure that the quality and robustness of the Welsh apprenticeship system is maintained in future by specifying any further requirements that might be necessary for apprenticeships and apprenticeship agreements to satisfy in order to be approved Welsh apprenticeships and approved Welsh apprenticeship agreements. These requirements could change over time. Section 120(5) is necessary to enable elements of Part 4 to apply with any modifications necessary to Crown servants in light of their atypical employment status. A number of the regulation making powers contained in Part 4 of the Bill build upon, or re-enact, existing regulation making powers in the Apprenticeship, Skills, Children and Learning Act 2009 which are used to operate the current Welsh apprenticeship system.

Elements of the regulatory system underpinning approved Welsh apprenticeships may need to change over time as apprenticeship frameworks evolve to meet the changing needs of the Welsh economy. The regulation making powers under sections 114(6) and 115(4) allow the Welsh Ministers to make adjustments to the information requirements of the register of apprenticeships and the fees that the Commission may charge for the issuing of apprenticeship certificates both of which may change over time.

Learner complaints

Section	Form	Provision	Procedure
124(2)	Regulations	Amends section 11 of the Higher Education Act 2004, inserting a power to specify 'qualifying institutions' in addition to those set out on the face of the Act, in respect of which complaints can be made by students and former students and considered under the student complaints scheme under that Act.	Negative

Description of powers

Section 13 of the Higher Education Act 2004 ("the 2004 Act") allows for the designation of a body to operate a student complaints scheme. The Office of the Independent Adjudicator is the designated operator body for handling unresolved student complaints in England and Wales, having been appointed by both the Secretary of State and the Welsh Ministers respectively. The Office of the Independent Adjudicator's role currently extends to 'qualifying institutions' as defined in section 11 of the 2004 Act.

Section 124(2) of the Bill amends section 11 of the 2004 Act inserting, at subsection (2), a regulation making power which enables the Welsh Ministers to specify additional 'qualifying institutions' for the purposes of the student complaints scheme.

The Welsh Ministers may specify in regulations:

- a registered provider or
- a tertiary education provider in Wales (other than a registered provider) in receipt of financial resources from the Commission under the following sections of the Bill:
 - 86(3)(a) (higher education courses),
 - 95(1)(a) (further education or training), or
 - 101(1)(a) (apprenticeships) of the Bill.

The Welsh Ministers will not be able to specify local authorities in relation to school sixth form provision as they are not funded under the specified provisions

Policy purpose and intent

The policy aim is to extend the remit of the Office of the Independent Adjudicator and the breadth of access to the complaints scheme to learners undertaking all courses funded by the Commission as specified. Consultation will be undertaken with stakeholders on the detail and practicalities of extending the scheme prior to the regulations being made.

This will enable providers to be brought into the student complaints scheme gradually, allowing time for the Office of the Independent Adjudicator and individual providers to build their capacity.

Data sharing

Section	Form	Provision	Procedure
128(1)(l)	Regulations	Power to specify persons other than those set out on the face of the Bill as persons who are able to share information with the Commission.	Negative
130(5)	Guidance	The Welsh Ministers must publish guidance regarding factors to be taken into account in deciding whether to approve a body or individual for the purposes of section 130 of the Bill	No procedure

Description of powers

Section 128 includes a list of persons, statutory bodies and persons exercising statutory functions that may share information with the Commission, for the purposes of the exercise of any of the Commission's functions. The Commission may also give information, about any matter in relation to its functions, to those listed in this section and any other person it considers appropriate. The Welsh Ministers may by regulations specify other persons that are allowed to share information with the Commission under this section.

Section 130 makes provision for how the Welsh Ministers may use the application-to-acceptance information obtained under section 129 and provides that the information may be shared with an "approved person". An approved person is:

- a body approved by the Welsh Ministers for the purposes of section 130 of the Bill, that uses or disseminates information for the purpose of research, or
- an individual approved by the Welsh Ministers or an approved body for the purposes of section 130 of the Bill.

The Welsh Ministers are subject to a duty to publish guidance setting out the factors to be considered when deciding whether to approve a body, or individual researcher, to become an "approved person" in relation to the use of application to acceptance information for research purposes.

Policy purpose and intent

This section allows the Welsh Ministers to make regulations to specify other persons that are not mentioned on the face of the Bill which will be able to share information with the Commission. It would also allow for new authorities to be specified.

Examples of the type of factors which may be included in guidance under section 130(5) in respect of a body being an approved person could include:

- Whether the body is a recognised academic institution, public sector organisation or a research organisation on the Research Councils UK list of eligible independent research organisations (noting that research would not be for commercial purposes);
- Whether the body complies with relevant data protection and related legislation, guidance and best practice to ensure that data is accessed, handled, transmitted and stored securely including the use of encryption where necessary;
- Whether the body operates under appropriate governance.

Examples of the type of factors which may be included in this guidance under section 130(5) in respect of an individual being an approved person could include:

- Whether the individual is affiliated with a recognized academic institution, public sector organization or a research organization on the Research Councils UK list of eligible independent research organizations for non-commercial research purposes;
- Whether the individual has relevant expertise in conducting research with secure/administrative data and in a secure environment or is willing to undergo training.

HE Governance – instruments and articles of government for Higher Education Corporations in Wales (HECs)

Section	Form	Provision	Procedure
133(2)	Regulations	Power to amend or repeal, by order, paragraphs 2 to 11 of Schedule 7A of the Education Reform Act 1988 that relates to the contents of the instruments of government for a HEC	Affirmative
134(2)	Regulations	Power to amend or repeal, by order, section 125(2) to (4) of the Education Reform Act 1988 that relate to the contents of the articles of government for a HEC	Affirmative

Description of powers

Section 133(1) makes provision for the Welsh Ministers' existing order making powers under section 124A (9) of the Education Reform Act ("the 1988 Act") to be extended to cover the whole of Schedule 7A with the exception of paragraph 1. Schedule 7A sets out statutory requirements for the content of instruments of government of HECs made by the Privy Council.

Under Section 124A (9) of the 1988 Act, the Welsh Ministers are currently able to amend or repeal any of paragraphs 3 to 5 and 11 of Schedule 7A by order. These paragraphs relate to membership of the HEC and in particular, its size, constitution and the appointment of its members. Paragraph 1 enables a HEC's instrument of government to empower the corporation to change its name with the consent of the Privy Council.

Section 134(2) introduces amendments that will enable the Welsh Ministers, by order, to amend or repeal section 125(2) to (4) of the 1988 Act which relate to the content of articles of government of HECs. Broadly the articles determine the distribution of functions between the board of governors, the Principal and the Academic Board and regulate the constitution and functions of committees of the corporation.

Policy purpose and intent

These provisions amend ERA 1988 and make revisions in respect of the Welsh Minister's powers to amend or repeal current statutory requirements placed on the contents of a HECs instrument of government. The overriding policy aim behind these provisions is to address the findings and recommendations of the Law Commission's report on *Technical issues in Charity Law* that relate to the amendment of governing documents for higher education institutions in Wales. In particular, the Law Commission's report recommends the removal of

existing statutory requirements placed on the governing documents of HECs so that they are able to respond to good governance and best practice guidance in the same way as other types of higher education institution that are not subject to equivalent legislative requirements.

Under current arrangements, the Welsh Ministers are able to amend, by order, only a limited number of the requirements placed on HEC governing documents under Schedule 7A of the 1988 Act. These are the requirements under paragraphs 3 to 5 and paragraph 11 of the Schedule. This means that any future changes to those requirements that are outside the scope of the current powers could not be made in the same way or to the same timeframe as they would require separate primary legislation to take them forward. These provisions will address this issue by extending the Welsh Ministers current order making powers so that they apply to all of the statutory requirements placed on HEC governing documents under Schedule 7A (with the exception of paragraph 1) and to the requirements under section 125(2) to (4) of ERA 1988.

This is intended to create a more flexible and responsive approach that will:

- allow future changes to any or all of the statutory requirements within the scope of the new extended powers to be considered in the same way and be taken forward via statutory order made by the Welsh Ministers;
- remove the need for separate primary legislation to change those requirements that are not within scope of the current powers as is currently the case; and
- allow any future changes that are considered necessary to be made more quickly than if separate primary legislation were to be required for changes to those requirements that are currently out of scope.

An order brought forward by the Welsh Ministers to amend or repeal prescribed provisions in Schedule 7A or sections 125(2) to (4) using these new powers will be subject to the affirmative procedure. The Welsh Ministers will also be required to consult with the Commission and any other persons they consider appropriate before making an order. Currently, an order under section 124A(9) of ERA 1988 is subject to the negative procedure. The change in procedure reflects the widening scope of the powers which affect provisions in an Act of Parliament.

Open University

Section	Form	Provision	Procedure
140(1)	Regulations	Power to provide for the Open University to be treated as an institution in Wales for the purpose of specific provisions under this Bill	Affirmative

Description of powers

The Open University does not fall within the definition of “tertiary education provider in Wales” because its activities are not carried on “wholly or mainly in Wales”. This power enables the Welsh Ministers to make regulations which provide for the Open University to be treated as a tertiary education provider in Wales for the purpose of any provision in, or made under, the Bill. Under the regulations, the Welsh Ministers are able to modify the effect of any provision, specified in those Regulations, insofar as it applies to the Open University (whether as a tertiary education provider in Wales or as a registered provider, should it become one).

Policy purpose and intent

The Open University is the largest higher education provider in the UK, and the only large higher education provider which operates across all four of the UK administrations. Although the Open University has a significant presence in Wales it is not a tertiary education provider in Wales for the purposes of the Bill. Changes in funding and regulation of the Open University in other UK nations may have knock on implications for the way in which the Open University is funded and regulated in Wales.

The Welsh Government is presently in discussions with the Open University to determine the most appropriate application of different provisions of the Bill to the Open University. This may be to apply the registration conditions, learner protection plans and other provisions to the Open University in order to ensure funding and protection for learners in Wales undertaking courses of study with the Open University.

It is therefore more appropriate to use secondary legislation to apply provisions in this Bill to the Open University in respect of the University’s provision in Wales, and for the way in which the Bill applies to the Open University to be amended in response to any wider changing circumstances across the UK.

Proposed Negative Statutory Instruments with Clear Reports

06 December 2021

Pn(6)002 – The Food Information (Wales) (Amendment) Regulations 2021

Procedure: Proposed Negative

These Regulations are made using powers conferred by section 31(1)(a) of and paragraph 27 of Schedule 5 to the European Union (Future Relationship) Act 2020.

These Regulations implement Article 5 of Annex 15 to the Trade and Cooperation Agreement between the EU and the UK ("TCA"). Annex 15 to the TCA makes provision for trade in wine and Article 5 provides for transitional measures relating to the labelling and placing on the market of wine produced before the date of entry into force of the TCA. Regulation 2 makes consequential amendments to the Food Information (Wales) Regulations 2014 to ensure such wine can continue to be sold.

These Regulations were laid for the purposes of sifting under the European Union (Future Relationship) Act 2020 in accordance with Standing Order 27.9A.

Parent Act: European Union (Future Relationship) Act 2020

Sift Requirements Satisfied: Yes



Agenda Item 4.1

SL(6)087 - The Education (European University Institute) (Wales) (Amendment) (EU Exit) Regulations 2021

Background and Purpose

These [Regulations](#) amend the Education (European University Institute) (Wales) Regulations 2014 (“the 2014 Regulations”) to ensure compliance with the EU Withdrawal Agreement, the EEA EFTA separation agreement, the Swiss citizens’ rights agreement (“the Agreements”) and the Common Travel Area arrangement.

The European University Institute (“the Institute”), located in Florence, Italy, is an international postgraduate and post-doctoral teaching and research institute established by European Union member.

Support for an eligible student who attends the Institute is provided for by the 2014 Regulations. The Welsh Ministers may only award support to one eligible student in each academic year.

These Regulations remove eligibility for support from EU nationals and accommodate those with citizens’ rights under the Agreements.

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 2 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

The first paragraph of the Explanatory Note states that one of the principal amendments made by these Regulations is to change the application deadline under the 2014 Regulations to 28 February. These Regulations do not appear to include any provision to change the application deadline. Therefore, there is an inconsistency between what the Regulations include and what the Explanatory Note states.



2. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

Regulation 11(12) of these Regulations inserts a new paragraph 9B (United Kingdom nationals) into Schedule 1 to the 2014 Regulations. Paragraph 9B(1)(b)(ii) includes the text:

“and has remained ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland throughout the period beginning on IP completion day and ending immediately before the relevant date”

It is unclear whether this text forms part of sub-paragraph (ii) or paragraph (b) and would apply equally to sub-paragraphs (i) and (ii). In new paragraph 9BA, the latter approach is taken.

Merits Scrutiny

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

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

Paragraph 289D of the immigration rules provides for the grant of further limited leave to remain for a period not exceeding 30 months in respect of an applicant that does not meet the requirements for indefinite leave to remain as a victim of domestic violence. This provision is not referenced within the first sub-paragraph of the definition of *“person granted leave to remain as a protected partner”* inserted into the 2014 Regulations by these Regulations.

This is different to the position under sub-paragraph (b) of that definition, which includes reference to paragraph D-DVILR.1.2 of Appendix FM of the immigration rules. Under paragraph D-DVILR.1.2, provision is made for further limited leave to remain for a period not exceeding 30 months. The approach also differs from that taken under sub-paragraph (c) of the definition of *“person granted leave to remain as a protected partner”* in relation to partners of members of the Armed Forces who are the victim of domestic violence. In that case a similar provision permits the grant of limited leave (under paragraph 41 of Appendix Armed Forces of the immigration rules).

It is not clear why a person granted limited leave under paragraph 289D of the immigration rules is outside the scope of the definition of *“person granted leave to remain as a protected partner”* when a person granted limited leave under paragraphs D-DVILR.1.2 of Appendix FM or paragraph 41 of Appendix Armed Forces is within the scope of that definition.

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

Regulations 11(2)(c) and (d) of these Regulations insert the text *“, the territory comprising the United Kingdom, the Islands and the Republic of Ireland”* into sub-paragraphs (7) and (8) of



paragraph 1 of Schedule 1 to the 2014 Regulations. Sub-paragraphs (7) and (8) of paragraph 1 of Schedule 1 to the 2014 Regulations already include the wording "*in the territory comprising the United Kingdom, Gibraltar,*". It is therefore not clear why "*the territory comprising the United Kingdom*" has been repeated in those provisions.

