

Constitutional and Legislative Affairs Committee

Meeting Venue:

Committee Room 2 – Senedd

Meeting date:

1 December 2014

Meeting time:

14.30

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



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Agenda

1 Introduction, apologies, substitutions and declarations of interest

2 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3 (Pages 1 – 3)

CLA(4)–30–14 – Paper 1 – Statutory Instruments with clear reports

Negative Resolution Instruments

CLA466 – The Education (European University Institute) (Wales) Regulations 2014

Negative procedure; Date made: 12 November 2014; Date laid: 14 November 2014;

Coming into force date: 5 December 2014

CLA469 – Food Hygiene (Wales) (Amendment) (No. 2) Regulations 2014

Negative procedure; Date made: 19 November 2014; Date laid: 20 November 2014;

Coming into force date: 13 December 2014

CLA470 – The Disabled Persons (Badges for Motor Vehicles) (Wales)(Amendment) Regulations 2014

Negative procedure; Date made: 18 November 2014; Date laid: 20 November 2014; Coming into force date: 17 December 2014

CLA471 – The Fish Labelling (Wales) (Amendment) Regulations 2014

Negative procedure; Date made: 19 November 2014; Date laid: 20 November 2014; Coming into force date: 13 December 2014

CLA472 – The Products Containing Meat etc. (Wales) Regulations 2014

Negative procedure; Date made: 18 November 2014; Date laid: 20 November 2014; Coming into force date: 13 December 2014

Affirmative Resolution Instruments

CLA467 – The Animal Welfare (Breeding of Dogs) Regulations 2014

Affirmative procedure; Date made: Not stated; Date laid: Not stated; Coming into force date: 30 April 2015

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

Affirmative Resolution Instruments

CLA468 – The Keeping and Introduction of Fish (Wales) Regulations 2014 (Pages 4 – 36)

Affirmative procedure; Date made: Not stated; Date laid: Not stated; Coming into force date: 20 January 2015

CLA(4)–30–14 – Paper 2 – Report

CLA(4)–30–14 – Paper 3 – Regulations

CLA(4)–30–14 – Paper 4 – Explanatory Memorandum

4 Paper to note (Pages 37 – 53)

CLA(4)–30–14 – Paper 5 – Correspondence from the Environment and Sustainability

Committee: Animal Welfare

**CLA(4)-30-14 – Paper 6 – Correspondence from the Health and Social Care
Committee: Social Services and Well-being (Wales) Act 2014**

**5 Motion under Standing Order 17.42 to resolve to exclude the public
from the meeting for the following business:**

Report: Section 109 Order (Pages 54 – 62)

CLA(4)-30-14 – Paper 7 – Report on the Section 109 Order

Forward Work Programme (Pages 63 – 64)

CLA(4)-30-14 – Paper 8 – Forward Work Programme

Agenda Item 2

**Constitutional and Legislative Affairs Committee
Statutory Instruments with Clear Reports
1 December 2014**

CLA466 – The Education (European University Institute) (Wales) Regulations 2014

Procedure: Negative

These Regulations provide the statutory basis for the financial support arrangements for students undertaking an eligible course at the European University Institute from academic year 15/16. The Regulations revoke the Assembly Learning Grants (European University Institute) (Wales) Regulations 2009 (S.I. 2009/3359 (W. 295)) and the Assembly Learning Grants (European University Institute) (Wales) (Amendment) Regulations 2010 (S.I. 2010/1797 (W. 173)). The Regulations allow for one student per academic year to be awarded financial support for a maximum of 3 years of study at the Institute.

CLA467 – The Animal Welfare (Breeding of Dogs) (Wales) Regulations 2014

Procedure: Affirmative

The Regulations provide for the licensing of persons involved in the breeding of dogs. Part 2 of the Regulations specifies dog breeding for the purposes of section 13 (1) of the Animal Welfare Act 2006. The consequence of this specification is that, subject to qualifying criteria, any person wishing to breed dogs in Wales must obtain a licence from their local authority under these Regulations. This requirement replaces the requirement to obtain a licence under the Breeding of Dogs Act 1973 in Wales.

