

# Agenda – Legislation, Justice and Constitution Committee

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Meeting Venue:	For further information contact:
Video Conference via Zoom	P Gareth Williams
Meeting date: 31 January 2022	Committee Clerk
Meeting time: 13.00	0300 200 6565
	<a href="mailto:SeneddLJC@senedd.wales">SeneddLJC@senedd.wales</a>

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**1 Introductions, apologies, substitutions and declarations of interest**  
(13.00)

**2 Scrutiny session with the Counsel General and Minister for the Constitution**

(13.00–14.30)

(Pages 1 – 39)

Mick Antoniw MS, Counsel General and Minister for the Constitution

Rob Parry – Deputy Director European Transition Legislation, Welsh Government

Paul Harrington – Head of Intergovernmental Relations, European Transition, Welsh Government

[Brexit Opportunities: Review of Retained EU Law – Statement made on 9 December 2021](#)

Attached Documents:

LJC(6)–04–22 – Paper 1 – Research briefing

LJC(6)–04–22 – Paper 2 – Letter from the Counsel General and Minister for the Constitution – 25 November 2021

LJC(6)–04–22 – Paper 3 – Letter to the Counsel General and Minister for the Constitution – 15 November 2021

LJC(6)–04–22 – Paper 4 – Letter from the Counsel General and Minister for



the Constitution – 19 November 2021

LJC(6)-04-22 – Paper 5 – Letter from the Counsel General and Minister for  
the Constitution – 8 November 2021

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

(14.30–14.35)

(Pages 40 – 42)

Attached Documents:

LJC(6)-04-22 – Paper 6 – Statutory instruments with clear reports

Made negative resolution instruments

#### **3.1 SL(6)129 – The Renting Homes (Fitness for Human Habitation) (Wales) Regulations 2022**

#### **3.2 SL(6)136 – The Education (Eligibility for Student Support) (Amendment) (Wales) Regulations 2022**

### **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)130 – The Renting Homes (Supported Standard Contracts) (Supplementary Provisions) (Wales) Regulations 2022**

(Pages 43 – 46)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-04-22 – Paper 7 – Draft report

**4.2 SL(6)131 – The Renting Homes (Supplementary Provisions) (Wales) Regulations 2022**

(Pages 47 – 49)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-04-22 – Paper 8 – Draft report

**4.3 SL(6)132 – The Renting Homes (Explanatory Information for Written Statements of Occupation Contracts) (Wales) Regulations 2022**

(Pages 50 – 52)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-04-22 – Paper 9 – Draft report

**4.4 SL(6)134 – The Renting Homes (Model Written Statements of Contract) (Wales) Regulations 2022**

(Pages 53 – 55)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-04-22 – Paper 10 – Draft report

**4.5 SL(6)139 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 2) Regulations 2022**

(Pages 56 – 59)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-04-22 – Paper 11 – Draft report

LJC(6)-04-22 – Paper 12 – Letter from the First Minister to the Llywydd – 20 January 2022

Affirmative resolution instruments

**4.6 SL(6)133 – The Renting Homes (Wales) Act 2016 (Amendment of Schedule 9A) Regulations 2022**

(Pages 60 – 62)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-04-22 – Paper 13 – Draft report

**5 Instruments that raise issues to be reported to the Senedd under Standing Order 21.7**

(14.45–14.55)

**5.1 SL(6)137 – Code of Recommended Practice for Local Authority Publicity**

(Pages 63 – 64)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-04-22 – Paper 14 – Draft report

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

(14.55–15.05)

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

(Pages 65 – 68)

Attached Documents:

LJC(6)-04-22 – Paper 15 – Report

LJC(6)-04-22 – Paper 16 – Letter from Minister for Education and Welsh Language – 25 January 2022

**6.2 SL(6)135 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) Regulations 2022**

(Pages 69 – 72)

Attached Documents:

LJC(6)-04-22 – Paper 17 – Draft report

LJC(6)-04-22 – Paper 18 – Welsh Government response

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

(15.05.15.15)

**7.1 WS-30C(6)005 – The Waste and Agriculture (Legislative Functions) Regulations 2021**

(Pages 73 – 79)

Attached Documents:

LJC(6)-04-22 – Paper 19 – Written statement, 17 January 2022

LJC(6)-04-22 – Paper 20 – Commentary

**7.2 WS-30C(6)006 – The Pesticides (Revocation) (EU Exit) Regulations 2022**

(Pages 80 – 88)

Attached Documents:

LJC(6)-04-22 – Paper 21 – Written statement, 20 January 2022

LJC(6)-04-22 – Paper 22 – Letter from the Minister for Climate Change – 25 January 2022

LJC(6)-04-22 – Paper 23 – Commentary

**8 Papers to note**

(15.15)

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

(15.15)

## **10 Scrutiny session with the Counsel General and Minister for the Constitution – consideration of evidence**

(15.15–15.25)

## **11 Monitoring report**

(15.25–15.35)

(Pages 89 – 101)

Attached Documents:

LJC(6)–04–22 – Paper 24 – Monitoring report

## **12 Strategic planning and forward work**

(15.35.15.55)

(To Follow)

Attached Documents:

LJC(6)–04–22 – Paper 25 – Discussion paper

LJC(6)–04–22 – Paper 26 – Summary of engagement

LJC(6)–04–22 – Paper 27 – Research briefing (Covid regulations)

LJC(6)–04–22 – Paper 28 – Research briefing (House of Lords Constitution Committee report)

## **13 Review of the Committee's remit**

(15.55–16.05)

(To Follow)

Attached Documents:

LJC(6)–04–22 – Paper 29 – Draft response

## **14 Legislative Consent Memorandum: The Cultural Objects (Protection from Seizure) Bill**

(16.05–16.15)

(Pages 102 – 105)

[Legislative Consent Memorandum: The Cultural Objects \(Protection from Seizure\) Bill](#)

Attached Documents:

LJC(6)–04–22 – Paper 30 – Legal advice note

**15 Legislative Consent Memorandum: Commercial Rent (Coronavirus) Bill**

(16.15–16.25)

(To Follow)

[Legislative Consent Memorandum: Commercial Rent \(Coronavirus\) Bill](#)

Attached Documents:

LJC(6)-04-22 – Paper 31 – Draft report

**16 Legislative Consent Memorandum: The Nationality and Borders Bill**

(16.25–16.35)

(Pages 106 – 111)

[Legislative Consent Memorandum: The Nationality and Borders Bill](#)

Attached Documents:

LJC(6)-04-22 – Paper 32 – Draft report

Document is Restricted



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

25 November 2021

Dear Huw,

Thank you for your letter of 15 November. I updated the Committee on the quadrilateral meeting of frameworks Ministers in my letter of 19 November.

Regarding your specific points:

At the quadrilateral meeting, on 10 November, agreement was reached on cross cutting issues affecting the wording for Common Frameworks, namely to the wording of the text for International Relations, the Northern Ireland Protocol and the process for how exclusions for policy areas in frameworks impacted by the UK Internal Market Act will be delivered. As I explained in my letter of 19 November, the agreement of the Welsh Government to UKIMA exclusions text is without prejudice to the ongoing judicial review in relation to the Internal Market Act.

Following the quadrilateral meeting, the frameworks are progressing rapidly to publication for scrutiny by committees of the legislatures. The Public Health Protection and Health Security Framework has already been published, on 28 October. Framework documents are being finalised and publication dates are still fluid, but given these caveats every effort is being made to publish frameworks for scrutiny on the following dates:

## **2 December**

Blood Safety and Quality; Organs Tissues and Cells; Company Law (NIE and UKG only); Specific Quantities (NIE and UKG only).

## **9 – 16 December**

Emissions Trading Scheme; Late Payment; Radioactive Substances; Public Procurement; Agricultural Support; Agriculture – Fertiliser Regulations, Agriculture – Organic Farming;

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[Correspondence.Mick.Antoniw@gov.Wales](mailto:Correspondence.Mick.Antoniw@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.

Agriculture – Zootech; Animal Health and Welfare; Plant Health; Plant Varieties and Seeds; Air Quality; Best Available Techniques (BAT: air quality); Food Compositional Standards and Labelling; Ozone Depleting Substances and F-Gases; Chemicals and Pesticides; Resources and Waste.

**January 2022**

Fisheries: Management and Support.

My officials have been liaising with committee clerks for some time on approaches to handling the frameworks and I understand Senedd officials are preparing to analyse frameworks and package them for scrutiny by Committees as soon as they are published.

The length of the framework scrutiny process is of course a matter for committees. It would be hugely desirable if the frameworks could be scrutinised and signed off before the beginning of Northern Ireland's pre-election period. This date has not yet been confirmed but it is likely to be in late March if the elections take place as scheduled on 5 May. I fully appreciate this puts very considerable pressure on already hard-pressed Committees to examine a very substantial amount of frameworks material in a short space of time. My frameworks policy team would be happy to offer any assistance they can to aid the scrutiny process.

Yours sincerely,

A handwritten signature in blue ink, reading "Mick Antoniw". The signature is written in a cursive style and is positioned above a short horizontal line.