Welsh Government response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

1 December 2021



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament **Pack Page 68**

Legislation, Justice and Constitution Committee

SL(6)091 - Development Procedure (Consultees) (Wales) (Miscellaneous Amendments) (Amendment) Order 2021

Background and Purpose

A new flood risk national planning policy and a new Flood Map for Planning ("FMP") were intended to come into force for planning purposes on 1 December 2021. The suite of changes included the introduction of specific criteria on which Natural Resources Wales ("NRW") had to be consulted in relation to certain matters of flood risk development

Following a change in policy by the Welsh Government, the new arrangements will no longer come into force on 1 December 2021 and the current policy and development advice map will continue to be used for planning decision making purposes beyond that date.

This [Order](#) amends the Development Procedure (Consultees) (Wales) (Miscellaneous Amendments) Order 2021 by removing the provisions containing requirements to consult NRW on flood risk development in accordance with the new FMP, as it will no longer be coming into force on 1 December 2021.

The effect of these amendments is that current NRW consultation requirements for flood risk development will continue.

Procedure

Negative.

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

Technical Scrutiny

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

Merits Scrutiny

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

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

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



comes into force), and the explanation for the breach provided by Julie James MS, Minister for Climate Change, in a letter to the Llywydd dated 23 November 2021.

In particular, we note the following:

"...the Welsh Government has received correspondence and communications from local authorities that highlight legitimate and reasonable concerns with the arrangements for bringing TAN 15 and the Flood Map for Planning into effect on 1st December. These had been subject to a 9-week 'soft launch' period, following their informal release to stakeholders on 29 September. The 9-week period allowed for a transition between current and new policy frameworks in recognition that many planning applications would have been made on the basis of the existing policy framework, i.e. the 2004 version of TAN 15 and the Development Advice Map. It was expected that the majority of planning applications already submitted and in the system could be determined by 30 November, and therefore not be inadvertently affected by the new policy advice.

Local authorities and the development industry have demonstrated that the 9-week transition period has been insufficient for the purposes of enabling an orderly transition to the new policy framework...

...the pause in bringing TAN 15 and the Flood Map for Planning into effect has meant it has been necessary to omit provisions relating to Natural Resources Wales and flood risk development from the Development Procedure (Consultees) (Wales) (Miscellaneous Amendments) Order 2021."

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 the Explanatory Memorandum to this Order provides that no regulatory impact assessment has been prepared. In particular, we note the following paragraphs in the Explanatory Memorandum:

"A separate Regulatory Impact Assessment (RIA) has not been prepared in respect of the 2021 Amendment Order as it revokes amendments to the DMPWO and DNSPO (in the 2021 Order) for consulting with NRW on development in flood risk areas before they come into force. This is considered to be a factual amendment and one that reflects the policy intent of the DAM continuing to be in use for planning decision making purposes beyond the 1 December; with NRW consultation requirements for development in flood risk areas remaining unchanged.

A comprehensive RIA will be undertaken as part of a future statutory instrument regarding amendments to NRW consultation requirements for development in flood risk areas. The Welsh Government is working collectively with NRW and local authorities to gather further evidence to inform these future changes before a new Flood Map for Planning can come into force for decision making purposes."



However, the Explanatory Note to the Order provides that a regulatory impact assessment has been prepared in relation to this Order. Can the Welsh Government explain this discrepancy between the Explanatory Note and the Explanatory Memorandum?

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

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

"Due to the need for the 2021 Amendment Order to come into force prior to 1 December (i.e. before provisions come into force that would have updated NRW consultation requirements to refer to a new Flood Map for Planning) the Welsh Government was unable to undertake a public consultation on these amending provisions.

Notwithstanding this, these amending provisions have no effect. The 2021 Amendment Order revokes amendments to the DMPWO and DNSPO (in the 2021 Order) for consulting with NRW on development in flood risk areas before they come into force. As a result, consultation with NRW on development in flood risk areas will continue to take place in accordance with the DAM.

By reverting to mapping and legislation to the default position, it will allow for further work to be undertaken on the Flood Map for Planning, and with local authorities, to ensure its robustness and that it is fit for purpose in accounting for local models of flood risk which incorporate climate change projections. It will effectively ensure any future legislative changes in respect of consulting with NRW on developments falling within the floodzones of a new flood map are underpinned by the best possible evidence."

Welsh Government response

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

Legal Advisers

Legislation, Justice and Constitution Committee

30 November 2021





Eich cyf/Your ref
Ein cyf/Our ref MA/JJ/3967/21

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

23 November 2021

Dear Llywydd

The Development Procedure (Consultees) (Wales) (Miscellaneous Amendments) (Amendment) Order 2021

In accordance with section 11A(4) of the Statutory Instruments Act 1946 (as inserted by Schedule 10 paragraph 3 of the Government of Wales Act 2006), I am notifying you that the statutory instrument referred to above comes into force less than 21 days from the date of laying. A copy of the instrument and the Explanatory Memorandum that accompanies it are attached for your information.

The Development Procedure (Consultees) (Wales) (Miscellaneous Amendments) Order 2021 contains provisions that are intended to support the implementation of a new planning policy framework for development in areas of flood risk and coastal erosion. The new Technical Advice Note (TAN) 15 and accompanying Flood Map for Planning were due to be issued on 1 December. This new framework necessitated a technical change to the legislative provisions that ensure Natural Resources Wales (NRW), the principal advisor on issues relating to the environment and natural resources to government, industry and the wider public sector, is consulted on planning applications where flood risk may be a relevant issue.

On 25 October I signed an Order that would ensure continuity in the types of planning applications that would be subject to consultation with NRW, as well as creating new requirements to consult with Fire and Rescue Authorities¹.

Since the Order was laid, the Welsh Government has received correspondence and communications from local authorities that highlight legitimate and reasonable concerns

¹ The provisions related to Fire and Rescue Authorities in The Development Procedure (Consultees) (Wales) (Miscellaneous Amendments) Order 2021 are entirely unaffected by recent events and are not subject to amendments covered by this letter.

with the arrangements for bringing TAN 15 and the Flood Map for Planning into effect on 1st December. These had been subject to a 9-week 'soft launch' period, following their informal release to stakeholders on 29 September. The 9-week period allowed for a transition between current and new policy frameworks in recognition that many planning applications would have been made on the basis of the existing policy framework, i.e. the 2004 version of TAN 15 and the Development Advice Map. It was expected that the majority of planning applications already submitted and in the system could be determined by 30 November, and therefore not be inadvertently affected by the new policy advice.

Local authorities and the development industry have demonstrated that the 9-week transition period has been insufficient for the purposes of enabling an orderly transition to the new policy framework. Among the types of schemes that may be adversely affected by the new TAN 15 taking effect on 1 December are flood defence schemes, whose rationale is to make communities more resilient to flooding. Another concern raised by local authorities specifically is that they feel they have not been able to fully contribute local evidence and knowledge into the national Flood Map for Planning. Unlike the previous Development Advice Map, the Flood Map for Planning includes climate change projections, resulting in significantly larger flood zones in some areas. Pausing the publication of TAN 15 and the Flood Map for Planning will allow for refinement of the mapping and the identification of appropriate climate change adaptation strategies.

The pause in bringing TAN 15 and the Flood Map for Planning into effect has meant it has been necessary to omit provisions relating to Natural Resources Wales and flood risk development from the Development Procedure (Consultees) (Wales) (Miscellaneous Amendments) Order 2021. To do so, I will be laying the Development Procedure (Consultees) (Wales) (Miscellaneous Amendments) (Amendment) Order 2021, to come into force on 25 November 2021.

I am copying this letter to the Minister for Rural Affairs, North Wales and Trefnydd, Huw Irranca-Davies MS, Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely



Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change

Agenda Item 4.3

SL(6)092 – The Valuation for Rating (Wales) (Coronavirus) (Revocation) Regulations 2021

Background and Purpose

These [Regulations](#) revoke the Valuation for Rating (Wales) (Coronavirus) Regulations 2021 (the “2021 Regulations”).

The 2021 Regulations specify assumptions that are to be made when applying the provisions of sub-paragraphs (1) to (7) of paragraph 2 of Schedule 6 to the Local Government Finance Act 1988 in connection with a non-domestic property’s rateable value. The effect of the 2021 Regulations is that ratepayers for non-domestic properties in Wales affected by:

1. the Welsh Government or UK Government’s response to coronavirus;
2. any requirements of, advice or guidance in response to coronavirus from any UK public authority, the Welsh Government, the Scottish Government, the Northern Ireland Executive, the UK Government or a government outside of the UK, or
3. measures taken to ensure compliance with health and safety legislation,

are not able to cite those matters as causing a material change of circumstances for the purpose of appealing a non-domestic property’s rateable value on the 2017 rating lists.

The provisions in the 2021 Regulations will be superseded by provisions for Wales included within The Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill (“the Bill”). The revocation of the 2021 Regulations will come into force on the day that the Bill receives Royal Assent.

Procedure

Negative.

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

Technical Scrutiny

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



Merits Scrutiny

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

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

We note the potential 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 Local Government, in a letter to the Llywydd dated 25 November 2021. In particular, we note the following in the letter:

“This statutory instrument ... will come into force once the Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill (the Bill) receives Royal Assent and there is a risk this may occur within 21 days of this statutory instrument being laid. The rationale is to provide clarity of law as provisions within the Bill would supersede the Valuation for Rating (Wales) (Coronavirus) Regulations 2021 (the existing Regulations) which came into force on 1 November.”

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

30 November 2021



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—
Welsh Parliament

Legislation, Justice and Constitution Committee

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Ein cyf/Our ref: MA-RE-3755-21

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

25 November 2021

Dear Elin

THE VALUATION FOR RATING (WALES) (CORONAVIRUS) (REVOCATION) REGULATIONS 2021

In accordance with section 11A(4) of the Statutory Instruments Act 1946, I am notifying you that there is a possibility this statutory instrument will come into force less than 21 days after it has been laid. This statutory instrument is made under paragraph 2(8) of Schedule 6 to the Local Government Finance Act 1988. It will come into force once the Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill (the Bill) receives Royal Assent and there is a risk this may occur within 21 days of this statutory instrument being laid. The rationale is to provide clarity of law as provisions within the Bill would supersede the *Valuation for Rating (Wales) (Coronavirus) Regulations 2021* (the existing Regulations) which came into force on 1 November. A copy of the instrument and the Explanatory Memorandum are attached for your information.

If it comes into force, this statutory instrument will revoke the existing Regulations which were put in place to protect public finances whilst the Bill progresses through Parliament. If the Bill passes, provisions within the Bill will supersede the existing Regulations and, for the sake of clarity, the existing Regulations need to be revoked. The existing Regulations will remain in place whilst the Bill progresses and in the event that the Bill does not receive Royal Assent.

Amendments in the Bill relating to Wales were laid on 9 September and I laid a Legislative Consent Memorandum on 21 September, considered by the Legislation, Justice and Constitution Committee and Economy, Trade and Rural Affairs Committee who reported on 17 November and 18 November respectively. I held a Plenary debate on the Legislative Consent Motion for the Bill on 23 November, within which the Senedd granted agreement for provisions applicable to Wales to be included in the Bill.

I am copying this letter to Lesley Griffiths MS, Minister for Rural Affairs, North Wales and Trefnydd, Huw Irranca-Davies MS, Chair of the Legislation, Justice and Constitution Committee, Peredur Owen Griffiths MS, Chair of the Finance Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely

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

Rebecca Evans AS/MS

Y Gweinidog Cyllid a Llywodraeth Leol
Minister for Finance and Local Government

Agenda Item 4.4

SL(6)093 - The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 12) Regulations 2021

Background and Purpose

[The Health Protection \(Coronavirus, International Travel\) \(Wales\) \(Amendment\) \(No. 12\) Regulations 2021](#) (“the Regulations”) amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”). The Public Health (Control of Disease) Act 1984, and regulations made under it, provide a legislative framework for health protection in England and Wales, and the Regulations are made in reliance on the powers in sections 45B, and 45P(2) of that Act.

The International Travel Regulations impose requirements on persons entering Wales after having been abroad. Non-exempt persons are prohibited from entering Wales where they have been in a country or territory listed in Schedule 3A (countries and territories subject to additional measures) to the International Travel Regulations within the last 10 days of arrival, pursuant to regulation 12E (additional measures applicable to persons travelling from a country or territory listed in Schedule 3A) of the International Travel Regulations.

Regulation 2 of these Regulations amends Schedule 3A to add Botswana, Eswatini, Lesotho, Namibia, South Africa and Zimbabwe to the list of countries or territories to which regulation 12E applies.

This will mean that travellers from those destinations will not be permitted to enter Wales but must enter through a port of entry in England or Scotland and go into a managed quarantine facility, and must take post-arrival PCR tests on day 2 and day 8.

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 3 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 Eluned Morgan MS, Minister for Health and Social Services, in a letter to the Llywydd dated 26 November 2021. In particular, we note the following in the letter:

“Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity and continue the four nation approach to international travel; in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case.”

We note also the following explanation in the Explanatory Memorandum:

“This is necessary owing to the risk posed in relation to coronavirus and in particular variant strains of the same, from passengers travelling to the UK.”

And:

“A highly concerning COVID-19 variant has been identified in South Africa, after the UK identified the variant submitted by Hong Kong (ex South Africa) on GISAID and alerted international partners. South Africa delivered a press conference yesterday and highlighted exponential growth; cases have increased fourfold in the last two weeks.”

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

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

“The amendments contained in these Regulations do not change the engagement under the International Travel Regulations of individual rights under the Human Rights Act 1998 and the European 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. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

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



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

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

30 November 2021



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament **Pack Page 80**

Legislation, Justice and Constitution Committee



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

26 November 2021

Dear Elin

Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 12) Regulations 2021

In accordance with sections 4(1) and 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this Statutory Instrument has not adhered to the 21 day convention and will come into force at 12.00 p.m. on 26 November 2021, before it can be laid. I intend to lay this and an accompanying Explanatory Memorandum on 26 November.

This statutory instrument amends the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020, so that:

- **Botswana, Eswatini, Lesotho, Namibia, South Africa and Zimbabwe are added to the 'Red List' of countries.**

Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity and continue the four nation approach to international travel; in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case.

I am copying this letter to the Minister for Rural Affairs and North Wales, and Trefnydd, Huw Irranca-Davies MS, Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely

Eluned Morgan AS/MS
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

Bae Caerdydd • Cardiff Bay
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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.

Agenda Item 4.5

SL(6)094 - The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 13) Regulations 2021

Background and Purpose

[The Health Protection \(Coronavirus, International Travel\) \(Wales\) \(Amendment\) \(No. 13\) Regulations 2021](#) (“the Regulations”) amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”). The Public Health (Control of Disease) Act 1984, and regulations made under it, provide a legislative framework for health protection in England and Wales, and the Regulations are made in reliance on the powers in sections 45B, and 45P(2) of that Act.