CLA469 – The Food Hygiene (Wales) (Amendment) (No.2) Regulations 2014

Procedure: Negative

These Regulations provide for the continuation in force of the requirement for raw milk to be labelled with a health warning. The warning states that the milk has not been heat-treated and may contain harmful organisms, and that the Food Standards Agency strongly advises it should not be consumed by children, pregnant women, older people and those who are unwell or have chronic illness.

The health warning must be provided in English, and may be provided in other languages (including Welsh, for which the Regulations prescribe the Welsh wording).

CLA470 – The Disabled Persons (Badges for Motor Vehicles) (Wales) (Amendment) Regulations 2014

Procedure: Negative

A disabled person's parking badge ("Blue Badge") enables the holder to benefit from a range of parking concessions and exemptions from certain charges which apply to other motorists. The Disabled Persons (Badges for Motor Vehicles) (Wales) Regulations 2000 ("the Principal Regulations") make provision regarding the issue of badges by local authorities.

Regulation 2 amends the Principal Regulations to reflect amendments made by the Disabled Persons' Parking Badges Act 2013 to section 21 of the Chronically Sick and Disabled Persons Act 1970 about the form of the Blue Badge and clarifies the application of certain provisions of the Principal Regulations.

CLA471 – The Fish Labelling (Wales) (Amendment) Regulations 2014

Procedure: Negative

These Regulations amend the Fish Labelling (Wales) Regulations 2013 (“the 2013 Regulations”) in order to enforce the consumer information requirements of Chapter IV of Regulation (EU) No 1379/2013 of the European Parliament and of the Council on the common organisation of the markets in fishery and aquaculture products (OJ No L 354, 28.12.2013, p 1) as read with Council Regulation (EC) No 1224/2009 (OJ No L 343, 22.12.2009, p 1).

CLA472 – The Products Containing Meat etc. (Wales) Regulations 2014

Procedure: Negative

These Regulations prohibit the use of specified names (such as “burger”, “luncheon meat”, “sausage”) in the sale and advertising of products if those products do not satisfy minimum requirements on meat content.

They also prohibit the sale of uncooked meat products which include specified parts of the carcass such as brains, feet and lungs (though there is an exception relating to the sale of sausage skin).

They also oblige food authorities and port health authorities to enforce the Regulations.

They also apply provisions of the Food Safety Act 1990 relating to enforcement and offences.

Agenda Item 3.1

Constitutional and Legislative Affairs Committee Draft Report

CLA(4)-30-14

CLA468 – The Keeping and Introduction of Fish (Wales) Regulations 2014

These Regulations control the keeping and introduction of fish in inland waters (subject to some exceptions relating to aquaculture production).

They also provide for: (1) the Natural Resources Body for Wales to grant permits to keep and introduce fish into inland waters, and the conditions that may be attached to permits; (2) the revocation, suspension and variation of permits; (3) the enforcement of the Regulations; (4) the offences and penalties for breaching the Regulations; (5) an existing licence granted under section 1 of the Import of Live Fish (England and Wales) Act 1980 to be deemed to be a permit under the Regulations.

Procedure: Affirmative

Technical Scrutiny

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

1. Use of “he” in Regulation 12(1)(g) in the English text.

Standing Order 21.2(viii) – uses gender specific language.

2. Use of “inspector” (“*arolygydd*”) instead of “officer” (“*swyddog*”) in Regulation 12(5) in the English and Welsh texts.

Standing Order 21.2(vi) – drafting appears to be defective.

Merits Scrutiny

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

Legal Advisers

Constitutional and Legislative Affairs Committee
November 2014

Government's Response:

The Keeping and Introduction of Fish (Wales) Regulations 2014

The Government accepts the point raised in relation to regulation 12(1)(g) of the Regulations. The word "he" should be replaced with the words "the officer". An equivalent change is also needed to the Welsh language text of Regulation 12(1)(g). This error does not change the meaning or affect the validity of the instrument and will be corrected upon publication.