**Mick Antoniw AS/MS**

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

Mick Antoniw MS  
Counsel General and Minister for the Constitution

15 November 2021

Dear Mick

### Common Frameworks

At our meeting today we formally noted your letter of 8 November informing us that a quadrilateral ministerial meeting on common frameworks would be held on 10 November.

We are grateful to you for providing us with information on who was due to attend, what the focus of the meeting would be, and a list of the draft agenda items.

While we acknowledge that you have committed to update us on the outcome of the quadrilateral meeting within two weeks of it having taken place, there are a number of questions which we would like to put to you now so that they can be addressed as soon as possible.

You will recall that I wrote to you in July to seek an update on the common frameworks programme and your letter in response of 7 September was extremely helpful to us in assessing and planning for the anticipated workload. I would again be grateful if you would provide:

1. the latest update on the common frameworks programme, including progress towards agreement on how frameworks will manage international obligations and interactions with the *UK Internal Market Act 2020* and the Northern Ireland Protocol;
2. a confirmed (or likely) date by which each provisional framework now in operation will be published, in the interests of transparency for stakeholders affected by the decisions being made on laws and policies in these areas;
3. a date by which the governments of the UK are expecting all common frameworks to have been scrutinised by their respective parliaments and subsequently finalised.

I am copying this letter to the Climate Change, Environment and Infrastructure Committee; the Economy, Trade and Rural Affairs Committee; and the Health and Social Care Committee.

I would welcome a response by 25 November 2021.

Yours sincerely,

*Huw Irranca-Davies*

Huw Irranca-Davies  
Chair

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



Llywodraeth Cymru  
Welsh Government

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

19 November 2021

Dear Huw,

Further to my letter of 8 November, I am writing in accordance with the Inter-institutional Relations Agreement to update you on the outcome of the Quadrilateral Ministerial meeting on Common Frameworks that took place on 10 November.

Agreement was reached on all the outstanding cross-cutting issues, namely a process for exclusions under the United Kingdom Internal Market Act in cases of proposed divergence, and on wording regarding International Relations and the Northern Ireland Protocol. In respect of the exclusions process, all discussions, negotiations and decisions were taken by the Welsh Government without prejudice to the ongoing judicial review in relation to the Internal Market Act.

In addition, all parties committed to future reporting on the frameworks as part of the process for the oversight of the frameworks within the Intergovernmental Relations Review. This process will also provide assurance to Senedd committees that they will be able to monitor the progress of the frameworks over the longer term. I have asked my officials to produce a paper by the end of this year, to be agreed by Ministers of the four governments, outlining an approach to reporting on Common Frameworks.

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**Back Page 36**  
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 will issue a Written Statement providing an update on the Common Frameworks programme in the first half of December ahead of the majority of frameworks being published for scrutiny.

Yours sincerely,

A handwritten signature in blue ink, reading "Mick Antoniw". The signature is written in a cursive style. Below the signature, there is a short horizontal line.

**Mick Antoniw AS/MS**

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



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

08 November 2021

Dear Huw,

I am writing in accordance with the Inter-institutional Relations Agreement to let you know that a quadrilateral ministerial meeting on Common Frameworks will be held on 10 November at 14:15. This meeting will take place virtually.

It is planned that the meeting will be attended by Ministers responsible for the Common Frameworks Programme from the UK Government, the Scottish Government, the Northern Ireland Executive and myself as the responsible Welsh Government Minister for the programme.

The meeting will focus on both the resolution of cross-cutting issues (including the United Kingdom Internal Market Act (2020) (UKIMA), International Relations (IR) and the Northern Ireland Protocol (NIP)), and agreement of a plan for forthcoming publication of Common Frameworks for scrutiny.

The draft agenda is as follows:

1. Core actions from last Quadrilateral Meeting
2. Recent progress across the programme
  - a. Cross-cutting issues: UKIMA
  - b. Cross-cutting issues: IR
  - c. Cross-cutting issues: NIP
3. Delivery timescales
  - a. Programme delivery timelines
  - b. Publication of Frameworks
4. Mainstreaming (Future Reporting)

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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.

The outcome of the quadrilateral meeting will be communicated to you within two weeks of it having taken place.

Yours sincerely,

A handwritten signature in blue ink that reads "Mick Antoniw". The signature is written in a cursive style. Below the signature, there is a short horizontal blue line.

**Mick Antoniw AS/MS**

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

# Agenda Item 3

## Statutory Instruments with Clear Reports 31 January 2022

### SL(6)129 – The Renting Homes (Fitness for Human Habitation) (Wales) Regulations 2022

#### Procedure: Made Negative

Section 91 of the Renting Homes (Wales) Act 2016 (“the Act”) requires a landlord, under a secure contract, a periodic standard contract or a fixed term standard contract made for a term of less than 7 years, to ensure that the dwelling is fit for human habitation. Section 92 requires the landlord to keep the dwelling in repair.

Section 94(1) requires the Welsh Ministers to prescribe matters and circumstances to which regard must be had when determining whether a dwelling is fit for human habitation, and section 94(2) enables the Welsh Ministers to prescribe matters and circumstances which may arise because of a landlord’s failure to keep the dwelling in repair. Section 94(3) enables the Welsh Ministers to impose requirements on landlords and to prescribe that if those requirements are not complied with, the dwelling is to be treated as if it were unfit for human habitation.

Regulation 3 and the Schedule prescribe the matters and circumstances to which regard must be had when determining whether a dwelling is fit for human habitation.

Regulation 4 provides that regulations 5 to 8 apply in relation to a secure contract, a periodic standard contract or a fixed term standard contract made for a term of less than 7 years, and which incorporate section 91 of the Act as a term of the contract.

Regulation 4 applies regulations 5 to 8 to the same kinds of occupation contract as regulation 3.

Regulations 5 and 6 impose requirements on a landlord for the purpose of preventing any matters or circumstances which may cause a dwelling to be unfit for human habitation from arising.

Regulation 5 requires that smoke alarms and carbon monoxide alarms, in repair and proper working order, are present in a dwelling.

Regulation 6 requires that the electrical service installations in a dwelling are subject to an electrical safety inspection by a qualified person at intervals of 5 years or less; and that a copy of the condition report is given to the contractholder. If works are carried out on a dwelling’s electrical service installations between electrical safety inspections, the landlord



must provide written confirmation that the works have been carried out to the contractholder.

Where a landlord fails to comply with a requirement imposed by regulation 5 or 6, the dwelling is to be treated as if it were unfit for human habitation until the failure is rectified by the landlord. If the failure re-occurs, the dwelling will again be treated as unfit for human habitation until it is rectified.

Regulation 7 provides additional time to ensure compliance for landlords under existing tenancies and licences that will become occupation contracts under the Act.

Regulation 8 enables landlords to rely on electrical condition reports obtained before [these Regulations](#) come into force.

**Parent Act:** Renting Homes (Wales) Act 2016

**Date Made:** 07 January 2022

**Date Laid:** 12 January 2022

**Coming into force:** in accordance with regulation 1

## **SL(6)136 – The Education (Eligibility for Student Support) (Amendment) (Wales) Regulations 2022**

### **Procedure: Made Negative**

The Welsh Ministers make regulations to provide the basis for the system of financial support for students ordinarily resident in Wales who are taking designated courses of higher education in the UK, and other students studying in Wales. The student finance regulations contain eligibility criteria pursuant to which certain groups may be eligible for student support, home fee status and the tuition fee cap.

The Education (European University Institute) (Wales) Regulations 2014 (“the 2014 Regulations”) provide for financial support for an eligible student to attend the European University Institute. These [Regulations](#) make correctional amendments to the 2014 Regulations, providing re-formatted drafting to the definition of a “UK national” and correcting the definition of a “protected partner”.

The Education (Student Support) (Wales) Regulations 2018 (“the 2018 Regulations”) provide for financial support for students taking designated higher education courses which began on or after 1 August 2018. These Regulations correct an error in the 2018 Regulations made in previous amending regulations, to ensure that Irish nationals (who were resident in the EEA and Switzerland at the end of the transition period) are unable to apply for maintenance support but remain eligible for fee support, home fee status and the tuition fee cap.



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

**Date Made:** 17 January 2022

**Date Laid:** 19 January 2022

**Coming into force date:** 11 February 2022



Senedd Cymru

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

—  
Welsh Parliament

**Legislation, Justice and Constitution Committee**

## **SL(6)130 - The Renting Homes (Supported Standard Contracts) (Supplementary Provisions) (Wales) Regulations 2022**

### **Background and Purpose**

The Renting Homes (Supported Standard Contracts) (Supplementary Provisions) (Wales) Regulations 2022 ("the Regulations") are made in exercise of the powers conferred by sections 23(1), 131 and 256(1) of the Renting Homes (Wales) Act 2016 ("2016 Act"). The Regulations come into force on a day to be appointed by the Welsh Ministers in accordance with regulation 1.