The International Travel Regulations impose requirements on persons entering Wales after having been abroad. Non-exempt persons are prohibited from entering Wales where they have been in a country or territory listed in Schedule 3A (countries and territories subject to additional measures) to the International Travel Regulations within the last 10 days of arrival, pursuant to regulation 12E (additional measures applicable to persons travelling from a country or territory listed in Schedule 3A) of the International Travel Regulations.

Regulation 2 of these Regulations amends Schedule 3A to add Mozambique and Malawi to the list of countries or territories to which regulation 12E applies.

This will mean that travellers from those destinations would not be permitted to enter Wales but must enter through a port of entry in England or Scotland and go into a managed quarantine facility, and must take post-arrival PCR tests on day 2 and day 8.

We note however, that whilst the Regulations were due to come into force at 8.00 p.m. on 26 November 2021, the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 14) Regulations 2021 revoked the Regulations at 19:59 hours on 26 November 2021. The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 15) Regulations 2021 thereafter added Angola, Malawi, Mozambique and Zambia to Schedule 3A of the International Travel Regulations at 04:00 hours on 28 November 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 3 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 Eluned Morgan MS, Minister for Health and Social Services, in a letter to the Llywydd dated 26 November 2021. In particular, we note the following in the letter:

“Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity and continue the four nation approach to international travel; in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case.”

We note also the following explanation in the Explanatory Memorandum:

“This is necessary owing to the risk posed in relation to coronavirus and in particular variant strains of the same, from passengers travelling to the UK.”

And:

“A highly concerning COVID-19 variant has been identified in South Africa, after the UK identified the variant submitted by Hong Kong (ex South Africa) on GISAID and alerted international partners. South Africa delivered a press conference yesterday and highlighted exponential growth; cases have increased fourfold in the last two weeks.”

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

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

“The amendments contained in these Regulations do not change the engagement under the International Travel Regulations of individual rights under the Human Rights Act 1998 and the European 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. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

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

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

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

30 November 2021



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament **Pack Page 84**

Legislation, Justice and Constitution Committee



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

26 November 2021

Dear Elin

**Health Protection (Coronavirus, International Travel) (Wales) (Amendment)
(No. 13) Regulations 2021**

In accordance with section 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this Statutory Instrument has not adhered to the 21 day convention and will come into force at 20:00 hours on 26 November 2021. I intend to lay this and an accompanying Explanatory Memorandum on 26 November.

This statutory instrument amends the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020, so that:

- **Mozambique and Malawi are added to the 'Red List' of countries.**

Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity and continue the four nation approach to international travel; in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case.

I am copying this letter to the Minister for Rural Affairs and North Wales, and Trefnydd, Huw Irranca-Davies MS, Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely

Eluned Morgan AS/MS
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

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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.

Agenda Item 4.6

SL(6)095 - The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 14) Regulations 2021

Background and Purpose

[The Health Protection \(Coronavirus, International Travel\) \(Wales\) \(Amendment\) \(No. 14\) Regulations 2021](#) ("the Regulations") revoke the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 13) Regulations 2021 ("the No. 13 Regulations").

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

The No. 13 Regulations originally amended the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 ("the International Travel Regulations") to add Mozambique and Malawi to the list of countries or territories in Schedule 3A (countries and territories subject to additional measures).

The International Travel Regulations impose requirements on persons entering Wales after having been abroad. Non-exempt persons are prohibited from entering Wales where they have been in a country or territory listed in Schedule 3A to the International Travel Regulations within the last 10 days of arrival, pursuant to regulation 12E (additional measures applicable to persons travelling from a country or territory listed in Schedule 3A) of the International Travel Regulations.

We note however, that whilst the No. 13 Regulations were due to come into force at 8.00 p.m. on 26 November 2021, the Regulations revoked them at 19:59 hours on 26 November 2021. The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 15) Regulations 2021 thereafter added Angola, Malawi, Mozambique and Zambia to Schedule 3A of the International Travel Regulations at 04:00 hours on 28 November 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 3 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 Eluned Morgan MS, Minister for Health and Social Services, in a letter to the Llywydd dated 26 November 2021. In particular, we note the following in the letter:

“Further to my letter earlier today regarding the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 13) Regulations 2021, and in accordance with sections 4(1) and 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this Statutory Instrument has not adhered to the 21 day convention and will come into force at 19:59 hours on 26 November 2021, before it can be laid. I intend to lay this and an accompanying Explanatory Memorandum on 29 November.”

We note also the following explanation in the Explanatory Memorandum:

“This is necessary owing to the risk posed in relation to coronavirus and in particular variant strains of the same, from passengers travelling to the UK. A highly concerning COVID-19 variant known as Omicron, has been identified in a number of countries. The World Health Organisation has designated it a variant of concern, due to the large number of mutations, some of which are concerning.

As a consequence of an assessment of the risk associated with this variant, the UK Government intended to add Angola, Malawi, Mozambique and Zambia to the ‘red list’ of countries but the need to obtain collective UK agreement resulted in a delay to the UK Regulations being laid. To ensure consistency in Wales with the position in England the Regulations were revoked.

Not adhering to the 21 day convention allowed these Regulations to revoke the earlier Regulations before they came into force, so as to continue the four nation approach to international travel.

Following further developments that evening and further UK-wide discussion Angola, Malawi, Mozambique and Zambia were added to the red list of countries on 27 November.”



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

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

“The amendments contained in these Regulations do not change the engagement under the International Travel Regulations of individual rights under the Human Rights Act 1998 and the European 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. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

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

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

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

30 November 2021





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

26 November 2021

Dear Elin

**Health Protection (Coronavirus, International Travel) (Wales) (Amendment)
(No. 14) Regulations 2021**

Further to my letter earlier today regarding the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 13) Regulations 2021, and in accordance with sections 4(1) and 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this Statutory Instrument has not adhered to the 21 day convention and will come into force at 19:59 hours on 26 November 2021, before it can be laid. I intend to lay this and an accompanying Explanatory Memorandum on 29 November.

This statutory instrument revokes the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 13) Regulations 2021.

Not adhering to the 21 day convention allows these Regulations to revoke the earlier Regulations before they come into force, so as to continue the four nation approach to international travel.

I am copying this letter to the Minister for Rural Affairs and North Wales, and Trefnydd, Huw Irranca-Davies MS, Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely

Eluned Morgan AS/MS
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

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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.

Agenda Item 4.7

SL(6)096 - The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 15) Regulations 2021

Background and Purpose

[The Health Protection \(Coronavirus, International Travel\) \(Wales\) \(Amendment\) \(No. 15\) Regulations 2021](#) (“the Regulations”) amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”). The Public Health (Control of Disease) Act 1984, and regulations made under it, provide a legislative framework for health protection in England and Wales, and the Regulations are made in reliance on the powers in sections 45B, and 45P(2) of that Act.

The International Travel Regulations impose requirements on persons entering Wales after having been abroad. Non-exempt persons are prohibited from entering Wales where they have been in a country or territory listed in Schedule 3A (countries and territories subject to additional measures) to the International Travel Regulations within the last 10 days of arrival, pursuant to regulation 12E (additional measures applicable to persons travelling from a country or territory listed in Schedule 3A) of the International Travel Regulations.

Regulation 2 of these Regulations amends Schedule 3A to add Angola, Malawi, Mozambique and Zambia to the list of countries or territories to which regulation 12E applies.

This will mean that travellers from those destinations would not be permitted to enter Wales but must enter through a port of entry in England or Scotland and go into a managed quarantine facility, and must take post-arrival PCR tests on day 2 and day 8.

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 3 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 Eluned Morgan MS, Minister for Health and Social Services, in a letter to the Llywydd dated 27 November 2021. In particular, we note the following in the letter:

“Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity and continue the four nation approach to international travel; in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case.”

We note also the following explanation in the Explanatory Memorandum:

“A highly concerning COVID-19 variant, known as Omicron, has been identified in a number of countries. The World Health Organisation has designated it a variant of concern, due to the large number of mutations, some of which are concerning.

As a consequence of an assessment of the risk associated with this variant, the UK Government will add Angola, Malawi, Mozambique and Zambia to the ‘red list’ of countries.”

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

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

“The amendments contained in these Regulations do not change the engagement under the International Travel Regulations of individual rights under the Human Rights Act 1998 and the European 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. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

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

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



Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

30 November 2021



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament **Pack Page 92**

Legislation, Justice and Constitution Committee



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

27 November 2021

Dear Elin

**Health Protection (Coronavirus, International Travel) (Wales) (Amendment)
(No. 15) Regulations 2021**

In accordance with sections 4(1) and 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this Statutory Instrument has not adhered to the 21 day convention and will come into force at 04:00 hours on 28 November 2021, before it can be laid. I intend to lay this and an accompanying Explanatory Memorandum on 29 November.

This statutory instrument amends the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020, so that:

- **Mozambique, Malawi, Zambia and Angola are added to the 'Red List' of countries.**

Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity and continue the four nation approach to international travel; in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case.

I am copying this letter to the Minister for Rural Affairs and North Wales, and Trefnydd, Huw Irranca-Davies MS, Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely

Eluned Morgan AS/MS
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

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Correspondence.Eluned.Morgan@gov.wales

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

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

Agenda Item 4.8

SL(6)100 - The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 16) Regulations 2021

Background and Purpose

The Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”) impose requirements on persons entering Wales after having been abroad. They include requirements for booking and undertaking coronavirus tests in accordance with those Regulations.

These [Regulations](#) amend the International Travel Regulations by correcting an error introduced to those regulations by the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) (No.3) Regulations 2021 (“the No. 3 Regulations”), which were laid on 30 November 2021.

Regulation 8 of the No.3 Regulations inserted a new regulation 6HB(3) into the International Travel Regulations relating to isolation requirements on receipt of inconclusive test results. In the English text this referred to isolation for 10 days, whereas the Welsh text incorrectly referred to isolation for 14 days.

These Regulations correct the error in the Welsh text of regulation 6HB(3) in the International Travel Regulations, clarifying that the isolation period is 10 days.

Procedure

Negative

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

Technical Scrutiny

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

Merits Scrutiny

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



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

We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a “made negative” instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Eluned Morgan MS, Minister for Health and Social Services in a letter to the Llywydd dated 1 December 2021.

In particular, we note the following:

“This statutory instrument amends the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020, to correct an error in an amendment to those Regulations made earlier this week by the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) (No.3) Regulations 2021. The Regulations made today will ensure that the Welsh and English text of regulation 6HB(3) are consistent. Not adhering to the 21 day convention allows this correction to come into force at the earliest opportunity and ensure travellers are able to follow a clear set of rules. It will also ensure ongoing consistency with the four nation approach to international travel. In view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case”

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

The Explanatory Memorandum to these Regulations confirms that no members of the public have been affected by the error. We note the following paragraphs of the Explanatory Memorandum:

“Although very regrettable, in practice we confirm that no one in Wales or the UK will currently be affected by this error prior to its remedy. This is because when the amendment was corrected it was only the second day of the new arrangements, and as such “day 2 tests” were only just being taken. The consequences of any inconclusive test results and the disparity between the texts of the isolation periods of 10 days or 14 days would not have any impact until next week.

However this error needs to be corrected and action taken urgently as an inconclusive result could be returned yesterday or today and people need to plan accordingly.”

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

2 December 2021





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

1 December 2021

Dear Elin

Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 16) Regulations 2021

In accordance with sections 4(1) and 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this Statutory Instrument has not adhered to the 21 day convention and will come into force at 20:00 hours on 1 December 2021, before it can be laid. I intend to lay this and an accompanying Explanatory Memorandum on 2 December.

This statutory instrument amends the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020, to correct an error in an amendment to those Regulations made earlier this week by the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) (No.3) Regulations 2021. The Regulations made today will ensure that the Welsh and English text of regulation 6HB(3) are consistent.

Not adhering to the 21 day convention allows this correction to come into force at the earliest opportunity and ensure travellers are able to follow a clear set of rules. It will also ensure ongoing consistency with the four nation approach to international travel. In view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case.

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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.

I am copying this letter to the Minister for Rural Affairs and North Wales, and Trefnydd, Huw Irranca-Davies MS, Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'M. E. Morgan'.

Eluned Morgan AS/MS

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

Agenda Item 4.9

SL(6)097 - The Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) (No. 3) Regulations 2021

Background and Purpose

The Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”) impose requirements on persons entering Wales after having been abroad. They include requirements for booking and undertaking coronavirus tests in accordance with those Regulations.

These [Regulations](#) amend the International Travel Regulations by making the following changes:

- Removing LFDs as an option for day 2 tests for all fully vaccinated travellers arriving from non ‘red-list’ countries.
- Requiring fully vaccinated travellers arriving from non ‘red-list’ countries to self-isolate from arrival until they get a negative result from their day 2 test PCR test.

The effect of these changes will be that fully vaccinated travellers arriving from non ‘red-list’ countries will need to self-isolate until they have taken a day 2 PCR test and received a negative result. If they receive a positive result they will need to remain in self-isolation for a period of 10 days beginning with the day on which they took the PCR test.

These Regulations also amend the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 in consequence of the changes made to the International Travel Regulations.

Procedure

Negative

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

Technical Scrutiny

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



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

These Regulations insert a new regulation 6HB(3) into the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020. The English version of new regulation 6HB(3) refers to isolation for 10 days, while the Welsh version refers to isolation for 14 days.

Therefore, it is unclear for how long a person must isolate in the circumstances set out in regulation 6HB. We expect the Welsh Government to rectify and clarify the situation as soon as possible.

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 Eluned Morgan MS, Minister for Health and Social Services in a letter to the Llywydd dated 29 November 2021.

In particular, we note the following:

“This statutory instrument amends the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020, so that:

- *LFDs are removed as an option for day 2 tests for fully vaccinated travellers.*
- *Fully vaccinated travellers are required to self-isolate from arrival until they get a negative result from their day 2 test.*

Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity and continue the four nation approach to international travel; in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case.”

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

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

“The amendments contained in these Regulations do not change the engagement under the International Travel Regulations of individual rights under the Human Rights Act 1998 and the European 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. 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 no regulatory impact assessment has been prepared in relation to these Regulations. In particular, we note the following paragraphs in the Explanatory Memorandum:

“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.”

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

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

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

Welsh Government response

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

Legal Advisers

Legislation, Justice and Constitution Committee

2 December 2021



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament **Pack Page 100**

Legislation, Justice and Constitution Committee



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

29 November 2021

Dear Elin

The Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) (No. 3) Regulations 2021

In accordance with sections 4(1) and 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this Statutory Instrument has not adhered to the 21 day convention and will come into force at 04:00 hours on 30 November 2021, before it can be laid. I attach a copy of the statutory instrument and I intend to lay this and an accompanying Explanatory Memorandum on 30 November.