The Government accepts the point raised in relation to regulation 12(5) of the Regulations. The word "inspector" should be replaced with the word "officer". An equivalent change is also needed to the Welsh language text of Regulation 12(5). This error does not change the meaning or affect the validity of the instrument and will be corrected upon publication.

Draft Regulations laid before the National Assembly for Wales under section 316(6) of the Marine and Coastal Act 2009, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2014 No. (W.)

RIVER, WALES

**SALMON AND FRESHWATER
FISHERIES**

**The Keeping and Introduction of
Fish (Wales) Regulations 2014**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations control the keeping and introduction of fish in inland waters. They apply in relation to Wales. They provide that it is an offence to introduce any fish into inland waters, to keep certain types of fish (the fish that belong to the taxonomic order specified in Part 1 of the Schedule but are not of a species specified in Part 2 of the Schedule) in inland waters, or to keep any kind of fish in protected areas where those fish would otherwise be absent, other than in accordance with a permit granted under these Regulations by the Natural Resources Body for Wales (“the Body”) (regulations 4 and 5). The Body may attach conditions to permits to introduce fish or to keep fish and a list of purposes for which, or matters in relation to which, conditions may in particular be imposed is contained in regulation 6(4).

Regulation 3 excludes aquaculture production businesses from the scope of these Regulations, including the transportation of fish between premises of one or more aquaculture production businesses. However, it does not exclude aquaculture production businesses from the requirement to have a permit to keep (otherwise than on the premises) fish or to introduce fish into inland waters.

Regulation 7 specifies the circumstances in which the Body may revoke, suspend or vary a permit.

Regulation 8 enables the Body to serve a notice on any person who is the owner or occupier of inland waters requiring that person to remove and dispose of fish, if the fish have been introduced into the water or kept in contravention of the Regulations. Paragraph (3) sets out the circumstances in which the Body may remove and dispose of fish without serving notice under paragraph (1). Paragraph (5) makes it a criminal offence not to comply with a notice under paragraph (1) without reasonable excuse.

Regulation 9 makes provision for the time at which a notice under regulation 7 or 8 takes effect.

Regulation 10 makes provision in relation to appeals by an applicant for a permit, or the holder of a permit or an owner or occupier of inland waters, who is the recipient of a notice under regulation 7 or 8.

Regulation 11 confers powers of entry on an authorised officer of the Body for the purposes of enforcing the Regulations. Regulation 12 sets out additional powers of an authorised officer, including the power to stop and detain any vehicle, and the power to carry out any search. Regulation 13 provides for certain offences relating to obstruction of a person acting in the execution of the Regulations.

Regulation 14 states that a person who is guilty of an offence under the Regulations is liable, on summary conviction, to a fine not exceeding £50,000, or on conviction on indictment to a fine which is unlimited. However, if section 85(2) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is in force on the day on which these Regulations are made, a fine imposed on summary conviction in a court in Wales will not be limited to £50,000.

Regulation 15 makes provision for offences by bodies corporate. The effect of paragraph (1) is that, in certain circumstances, a director or other similar person of a body corporate may be personally liable for an offence as well as the body corporate. Regulation 16 makes provision for offences committed (or alleged to have been committed) by partnerships and unincorporated associations.

Regulation 17 provides that an existing licence in force under section 1 of the Import of Live Fish (England and Wales) Act 1980 is to be taken to be a permit under the Regulations.

Regulation 18 repeals section 30 of the Salmon and Freshwater Fisheries Act 1975 in relation to Wales.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these

Regulations. A copy can be obtained from Marine and Fisheries Division, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

Draft Regulations laid before the National Assembly for Wales under section 316(6) of the Marine and Coastal Act 2009, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2014 No. (W.)