The 2016 Act seeks to make it simpler and easier to rent a home in Wales by replacing various, complex pieces of existing legislation with one clear legal framework. New "occupation contracts" will replace current residential tenancies and licenses, making the rights and obligations of both landlord and tenant or licensee (referred to in the 2016 Act as the "contract-holder") much clearer.

All occupation contracts will include the relevant fundamental terms, which are set out in the 2016 Act as fundamental provisions. These deal with the essential rights and obligations of landlords and contract-holders. Supplementary terms deal with practical matters which help to make the occupation contract work, such as enabling a landlord to access a property to undertake repairs or maintenance. The supplementary terms are set out as provisions in regulations rather than in the 2016 Act itself. This is to more easily allow for any future changes in housing legislation or practice to be incorporated into occupation contracts than would otherwise be the case.

The Regulations set out the supplementary provisions which are, subject to sections 21, 24 and 25 of the 2016 Act, incorporated into supported standard contracts, as supplementary terms. However, at the creation of the occupation contract, the parties may agree that a supplementary provision is modified or that it is not included in the occupation contract. But, a modification or omission must not render the occupation contract incompatible with any fundamental term of the contract.

Regulation 4 of the Regulations requires the contract-holder to obtain the landlord's consent before carrying on a trade or business at the dwelling.

Regulation 5 requires the contract-holder to obtain the landlord's consent before allowing lodgers to live at the dwelling.

Regulation 6 requires the landlord to provide an inventory to the contract-holder, within a specified timescale. It also makes provision enabling the contract-holder to make comments on the inventory and how the landlord may respond to those comments.



Regulation 7 provides the contract-holder is not liable for rent for each day (or part day) the dwelling is unfit for human habitation.

Regulation 8 requires the landlord to provide, within 14 days of any request by the contract-holder, a written receipt for rent or other consideration paid by the contract-holder.

Regulation 9 sets out how a contract-holder may change the providers of utilities to the dwelling.

Regulation 10 imposes a number of requirements on the contract-holder in relation to the care of the dwelling, fixtures and fittings within the dwelling and any items listed in the inventory. This includes requiring the contract-holder to obtain the landlord's consent before removing any of the fixtures and fittings or any items listed in the inventory from the dwelling. It requires the contract-holder to keep the dwelling in reasonable decorative order. It also prohibits the contract-holder from keeping anything in the dwelling that would be a health and safety risk.

Regulation 11 requires the contract-holder to report to the landlord any fault, defect, damage or disrepair within the dwelling which the contract-holder reasonably believes is the landlord's responsibility. It also requires the contract-holder to undertake those repairs that they reasonably believe are not the landlord's responsibility.

Regulation 12 provides the landlord with a right, having given 24 hours' notice, to enter the dwelling at any reasonable time for the purpose of carrying out those repairs that were the contract-holder's responsibility that have not been undertaken.

Regulation 13 requires the contract-holder to give the landlord immediate access to the dwelling to deal with an emergency. It sets out that the landlord may access the dwelling in an emergency if the contract-holder does not provide access.

Regulation 14 requires the contract-holder to keep the dwelling secure and sets out that the contract-holder can change the locks in the dwelling, provided the changes provide no less security, and that copies of any new keys are given to the landlord.

Regulation 15 requires the contract-holder to obtain the landlord's consent before making alterations to the dwelling and defines "alteration" for the purposes of this regulation.

Regulation 16 requires a contract-holder, at the end of the occupation contract, to remove from the dwelling their belongings and the belongings of any permitted occupiers. It also requires any property belonging to the landlord to be returned to the position it was in at the beginning of the occupation contract, and requires keys to be returned.

Regulation 17 prescribes the notice period to be given to the landlord by a joint contract-holder who wishes to withdraw from the occupation contract.

Regulation 18 requires the landlord to repay (within a reasonable time) the contract-holder any pre-paid rent or other consideration which relates to any period falling after the end of the contract.



## 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(v) – that for any particular reason its form or meaning needs further explanation.**

Regulation 6 deals with the provision of an inventory. Regulation 6(5) sets out the actions that the landlord must take to address any comments made by the contract-holder in relation to the inventory. No time frame is set within which the landlord must take these actions, which may give rise to issues with the enforceability of the provision – if the landlord is not required to comply within a certain time then it is more difficult for a contract-holder to present an argument that compliance should already have occurred. The Welsh Government is asked to explain why no time frame is set for landlords to comply with the requirements in regulation 6(5).

## 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.**

Regulations 12 and 13 give the landlord the right to enter the dwelling. The 2016 Act provides that a landlord may be a “private landlord” or a “community landlord”, and the latter can include a local authority by virtue of section 9 of that Act. If this right is exercised by a public body such as a local authority, then it may interfere with the contract-holder’s right to private life under article 8 of the European Convention on Human Rights (“ECHR”). Similarly, it could interfere with the contract-holder’s right to the peaceful enjoyment of their possessions under article 1 of the First Protocol to the ECHR. The Welsh Government is asked to provide details of the human rights assessment that it undertook in relation to regulations 12 and 13.

## Welsh Government response

A Welsh Government response is required.



**Legal Advisers**  
**Legislation, Justice and Constitution Committee**  
**25 January 2022**



## SL(6)131 - The Renting Homes (Supplementary Provisions) (Wales) Regulation 2022

### Background and Purpose

These Regulations set out the supplementary provisions which are, subject to sections 21, 24 and 25 of the Renting Homes (Wales) Act 2016 ("the Act"), incorporated into occupation contracts as supplementary terms.

The default position is that supplementary provisions are incorporated as supplementary terms of an occupation contract. However, at the creation of the occupation contract, the parties may agree that a supplementary provision is modified or that it is not included in the occupation contract. A modification or omission must not render the occupation contract incompatible with any fundamental term of the contract.

The Regulations set out supplementary provisions which apply to different types of occupation contracts and deal with matters such as:

- landlord's consent to carry on a trade or business at the dwelling;
- persons permitted to live at the dwelling;
- how to change utility providers;
- the dwelling being unoccupied;
- what happens to property at the dwelling at the end of the occupation contract;
- repayment of pre-paid rent or other consideration after the end of the contract;
- non-payment of rent when the dwelling is unfit for human habitation;
- provision of rent receipts;
- care of the dwelling, fixtures and fittings and any items listed in any inventory;
- reporting problems with the dwelling and carrying out repairs;
- the notice period to be given to the landlord by a joint contract-holder who wishes to withdraw from the occupation contract;
- occupation of the dwelling as a principal home;
- keeping the dwelling secure and changing the locks;
- consent to alteration to any structures in the dwelling;
- transfer of the occupation contract;
- provision of advice to the contract-holder following a report of prohibited conduct, such as anti-social behaviour;
- provision of an inventory and the process to agree it;
- retention of documents relating to the dwelling; and
- consent regarding lodgers.

### 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(v) – that for any particular reason its form or meaning needs further explanation.**

Regulation 27 deals with the provision of an inventory under certain types of occupation contract. Regulation 27(5) sets out the actions that the landlord must take to address any comments made by the contract-holder in relation to the inventory. No time frame is set within which the landlord must take these actions, which may give rise to issues with the enforceability of the provision – if the landlord is not required to comply within a certain time then it is more difficult for a contract-holder to present an argument that compliance should already have occurred. The Welsh Government is asked to explain why no time frame is set for landlords to comply with the requirements in Regulation 27(5).

## Merits Scrutiny

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

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

The Explanatory Note to the Regulations states that:

*Regulation 5 provides that the contract-holder may permit persons who are not lodgers or sub-holders to live in the dwelling. Neither the landlord nor the contract-holder may cause or permit the dwelling to become overcrowded within the meaning of Part 10 (overcrowding) of the Housing Act 1985 (c. 68).*

However, the restriction on the landlord and the contract-holder which states that they cannot cause or permit the dwelling to become overcrowded within the meaning of Part 10 (overcrowding) of the Housing Act 1985 is not included in Regulation 5 itself or elsewhere in the Regulations. The Explanatory Memorandum to the Regulations notes that the provision was redrafted to remove reference to 'overcrowding' within the meaning of Part 10 of the Housing Act 1985. Referring to a restriction within the Explanatory Notes which is no longer included in the Regulations may cause confusion for the reader. The Welsh Government is asked to confirm why this reference is included in the Explanatory Note when it has been removed from the Regulations.



**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.**

Regulations 15, 16 and 33 give the landlord, who may be a private landlord or a “community landlord”, which is defined to include a local authority, the right to enter the dwelling. Where this right is exercised by a public body such as a local authority then it may interfere with the contract-holder’s right to private life under article 8 of the European Convention on Human Rights (“ECHR”). Similarly, it could interfere with the contract-holder’s right to the peaceful enjoyment of their possessions under article 1 of the First Protocol to the ECHR. The Welsh Government is asked to provide details of the human rights assessment that it undertook in relation to Regulations 15, 16 and 33.

### **Welsh Government response**

A Welsh Government response is required.

#### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**25 January 2022**



# Agenda Item 4.3

## **SL(6)132 – The Renting Homes (Explanatory Information for Written Statements of Occupation Contracts) (Wales) Regulations 2022**

### **Background and Purpose**

These Regulations prescribe the explanatory information that must be contained in a written statement of an occupation contract issued in accordance with section 31 of the Renting Homes (Wales) Act 2016 (“the Act”).