This statutory instrument amends the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020, so that:

- **LFDs are removed as an option for day 2 tests for fully vaccinated travellers.**
- **Fully vaccinated travellers are required to self-isolate from arrival until they get a negative result from their day 2 test.**

Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity and continue the four nation approach to international travel; in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case.

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Gohebiaeth.Eluned.Morgan@llyw.cymru
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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.

I am copying this letter to the Minister for Rural Affairs and North Wales, and Trefnydd, Huw Irranca-Davies MS, Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'M. E. Morgan'.

Eluned Morgan AS/MS

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

SL(6)088 – The Local Elections (Communities) (Wales) Rules 2021

Background and Purpose

These [2021 Rules](#) set out the rules of conduct by which the election of councillors to community or town councils in Wales is to take place. The 2021 Rules are Wales-specific and aim to provide an updated and modernised set of conduct rules. For example, the 2021 Rules set out rules on the:

- timetable for certain activities that take place before and on polling day,
- giving notice of an election,
- nomination of candidates,
- form of ballot papers,
- functions of returning officers and presiding officers,
- appointment (by candidates) of polling agents and counting agents,
- counting of votes and the declaration of results.

The 2021 Rules also provide for policies made as part of the development and delivery of the Local Government and Elections (Wales) Act 2021 to be implemented. These policy changes were consulted on as part of the Electoral Reform in Local Government in Wales consultation conducted in 2017. The policies being taken forward in the 2021 Rules relate to the optional publication of the candidate's home address, the statement of party affiliation and necessary changes following the extension of the franchise to those aged 16 and 17 and qualifying foreign citizens.

The 2021 Rules will apply to the election of councillors to community or town councils in Wales held on or after 5 May 2022.

Procedure

Draft Affirmative

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

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

These 2021 Rules, among other things, consolidate the law concerning community council elections and the rules by which they are conducted.

We welcome the consolidation of this area of law, previously contained in the Local Elections (Parishes and Communities) (England and Wales) Rules 2006 (**the 2006 Rules**). The 2006 Rules were made by the Secretary of State on an England-and-Wales basis, in English only, and contained a complex mix of provisions, some of which applied in Wales and some of which did not.

These 2021 Rules now set out the relevant rules that apply in Wales in a clear way, in one place and in both English and Welsh. This will markedly improve accessibility to this area of law, which is to be welcomed.

Also to be welcomed is the Explanatory Memorandum to the 2021 Rules, which includes a clear and thorough explanation of the 2021 Rules. This is particularly important given the length (over 170 pages) of the 2021 Rules.

However, we note that the Welsh Ministers intend to make further subordinate legislation in this area of law, making supplementary and consequential provision. We hope this will not result in an unnecessary step backwards as regards accessibility and the consolidation achieved by the 2021 Rules.

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

30 November 2021



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament **Pack Page 104**

Legislation, Justice and Constitution Committee

SL(6)089 – The Local Elections (Principal Areas) (Wales) Rules 2021

Background and Purpose

These [2021 Rules](#) set out the rules of conduct by which the election of councillors to county and county borough councils in Wales is to take place. The 2021 Rules are Wales-specific and aim to provide an updated and modernised set of conduct rules. For example, the 2021 Rules set out rules on the:

- timetable for certain activities that take place before and on polling day,
- giving notice of an election,
- nomination of candidates,
- form of ballot papers,
- functions of returning officers and presiding officers,
- appointment (by candidates) of polling agents and counting agents,
- counting of votes and the declaration of results.

The 2021 Rules also provide for policies made as part of the development and delivery of the Local Government and Elections (Wales) Act 2021 to be implemented. These policy changes were consulted on as part of the Electoral Reform in Local Government in Wales consultation conducted in 2017. The policies being taken forward in the 2021 Rules relate to the optional publication of the candidate's home address, the statement of party affiliation and necessary changes following the extension of the franchise to those aged 16 and 17 and qualifying foreign citizens.

The 2021 Rules will apply to the election of councillors to county and county borough councils in Wales held on or after 5 May 2022.

Procedure

Draft Affirmative

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

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

These 2021 Rules, among other things, consolidate the law concerning principal council elections and the rules by which they are conducted.

We welcome the consolidation of this area of law, previously contained in the Local Elections (Principal Areas) (England and Wales) Rules 2006 (**the 2006 Rules**). The 2006 Rules were made by the Secretary of State on an England-and-Wales basis, in English only, and contained a complex mix of provisions, some of which applied in Wales and some of which did not.

These 2021 Rules now set out the relevant rules that apply in Wales in a clear way, in one place and in both English and Welsh. This will markedly improve accessibility to this area of law, which is to be welcomed.

Also to be welcomed is the Explanatory Memorandum to the 2021 Rules, which includes a clear and thorough explanation of the 2021 Rules. This is particularly important given the length (over 170 pages) of the 2021 Rules.

However, we note that the Welsh Ministers intend to make further subordinate legislation in this area of law, making supplementary and consequential provision. We hope this will not result in an unnecessary step backwards as regards accessibility and the consolidation achieved by the 2021 Rules.

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

30 November 2021



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament **Pack Page 106**

Legislation, Justice and Constitution Committee

Subordinate Legislation with Clear Reports

06 December 2021

SL(6)090 – The Curriculum for Wales – Relationships and Sexuality Education Code

Background and Purpose

The Curriculum for Wales – Relationships and Sexual Education Code (the “Code”) is proposed to be issued pursuant to section 8 of the Curriculum and Assessment (Wales) Act 2021 (“the Act”). The Code sets out the themes and matters to be encompassed by the mandatory element of Relationships and Sexuality Education (“RSE”).

The content of the Code is set within the context of broad and interlinked learning strands, namely:

- Relationships and identity;
- Sexual health and well-being;
- Empowerment, safety and respect.

Under section 8(2) and (3) of the Act, a curriculum does not encompass RSE unless it accords with the provision in the Code. Teaching and learning also does not encompass the mandatory element of RSE unless it accords with the provision in the Code.

Implementation of the Code in schools and settings is designed to take place from September 2022 through to the 2026/27 academic year as the Curriculum for Wales is rolled out across schools and settings. The Code will be supplemented by statutory guidance published under section 71 of the Act.

Procedure: Affirmative

The Welsh Ministers have laid a draft of the Code before the Senedd. The Welsh Ministers cannot issue the Code unless the Senedd approves the draft Code.

Parent Act: Curriculum and Assessment (Wales) Act 2021

Date Made:

Date Laid:

Coming into force date:





Llywodraeth Cymru
Welsh Government

29 November 2021

Dear Members,

I am writing to you with an update about the Relationships and Sexuality Education (RSE) draft Code and supporting statutory guidance.

Under the Curriculum and Assessment (Wales) Act 2021, the Welsh Government is required to publish an [RSE code](#), subject to the draft affirmative procedure. This sets out the mandatory learning in RSE which every school and setting must include in their curriculum for all learners. This learning is set out at developmentally appropriate phases. I am pleased to say that this was laid before the Senedd on 23 November. Both the code and guidance have been co-developed with teachers and a range of stakeholders.

The code is designed to help learners to form and maintain a range of relationships, all based on mutual trust and respect. These relationships are critical to the development of emotional well-being, resilience and empathy. An understanding of sexuality with an emphasis on rights, health, equality and equity empowers learners to understand themselves, take responsibility for their own decisions and behaviours and form relationships that are fully inclusive, reflecting diversity and promoting respect. Social and technological changes only underline how important this learning is for children and young people.

High-quality, holistic and inclusive RSE is associated with a range of positive and protective outcomes for all learners and their communities and can, for example:

- help increase learners' understanding of and participation in healthy, safe, and fulfilling relationships
- help young people recognise abusive or unhealthy relationships and seek support
- help reduce all bullying, including homophobic, biphobic and transphobic bullying, and increase safety and well-being for all learners
- help all learners make informed decisions about sexual intimacy and reproductive health
- help promote equality and equity of sex, gender and sexuality

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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.

- increase awareness, knowledge and understanding of gender-based and sexual violence.

It is of course vital that schools, settings and practitioners are fully supported to deliver this critical aspect of the curriculum. Alongside the RSE code, the Curriculum for Wales framework will therefore also include supporting Statutory Guidance. This recognises that *how* RSE is taught is as important as *what* is taught. I am enclosing a copy of the draft RSE Statutory Guidance, for your information. This guidance will be published upon approval of the Code.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jeremy Miles', with a stylized, cursive flourish at the end.

Jeremy Miles AS/MS

Gweinidog y Gymraeg ac Addysg
Minister for Education and Welsh Language

[DN: unless noted separately, this section of guidance replaces that for RSE already published under cross-cutting themes within the Designing your Curriculum section of the CfW Framework – see: [Cross-cutting themes for designing your curriculum - Hwb \(gov.wales\)](#)]

Relationships and Sexuality Education (RSE) – Statutory Guidance

(Words in green denote glossary definition is available)

Legal status of this guidance

This section sets out statutory guidance in relation to RSE and is published under section 71 of the Curriculum and Assessment (Wales) Act 2021 (the Act), it is designed to assist those responsible under the Act to design RSE as part of the curriculum.

Introduction

Relationships and sexuality education (RSE) is a statutory requirement in the Curriculum for Wales framework and is mandatory for all learners from age 3-16.

RSE has a positive and empowering role in learners' education and plays a vital role in supporting them to realise the [four purposes](#) as part of a [whole school approach](#). Helping learners to form and maintain a range of relationships, all based on mutual trust and respect, is the foundation of RSE. These relationships are critical to the development of emotional well-being, resilience and empathy. An understanding of sexuality with an emphasis on rights, health, equality and [equity](#) empowers learners to understand themselves, take responsibility for their own decisions and behaviours and form relationships that are fully inclusive, reflecting [diversity](#) and promoting respect.

Schools and settings have an important role to play in creating safe and empowering environments that support learners' rights to enjoy fulfilling, healthy and safe relationships throughout their lives. This is critical to building a society which treats others with understanding and empathy, whatever their ethnicity; social economic background; disability; or [sex](#), [gender](#) or sexuality.

This section of the Curriculum for Wales framework contains:

- the RSE Code: this sets out the mandatory learning at developmentally appropriate phases
- the supporting statutory guidance: this provides support in developing RSE in a curriculum both as essential learning in its own right and also as a cross-cutting element in all Areas.

The section below makes clear what is part of the mandatory code and what is statutory guidance. A link to schools' and settings' legal duties on RSE can be found in the [legislative summary](#) section of this framework guidance.

Why is RSE so important?

The world around us is evolving rapidly and significantly. As a society we are becoming ever more aware of:

- changing family structures and relationships
- shifting social, cultural and religious norms in relation to sex, gender and sexuality
- advances in technology including the rising influence of social media and increased use of digital communications and devices,
- changing laws and rights around relationships, sex, gender and sexuality.

In this context, RSE is an important support in enabling learners to navigate these changes. Understanding how relationships are formed, developed and maintained enables children and young people to develop skills and attitudes to support them in their own relationships throughout their lives. These may include family relationships, friendships, professional relationships, romantic and sexual relationships. Learning about both relationships and sexuality supports young people to develop the knowledge and skills needed to make sense of their thoughts and feelings and to effectively navigate rapidly changing influences. Learners need to be supported to respond to these and, where appropriate, feel equipped to challenge harmful stereotypes and perceptions and seek help and support.

RSE has the potential to be transformative for learners and communities - it is important in empowering learners and in developing their critical thinking. Children and young people are navigating a range of complex and contradictory messages about relationships and sexuality that will shape their sense of self and their relationships with others. High quality RSE provision will support learners to critically engage with what they are learning and experiencing. This supports them to understand their values and beliefs and to **advocate** for respect and understanding of others.

The Welsh Government believes all children and young people have the right to receive high-quality, holistic and **inclusive** education about relationships and sexuality. High-quality, holistic and inclusive RSE is associated with a range of positive and protective outcomes for all learners and their communities and can, for example:

- help increase learners' understanding of and participation in healthy, safe, and fulfilling relationships
- help young people recognise abusive or unhealthy relationships and seek support
- help reduce all **bullying**, including homophobic, biphobic and transphobic bullying, and increase safety and well-being for all learners
- help all learners make informed decisions about sexual intimacy and reproductive health
- help promote equality and equity of sex, gender and sexuality
- increase **awareness, knowledge** and **understanding** of gender-based and sexual violence.

What is RSE?

RSE encompasses the knowledge, skills, dispositions and values that will empower learners to:

- support their health and well-being
- develop healthy, safe and fulfilling relationships of all kinds, including those with family and friends, and in time, romantic and sexual relationships
- navigate and make sense of how relationships, sex, gender and sexuality shape their own and other people's identities and lives
- understand and support their rights and those of others to enjoy equitable, safe, healthy and fulfilling relationships throughout their lives and advocate for these.

RSE provision helps to ensure learners develop a positive understanding of relationships and sexuality and recognise misconceptions. RSE aims to empower learners in line with their needs, experiences and wider development. Through discussion and by responding to learners' questions and needs, it can provide safe and empowering environments that enable learners to reflect on and express their views and feelings on a range of issues.

RSE in the curriculum focuses on three broad strands:

- Relationships and identity: helping learners develop the skills they need to develop healthy, safe, and fulfilling relationships with others and helping them to make sense of their thoughts and feelings.
- Sexual health and well-being: helping learners to draw on factual sources regarding their sexual and reproductive health and well-being allowing them to make informed decisions throughout their lives.
- Empowerment, safety and respect: helping protect them from all forms of discrimination, violence, abuse and neglect and enabling them to recognise unsafe or harmful relationships and situations, supporting them to recognise when, how and where to seek support and advice.

Principles and approaches of effective RSE

To achieve the aims set out above, the following principles and approaches provide guidance and support for schools and settings as they design and realise RSE within their curriculum:

- Whole-school approach:

Teaching and learning in RSE should be supported by a whole school approach to RSE and this is critical to supporting learners' well-being. This means effectively linking all aspects of school, including the curriculum, policy, staff, school environment and community to support learners in their relationships and sexuality education. This should support the development of

positive relationships, allowing learners and practitioners to thrive; reinforce a consistent positive ethos and provide holistic high quality support for practitioners and learners.

A whole school approach should include consideration of leadership and policy around RSE. This should include the participation of the senior leadership team in developing the school's vision for RSE as well as the designation of a RSE lead within the school. This should also consider how curriculum and pedagogy supports and informs the development of the wider approach. Professional learning is also key. The senior leadership team should ensure that all staff participate in professional learning. Schools should also consider how the culture and environment can support RSE.