RIVER, WALES

**SALMON AND FRESHWATER
FISHERIES**

**The Keeping and Introduction of
Fish (Wales) Regulations 2014**

Made

Coming into force

20 January 2015

A draft of this instrument has been approved by a resolution of the National Assembly for Wales in accordance with section 316(6) of the Marine and Coastal Access Act 2009(1).

The Welsh Ministers, in exercise of the powers conferred by sections 232(1), (5)(a), (d), (e), (h), (i) and (j) and (7) and 316(1) and (2) of the Marine and Coastal Access Act 2009(2), make the following Regulations.

PART 1

INTRODUCTION

Title, commencement and application

1.—(1) The title of these Regulations is the Keeping and Introduction of Fish (Wales) Regulations 2014.

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- (1) 2009 c.23. Section 316(10)(a) defines “draft affirmative procedure” (“*gweithdrefn gadarnhaol ddrafft*”) for the purposes of section 316(6).
- (2) Section 232 was amended by S.I. 2013/755 (W. 90). The term “appropriate national authority” (“*awdurdod cenedlaethol priodol*”) is defined in section 232(8).

(2) These Regulations come into force on 20 January 2015.

(3) Subject to paragraphs (4) and (5), these Regulations apply in relation to live fish in Wales.

(4) Regulation 17 applies in relation to live fish and live eggs of fish in Wales.

(5) Regulation 18 applies in relation to Wales.

Interpretation

2. In these Regulations—

“the Body” (“*y Corff*”) means the Natural Resources Body for Wales;

“fish” (“*pysgod*”) means fish or the spawn of fish and includes molluscs and crustaceans;

“inland waters” (“*dyfroedd mewndirol*”) means any water of a kind specified in section 221 of the Water Resources Act 1991⁽¹⁾ except that it does not include garden ponds less than 0.4 hectares in area, which are not fished, have no links to other waters and are located within the curtilage of a residential property;

“keeping” (“*cadw*”), in relation to fish, means having, owning or controlling fish in inland waters;

“permit” (“*trwydded*”) means a permit granted or to be granted under regulation 6(1);

“premises” (“*mangre*”), except in regulation 3, means—

(a) any land, artificial island, marine installation or structure,

(b) any vehicle, or

(c) any vessel;

“vehicle” (“*cerbyd*”) includes a trailer;

“vessel” (“*llestr*”) includes any ship or boat or other vessel used in navigation, and any hovercraft, submersible craft or other floating craft, but does not include anything that permanently rests on, or is permanently attached to, the sea bed.

Exclusions

3. These Regulations do not apply in relation to activities which take place—

- (a) on the premises of an aquaculture production business authorised under regulation 6 of the Aquatic Animal Health (England and Wales) Regulations 2009⁽²⁾; or

(1) 1991 c.57.

(2) S.I. 2009/463.

- (b) during transportation between—
 - (i) the premises of any such business; or
 - (ii) the premises of one such business and the premises of another such business.

PART 2

OFFENCES RELATING TO THE INTRODUCTION AND KEEPING OF FISH

Introduction of fish

4. A person who, otherwise than under and in accordance with the terms of a permit granted under regulation 6 held by that person—

- (a) introduces fish into inland waters,
- (b) has in their possession fish for the purpose of introducing any of those fish into inland waters, or
- (c) causes or allows any other person to introduce fish into inland waters

commits an offence.

Keeping fish

5.—(1) A person who keeps in inland waters, otherwise than under and in accordance with a permit granted under regulation 6, any fish of a kind to which this regulation applies commits an offence.

(2) This regulation applies to any fish which belongs to a taxonomic order specified in Part 1 of the Schedule and is not of a species specified in Part 2 of the Schedule.

(3) In relation to a protected area, this regulation also applies to fish of any species which would otherwise be absent from that area.