The Act establishes two types of occupation contract, the secure contract and the standard contract. The Act also establishes a number of different types of standard contract which can be used in particular circumstances.

Regulation 3 of these Regulations prescribe explanatory information which must be contained in all written statements of occupation contracts. Regulations 5 to 9 prescribe explanatory information which must be contained in written statements of specific types of occupation contracts.

### **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 3 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.**

Section 31 of the Act requires a landlord to provide a contract-holder with a written statement of their occupation contract within 14 days of the occupation date. If the landlord fails to do so, the landlord may be required to pay compensation to the contract-holder. Section 35 of the Act makes provision about the duration of the period in respect of which compensation is payable. For example, if a contract-holder first occupies premises on 1 January, the landlord must provide a written statement within 14 days, i.e. before the end of 14 January. If the landlord fails to do so, compensation is payable for every day from 1 January onwards (subject to a maximum of 2 months).



However, regulation 3(g) of these Regulations says that the written statement must include an explanation that, for each day the written statement is late, the landlord may be liable to pay compensation to the contract-holder for each day the written statement is not provided.

We are concerned that regulation 3(g) could easily be read as saying that compensation is payable in respect only of the period that begins after the initial 14-day period has passed. We believe it is easy to read "liable to pay compensation...for each day the written statement is late" as excluding compensation being payable in respect of the 14-day period itself. Applying the example above, such a reading would mean that compensation is not payable in respect of the period 1 to 14 January. However, such an interpretation would be contrary to the position we set out above under section 31 and 35 of the Act.

We would be grateful if the Welsh Government could confirm whether our understanding of the Act is correct, and whether the Welsh Government believes the Regulations should be clearer as to the period in respect of which compensation is payable.

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

Regulation 5(b) requires written statements of periodic standard contracts to contain an explanation that, before a court can make a possession order, the landlord must demonstrate that all the correct procedures have been followed and that certain conditions (depending on the particular circumstances) have been satisfied.

Regulation 5(b)(iv)(aa) requires a specific explanation that, where such contracts incorporate section 173 of the Act (landlord's notice), the landlord must demonstrate that:

- the landlord has given the contract-holder notice under section 173 that they must give up possession on a specified date in the notice, and
- no restrictions on giving notice under section 173 apply, including specific restrictions set out in sections 75 and 98 of the Housing Act 2004 and section 44 of the Housing (Wales) Act 2014.

We would be grateful if the Welsh Government could clarify the legislative basis for requiring a landlord to comply with the specific restrictions referred to above in order to give notice under section 173 of the Act.

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

Regulation 8(b)(v) requires the provision of certain explanatory information in circumstances where a fixed term standard occupation contract incorporates section 194 of the Act as a term of that contract. The specified information includes the landlord needing to demonstrate that where the occupation contract is within:

- Schedule 8A to the Act, the contract-holder was given an least two months' notice that they must give up possession (Regulation 8(b)(v)(cc)); and



- Either Schedule 8A, Schedule 9 or Schedule 9C to the Act (or any combination of them), the contract-holder was given the relevant notice that they must give up possession (Regulation 8(b)(v)(dd)).

The Welsh Government is asked to clarify the reason for referring to occupation contracts within Schedule 8A in Regulation 8(b)(v)(dd), given that a minimum notice period for these contracts of two months' is already specified in Regulation 8(b)(v)(cc).

## Merits Scrutiny

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

## Welsh Government response

A Welsh Government response is required.

### Legal Advisers

**Legislation, Justice and Constitution Committee**

**26 January 2022**



Senedd Cymru

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

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**Legislation, Justice and Constitution Committee**

## SL(6)134 - The Renting Homes (Model Written Statements of Contract) (Wales) Regulations 2022

### Background and Purpose

These Model Written Statements Regulations prescribe three model written statements of occupation contract for use by landlords under the new framework established by the Renting Homes (Wales) Act 2016 (the 2016 Act).

The model written statements relate to three types of contract:

1. secure occupation contracts,
2. periodic standard occupation contracts, and
3. and fixed term standard contracts made for a term less than seven years.

The model written statements incorporate the terms that are applicable to each type of contract. The Explanatory Memorandum states that this is intended to encourage consistency in the way that written statements are drafted and provides written statements that are compliant with the legal requirements of the 2016 Act.

Landlords must provide contract-holders with written statements, though they do not have to use the model written statements.

### Procedure

Negative.

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

### Technical Scrutiny

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

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

It is unclear where the model written statement of a fixed term standard occupation contract for a term of less than seven years (in Schedule 3) provides for the term of the contract to be set out in the written statement.



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

We note the following drafting issues:

- (a) Schedule 2, term 47: the words “on that ground” have been unnecessarily repeated. The words are not repeated in section 157 of the 2016 Act (i.e. the section from which term 47 derives);
- (b) Schedule 3, term 10: the word “Repairs” is used in the heading to term 10 but not in the heading to section 98 of the 2016 Act (i.e. the section from which term 10 derives);
- (c) Schedule 3, term 39: all terms should be labelled F, F+ or S in order to help readers understand the status of term. However, term 39 is not labelled.

## Merits Scrutiny

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

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

We ask whether it would be helpful if the model written statement in Schedule 3:

- (a) set out a brief explanation or warning as to what happens at the end of the term (see, for example, the information included in section 184 of the 2016 Act);
- (b) warned readers that additional terms could include very important terms (for example, a landlord’s break clause that allows a landlord to end the contract before the end of the term).

### 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

These Model Written Statements Regulations form part of a suite of regulations that implement the 2016 Act. We note the following reporting points raised by this committee in respect of some of those other regulations that implement the 2016 Act, and how those reporting points are inherited by these Model Written Statements Regulations.

Name of regulations	Reporting point	Knock-on effect on the Model Written Statements Regulations
The Renting Homes (Supplementary Provisions) (Wales) Regulations 2022	Where a contract-holder makes comments to the landlord as regards an inventory, the landlord must take certain steps. However,	The term relating to inventories is a new supplementary term. The model written statements in Schedules 2 and 3 to the Model Written Statements



	no timescale is given for the landlord to take those steps.	Regulations incorporate such new supplementary terms, therefore the issue regarding timescales is inherited by the Model Written Statements Regulations.
The Renting Homes (Explanatory Information for Written Statements of Occupation Contracts) (Wales) Regulations 2022	Lack of clarity in the wording relating to the period during which compensation is payable when a landlord fails to provide a written statement to a contract-holder.	The wording to be used in written statements is inherited by the Model Written Statement Regulations. Therefore, the lack of clarity is also inherited.
The Renting Homes (Explanatory Information for Written Statements of Occupation Contracts) (Wales) Regulations 2022	Lack of clarity as to the explanation of the need to comply with certain requirements before a landlord can give notice of termination to a contract-holder.	The explanation of the requirement to comply with those requirements is inherited by Schedule 2 to the Model Written Statement Regulations. Therefore, the lack of clarity is also inherited.

### **5. 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 repeatedly refers to the Regulatory Impact Assessment carried out for the 2016 Act. Can the Welsh Government confirm whether that RIA (now 5 years old) is still a good basis for the ‘costs and benefits’ conclusions set out in the Explanatory Memorandum?

### **Welsh Government response**

A Welsh Government response is required to points one, three and five.

### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**27 January 2022**



# Agenda Item 4.5

## **SL(6)139 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 2) Regulations 2022**

### **Background and Purpose**

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (“the principal Regulations”) to remove restrictions on outdoor gatherings and events that apply in relation to Alert Level 2, which were introduced on 26 December 2021 and amended on 15 January 2022. The restrictions removed are:

- the limit on numbers for regulated outdoor events of 500 people;
- the limit on numbers and the offence for gathering outdoors in excess of 50;
- the additional reasonable measures for outdoor hospitality (the rule of six, and the table service requirement).

These Regulations make amendments:

- related to the Alert Level 2 changes, including removing the offence of participating in a gathering of more than 50 people outdoors in a private dwelling; and
- so that the requirement to control entry to premises and for customers to be seated when ordering food or drink only applies to indoors parts of the premises.

These Regulations took effect from 6:00a.m. on 21 January 2022.

### **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 4 points are identified for reporting under Standing Order 21.3 in respect of this instrument.



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

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

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

...

*The adjustment of the restrictions and requirements under the principal Regulations by these Regulations is a proportionate response to the spread of coronavirus. It balances the need to maintain an appropriate response to the threat posed by coronavirus against the rights of individuals and businesses, in a manner which remains proportionate to the need to reduce the rate of transmission of the coronavirus, taking into account the scientific evidence.”*

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

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

*“Given the ongoing threat arising from coronavirus and the need for a prompt public health response, there has been no public consultation in relation to these Regulations. However, engagement has taken place with various stakeholders.”*

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

We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a “made negative” instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Mark Drakeford MS, First Minister, in a letter to the Llywydd dated 20 January 2022.