- Enabling human rights:

Schools and settings should discuss RSE in the context of children's rights as protected by the [UNCRC](#). A rights based approach supported by equity should be embedded in the learning.

The Children's Commissioner has published a guide for schools [The Right Way: A Children's Rights Approach for Education in Wales](#). This should inform how settings embed a rights-based approach in the curriculum, including RSE. Rights provide learners with a way of exploring RSE issues, helping them to develop the foundational skills for healthy relationships; respect and understanding of others and to recognise healthy and harmful behaviours

In this way, learners develop an understanding of how rights are related to all aspects of RSE and contribute to the freedom, dignity, well-being and safety of all people. This also helps learners understand the importance of equity, recognising the importance of rights in ensuring fair treatment for all

Schools and settings should expressly consider [children's rights](#). Learning in RSE should highlight the right to:

- non-discrimination (Article 2)
- to be heard and involved in decision-making (Article 12)
- to freedom of expression (Article 13)
- to follow your own religion (Article 14)
- to have privacy (Article 16)
- to access information to make informed decisions (Article 17)
- not be harmed and should be looked after and kept safe (Article 19)
- to experience the highest attainable health, access to health facilities, and preventative health care (Article 24)
- to education that prepares children to understanding others (Article 29)
- to protection from sexual abuse and exploitation (Article 34)
- to get special help if they have been abused (Article 39).

Article 3 - everyone who works with children should always do what is best for each child - is relevant to RSE, as it is to the whole curriculum.

Schools and settings can also link learning to the United Nations Convention on the Rights of Persons with Disabilities (UNCRC). Learners should also be supported to develop an understanding of the legal duties and protections associated with diversity, gender-based and domestic violence and well-being. Further information on relevant laws can be found in the legislation summary of this guidance

- Inclusivity, including LGBTQ+ inclusivity

In line with the mandatory requirements of the RSE Code, RSE will be realised in a way that is inclusive in accordance with the principles of equality. This helps ensure that all learners can see themselves, their families, their communities and each other reflected across the curriculum and can learn to value difference and diversity as a source of strength. This contributes to a cohesive, fair and equitable society that equips learners with skills for life. This of course includes gender equity and LGBTQ+ inclusivity.

Learners are growing up in a world where gender and sexual identity, cultures, rights and legislation are changing or evolving around the world. In order to be effective, inclusive RSE must start early. From a young age learners can learn about their own uniqueness, how to appreciate diversity and respect the rights of others. This is the foundation for exploring diversity in relationships, gender and sexual identity and for developing the skills and values needed to think critically about gender and sexual norms, rights and inequities. This should include consideration of a range of influences that shape our values and identity. It should help learners to develop understanding of different values, religious beliefs and non-religious convictions that can inform our values and identity around relationships and sexuality.

- RSE as a cross-cutting element

RSE is a broad, interdisciplinary and complex area that includes biological, social, psychological, spiritual, ethical and cultural dimensions.

This means that each Area of the curriculum and the range of subject disciplines within them each have a unique contribution to learning in RSE. RSE should draw on all Areas to allow learners to make connections between their learning in RSE and the wider curriculum, understanding historical, cultural, geographic, physical, political, social and technological perspectives and influences on RSE issues. This also helps avoid a 'single issue' approach where each lesson covers a different RSE issue, isolated from other learning. Schools should consider what each Area can authentically bring to an understanding of RSE. This should be meaningful and should avoid superficial or tenuous links.

The Designing Your Curriculum section for each Area includes support on how each Area can authentically contribute to RSE (see full extract below).

- Developmentally-appropriate learning

All learning in RSE should be developmentally appropriate and consider the following:

Responding to learners' needs, experiences, and evolving knowledge:

Schools should include [learners' perspectives](#) to ensure relevant and responsive RSE and provide increasing opportunities for learners to help direct their learning as they progress. Learners' views about what, how and where they learn should be taken into consideration so that the RSE curriculum can truly reflect the experiences that children and young people encounter in society.

Broad developmental appropriateness within the RSE Code:

The RSE Code sets out each strand of teaching and learning in three broad developmental [phases](#) as follows:

- Phase 1 - from age 3
- Phase 2 - from age 7
- Phase 3 - from age 11

Each phase represents the building blocks of progression in RSE. As learners progress, they should build on previous learning from either phase one; or phases one and two; consolidating and strengthening the same dispositions, knowledge and skills and applying them in new and relevant contexts as they develop. This is very different to simply acquiring learning about topics in isolation and then moving on to other content.

Schools should have regard to the mandatory strands of developmentally appropriate content within the RSE Code to develop their approach, and should recognise learners' social, physical, emotional and cognitive development and needs during their planning.

During the early phase of development, an effective focus on prerequisite skills can enable the learner to successfully respond to situations in a meaningful way, thus supporting all learners with progression. In the early phase, this is how most RSE topics are considered.

Understanding the nature of progression in RSE:

The principles of progression across the [Health and well-being Area](#) offer guidance to [progression](#) in RSE. Learning should revisit content, themes and topics as outlined in any of the preceding phases set out in the RSE Code below, reinforcing and building on learners' developing understanding and changing needs. As they develop, learners should be encouraged to take increasing responsibility for their own learning.

RSE for learners with special educational needs or additional learning needs:

Schools providing education for learners with moderate and severe, profound and multiple learning needs should consider how best to meet the needs of all learners whose understanding of sexual health and well-being issues may not match their development.

All staff, including ancillary staff, physiotherapists, nurses and carers should be aware of the school's approach to RSE when working with learners with additional learning needs.

RSE provision should be a planned and integrated part of the curriculum, coordinated effectively to ensure continuity and progression in learning across the continuum. Special schools should decide the precise content of the RSE programme which, in many cases, will include careful consideration of the prerequisites for meaningful learning in RSE and the strategies for learning adopted to meet the differing needs of learners. For example, for learners who use alternative methods of communication, such as signing, symbols or communication switches and aids, schools will need to ensure that all staff are familiar with key RSE terms in Makaton, Braille and British Sign Language, or whatever alternative methods of communication are being used.

- Engaging with learners, parents, carers and wider communities

Schools and settings should have clear lines of communication in relation to RSE and should [engage with learners, parents, carers and the wider community](#), offering them the opportunity to engage with learning and teaching in RSE.

Communicating effectively with parents and carers on an ongoing basis is an important way to foster positive relationships in order to engage them in purposeful and meaningful dialogue. When undertaken well, this can help aid learner progression by helping parents and carers to understand how they can support learning within and outside the school environment. Schools' curricula should also recognise and reflect the needs and contexts of the communities within and beyond the school.

A proactive approach should help to dispel any concerns that parents and carers may have in relation to RSE provision. This should also help to reassure them of the positive nature of RSE by setting out the proposed learning and resources to be used at the different developmental phases.

Schools and settings should recognise when and where they need to use the support of external organisations and expertise, such as school nurses. School staff should be present at all times when external organisations are engaging with learners. They should also have appropriate knowledge and understanding of the local support services network for support and referral when necessary.

It should be ensured that all resources to be used in schools and settings are relevant, reputable, developmentally appropriate, inclusive and sensitive to learners' needs. Schools should share examples of the resources they plan to use with parents in order to reassure them and to enable conversations, where appropriate, to be reinforced and continued in the home.

- Professional learning

Professional learning is a key requirement for the realisation of high quality RSE, and should occur at a school, cluster, regional and national level.

The senior leadership in schools should ensure that all practitioners contribute to the school's RSE priorities, either through the whole school approach, the cross-cutting element or the essential learning. Schools and settings should facilitate all practitioners' access to professional learning that can support them to develop their confidence, knowledge and skills in RSE.

- Positive, protective and preventative RSE

Building on the Code, the approach to RSE should be positive, protective and preventative, considering how learners might need to be supported to:

- understand and cope with change, conflicts and pressure
- recognise potentially harmful behaviours in relationships and know how to seek support
- have the knowledge to recognise all forms of discrimination, violence, abuse and neglect, including [violence against women, domestic abuse and sexual violence](#)
- seek help and advice where appropriate.

Schools should look to create safe and supportive learning environments. These help create trust and allow learners a safe space to consider learning, ask questions and express their thoughts and feelings. Practitioners should seek to present learning around RSE issues positively and meaningfully. While understanding risks and harm are an important aspect of RSE, using these as the focus for teaching about RSE issues, or focusing mainly on the negative aspects of RSE is likely to be ineffective or harmful.

This can be achieved by developing a working agreement of 'ground-rules' with learners for discussions about RSE. This helps to maintain professional boundaries and keep learners and practitioners safe. For example, creative approaches can help learners share their questions, views and experiences anonymously, allowing more open, honest discussion.

RSE Code

This Code contains mandatory requirements, the legal basis for which is set out in the [legislation summary](#) of this Curriculum for Wales framework guidance. It sets out the themes and matters that must be encompassed in RSE. A curriculum and teaching and learning must encompass the mandatory element of RSE outlined within the following RSE Code.

Designing your curriculum

This mandatory RSE Code supports schools to design their RSE. The content is set within the context of broad and interlinked learning strands, namely

- relationships and identity
- sexual health and well-being
- empowerment, safety and respect.

These strands allow practitioners to design and develop a curriculum tailored to their learners, making connections and developing authentic contexts for learning across the curriculum.

The Welsh Government committed to covering the following themes in RSE: relationships; rights and equity; sex, gender and sexuality; bodies and body image; sexual health and well-being; and violence, safety and support. To assist schools and settings in their planning of RSE, these themes are interwoven into the learning strands.

Across the learning strands, curriculum content in RSE must be inclusive and reflect diversity. It must include learning that develops learners' awareness and understanding of different identities, views and values and a diversity of relationships, gender and sexuality, including LGBTQ+ lives.

Learning about rights and equity runs through all the strands, as well as embedding learning and experience through a rights-based approach to the learning.

Content appropriate to learner development

The Act requires that the RSE schools provide must be developmentally appropriate for learners. This means schools and settings must take account of a range of factors including the learner's age; knowledge and maturity; any additional learning needs and anticipating their physiological and emotional development. RSE must be developmentally appropriate for each learner, meaning that learners' needs of similar ages may differ.

The phases have been designed to give practitioners an understanding of what is likely to be developmentally appropriate. For example, in phase 1 and 2, learners will be taught about the principles of general **consent** as pre-requisites for learning about sexual consent at the developmentally appropriate time in phase 3. In practice, this means learners in phases one and two developing an awareness of asking for

permission to share materials, for example toys; or learning about respecting personal boundaries.

The phases are designed to help schools and settings make judgements about whether learning is developmentally appropriate for specific learners. The ages set out below indicate broadly when practitioners should start to consider whether learning in a phase is developmentally appropriate for their learners. This may mean some learners will be ready for specific learning before the broad indications given in the Code, but likewise it may mean that some learners need opportunity for further development before they engage with specific learning. Introduction to a phase may be gradual: with some learning in that phase being developmentally appropriate for learners sooner than other learning. As outlined above, these decisions must be based on a range of factors.

The tables attached to each strand of learning below are in three broad developmental phases. As they are set out, they represent the building blocks of progression in RSE. As learners progress, they will be building upon previous learning from either phase one; or phases one and two, consolidating and strengthening the same dispositions, knowledge and skills and applying them in new, relevant contexts. This is very different to simply acquiring learning about topics in isolation and then moving on to other content.

The learning for RSE refers to both what is taught expressly and what is embedded throughout the curriculum and in the school environment through the whole school approach.

Relationships and identity

This strand focuses on:

- the range of relationships that human beings have throughout their lives
- how identity can be shaped by our relationships and sexuality
- the importance of human rights in securing healthy, safe and fulfilling relationships in an inclusive society.

Learners need to develop the understanding and behaviours that will support them to develop and maintain healthy, safe and fulfilling relationships throughout their lives. Learners need to be supported to recognise and value different types of relationships, including families and friendships, as well as the diversity within different types of relationships, including LGBTQ+ diversity, and that these can change over time. Developing empathy, compassion and communication skills are critical to learners' relationships now and the relationships they will form in the future. This will also support respect, understanding and equitable treatment for others, whatever their sex, gender, sexuality, faith or belief.

Learners also need to develop both their sense of self and their sense of everyone being unique. Over time, learners can explore how relationships, sex, gender, romantic and sexual attraction and personal experiences may shape and inform a person's identity and individuality. This supports learners to understand how identity, relationships and sexuality are informed by biology, technology and social, cultural and religious norms and that these may change over time. By engaging with these

aspects, learners can recognise both positive and harmful behaviours and norms and have the confidence to speak up for themselves and to speak out and advocate for the rights and respect of others.

This strand also recognises how rights can support and underpin equitable, respectful relationships, as well as a fair and inclusive society.

Phase 1	Phase 2	Phase 3
Practitioners should consider learners' developmental appropriateness for learning in each phase:		
From age 3	From age 7	From age 11
The learning supports:		
Ability to act with kindness, empathy and compassion in interactions with others immediate to them including family, friendship and peer relationships	Ability to form and maintain relationships which are equitable, respectful and kind with a range of others.	Understanding the positive and negative characteristics and healthy or unhealthy aspects of a range of relationships including family, friendship, romantic and sexual. Ability to develop and understand the importance of equity, mutual respect, and affection in relationships with others.
An awareness of how to communicate wants and needs in relationships, and begin to respect those of others. Awareness of how needs relate to rights.	How understanding and use of effective communication, decision-making, managing conflict and refusal skills are part of ensuring your own and others rights and part of friendships and relationships.	Understanding and use of effective communication, decision making, managing and resolving conflict, and refusal skills in a range of different contexts and types of relationships, offline and online, including intimate relationships. Understanding how to speak out about harmful behaviours directed at them or others.
Awareness of the diversity of families and relationships, including friendship and peer	Recognition of the characteristics of different families, friendship and peer	Understanding how the diversity of relationships including marriage, and all types of civil partnership, has changed over time,

<p>relationships, and why these are important.</p>	<p>relationships and the diversity of these.</p> <p>Understanding positive behaviours in relationships and what can happen when relationships breakdown.</p> <p>An awareness of how families, relationships and parenting are shaped by social and cultural norms and laws that have changed over time.</p>	<p>and how relationships are positively and negatively impacted by social and cultural norms and laws in different ways around the world.</p>
<p>Developing a sense of themselves, in the context of families, friends and communities.</p> <p>Recognising how people value different things and have different families, friends and communities.</p>	<p>Recognising how people's relationships with others shape who they are and their happiness.</p> <p>An awareness of how identity can be expressed in different ways.</p>	<p>Understanding how rights need to be balanced in a diverse society; the characteristics, benefits and challenges of living in a diverse society; and how and why attitudes have changed and are changing including towards gender and sexuality diversity.</p>
<p>Experiencing inclusive behaviours, language and role modelling that show respect for others, whatever their gender.</p> <p>Recognising learners' rights to be treated fairly, kindly and with respect.</p>	<p>Valuing and recognising the contributions of everyone; and the importance of sex and gender equality.</p> <p>Recognise and know how to safely respond to and challenge gender and sexual stereotypes and unfair behaviour.</p> <p>An awareness of how positive and negative social and cultural norms regarding sex, gender and sexuality influence relationships and behaviours</p>	<p>An ability to advocate for and advance the rights of all and understand and respect all people in relation to sex, gender and sexuality.</p> <p>Understanding how the law and human rights secure freedoms around sex, gender and sexuality and how these can differ in other countries and over time.</p> <p>Ability to critically explore and understand how a range of social, cultural and religious norms and influences about relationships, sex, gender</p>

		and sexuality can shape perceptions and our well-being and can be both positive and harmful.
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Sexual health and well-being

This strand focuses on:

- learning about how living things grow, reproduce and have a life cycle
- developing an understanding of the human body, including people's feelings about their bodies and how these can be represented
- the health issues related to relationships and sexuality
- an understanding of how sexuality and sexual health affects our well-being.