(4) In paragraph (3) a “protected area” (“*ardal warchodedig*”) is—

- (i) a site of special scientific interest, as defined by section 52(1) of the Wildlife and Countryside Act 1981(1);
- (ii) a European site or European marine site as defined by regulation 8 of the Conservation of Habitats and Species Regulations 2010(2);

(1) 1981 c.69. Relevant amendments to section 52(1) were made by section 75(1) of, and paragraphs 5(1) and, (2) of Schedule 9 to, the Countryside and Rights of Way Act 2000 (c. 37).

(2) S.I. 2010/490. Regulation 8 was amended by S.I. 2012/1927.

- (iii) a wetland designated under paragraph 1 of article 2 of the Ramsar Convention, as defined by section 37A(4) and (5) of the Wildlife and Countryside Act 1981⁽¹⁾.

PART 3

PERMITS

Grant of permit

6.—(1) On receipt of an application for a permit authorising the carrying on of any of the activities mentioned in paragraph (2), the Body may grant such a permit.

(2) The activities to which paragraph (1) refers are—

- (a) the keeping of fish of a kind to which regulation 5 applies in inland waters;
- (b) the introduction of fish into inland waters.

(3) A permit may be granted subject to such conditions as the Body may see fit.

(4) In particular, conditions may be imposed—

- (a) to limit the number of fish introduced into, or kept in, any inland waters;
- (b) to minimise the risk of fish escaping from any inland waters;
- (c) to ensure that the keeping or movement of fish is not harmful to the environment or to any fishery in waters that are connected to each other (including waters connected by a floodplain);
- (d) in relation to the keeping and retention of records for any activity authorised by the permit;
- (e) in relation to the disposal of fish;
- (f) setting out the circumstances in which a permit holder must notify the Body; and
- (g) limiting the time for which the permit is valid, so that the keeping of specified fish in inland waters is only allowed as a temporary measure.

(5) In this regulation, “movement of fish” (“*symud pysgod*”) means removal of fish from, or introduction of fish into, inland waters.

(1) Section 37A was inserted by section 77 of the Countryside and Rights of Way Act 2000 (c.37).

PART 4

ENFORCEMENT AND ADMINISTRATION

Revocation etc. of a permit

7.—(1) The Body may, by notice served on the holder of a permit, suspend or revoke the permit—

- (a) if any condition is breached, or
- (b) if the environmental conditions of the inland waters to which the permit relates have changed since the date on which the permit was granted, such that the Body considers that a suspension or revocation of the permit is necessary.

(2) The Body may, by notice served on the holder of a permit, vary the permit if in the Body's opinion the permit requires revision.

(3) The Body may suspend, vary or revoke a permit at the request of the holder of that permit.

Notice to remove and dispose of fish

8.—(1) If fish are introduced into inland waters or kept in contravention of these Regulations, the Body may serve a notice on the holder of a permit or, if there is none, the owner or occupier of those waters requiring the holder of the permit or the owner or occupier (as the case may be)—

- (a) to remove and dispose of fish—
 - (i) in a manner specified in the notice, and
 - (ii) at the expense of the holder of the permit or the owner or occupier; and
- (b) to take steps to ensure that the position is, as far as possible, restored to what it would have been had the Regulations not been contravened.

(2) If a notice under paragraph (1) is not complied with, the Body may arrange for—

- (a) the removal and disposal of fish; and
- (b) the taking of steps to ensure that the position is, as far as possible, restored to what it would have been had these Regulations not been contravened.

(3) The Body may remove and dispose of fish without serving notice under paragraph (1)—

- (a) in an emergency; or
- (b) if the holder of the permit or the owner or occupier cannot be ascertained.

(4) Where the Body acts under paragraph (2) or (3)(a), it may do so at the expense of the holder of the permit or the owner or occupier of inland waters and

any amount that falls to be repaid may be recovered by the Body as a civil debt.

(5) Failure to comply with a notice under paragraph (1) without reasonable excuse is an offence.

Time in which a notice takes effect

9.—(1) Subject to paragraph (2) and (3), a notice served under regulation 7(1) or (2) or regulation 8(1) takes effect 28 days after the date on which it was served.