In particular, we note that the letter says:

*“This is necessary in order to ensure that the principal Regulations’ restrictions and requirements continue to be proportionate.”*

**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.**



It is noted that there are no consequential amendments made to Schedule 1 to the principal Regulations, which set out restrictions which apply to Alert Level 1. This has the consequence, in relation to outdoor gatherings and events, of making the restrictions which apply to Alert Level 2 less onerous than those that apply to Alert Level 1. This could cause confusion to those looking at the Alert Levels with an intention of understanding possible measures that could be adopted for each of the Alert Levels.

Although Welsh Government can bring forward regulations to correct these inconsistencies if Alert Level 1 were to be adopted, doing so necessitates additional amending regulations. The Committee notes that, including these Regulations, there are 30 amending regulations relating to the principal Regulations. Increasing the number of amending regulations could reduce the clarity, specifically this increases the number of instruments that a person needs to review in order to understand the position at any one time. That could lead to confusion and ambiguity. It is acknowledged that Welsh Government currently publishes a consolidated version of the principal Regulations.

Welsh Government are asked:

- if any consideration is being given to producing a new consolidated set of regulations?
- whether consideration could be given to using explanatory material (Explanatory Notes and Explanatory Memorandums) to include additional explanations to aid clarity, such as explaining which Alert Level and corresponding Schedule is in force, and clarifying that the reader should not contrast and compare Schedules?

## Welsh Government response

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

### Legal Advisers

**Legislation, Justice and Constitution Committee**

**27 January 2022**



Senedd Cymru

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

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**Legislation, Justice and Constitution Committee**



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

20 January 2022

Dear Elin,

**The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 2) Regulations 2022**

I have today made these Regulations under sections 45C(1) and (3)(c) and 45P(2) of the Public Health (Control of Disease) Act 1984, which come into force at 6.00 a.m. on 21 January 2022. I attach a copy of the statutory instrument and I intend to lay this and an accompanying Explanatory Memorandum once the statutory instrument has been registered.

In accordance with section 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this statutory instrument is being made according to the negative procedure and will come into force at 6.00 a.m. on 21 January 2022, less than 21 days after it has been laid. This is necessary in order to ensure that the principal Regulations' restrictions and requirements continue to be proportionate.

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

**MARK DRAKEFORD**

Bae Caerdydd • Cardiff Bay  
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CF99 1SN

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

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

# Agenda Item 4.6

## **SL(6)133 – The Renting Homes (Wales) Act 2016 (Amendment of Schedule 9A) Regulations 2022**

### **Background and Purpose**

These Regulations amend Schedule 9A to the Renting Homes (Wales) Act 2016 (“the 2016 Act”) to include two additional requirements with which landlords are required to comply.

Schedule 9A was inserted into the 2016 Act by the Renting Homes (Amendment) (Wales) Act 2021. Schedule 9A already prevents a landlord from issuing a notice under sections 173, 186, or under a landlord’s break clause, in certain circumstances.

These Regulations place two further restrictions on a landlord’s ability to issue a notice seeking possession. The prohibitions are:

- if an energy performance certificate (“EPC”) has not been provided – a valid EPC is required whenever a property is built, sold, or rented; or
- if the notice relates to health and safety – the relevant health and safety circumstances are that the landlord has failed to:
  - ensure working smoke alarms and, where required, carbon monoxide alarms, are installed;
  - obtain an electrical condition report, or to give the contract holder such a report or written confirmation of certain other electrical work; or
  - comply with the Gas Safety Regulations 1998 by providing to the contract-holder, or displaying, a relevant gas safety certificate.

These Regulations are intended to operate alongside other relevant provisions in Part 4 of the 2016 Act, which deals with the condition of dwellings let by landlords, as well as associated subordinate legislation, including the Renting Homes (Fitness for Human Habitation) (Wales) Regulations 2022 and the Renting Homes (Supplementary Provisions) (Wales) Regulations 2022.

### **Procedure**

Draft Affirmative

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

### **Technical Scrutiny**

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



## Merits Scrutiny

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

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

Regulations 3 and 4, which insert new paragraphs 3A, 5A, 5B and 5C into Schedule 9A to the 2016 Act, prevent a landlord giving notice if there are breaches of certain statutory obligations. Any provision that interferes with an individual's property or use of that property will potentially engage Article 1 Protocol 1 to the European Convention on Human Rights.

The Explanatory Memorandum does not contain a justification for the interference with human rights. The Welsh Government is asked to provide details of the human rights assessment that it undertook in relation to Regulations 3 and 4.

**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**

These Regulations amend primary legislation, namely the Renting Homes (Wales) Act 2016. The Committee notes that the Legislation, Justice and Constitution Committee of the Fifth Senedd reported on the Renting Homes (Amendment) (Wales) Bill during Stage 1 proceedings. The Report references the existence of this Henry VIII power and the clarifications sought at the time from the Minister in relation to the justification for the power (like all other regulation-making powers in that Bill) being a Henry VIII power. The Minister's response was:

*"The Schedules to the 2016 Act contain a power for the Welsh Ministers to amend them, as we will need to review the matters contained within those Schedules as the housing landscape evolves over time. We need to have the flexibility to react to those changes and make appropriate provision within the various Schedules, as necessary. The Bill therefore adopts the same approach. The alternative would seem to be regulations which would also amend primary legislation or, alternatively, would need to be read alongside the primary legislation, resulting in detail falling outside of primary legislation into secondary legislation, which can itself attract criticism so far as scrutiny and accessibility of the law issues are concerned."*

## Welsh Government response

A Welsh Government response is required.

### Legal Advisers

Legislation, Justice and Constitution Committee

25 January 2022



## SL(6)137 – The Code of Recommended Practice for Local Authority Publicity

### Background and Purpose

The Code of Recommended Practice for Local Authority Publication (“the Code”) provides guidance on the content, style, distribution and cost of local authority publicity. The Code is being updated and revised to reflect changes that have taken place since the last Code was issued in 2014.

Local authorities, defined in section 6(2) of the Local Government Act 1986, are required by section 4(1) of that Act to have regard to the Code in coming to any decision on publicity. “Publicity” is defined in section 6(4) of the 1986 Act as “any communication, in whatever form, addressed to the public at large or a section of the public”.

It is intended that the revisions to the Code will be made and come into force no later than 18 March 2022.

### Procedure

Draft Negative.

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

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

### Scrutiny under Standing Order 21.7

The following points are identified for reporting under Standing Order 21.7 in respect of this code.

1. The 2014 version of the Code makes clear that it is a revision of a previous Code. For example, the first paragraph of the 2014 Code refers twice to the Code being a revision. However, this distinction is not made in this version of the Code, which instead merely refers to the Code being issued. This distinction is important as the negative procedure only applies where the Code is revised, in accordance with section 4(6) of the Local Government Act 1986. Whilst it is noted that the Explanatory Memorandum makes clear that the Code is a revision, clarification is sought as to why this version of the Code takes a different approach to the 2014 Code by not making clear that it is a revision.



2. Paragraphs 34 and 42 state that any material produced should “*have regard*” to the Equality Act 2010 and should be produced “*in accordance*” with the Welsh Language (Wales) Measure 2011. Clarification is sought as to why material should be produced “*in accordance*” with the 2011 Measure but only “*have regard*” to the 2010 Act.
3. Paragraph 19 of the Code refers to “*section 142(A) of the 1972 Act*”. It appears that this should read “*section 142(1A) of the 1972 Act*” (emphasis added). This error also occurs in the Welsh language version of the Code and appears to have been carried over from the 2014 version of the Code.
4. We note the following inconsistencies between the English and Welsh versions of the Code:
  - a. In paragraph 7, the Welsh version refers to regular review of strategies. However, the English version refers to reviews (not regular reviews);
  - b. In paragraph 20 of the Welsh version, it appears that “*prif aelod etholedig o’r cyngor*” should read “*aelod etholedig o’r prif gyngor*”;
  - c. In paragraph 26, the Welsh version refers to “*a/neu ddenu rhai newydd*”. However, the English version refers to “*or attract new ones*” (not “*and/or attract new ones*”).

## Government response

A Welsh Government response is required in relation to points 1 to 3 above.

### Legal Advisers

Legislation, Justice and Constitution Committee

26 January 2022



## **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

### Technical scrutiny

1. The reference in the Explanatory Note to a change in the application deadline was included in error.
2. The text referred to in the report applies to both sub-paragraphs (i) and (ii). A formatting error resulted in that text following on immediately after sub-paragraph (ii). The Government does not consider that the formatting error prevents the correct interpretation of that provision.

### Merit scrutiny

1. The first sub-paragraph of the definition of "person granted leave to remain as a protected partner" should have included reference to paragraph 289D of the immigration rules. The Government will look to schedule an amendment in an appropriate future instrument.
2. The inclusion of "the territory comprising the United Kingdom, the Islands and the Republic of Ireland" is necessary. That is a term used in the Regulations and is distinct from the term "the territory comprising the United Kingdom, Gibraltar...".

## Committee Consideration

The Committee considered the instrument and Government response at its meeting on 6 December 2021 and reports to the Senedd in line with the reporting points above.