In early development, learners need to experience contexts for understanding the importance of maintaining personal health and well-being, including hygiene, and how this impacts on themselves and others. This progresses to applying broad principles of health and hygiene within sexual health.

As learners develop, teaching and learning needs to include focus on exploring how physical changes have an impact on well-being and relationships ensuring the representation of LGBTQ+ experiences and lives. Learning also focuses on menstrual well-being and conditions which can affect the reproductive system; as well as developing understanding of the possible outcomes of the decisions made relating to sexual health and relationships. All of this learning will focus on recognising the diversity of human body types, how perception and understanding of the human body is shaped by society, the law, science and technology and the impact of this on well-being.

Phase 1	Phase 2	Phase 3
Practitioners should consider learners' developmental appropriateness for learning in each phase:		
From age 3	From age 7	From age 11
The learning supports:		
<p>The use of accurate terminology for all body parts.</p> <p>An awareness of the human life cycle and that reproduction is a part of life.</p>	<p>Knowledge and understanding of how reproductive organs develop in a human body. This includes understanding fertility and the processes of reproduction, including</p>	<p>Understanding how fertility, sexual function and menstrual health and well-being can change across the life course and how to find information and support when needed.</p>

	<p>what supports menstrual health and well-being.</p> <p>Recognising the process of pregnancy and birth.</p>	<p>The knowledge and understanding of how hormones continue to affect emotional and physical health throughout adulthood.</p> <p>Understanding how contraception can assist with reproductive choices, including awareness of abortion.</p>
<p>Awareness of how human bodies change as they grow.</p>	<p>The knowledge and understanding of how people experience significant physical, emotional, social and cognitive changes during puberty.</p>	<p>Understanding of good sexual and reproductive health, including the range of risks and outcomes from sexual experiences and the knowledge needed to support informed decisions about sexual activity and about reproductive choices.</p>
<p>An awareness of the importance of personal self-care and hygiene.</p>	<p>The knowledge and skills needed to manage personal self-care and hygiene, including the importance of menstrual well-being.</p>	<p>The knowledge and understanding of the causes, symptoms and impact of conditions connected to sexual and reproductive health and to fertility, including sexually transmitted infections, HIV and reproductive cancers.</p> <p>Understanding and skills needed to minimise risks and seek help.</p>
<p>A recognition that everyone's body is unique and special to them.</p>	<p>An awareness that there are many different sources of information offline and online that help us learn about our bodies and affect how we feel about our body and other people's bodies.</p>	<p>Critically engaging with positive and negative representations of a diversity of bodies, including through various forms of media and understanding that these can be unrealistic and harmful.</p>

<p>Awareness of the different feelings one can have, recognising other people's feelings and how these may differ to your own.</p>	<p>Awareness of how people can feel attracted to others as they mature and how this can lead to emotional and physical responses.</p>	<p>Understanding how all are entitled to safe and pleasurable relationships and recognising the role consensual sexual activity plays within healthy relationships.</p> <p>Understanding the legal age of consent.</p>
<p>Recognising trusted adults who can help them and whom they can talk to and ask questions of, especially when they feel unhappy or unsafe.</p>	<p>Be able to identify trustworthy sources of information and able to raise issues and questions with trusted adults.</p>	<p>Recognise and be able to use a range of support services to access information and support around relationships, health and well-being and safety.</p>

Empowerment, safety and respect

This strand focuses on:

- learners' rights to safety and protection and freedom from harm and discrimination
- how and where to seek information, help and support
- how to support and advocate for the rights, fair treatment and respect of all.

This strand builds on the positive behaviours and skills of healthy relationships. It reinforces the requirement to support learners to develop empathy, kindness and compassion towards each other and empowering them with the confidence to draw upon available support if they are concerned about their own safety or that of others.

Learners should be supported to understand change and conflict and recognise the impact of these on relationships, and where appropriate seek help and support.

They should be supported to understand that exercising their right to be free from all forms of discrimination, violence, abuse and neglect is enabled by trusted adults who can support their safety. This includes through a number of legal protections that exist for all. Criminal law makes such behaviours unlawful and there are criminal sanctions for those found guilty of committing such offences.

Learners need to develop an understanding of the social, emotional, physical and legal nature and impact of harmful behaviours, including all **bullying**, and LGBTQ+ based bullying, sexual violence and gender-based violence in a range of contexts, including online.

Phase 1	Phase 2	Phase 3
Practitioners should consider learners' developmental appropriateness for learning in each phase:		
From age 3	From age 7	From age 11
The learning supports:		
<p>Recognising harmful behaviour including behaviours which are discriminatory and the right to be free from discrimination.</p> <p>Ability to interact with others in a way that is fair.</p>	<p>Understanding of the importance of fair treatment for all and of respect in all interpersonal interactions offline and online.</p> <p>Recognising the value of non-discriminatory behaviours and when and how to take safe action to respond to and challenge discriminatory behaviours.</p>	<p>Understanding the importance of inclusivity, including for LGBTQ+ people, non-discrimination and the value of diversity in our interpersonal behaviours and relationships.</p> <p>Developing a sense of individual and social responsibility to others, including consideration of how we respond to behaviours that are discriminatory, disrespectful and harmful, offline and online.</p>
<p>Recognising the right to be free from harmful, abusive and bullying behaviour.</p> <p>An awareness of how to recognise positive and harmful behaviours, including bullying.</p> <p>Ability to share with a trusted adult when faced with harmful behaviours.</p>	<p>Understanding of the right for everyone to be free from harm or abuse.</p> <p>An awareness of different kinds of harmful or abusive behaviour including physical, sexual, and emotional abuse and neglect, including and peer on peer harassment and bullying and the role technology can play.</p> <p>How to seek support for oneself, and offer support to others.</p> <p>How to be a good friend and advocate for others.</p>	<p>Recognising harmful, abusive or coercive behaviour in personal relationships including control, violence and sexual violence and how to respond and seek help for self and others. This includes all forms of violence based on sex, gender and sexuality.</p>

<p><i>(Phases 1 and 2 include pre-requisite knowledge and skills for understanding the learning on consent at phase 3)</i></p> <p>Beginning to recognise that other people have thoughts, feelings and opinions that are different.</p> <p>An awareness of the need to seek agreement in order to share, for example toys.</p> <p>An awareness of everyone's right to privacy, personal boundaries and which parts of the body are private.</p> <p>Ability to communicate if someone is touching them in a way that makes them feel uncomfortable.</p>	<p>Understanding of the right to bodily privacy, personal boundaries including online.</p> <p>Understanding how behaviours may be perceived by others offline and online.</p> <p>Recognising which steps to take to keep safe from harm both in offline and online friendships.</p> <p>Understanding the social and emotional norms and pressures that lead to non-consensual behaviours, friendships and relationships, for example, gender norms.</p> <p>Developing the skills to build consensual behaviours and relationships and know how to safely respond, challenge and report non-consensual behaviours and relationships offline and online.</p>	<p>Understanding of the importance of consent for safe and healthy relationships and in particular sexual relationships.</p> <p>Understanding of how consent can be communicated in different social contexts and relationships, including online.</p> <p>A critical understanding of how consent is impacted by perception and social context and the factors that influence and impair people's ability to engage in consensual behaviour, for example, substances, violence, coercion and relationship norms.</p>
<p>Awareness of how to keep safe when using digital media, including sharing with a trusted adult when they feel uncomfortable or scared.</p>	<p>Know how and when digital media can be shared safely, with permission and when it can be a source of harm.</p> <p>Awareness of the benefits and dangers of the internet and social media in forming friendships online.</p> <p>Exploring the motives behind fabricated and digitally-altered media.</p> <p>An understanding of the need to keep safe online,</p>	<p>Understand the ethical and legal issues relating to the consensual and non-consensual sharing of self-generated imagery, and rights to safety, support well-being and protection.</p> <p>Understanding the impacts associated with sexual material and intimacy online, including the ethical and legal implications.</p>

	<p>an ability to take steps to protect themselves and an ability to share with trusted adults where something is seen that shouldn't have been, or is upsetting or uncomfortable.</p>	<p>An awareness of how sexual material and media often represents gender, sexual activity, bodily appearance and relationships in unrealistic and harmful ways.</p>
<p>An awareness that everyone has the right to be safe and no one is allowed to harm anyone else.</p> <p>Ability to speak up for each other.</p>	<p>Awareness of laws in place to protect from different forms of discrimination, violence, abuse, neglect and harassment.</p>	<p>An understanding of laws around RSE issues that are in place to protect us from all forms of discrimination, violence, abuse, neglect and harassment, and that laws are intended to protect not criminalise young people.</p> <p>An understanding of how to advocate for safe environments and the rights and understanding of everyone on a range of RSE issues.</p> <p>Appreciate the importance of safely speaking out against sex and gender based and sexual violence.</p>

Glossary

Term	Definition
Advocate	(eirioli) to support the rights of others by helping to make sure their views and experiences are listened to and to inform decisions.
Awareness, knowledge and understanding	(Ymwybyddiaeth, gwybodaeth a dealltwriaeth) in early development, learners experience holistic approaches to exploring relationships and are supported in shaping an understanding of themselves in the world. Learners have more awareness as they progress in their learning with concepts being introduced gradually according to learner development. As they move through the continuum, learners gain increased knowledge and understanding, and often experience of, the different themes that are part of RSE curriculum content.
Bullying	(Bwlio) Behaviour by an individual or group, usually repeated over time, that intentionally hurts others either physically or emotionally.
Consent	(Cydsyniad) when one person provides informed and free consent for another person to do something that affects them. It is important for people to ask for consent before they do something that affects another person. It is also important for a person's decision to be respected – if they say 'no' to something, then the other person should not go ahead with their action.
Equity	(Tegwch) fair and impartial treatment, including equal treatment or differential treatment to redress imbalances in rights, benefits, obligations and opportunities.

Gender	(Rhywedd) often used to refer to whether someone identifies as female, male or non-binary. Gender can also refer to the social and cultural norms and differences that different societies have about how people behave, look or dress. People often find an important sense of identity in these but they can also perpetuate discrimination, inequalities and harms.
Gender-based violence (GBV)	(Trais ar sail rhywedd) (a) violence, threats of violence or harassment arising directly or indirectly from values, beliefs or customs relating to gender or sexual orientation; (b) female genital mutilation; (c) forcing a person (whether by physical force or coercion by threats or other psychological means) to enter into a religious or civil ceremony of marriage (whether or not legally binding).
Inclusive	(Cynhwysol) the process of strengthening the capacity of the education system to reach out to all learners. Inclusive RSE recognises the importance of diversity and difference across a range of identities related to relationships, sex, gender, sexuality and that this diversity is a source of strength and is foundational to a cohesive, fair and equitable society.
LGBTQ+	(LHDTC+) lesbian, gay, bisexual/bi, transgender/trans, queer or questioning. The + refers to other letters that can be added to represent other identities, including non-binary.
Phase	(Cyfnod) In the context of the RSE Code, a phase indicates when that learning would be developmentally appropriate for most learners.
Protected characteristics	(Nodeddion Gwarchoddedig) age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership and pregnancy and maternity.

Relationships	(Cyberthnasau) can be interpersonal and intrapersonal. Interpersonal relationships refers to the connections and interactions between two or more people. Intrapersonal relationships refers to the relationship that one has with oneself. Both types are inextricably linked, shifting and changing over time. They can be familial, spiritual, romantic, platonic and sexual.
Sex	(Rhyw) attributed to a person on the basis of primary sex characteristics (genitalia) and reproductive functions.
Sexuality	(Rhywioldeb) a central aspect of being human and encompasses sexual orientation, gender identities and roles, sex, reproduction and intimacy. Sexuality is experienced and expressed through thoughts, beliefs, behaviours and relationships.
Violence against Women Domestic Abuse and Sexual Violence	(Trais yn erbyn menywod, cam-drin domestig a thrais rhywiol) RSE, while fostering positive attitudes and behaviours, may also give learners space to explore the features of unhealthy relationships.
Whole school approach	(Dull Ysgol Gyfan) the effective linking of all elements of a school's curriculum, policy, staff, community, services and environment. It encourages the communication and reinforcement of a consistent positive ethos and provides holistic high quality support for learners. This includes how RSE forms part of the approach to physical, mental and emotional health and well-being.

[DN: the following guidance is to be added to the Legislation Summary of the CfW framework online – which is also being updated and will include a specific sub-section for RSE. See: [Summary of proposed legislation - Hwb \(gov.wales\)](#)]

Legislation summary - RSE

RSE Code

RSE is a mandatory element of the Curriculum for Wales Framework and a curriculum must accord with the RSE Code. This means **schools** and **settings** must include the learning set out in the Code. A curriculum does not encompass RSE unless it accords with the provision in the RSE Code. Learning and teaching also does not encompass the mandatory element of RSE unless it accords with the provision in the RSE Code.

The RSE Code is set out and signposted in the [RSE section](#) of the Framework guidance.

This Code is issued under section 8 of the Act.

RSE guidance

The RSE section of the framework guidance also includes guidance on developing RSE within a curriculum and how to implement it. This is statutory guidance and is issued under section 71 of the Act. Those responsible for designing and developing a curriculum must read and **have regard** to this guidance when designing it.

Under the Act, this guidance is statutory for the following:

- the head teacher of a maintained school or a maintained nursery school
- the governing body of a maintained school or a maintained nursery school
- a provider of funded non-maintained nursery education
- the teacher in charge of a pupil referral unit
- the management committee for a pupil referral unit
- a person who provides teaching and learning for a child, otherwise than at a maintained school, maintained nursery school or pupil referral unit (**EOTAS**)
- a local authority in Wales.