(2) Where the notice specifies a period, the notice takes effect on the expiry of that period.

(3) Where an appeal under regulation 10 is brought, the notice does not take effect until the appeal has been determined or withdrawn, unless the appointed person determining the appeal so directs.

Appeals

10.—(1) An applicant for the grant of a permit may appeal against—

- (a) a refusal to grant it, or
- (b) the imposition of any condition.

(2) The holder of a permit or an owner or occupier of inland waters served with a notice under regulation 7(1) or (2) or regulation 8(1) may appeal against that notice.

(3) The appellant must serve written notice of appeal on the Body within 28 days from the date on which notification of the decision being appealed against was given.

(4) On receipt of a notice of appeal, the Body must appoint an independent person to determine the appeal.

(5) The appeal is by way of written representations from the Body and the appellant, and is subject to any time limits determined by the independent person.

(6) The independent person decides whether to allow the appeal (and may direct the Body to grant a permit or to vary any condition).

Powers of entry

11.—(1) An officer of the Body may, on producing a duly authenticated authorisation if required, enter any premises (except any premises used wholly as a private dwelling house) at any reasonable hour—

- (a) where the officer has reason to suspect that an offence under these Regulations has been, or is about to be, committed; or
- (b) for the purposes of exercising the powers conferred by regulation 7(1)(b) or regulation

8(3), or for investigating whether any of those powers are exercisable.

(2) The officer may be accompanied by such other persons, and may use any such vehicles, vessels or equipment as the officer considers necessary.

(3) An officer may enter any premises (or any part of premises) which are a private dwelling house only if a justice of the peace has issued a warrant authorising the officer to do so.

(4) If a justice of the peace, on sworn information in writing, is satisfied that there are reasonable grounds for entry into any premises for the purposes described in paragraph (1), and either—

- (a) admission has been refused, or a refusal is expected, and (in either case) notice to apply for a warrant has been given to the occupier,
- (b) asking for admission for giving such notice would defeat the object of the entry,
- (c) the case is one of urgency, or
- (d) the premises are unoccupied or the occupier is temporarily absent,

the justice may by signed warrant authorise the officer to enter the premises, if need be by reasonable force.

(5) A warrant under this regulation is valid for one month.

(6) An officer who enters any unoccupied premises must leave them as effectively secured against unauthorised entry as they were before entry.

Powers of an authorised officer

12.—(1) An officer entering premises under regulation 11 may—

- (a) stop and detain any vehicle or vessel;
- (b) inspect the premises, and any net, trap, machinery, equipment or fish on the premises;
- (c) take samples (including samples of fish) from anything on the premises;
- (d) seize any fish, net, trap, machinery or other equipment on the premises so far as it is necessary for the purposes described in regulation 11(1);
- (e) carry out any search, investigation, examinations or tests;
- (f) seize and humanely kill samples of fish for evidential purposes;
- (g) have access to, and inspect, copy or seize any document or record (in whatever form it is held) that he considers may be relevant to the purposes described in regulation 11(1); and

- (h) have access to, inspect and check the operation of any computer and any associated apparatus or material that is or has been in use in connection with a record of a kind referred to in sub-paragraph (g).

(2) For the purpose of paragraph (1)(h), the officer may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material—

- (a) to afford such assistance as may be reasonably required; and
- (b) where a record is kept by means of a computer, to produce the record in a form in which it may be taken away.

(3) If the record is not produced in the form required by paragraph (2)(b), the officer may seize the computer or electronic storage device.

(4) Where an officer has reason to suspect that a person has committed an offence under these Regulations, the officer may require the person to provide the person's name and address.

(5) Where an officer has entered any premises, and it is not reasonably practicable to determine at the time whether any document or electronic file, fish, net, trap, machinery or other equipment on those premises is relevant to the purposes described in regulation 11(1), the inspector may seize it to ascertain whether or not it is relevant.

(6) Any fish seized may be disposed of as the authorised officer sees fit.