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



Llywodraeth Cymru  
Welsh Government

Huw Irranca-Davies  
Chair  
Legislation, Justice and Constitution Committee  
Welsh Parliament  
Cardiff Bay  
Cardiff  
CF99 1SN

25 January 2022

Dear Huw,

Thank you for your letter of 10 December regarding the points raised in the Legislation, Justice and Constitutional Affairs Committee's report in relation to the Education (European University Institute) (Wales) (Amendment) (EU Exit) Regulations 2021.

The first technical point raised in the report is in relation to an error in the Explanatory Note. We are seeking to correct this with the SI Registrar through a correction slip to the instrument.

The Welsh Government has made regulations to address the second technical point (the definition of a UK national) and the first merit point (the omission of paragraph 289D of the immigration rules in the definition of a protected partner) in the report. These regulations were laid on 19 January.

I trust the Committee will find this helpful.

Yours sincerely

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

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.

## **SL(6)135 - The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) Regulations 2022**

### **Background and Purpose**

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

[The Health Protection \(Coronavirus Restrictions\) \(No. 5\) \(Wales\) \(Amendment\) Regulations 2022](#) ("the Regulations") are made in exercise of the powers conferred by sections 45C(1) and (3)(c) and 45P(2) of the 1984 Act in response to the threat to public health which is posed by the incidence and spread of COVID-19.

The Regulations amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (the "principal Regulations"), with effect from 15 January 2022, to:

- provide that, under the Alert Level 2 restrictions in Schedule 2 to the principal Regulations, up to 500 people may be present at an outdoor event (raising the limit from 50). This figure does not include persons working or providing voluntary services at the event. In addition where the event is a team sports event, the principal Regulations treat members of the teams and those providing coaching or otherwise assisting the teams as working at the event; and
- make a minor amendment to regulation 16 of the principal Regulations, adding a reference to "Step 4", which is consequential on the changes made to the principal Regulations by the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 25) Regulations 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 four 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 Mark Drakeford MS, First Minister, in a letter to the Llywydd dated 14 January 2022.

The letter to the Llywydd states:

*“In accordance with section 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this statutory instrument will come into force at the beginning of the day on 15 January 2022, less than 21 days after it has been laid. This is necessary in order to respond to the changing evidence on coronavirus, particularly the Omicron variant.”*

### **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 in the Explanatory Memorandum:

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

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

*Each of these is a qualified right, which permits the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health, and are proportionate. Any interference with these rights also needs to be balanced with the state’s positive obligations under Article 2 (right to life). The adjustment of the restrictions and requirements under the principal Regulations by*



*these Regulations is a proportionate response to the spread of coronavirus. It balances the need to maintain an appropriate response to the threat posed by coronavirus against the rights of individuals and businesses, in a manner which remains proportionate to the need to reduce the rate of transmission of the coronavirus, taking into account the scientific evidence."*

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

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

*"Given the ongoing threat arising from coronavirus and the need for a prompt public health response, there has been no public consultation in relation to these Regulations. However, engagement has taken place with various stakeholders including the Equalities Division of the Welsh Government."*

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

## **Welsh Government response**

A Welsh Government response is required in relation to Merits point 4 only.

## **Committee Consideration**

The Committee considered the instrument at its meeting on 24 January 2022 and reports to the Senedd in line with the reporting points above.



## **Government Response: The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) Regulations 2022**

Merit Scrutiny point 4:

Equality impacts are covered in the Summary Impact Assessments relating to changes in the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (the principal Regulations).

As part of the consideration of any tightening of protective measures via those Regulations, a Summary Impact Assessment (or SIA) is carried out. This will be a new SIA for circumstances when new measures are being introduced; where measures have been previously used this will be a review and potential update of an existing SIA.

SIAs are published as soon as possible but often this is some time after amending Regulations have been made, given timescales for quality assurance and publication of complex and substantial material in the context of the range of other work being undertaken to respond to the pandemic.

For any easing of protective measures, a new or updated assessment would only be published if the impacts are expected to be different from those previously identified. If the impacts are expected to be the same, the previously published impact assessment remains valid.

We consider that the relevant impact assessments specifically relating to restrictions on outdoor activity, which were published in 2021, remain relevant to these Regulations. These relevant assessments can be found at the links below:

[coronavirus-restrictions-review-14-may-2021-summary-impact-assessment.pdf \(gov.wales\)](#)

[alert-levels-wales-guide-restrictions-summary-impact-assessment-august-2021](#)

We have initiated a review of the above impact assessment process and will take into account comments from the Committee.

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**WRITTEN STATEMENT  
BY  
THE WELSH GOVERNMENT**

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**TITLE**            **SI laid in Parliament, which amends secondary legislation in a devolved area The Waste and Agriculture (Legislative Functions) Regulations 2021 (“the 2021 Regulations”)**

**DATE**            **17 January 2022**

**BY**                **Julie James MS, Minister for Climate Change and Lesley Griffiths MS, Minister for Rural Affairs and North Wales, and Trefnydd.**

1. The 2021 Regulations provide for legislative functions of the European Commission under various Waste Directives to be exercisable instead by a public authority in the United Kingdom.
2. The 2021 Regulations will transfer functions concerning devolved policy matters to Welsh Ministers, the Secretary of State (SoS) in relation to England, Scottish Ministers in relation to Scotland and DAERA in Northern Ireland (so long as the relevant Directive is not listed in Annex 2 of the NI Protocol).
3. Any functions concerning reserved areas will be transferred to the SoS in relation to the UK unless the relevant Directive is in Annex 2 of the Northern Ireland Protocol, in which case it will be transferred in relation to Great Britain only.
4. The functions being transferred are primarily tertiary legislation making powers contained within the EU Waste Directives which allow for making of delegated legislation by the Commission in accordance with powers set out in EU Directives. The tertiary legislation generally amends or supplements non-essential parts of the Directive. The transferred powers in the 2021 regulations will be exercised by statutory instrument in the form of regulations. The legislative procedure for these SIs will be the negative procedure.

5. The Regulations also correct an error in existing provision for legislative functions relating to agriculture. The 2021 Regulations insert an omitted definition of “appropriate authority” in to REUL Regulation 1306/2013 on the financing, management and monitoring of the common agricultural policy. The definition provides that the Welsh Ministers are the “appropriate authority” in relation to REUL Regulation 1306/2013 with the Secretary of State being able to act in limited, specified circumstances with the Welsh Ministers’ consent.

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

6. The 2021 Regulations will increase the Welsh Ministers Executive Competence by way of the various enabling powers being transferred to Welsh Ministers. The Regulations do not impact on the Senedd’s legislative competence.

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

7. In relation to devolved functions, the powers transferring to Welsh Ministers are:
  - i. Landfill Directive – transfers a power to develop a standard for sampling waste.
  - ii. Mining Waste Directive – transfers powers to amend secondary legislation and EU retained legislation on a range of technical functions including; sampling methods for waste, classifications of waste facilities, defining inert waste and technical guidelines for financial guarantees.
  - iii. Waste Framework Directive – transfers powers to set criteria for when specific substances or objects are by-products rather than waste, to set mandatory end of waste criteria for specific materials and to amend the application of the R1 energy recovery formula for incineration facilities.
  - iv. End of Life Vehicles Directive(ELV Directive) – transfers a power to be able to set minimum depollution requirements for facilities that treat end of life vehicles.
  - v. Batteries Directive – transfers a power to be able to set detailed rules supplementing the rules for export and recycling. Batteries can be recycled outside the EU and can count towards the UK requirement to recycle batteries if the recycling operation takes place under Directive equivalent conditions in another country.
  - vi. Waste Electronic and Electrical Equipment Directive (WEEE Directive) – transfers a power to be able to specify technologies in relation to treatment of substances that must be removed when treating WEEE and transfer the power to modify relevant EU legislation in light of scientific progress.

8. The reserved functions which will be transferred only to the SoS are;-
  - i. ELV Directive – transfers a power to set a list of heavy metal restrictions in the manufacture of vehicles, and to set a list of exemptions from the bans on materials and components that contain heavy metals (lead, mercury, cadmium and chromium).
  - ii. ELV Directive – transfer of a power to set out the minimum requirements for the certificate of destruction. In the UK the DVLA is responsible for deregistering vehicles and applying certificates of destruction to the national vehicle register.
  - iii. ELV Directive – transfer a power to establish standards to support the obligation on vehicle manufactures to ensure component parts are marked (product labelling) to aid their reuse and recycling.
  - iv. Batteries Directive – transfer of a power to grant exemptions from the battery labelling requirements.
  - v. WEEE Directive – transfer of a power to modify the symbol for marking electrical and electronic equipment
9. For each of the powers being transferred there is no equivalent domestic power. It is important that we transfer these functions within two years of IP completion day to ensure we have a means to amend the relevant matters in the future.
10. The returning functions provided by the 2021 Regulations will not need to be exercised immediately, they will become part of EU retained law, current controls will continue to apply until such time as they need to change.
11. The 2021 Regulations correct an error in REUL Regulation 1306/2013 to insert the definition of “appropriate authority” which was erroneously omitted.
12. Regulation 10(2)(a) and (b) of the Agriculture (Payments) (Amendment, etc.) (EU Exit) Regulations 2020 (S.I. 2020/1445) amended regulation 3 of the Agriculture (Legislative Functions) (EU Exit) Regulations 2019 (S.I. 2019/748), and inserted a definition of “appropriate authority” into REUL Regulation 1306/2013. This definition provided that the Welsh Ministers were the appropriate authority subject to point (ii) of the definition which provided that the Secretary of State would act with the Welsh Ministers’ consent in limited, specified circumstances.
13. Regulation 3 of the Agriculture (Legislative Functions) (EU Exit) Regulations 2019 was subsequently repealed in error immediately before IP completion day by regulation 65

of the Agriculture (Legislative Functions) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/831). This has meant that there is currently no definition of “appropriate authority” in REUL Regulation 1306/2013.