As outlined in section 50 of the Act, EOTAS settings must include provision for teaching and learning that encompasses RSE, and this must be developmentally appropriate.

RSE is best realised drawing on partnerships with a wide range of people and organisations. It therefore may also be useful for businesses; communities; public sector charitable and voluntary organisations and others who work in partnership with schools and settings. It also includes information that parents and carers are likely to find useful.

Pluralistic requirement

In all schools and settings, RSE must be objective, critical, and pluralistic as to its content and manner of teaching (see the case of 'Dojan and Others v. Germany 2011 application no. 319/08'). By pluralistic we mean that where questions of values are concerned, schools and settings must provide a range of views on a given subject, commonly held within society. This also means providing a range of factual information on RSE issues. In all schools, where they explore specific beliefs or views, this must include a range of other faith and non religious views on the issue.

For example, schools may include learning about current tensions, disagreements or debates within society, or they may explore different perspectives within faiths on issues. Developing this pluralism is important in ensuring learners develop as informed citizens who are aware of and sensitive to a range of different opinions, values and beliefs. This supports them to engage with and navigate potential tensions.

A good understanding of learners' views, emerging values and backgrounds is central to developing this pluralism. Positive relationships with wider communities can help to create a constructive context for exploring aspects and tensions in a sensitive way.

Children's rights

Children Rights under the [UNCRC](#) are central to all of the Welsh Government's work, in line with its commitments and duty to have due regard to the UNCRC in all that it does.

Schools and settings can also link learning to the United Nations Convention on the Rights of Persons with Disabilities ([UNCRPD](#)).

Schools and settings are also encouraged to effectively link learning where appropriate to the Public Sector Equality Duty (2010); and the Well-being of Future Generations (Wales) Act (2015).

Equality Act 2010

Schools are required to comply with relevant requirements of the Equality Act 2010.

In particular, schools and other settings should note that compliance with the public sector equality duty is a legal requirement for local authority maintained schools (including PRUs) in Wales and makes good educational sense to comply with it. The public sector equality duty helps schools to focus on key issues of concern and how to improve outcomes for all learners. The duty includes identifying where we can take action to advance equality of opportunity, eliminate discrimination and foster good relations, and where possible, mitigate negative impacts which may result from decisions.

In all schools and settings teaching should reflect the law (including the Equality Act 2010) as it applies to relationships, so that learners clearly understand what the law allows and does not allow, and the wider legal implications of decisions they may make.

Under the provisions of the Equality Act, schools must not unlawfully discriminate against learners on the basis of their age, sex, race, disability, religion or belief, gender reassignment, pregnancy or maternity, marriage or civil partnership, or sexual orientation (collectively known as the **protected characteristics**). Schools must also make reasonable adjustments to alleviate disadvantage.

Provisions within the Equality Act 2010 allow schools to take positive action, where it can be shown that it is proportionate, to deal with particular disadvantages affecting one group because of a protected characteristic. This should be taken into consideration in designing and teaching RSE.

Schools should consider the makeup of their own body of learners, including their gender and age range, and consider whether it is appropriate or necessary to put in place additional support for learners with particular protected characteristics (which mean that they are potentially at greater risk). Schools should consider what they can do to foster healthy and respectful peer-to-peer communication and behaviour between learners, and provide an environment, which challenges perceived limits based on their gender or any other characteristic, including through these subjects and as part of a whole-school approach.

Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015

The Welsh Government passed the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015. The 2015 Act provides a focus on violence against women and girls by requiring persons exercising functions (local authority and Local Health Board) under the Act (defined in section 2(2) of that Act as “relevant functions”), to have regard to the need to remove or minimise factors which increase the risk, or exacerbate the impact on victims, of violence against women and girls. However, a person exercising relevant functions must also have regard to all other relevant matters. In so doing the Welsh Government has sought to raise awareness of these issues and to impose functions on those strategic bodies to have a plan to remove or minimise such behaviours.

Violence against women, domestic abuse and sexual violence touches many lives. This has particularly serious implications for learners, as victims themselves, in households where domestic abuse plays a part. It can impact on their safety, mental and physical health and general well-being. It affects family and peer relationships, and potential to enjoy healthy, happy, respectful relationships in the future; and it can impact on current and future educational attainment.

There will be learners and staff within schools who are currently experiencing, or at risk of using, abusive behaviour against women, domestic abuse or sexual violence,

or have done so in the past. Schools and settings should be responsible for making sure their learners and staff are safe and healthy.

The Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 presents an opportunity to lead the way on prevention work in Wales. Educational settings provide an environment where positive attitudes towards gender equality and healthy, respectful relationships can be fostered through a rights-based approach.

Adopting a whole-school approach that includes preventative education within, and which also involves the wider community is vital.

The Welsh Government's Whole Education Approach to Violence against Woman, Domestic Abuse and Sexual Violence in Wales: Good Practice Guide was developed in conjunction with Welsh Women's Aid. It is intended to be a [practical and useful toolkit](#) for embedding principles of a whole education approach to address violence against women, domestic abuse and sexual violence. It recognises the importance of education settings being environments where positive attitudes towards gender equality and healthy, respectful relationships can be fostered.

The Welsh Government has also published [practical guidance for school governors](#) on the need to develop a policy on violence against women, domestic abuse and sexual violence; how to recognise indicators of abuse and where to get support for themselves, their colleagues or their learners.

Relevant links

[Well-being of Future Generations \(Wales\) Act \(2015\).](#)

Safeguarding - Welsh Government guidance on [Keeping learners safe](#)

[Guidance for education settings on peer sexual abuse, exploitation and harmful sexual behaviour](#)

[Violence against women, domestic abuse and sexual violence: guidance for governors | GOV.WALES \(2016\)](#)

[Rights, respect, equality: Statutory guidance for governing bodies of maintained schools 2019](#)

[Sharing nudes and semi-nudes: Responding to incidents and safeguarding children and young people - Keeping safe online - Hwb \(gov.wales\)](#)

[DN: to be included in the Designing your Curriculum sections of each Area in the online Hwb version – ‘how each Area contributes to RSE’]

Expressive arts

The expressive arts are a powerful medium to explore and express feelings, thoughts, views and experiences on a range of RSE themes. The creative process inherent within the expressive arts can provide a safe, inclusive and innovative environment for learners to explore, articulate and reflect on experiences and feelings that they may not share in other approaches. This can help practitioners to understand learners’ knowledge about RSE as well as their learning needs, their questions and what matters to them.

Like literature, expressive arts also provides an opportunity to consider how different RSE themes have been explored, presented and communicated, throughout history and in different cultures and societies.

This learning also helps their understanding of how the expressive arts shape our ideas and feelings and provide insight and understanding of others’ experiences and perspectives.

Health and well-being

Health and well-being is of course central to RSE. The Area provides an important platform for learning about healthy relationships; how social norms and influences shape our perceptions of relationships and sexuality; the implications of relationships and sexuality on our physical health and mental and emotional well-being; as well as decision making in the context of relationships and sex. This supports learners to develop personal skills and strategies that enable them to become healthy and well throughout their lives. The Area also gives learners opportunities to consider how issues relating to RSE connect to wider issues around health and well-being: how relationships and sexuality are influenced by wider health and well-being and likewise, how relationships and sexuality impact on our wider health and well-being.

Maths and Numeracy

Maths and numeracy can have an important role in promoting inclusivity and avoiding stereotypes through chosen examples, case studies and scenarios. It can also provide important role models of diverse gender and sexuality who have made important contributions to maths. Statistics and numeracy can also be used to develop and understanding of statistical data used to build evidence on equalities and inequalities, for example around pay or career choices.

Humanities

This Area provides an important opportunity for learners to understand how societal understandings of relationships, sex, gender and sexuality have changed over time and how they continue to evolve. Exploring RSE through the humanities can inspire learners to deepen their understanding of key issues and develop the skills to interpret ideas and presentations about RSE throughout history and across different cultures and contexts around the world. For example, this could consider how norms and perceptions of LGBTQ+ people have changed over time. It also supports them to engage critically with information, to understand the basis of information presented as fact, and make critical judgements about how to use and respond to the knowledge sources available to them.

This Area also offers learners opportunities to explore human rights, values, ethics, philosophies, religious views relating to relationships and sexuality. This provides learners with important opportunities to discuss, explore and develop understanding of different perspectives on RSE issues, shaped by religious and non-religious worldviews, ethical challenges and social inclusion issues. This also supports learners to understand and navigate the tensions between different perspectives. This can also support learners to engage critically with local, national and global RSE issues in both the past and present, helping them to become ethical, informed citizens and ready to play a full part in life and work.

Language, literacy and communication

Speaking, listening, responding and building empathy are skills that are fundamental to all RSE issues, including friendship building, seeking advice and in future, developing healthy sexual relationships. This Area also presents opportunities for learners to make sense of what they hear, read, see and feel when they engage with literature, different media and the world around them. This includes the ability to analyse and explore in a range of media, style and genres. In the context of RSE this could include exploring body images or relationship stereotypes in cartoons, films, poetry, fiction, documentaries and increasingly digital platforms of communication and storytelling.

This Area also enables learners' to experience and respond to a range of often challenging and sensitive RSE topics as listeners, viewers, readers, narrators and creators. As such, it has the potential to offer safe, inclusive and creative ways to explore RSE topics from diverse cultural and linguistic perspectives. Learners can consider how key RSE themes are explored in literature and shaped by language. This can help learners to start to think critically about how relationship, gender, sexual identity and body norms play out in different cultures and communities, including their own. Exploring RSE through literature can also help learners develop awareness and understanding of diversity and difference.

Science and technology

Science and technology provides learners with information about human biology, life cycles and reproduction but it also offers important contributions beyond this. This area can support learners to ask questions and question how things work, which supports their engagement in RSE.

This Area also supports learners to assess data and sources around RSE, critically understand the basis of information presented as fact, and make critical judgements about how to use and respond to the knowledge sources and data available to them.

This Area also supports learners to engage with digital technologies, to understand how they work and to recognise the broad legal, social and ethical consequences in uses of technology. This is vital in enabling learners to make safe and ethical decisions when using technology to form friendships, build communities, explore their identity and engage in romantic and sexual relationships in the future. This also provides opportunities to explore how computation, algorithms and data processing shape perceptions of bodies, relationships, gender and sexuality.

DRAFT

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **The UK Statistics (Amendment etc.) (EU Exit) Regulations 2021**

DATE **24 November 2021**

BY **Lesley Griffiths MS, Minister for Rural Affairs and North Wales,
and Trefnydd**

The UK Statistics (Amendment etc.) (EU Exit) Regulations 2021

Policy Overview of the SI:

The aim of this instrument is to continue the approach taken by The UK Statistics (Amendment etc.) (EU Exit) Regulations 2019, that began the process of revoking EU law on statistics. The purpose of this instrument is to revoke the remaining retained EU statistics law, including new legislation that has come into force since the 2019 instrument was drafted.

The Law which is being amended:

- A set of numerous retained EU laws, as detailed in the schedule to the S.I, that impose obligations on the UK to provide specific statistical data to Eurostat, the statistical office of the European Commission, for the purpose of producing European statistics
- A set of numerous retained EU laws, as detailed in the schedule to the S.I, that set out statistical standards and classifications that statistical data must meet for the purpose of producing European statistics
- The Data Protection Act 2018
- The Public Contract Regulations 2015
- The Concession Contracts Regulations 2016
- The Utilities Contracts Regulations 2016
- The Electricity Supplier Obligations (Amendment and Excluded Electricity) Regulations 2015.

The purpose of the amendments

The purpose of the amendments is to correct deficiencies in legislation arising from the UK leaving the European Union in relation to the provision of statistical information.

The regulations will revoke retained EU law (Regulations and Decisions) in relation to the provision and collation of statistics at an EU level.

The regulations will also amend the Public Contract Regulations 2015, the Concession Contracts Regulations 2016, the Utilities Contracts Regulations 2016, the Electricity Supplier Obligations (Amendment and Excluded Electricity) Regulations 2015 and the Data Protection Act 2018 so that their references to certain European standards have effect within the retained EU law as of Implementation Period (IP) completion day.

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

<https://www.legislation.gov.uk/ukSI/2021/1300/contents/made>

Any impact the SI may have on the Welsh Ministers' executive competence

The SI has no impact on the Welsh Minister's executive competence as it is purely technical in nature.

Any impact the SI may have on the legislative competence of the Senedd

The SI has no impact on the Senedd's legislative competence as it is purely technical in nature.

Why consent was given

There is no divergence between the Welsh Government and the UK Government on the policy for the correction. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting to a UK wide SI ensures that there is a single legislative framework across the UK which promotes clarity and accessibility during this period of change. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

UK MINISTERS ACTING IN DEVOLVED AREAS

004 - The UK Statistics (Amendment etc.) (EU Exit) Regulations 2021 *Laid in the UK Parliament: 23 November 2021*

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Made negative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	N/A
Date sifting period ends in UK Parliament	N/A
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Made negative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Background

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 ("the 2018 Act") and section 41(1) of the European Union (Withdrawal Agreement) Act 2020.

Summary

The purpose of the amendments is to correct deficiencies in legislation relating to statistics, arising from the UK leaving the European Union.

These Regulations will revoke retained EU statistics law. EU Member States are subject to a large EU statute book relating to the production of EU statistics. Most EU statistics law requires the collection of data, production of statistics and transmission of such data to the EU for the purpose of producing EU statistics. EU statistics law sets timescales for surveys, reference periods, quality criteria, classifications and standards that must be used for EU statistics. As EU statistics law only concerns EU statistics, it does not confer any powers for the production of UK statistics. The UK statistical system is run under a separate existing legal framework.

As the UK does not need EU statistics law to continue to produce statistical data, the EU statistics law is considered to be deficient, redundant and surplus to the UK legal framework. Data will continue to be collected, regulated and disseminated under the UK's domestic statistics framework.

The regulations will also amend the Public Contract Regulations 2015, the Concession Contracts Regulations 2016, the Utilities Contracts Regulations 2016, the Electricity Supplier Obligations (Amendment and Excluded Electricity) Regulations 2015 and the Data Protection Act 2018 so that their references to certain European standards have effect within the retained EU law as of Implementation Period (IP) completion day.

Statement by Welsh Government

Legal Advisers agree with the statement laid by the Welsh Government dated 24 November 2021 regarding the effect of these Regulations.

The Welsh Government's statement confirms that these Regulations do not impact upon the legislative powers of the Senedd or executive powers of the Welsh Ministers.

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.

Eluned Morgan MS
Minister for Health and Social Services
Welsh Government

Dr Tracey Cooper
Chief Executive, Public Health Wales

26 November 2021

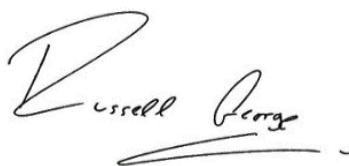
Dear Eluned and Tracey

Provisional common framework: Public Health Protection and Health Security

At our meeting on 18 November 2021 we considered our approach to scrutinising the provisional Public Health Protection and Health Security Common Framework.

To inform our consideration of the Framework, we would welcome the views of the Welsh Government and Public Health Wales on the matters set out in the annex to this letter **by Thursday 13 January 2022**.

Yours sincerely



Russell George MS
Chair, Health and Social Care Committee

cc Huw Irranca-Davies, Chair, Legislation, Justice and Constitution Committee

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

Annex: Provisional common framework: Public Health Protection and Health Security

To assist our deliberations on the provisional common framework, we would welcome further information on the matters listed below. We would be grateful to receive your response **by Thursday 13 January**.

General

1. Why is a common framework needed for this policy area?
2. How will this common framework link up with frameworks in related policy areas, such as food and feed safety and hygiene and animal health and welfare?
3. The provisional framework sets out that the parties will develop a shared work programme. Will this shared work programme be published?
4. The framework sets out that part of its purpose is to manage potential divergence between different parts of the UK. Parties will seek to agree common approaches 'where agreeable'. How will the parties decide when divergence would be acceptable?
5. How would this framework affect the handling of any future pandemic?

UK and EU

6. Public Health Wales has previously raised concerns about the risks of leaving EU institutions for public health protection and health security. How are the Welsh Government and Public Health Wales mitigating these risks?
7. Under the Health Security (EU Exit) Regulations 2021, Public Health Wales and the Welsh Government have taken on some responsibilities formerly exercised at EU level, such as representing Wales at the new UK Health Protection Committee. Could you confirm what new responsibilities Public Health Wales and the Welsh Government will be undertaking and what resources have been allocated for this? How do the new arrangements differ from your previous arrangements when the UK was an EU Member State?
8. The UK Health Security Agency (UKHSA) will carry out some coordinating functions previously exercised at EU level. Is the Welsh Government content that the UKHSA has sufficient resources to carry out these functions?

International

9. Is the Welsh Government content that the framework takes into account its existing international commitments?



10. Please provide the Welsh Government's assessment of how the framework accommodates divergence and alignment between the four nations' international health commitments and activity, for example the Welsh Government's MOU with the WHO on health equity or its public health protection support to African nations during the pandemic.
11. Please confirm how existing international obligations were considered and incorporated into the framework and explain how future obligations will be incorporated.
12. Please provide more information on the role of the Welsh Government or Welsh bodies in delivering the framework's international aspects. For example, whether the framework provides opportunities for a devolved role in the development of UK foreign policy, as provided in other frameworks.
13. Please confirm whether the framework provides opportunities for Welsh representation at international forums, either by the Welsh Government or Welsh bodies.

Disputes

14. Is the Welsh Government content that the dispute resolution mechanism for the framework is fit for purpose?
15. Who will be the final arbiter in the event of a dispute, and will there be a right of appeal in the event that one of the parties is dissatisfied with the resolution of a dispute?
16. Will the Welsh Government notify the Senedd of disputes raised through the framework?

Transparency and accountability

17. Did the Welsh Government and Public Health Wales engage with any stakeholders in Wales in developing the provisional framework? How does the provisional framework reflect the response of stakeholders?
18. How will the Senedd and stakeholders be updated on the continuing operation of the framework?
19. How will the Senedd and stakeholders be able to contribute to the review and amendment process for the framework?



Llywodraeth Cymru
Welsh Government

Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru

SeneddLJC@senedd.wales

29 November 2021

Dear Huw,

Inter-Institutional Relations Agreement: British-Irish Council Summit in Wales

Further to my letter of 15 November regarding the inter-institutional relations agreement, the British-Irish Council Summit in Wales and the virtual Ministerial discussion of the Indigenous, Minority and Lesser-Used Languages worksector, I wish to draw your attention to my [statement](#) earlier this week, and to the BIC [communiqué](#) summarising the outcomes of the Summit and Ministerial discussion.

I am copying this letter to the Minister for Education and Welsh Language, Chair of the Children, Young People and Education Committee and Chair of the Culture, Communications, Welsh Language, Sport and International Relations Committee.

Yours sincerely,

MARK DRAKEFORD

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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.



The Scottish Parliament
Pàrlamaid na h-Alba

Delegated Powers and Law Reform Committee

Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution
Committee
Senedd Cymru
Via email

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DPLR.Committee@parliament.scot

25 November 2021

Dear Mr Irranca-Davies

The Scottish Parliament's Delegated Powers and Law Reform Committee has begun a [short inquiry into the use of the made affirmative procedure during the coronavirus pandemic](#). Given these made affirmative instruments are also used in the Senedd, I wanted to both make you aware of the inquiry and invite any thoughts your Committee might have on this work.

As will likely have been the case in Wales, the public health measures used to try and protect the people of Scotland from the full impact of the coronavirus have chiefly been made using secondary legislation. Many of these measures have been brought into law using the made affirmative procedure. This has allowed the Scottish Government to bring changes into force immediately. The instruments are still considered by both this Committee and the relevant lead committee and must be approved by the Parliament within 28 days for the regulations to stay in force.

Prior to the pandemic, the use of the made affirmative procedure for laying Scottish statutory instruments was relatively unusual; less than five per year. Since March 2020, the Parliament has considered its use on well over 100 occasions.

The Committee has recognised the need to use the procedure during the pandemic. It has allowed the Scottish Government to respond quickly to the ever-changing challenges that the coronavirus presented. The Committee has nevertheless said that substantial changes should be brought into force immediately and before any parliamentary scrutiny only when that is essential, and that it should not become standard practice, particularly when time allows the affirmative procedure to be used.

The purpose of the inquiry is to ensure that the made affirmative procedure continues to be used appropriately and only when necessary. The Committee hopes that its work

might be of benefit to the Parliament when it considers the use of the made affirmative procedure in future legislation. We also want to ensure that there is an appropriate balance between flexibility for the Scottish Government in responding to an emergency, whatever that may be, and ensuring appropriate parliamentary scrutiny and oversight.

While the Committee appreciates that the procedures in the Senedd will be slightly different from those at Holyrood, it would be interested to know if your Committee had considered the use of the made affirmative procedure, particularly during the pandemic, and whether you had any views on how we can ensure that parliamentary scrutiny is not diminished by their use.

Given the Committee is keen to report in time for the February recess, we would be grateful for any views you might have by Wednesday 22 December 2021

Yours sincerely

A handwritten signature in black ink that reads "Stuart". The letters are cursive and fluid, with a long horizontal stroke at the end of the word.

Stuart McMillan MSP
Convener of the Delegated Powers and Law Reform Committee

Huw Irranca-Davies MS
Chair, Legislation, Justice and Constitution Committee

1 December 2021

Dear Huw,

Thank you for your letter of 18 November regarding the Animal Health, Plant Health, Seeds and Seed Potatoes (Miscellaneous Amendments) Regulations 2021.

I note the comments of the Committee in relation to the principle any subordinate legislation impacting on Senedd's powers should not be made without the approval of the Senedd, subject to time. It should be noted however consent to the Statutory Instrument was given to the UK Government by the Minister for Climate Change prior to the First Ministers commitment coming into place on 11 October. Therefore at the time consent was given Standing Order 30C was followed.

The Committee will also wish to note there are three frameworks relating to the functions within the Statutory Instrument; Plant Varieties and Seeds, Plant Health and Animal Health and Welfare. These were provisionally agreed by Ministers at the end of the transition period and have been in operation since the beginning of this year. The decision to give legislative consent is a separate process, however the three frameworks allow for discussions on policy, regulatory and operational issues through the groups established between the four governments.

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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.

Consent to the Statutory Instrument was given due to the need to address failures of retained EU law to operate effectively following the withdrawal of the United Kingdom from the European Union. This ensures plant and animal health controls can operate effectively to protect biosecurity and support trade between Great Britain and the relevant third countries.

Regards,

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive style with a large, sweeping initial 'L'.

Lesley Griffiths AS/MS
Y Gweinidog Materion Gwledig a Gogledd Cymru, a'r Trefnydd
Minister for Rural Affairs and North Wales, and Trefnydd

Lesley Griffiths MS
Minister for Rural Affairs and North Wales,
and Trefnydd

18 November 2021

Dear Lesley

**Standing Order 30C Written Statement: The Animal Health, Plant Health, Seeds and Seed Potatoes
(Miscellaneous Amendments) Regulations 2021**

At our meeting on 15 November 2021 we considered the Standing Order 30C Written Statement in relation to the Animal Health, Plant Health, Seeds and Seed Potatoes (Miscellaneous Amendments) Regulations 2021.

You will be aware that these Regulations make amendments to secondary legislation to correct deficiencies relating to plant health, seeds and seed potatoes which have arisen as a result of the withdrawal of the UK from the EU. The Regulations also correct errors in various statutory instruments. We note that the Welsh Ministers have given consent to the UK Government to make these Regulations in a devolved area for reasons of "efficiency, expediency and due to the technical nature of the amendments".

The written statement states that the Regulations:

"...confer functions on the National Plant Protection Organisation of the United Kingdom. These functions may constitute functions of a reserved authority for the purposes of paragraph 8(1) of Schedule 7B to the Government of Wales Act 2006 and as such represent a potential restriction on the future competence of the Senedd."

It is our understanding that these Regulations impact the Senedd's legislative competence because, under Schedule 7B to the *Government of Wales Act 2006*, the consent of the UK Government would

be needed before the Senedd could legislate to remove or modify the national plant protection organisation of the UK functions.

We would like to take this opportunity to reiterate the principle that any subordinate legislation that impacts the Senedd's powers should not be made without the involvement of the Senedd (for example, by the Welsh Government seeking the approval of the Senedd before consenting to the making of subordinate legislation by the UK Government). This principle applies no matter how small the impact on the Senedd's powers might be.

Further, if the Welsh Government consented to the making of these Regulations on the basis of a GB-wide approach (i.e. a common framework), we would be grateful for further information regarding any such common framework.

We would be grateful to receive your response by 1 December 2021.

Yours sincerely,

A handwritten signature in black ink that reads "Huw Irranca-Davies". The signature is written in a cursive style and is underlined with a single horizontal stroke.

Huw Irranca-Davies

Chair

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



Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change

Agenda Item 9.3



Llywodraeth Cymru
Welsh Government

Mick Antoniw AS/MS
Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution

Ein cyf/Our ref MA-JJ-4062-21

Huw Irranca-Davies MS
Chair, Legislation, Justice and Constitution (LJC) Committee

02 December 2021

Dear Committee Chair

Thank you for your letter of 8 November outlining the Committee's questions from the Legislative Consent Motion debate relating to provisions in the UK Environment Bill. We are writing to provide more detail on the matters highlighted.

Firstly, we would like to clarify the comments regarding the single use plastics (SUP) Bill, in the context of the United Kingdom Internal Market Act 2020 (UKIMA). You will be aware, UKIMA was introduced following our consultation proposing bans for a number of commonly littered SUP items. While the Mutual Recognition Principle in Part 1 of UKIMA has introduced complexity in this area, our shared view is that UKIMA cannot curtail the Senedd's legislative competence in the way it purports to. This is consistent with information put forward as part of our ongoing legal challenge on this issue. The evidence provided to the Committee by the Counsel General in September and his letter in October highlight this point. Overall, we do not believe UKIMA operates so as to prevent the Senedd from legislating on devolved matters in a way that is inconsistent with the mutual recognition principle in UKIMA. Therefore, in the context of SUP we do not believe UKIMA operates so as to prevent the Senedd from legislating to ban the sale in Wales of SUP items in a way that is inconsistent with the mutual recognition principle in UKIMA.

For these reasons, we do not expect any impact on the Legislative Programme arising from UKIMA.

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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.

As highlighted in the Reducing Single Use Plastic consultation, the Welsh Government intends delivering our ambition on commonly littered single use plastics in phases. We are taking all possible steps to introduce legislation for the proposed phase one bans, as quickly as possible, within this Senedd term. Meanwhile, officials have already begun work preparing for future phases of the work, including reviewing evidence for the 60+ additional items identified in the consultation as candidates for potential future action. In the Programme for Government, we set ourselves a high bar and a Bill is one of the options we are exploring to deliver in full a wider ambition to tackle this kind of environmental pollution.

We thank the Committee for their patience in these matters and ask them to note the UK Bill has now received Royal Assent.

Yours sincerely



Julie James MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change



Mick Antoniw MS
Y Cwnsler Cyffredinol a Gweinidog y
Cyfansoddiad
Counsel General and Minister for the
Constitution

Julie James MS
Minister for Climate Change

Mick Antoniw MS
Counsel General

8 November 2021

Dear both

Legislative Consent Motion debate relating to provisions in the UK Government's Environment Bill

On Tuesday last week in plenary, during closing remarks in the debate on the above consent motion, the Minister for Climate Change said the following:

"Just to reiterate the point that I fully intend to bring a single-use plastics Bill to the Senedd. We are, of course, however, embroiled in specific problems relating to the United Kingdom Internal Market Act 2020 and the legal arrangements surrounding it."

However, the Counsel General when questioned about the impact of the 2020 Act in an evidence session on 22 September told us:

"So, essentially, we do not have regard to the internal market Act in terms of our legislation. We work on the basis of the devolved powers that we actually have, as determined by the various Government of Wales legislation. We do not think that the internal market Act lawfully limits those devolved responsibilities."

On 22 October, in response to a question on the 2020 Act in our letter of 8 October, the Counsel General said:

8. Is the Welsh Government proceeding with its legislative programme on the basis that the practical effect of Welsh laws within the scope of the Internal Market are not impacted and undermined, as argued in its grounds for judicial review?

The Welsh Government's position is that the Act has not altered the devolution settlement. Indeed, that is what we have submitted as part of the Judicial Review challenging the United Kingdom Internal Market Act 2020, which is now at appeal stage in the Court of Appeal. We confirm that the Welsh Government is proceeding with its legislative programme on that basis..."

We would be grateful if you could clarify the comments regarding the single-use plastics Bill in the context of the 2020 Act and also the Welsh Government's position regarding the impact of the 2020 Act on its approach to legislating.

I am copying this letter to the Chair of the Climate Change, Infrastructure and Environment Committee.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies

Chair, Legislation, Justice and Constitution Committee



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