14. The 2021 Regulations re-insert the definition of “appropriate authority” into REUL Regulation 1306/2013.

### **Why consent was given**

15. Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. There is no divergence in policy after full and careful consideration of the proposed amendments, assessment of the policy instructions and legal analysis of the drafting. These amendments are to ensure that the statute book remains functional following EU Exit.

## UK MINISTERS ACTING IN DEVOLVED AREAS

### 005 - The Waste and Agriculture (Legislative Functions) Regulations 2022

*Laid in the UK Parliament: 13 January 2022*

#### **Sifting**

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

#### **Scrutiny procedure**

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

#### **Background**

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

#### **Summary**

These Regulations are made in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

These Regulations provide for legislative functions of the European Commission under various Waste Directives to be exercisable instead by a public authority in the United Kingdom. These Regulations will transfer functions concerning devolved policy matters to Welsh Ministers, the Secretary of State (SoS) in relation to England, Scottish Ministers in relation to Scotland and DAERA in Northern Ireland (subject to exceptions noted in the Northern Ireland Protocol).

For each of the powers being transferred there is no equivalent domestic power. A letter from the Counsel General dated 7 January 2022 confirms that the returning functions provided by the 2021 Regulations will not need to be exercised immediately, they will become part of EU retained law, and current controls will continue to apply until such time as they need to change.

The Regulations also correct an error in existing provision for legislative functions relating to agriculture. The 2021 Regulations insert an omitted definition of “appropriate authority” in to REUL Regulation 1306/2013 on the financing, management and monitoring of the common agricultural policy. The definition provides that the Welsh Ministers are the “appropriate authority” in relation to REUL Regulation 1306/2013 with the Secretary of State being able to act in limited, specified circumstances with the Welsh Ministers’ consent.

### **Statement by Welsh Government**

Legal Advisers agree with the statement laid by the Welsh Government dated 17 January 2022 regarding the effect of these Regulations.

However, Legal Advisers also note that the draft Regulations this written statement relates to is the Waste and Agriculture (Legislative Functions) **2022**, not 2021. Unlike all other written statements laid by the Welsh Government during the Sixth Senedd, this statement does not provide a link to the Regulations and accompanying Explanatory Memorandum, which sets out the provenance, purpose and effect of the amendments.

In a [letter addressed to the Legislation, Justice and Constitution Committee dated 8 November 2021](#), the First Minister provided that:  
*I can confirm that the Welsh Government will write to your committee and other relevant committees to inform them of an intention to consent to the UK Government exercising a delegated legislative power in a devolved area in relation to Wales, explaining the rationale for the intention to consent. Where time allows we will provide an opportunity for the Senedd to express a view before consent is formally given.*

However, paragraph 15 of the Written Statement provides that consent has been given for the UK Government to make these corrections to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. This Committee was not notified by the Welsh Government of its intention to consent to the UK Government’s SI, or the rationale for the intention to consent.

The [Counsel General wrote to this Committee on 7 January 2022](#), providing that he has given consent to the UK Government exercising a delegated legislative power in a devolved area in relation to Wales, and that agreement has been given to these Regulations. With regards to the

First Minister's commitment set out in the letter dated 8 November, the Counsel General provides that:

*the First Minister has given a commitment that where time allows we will provide an opportunity for the Senedd to express a view before consent is formally given. Regrettably it was not possible to do so for this SI as although it has only just been laid, consent was given some weeks ago and before the commitment was implemented.*

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

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

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

# Agenda Item 7.2

## Written Statement

### SI laid in Parliament, which amends legislation in a devolved area

#### The Pesticides (Revocation) (EU Exit) Regulations 2022 (“the Regulations”)

The Regulations revoke retained direct EU legislation listed below relating to pesticides, and in particular, legislation relating to plant protection products and maximum residue levels which are redundant retained EU law.

- Commission Implementing Regulation (EU) 2020/616 renewing the approval of the active substance foramsulfuron in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011.
- Commission Implementing Regulation (EU) 2020/617 renewing the approval of the active substance metalaxyl-M, and restricting the use of seeds treated with plant protection products containing it, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011.
- Commission Implementing Regulation (EU) 2020/640 concerning the non-approval of propolis extract as a basic substance in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market.
- Commission Implementing Regulation (EU) 2020/642 approving the basic substance L-cysteine in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011.
- Commission Implementing Regulation (EU) 2020/643 concerning the non-approval of *Saponaria officinalis* L. roots as a basic substance in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market.
- Commission Implementing Regulation (EU) 2020/646 approving the active substance Lavandulyl senecioate as a low-risk substance in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending Commission Implementing Regulation (EU) No 540/2011.
- Commission Implementing Regulation (EU) 2020/653 correcting Implementing Regulations (EU) No 540/2011 and (EU) 2019/706 as regards the CAS number of the active substance carvone.
- Commission Regulation (EU) 2020/703 amending Annex II to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for dimethoate and omethoate in or on cherries.

- Commission Regulation (EU) 2020/749 amending Annex III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for chlorate in or on certain products.
- Commission Regulation (EU) 2020/856 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for cyantraniliprole, cyazofamid, cyprodinil, fenpyroximate, fludioxonil, fluxapyroxad, imazalil, isofetamid, kresoxim-methyl, lufenuron, mandipropamid, propamocarb, pyraclostrobin, pyriofenone, pyriproxyfen and spinetoram in or on certain products.
- Commission Implementing Regulation (EU) 2020/869 amending Implementing Regulation (EU) No 540/2011 as regards the extension of the approval periods of the active substances beflubutamid, benalaxyl, benthiavalicarb, bifenazate, boscalid, bromoxynil, captan, cyazofamid, dimethomorph, ethephon, etoxazole, famoxadone, fenamiphos, flumioxazine, fluoxastrobin, folpet, formetanate, metribuzin, milbemectin, *Paecilomyces lilacinus* strain 251, phenmedipham, phosmet, pirimiphos-methyl, propamocarb, prothioconazole and S-metolachlor.
- Commission Implementing Regulation (EU) 2020/892 concerning the non-renewal of the approval of the active substance beta-cyfluthrin, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011.
- Commission Implementing Regulation (EU) 2020/968 renewing the approval of the active substance pyriproxyfen in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011.
- Commission Implementing Regulation (EU) 2020/1003 renewing the approval of the active substances *Phlebiopsis gigantea* strains VRA 1835, VRA 1984 and FOC PG 410.3 as low-risk substances in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011.
- Commission Implementing Regulation (EU) 2020/1004 approving the basic substance cow milk in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011.
- Commission Implementing Regulation (EU) 2020/1018 approving ferric pyrophosphate as low-risk active substance in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending Commission Implementing Regulation (EU) No 540/2011.
- Commission Regulation (EU) 2020/1085 amending Annexes II and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards

maximum residue levels for chlorpyrifos and chlorpyrifos-methyl in or on certain products.

- Commission Implementing Regulation (EU) 2020/1160 amending Implementing Regulation (EU) 540/2011 as regards the extension of the approval periods of the active substances aluminium ammonium sulphate, aluminium silicate, blood meal, calcium carbonate, carbon dioxide, extract from tea tree, fat distillation residues, fatty acids C7 to C20, garlic extract, gibberellic acid, gibberellins, hydrolysed proteins, iron sulphate, kieselgur (diatomaceous earth), plant oils/rape seed oil, potassium hydrogen carbonate, quartz sand, fish oil, repellents by smell of animal or plant origin/sheep fat, Straight Chain Lepidopteran Pheromones, tebuconazole and urea.
- Commission Implementing Regulation (EU) 2020/1246 concerning the non-renewal of the approval of the active substance fenamiphos, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011.
- Commission Implementing Regulation 2020/1263 approving the active substance sodium hydrogen carbonate as a low-risk substance in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending Commission Implementing Regulation (EU) No 540/2011.
- Commission Implementing Regulation 2020/1276 concerning the non-renewal of the approval of the active substance bromoxynil, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011.
- Commission Implementing Regulation 2020/1280 concerning the non-renewal of the approval of the active substance benalaxyl, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011.
- Commission Implementing Regulation (EU) 2020/1281 concerning the non-approval of the active substance ethametsulfuron-methyl, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market.
- Commission Implementing Regulation 2020/1293 amending Implementing Regulation (EU) No 540/2011 as regards the conditions of approval of the active substance azadirachtin.
- Commission Implementing Regulation (EU) 2020/1295 amending Implementing Regulation (EU) 2015/408 as regards the inclusion of the active substances carbetamide, emamectin, flurochloridone, gamma-cyhalothrin, halosulfuron-methyl, ipconazole and tembotrione in the list of candidates for substitution.
- Commission Implementing Regulation (EU) 2020/1498 concerning the non-renewal of approval of the active substance thiophanate-methyl, in accordance

with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011.

- Commission Implementing Regulation (EU) 2020/1511 amending Implementing Regulation (EU) No 540/2011 as regards the extension of the approval periods of the active substances amidosulfuron, bifenox, chlorotoluron, clofentezine, clomazone, cypermethrin, daminozide, deltamethrin, dicamba, difenoconazole, diflufenican, fenoxaprop-P, fenpropidin, fludioxonil, flufenacet, fosthiazate, indoxacarb, lenacil, MCPA, MCPB, nicosulfuron, paraffin oils, picloram, prosulfocarb, sulphur, triflusulfuron and tritosulfuron.
- Commission Regulation (EU) 2020/1565 amending Annexes II, III and IV to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for 1,4-diaminobutane, 1-methylcyclopropene, ammonium acetate, bifenazate, chlorantraniliprole, chlormequat, cyprodinil, limestone, mandipropamid, pepper, pyridaben, repellants: blood meal, seaweed extracts and trimethylamine hydrochloride in or on certain products.
- Commission Implementing Regulation (EU) 2020/1643 amending Implementing Regulation (EU) No 540/2011 as regards the approval periods of the active substances calcium phosphide, denathonium benzoate, haloxyfop-P, imidacloprid, pencycuron and zeta-cypermethrin.
- Commission Implementing Regulation (EU) 2020/2007 amending Implementing Regulation (EU) No 540/2011 as regards the extension of the approval periods of the active substances 1-decanol, 1,4-dimethylnaphthalene, 6-benzyladenine, acequinocyl, *Adoxophyes orana granulovirus*, aluminium sulfate, amisulbrom, *Aureobasidium pullulans* (strains DSM 14940 and DSM 14941), azadirachtin, *Bacillus pumilus* QST 2808, benalaxyl-M, bixafen, bupirimate, *Candida oleophila* strain O, chlorantraniliprole, disodium phosphonate, dithianon, dodine, emamectin, flubendiamide, fluometuron, fluxapyroxad, flutriafol, hexythiazox, imazamox, ipconazole, isoxaben, L-ascorbic acid, lime sulphur, orange oil, *Paecilomyces fumosoroseus* strain FE 9901, pendimethalin, penflufen, penthiopyrad, potassium phosphonates, prosulfuron, *Pseudomonas* sp. strain DSMZ 13134, pyridalyl, pryiofenone, pyroxsulam, quinmerac, S-abscisic acid, sedaxane, sintofen, sodium silver thiosulfate, spinetoram, spirotetramat, *Streptomyces lydicus* strain WYEC 108, tau-fluvalinate, tebufenozide, tembotrione, thiencarbazone, valifenalate, zinc phosphide.
- Commission Implementing Regulation (EU) No 2020/2104 amending Implementing Regulation (EU) No 540/2011 as regards the extension of the approval period of the active substance paraffin oil.

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

Earlier Exit SIs put in place the main corrections required to the regulatory regime for pesticides. These broadened the executive competence of the Welsh Ministers by conferring functions on them (in their capacity as the 'Competent Authority' for Wales) without encumbrance.

## **The purpose of the amendments**

The main corrections required to the regulatory regime for pesticides as a result of EU Exit have already been put in place through a series of earlier EU Exit SIs. These SIs established a regulatory regime for pesticides in Great Britain. The approach taken in these earlier SIs was to deem active substance approvals and various decisions on MRLs made in the EU prior to the end of the implementation period to have been made by the relevant Great Britain competent authorities, and to establish new statutory registers to record decisions on approval of active substances and give effect to decisions on setting of pesticide MRLs. This ensured that all relevant extant EU decisions were retained in Great Britain after the end of the implementation period. The EU implementing regulations which had previously given effect to those decisions were therefore redundant and so were repealed.

The Regulations are now required in order to follow this established approach in relation to further EU implementing regulations which came into force in the latter part of the implementation period, hence too late to have been addressed in the earlier EU Exit SIs. The effect of these further EU implementing regulations has already been retained through the transitional provisions in the earlier EU Exit SIs, and the new statutory registers, so the implementing regulations themselves are no longer required. It is now necessary to remove them so that they do not remain on the statute book.

The Regulations and accompanying Explanatory Memorandum, setting out the detail of the provenance, purpose and effect of the amendments is available here: <https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-pesticides-revocation-eu-exit-regulations-2022>

## **Why consent was given**

Consent has been given for the UK Government to make these corrections in relation to Wales for reasons of efficiency and expediency. The amendments have been considered fully and there is no divergence in policy.

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



Llywodraeth Cymru  
Welsh Government

Huw Irranca-Davies MS Chair,  
Legislation, Justice and Constitution Committee  
Senedd Cymru  
[SeneddLJC@senedd.wales](mailto:SeneddLJC@senedd.wales)

25 January 2022

Dear Huw,

### **The Pesticides (Revocation) (EU Exit) Regulations 2022**

The above titled SI revokes retained direct EU legislation relating to pesticides, and in particular, legislation relating to plant protection products and maximum residue levels which are redundant retained EU law.

The effect of SI is to revoke redundant retained direct EU legislation which forms part of the plant protection product (“PPP”) and maximum residue level (“MRL”) regulatory regimes, so that these regimes can continue to operate effectively following the end of the implementation period. The revocations concern direct EU legislation which came into force towards the end of the implementation period (and so was not addressed by the earlier EU Exit SIs) and which is given effect in Great Britain through transitional provisions in the earlier EU Exit SIs and the national statutory registers. As a result, the retained direct EU legislation to be revoked is no longer required.

The SI is subject to the negative procedure, and was laid before Parliament on 18 January 2022 with a commencement date of 4 April 2022.

Although the Welsh Government’s general principle is that the law relating to devolved matters should be made and amended in Wales, on this occasion given the policy alignment between all three governments, and the clear advantages given the subject matter of the law relating to England, Scotland and Wales being accessible in a single instrument, I consider that legislating separately for Wales would be neither the most appropriate way to give effect to the necessary changes nor a prudent use of Welsh Government resources given other important priorities.

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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.

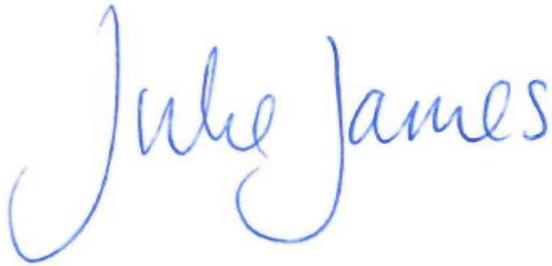
We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

I am therefore writing to you to let you know I have given my consent, to the Secretary of State to make this SI in relation to Wales. I have laid a Written Statement, which can be found at:

<https://senedd.wales/media/hu5pxuh4/ws-ld14873-e.pdf>

I am copying this letter to Climate Change, Environment, and Infrastructure Committee, [SeneddClimate@senedd.wales](mailto:SeneddClimate@senedd.wales) and Economy, Trade, and Rural Affairs Committee, [SeneddEconomy@senedd.wales](mailto:SeneddEconomy@senedd.wales) for their information.

Yours sincerely

A handwritten signature in blue ink that reads "Julie James". The signature is written in a cursive style with a large initial 'J'.

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

## UK MINISTERS ACTING IN DEVOLVED AREAS

### 006 - The Pesticides (Revocation) (EU Exit) Regulations 2022

*Laid in the UK Parliament: 19 January 2022*

#### Sifting

Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed 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	3 February 2022
SICM under SO 30A (because amends primary legislation)	Not required

#### Scrutiny procedure

Outcome of sifting	N/A
Procedure	Proposed 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 the European Union (Withdrawal) Act 2018.

#### Summary

These Regulations revoke redundant retained direct EU legislation which forms part of the plant protection product and maximum residue level regulatory regimes, so that these regimes can continue to operate effectively following the end of the implementation period. The revocations concern direct EU legislation which came into force towards the end of the implementation period and so was not addressed by earlier EU Exit SIs in relation to this subject matter, but which is given effect in Great Britain through transitional provisions in earlier EU Exit SIs and the national statutory registers. As a result, the retained direct EU legislation to be revoked is no longer required. They are now being removed so that they do not remain on the statute book.

#### Statement by Welsh Government

Legal Advisers agree with the statement laid by the Welsh Government on 20 January 2022 regarding the effect of these Regulations.

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

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

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

Document is Restricted

# Agenda Item 14

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

Document is Restricted

# Agenda Item 16

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

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