Obstruction

13. Any person who—

- (a) intentionally obstructs an officer from exercising that officer's powers under this Part,
- (b) without reasonable cause, fails to give any officer exercising that officer's powers under this Part any assistance or information that that officer may reasonably require under these Regulations,
- (c) furnishes to any officer exercising that officer's powers under this Part any information knowing it to be false or misleading, or
- (d) fails to produce a record when required to do so to any officer exercising that officer's powers under this Part,

commits an offence.

Penalties

14.—(1) A person guilty of an offence under regulation 4 (introduction of fish), regulation 5 (keeping of fish),^r regulation 8(5) (failure to comply with a notice) or regulation 13 (obstruction) is liable—

- (a) on summary conviction, to a fine not exceeding £50,000, or
- (b) on conviction on indictment, to a fine.

(2) If section 85(2) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is in force on the day on which these Regulations are made, paragraph (1)(a) applies in relation to a conviction by a court in Wales with the omission of the words “not exceeding £50,000”.

Offences by bodies corporate

15. Where a body corporate is guilty of an offence under these Regulations, and that offence is proved to have been committed with the consent of, or connivance of, or to be attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar person of the body corporate, or
- (b) any person who was purporting to act in any such capacity,

that person, as well as the body corporate, is guilty of an offence.

Offences by partnerships and unincorporated associations

16.—(1) Proceedings for an offence under these Regulations alleged to have been committed by a partnership or an unincorporated association may be brought against the partnership or association by its name.

(2) For the purposes of such proceedings—

- (a) rules of court relating to the service of documents are to have effect as if the partnership or association were a body corporate;
- (b) section 33 of the Criminal Justice Act 1925⁽¹⁾ and Schedule 3 to the Magistrates' Courts Act

(1) 1925 c.86. Subsections (1) and (2) of section 33 were repealed by section 132 of, and Schedule 6 to, the Magistrates' Courts Act 1952 (c. 55); subsection (3) was amended by section 56(1) of, and paragraph 19 of Part 2 of Schedule 8 to, the Courts Act 1971 (c. 23); subsection (4) was amended by section 109(1) and (3) of, and paragraph 71 of Schedule 8 and Schedule 10 to, the Courts Act 2003 (c. 39); subsection (5) was repealed by section 132 of, and Schedule 6 to, the Magistrates' Courts Act 1952.

1980(1) apply in relation to the partnership or association as they apply in relation to a body corporate.

(3) A fine imposed on a partnership or association on its conviction for an offence under these Regulations is to be paid out of the funds of the partnership or association.

(4) Where an offence under these Regulations committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner (as well as the partnership) is guilty of the offence and is liable to be proceeded against and punished accordingly.

(5) Where an offence under these Regulations committed by an unincorporated association is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the association, that officer (as well as the association) is guilty of the offence and is liable to be proceeded against and punished accordingly.

(6) In paragraph (4), “partner” (“*partner*”) includes a person purporting to act as a partner.

(7) In paragraph (5), “officer” (“*swyddog*”) means an officer of the association or a member of its governing body, or a person purporting to act in such a capacity.

PART 5

MISCELLANEOUS

Transitional

17. A licence under section 1 of the Import of Live Fish (England and Wales) Act 1980(2) authorising a person to keep or release live fish, or the live eggs of fish, which is in force immediately before the coming

(1) 1980 c.43. Paragraph 2(a) was repealed by sections 41 and 332 of, and paragraphs 51(1) and 13(a) of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44); paragraph 5 was repealed by sections 25(2) and 101(2) of, and Schedule 13 to, the Criminal Justice Act 1991 (c. 53); paragraph 6 was amended by section 41 of, and paragraph 51(1) and 13(b) of Schedule 3 to, the Criminal Justice Act 2003.

(2) 1980 c.27. Subsection (1) was amended by regulation 45 of, and paragraph 5 of Schedule 2 to, the Aquatic Animal Health (England and Wales) Regulations 2009 (S.I. 2009/463); subsection (2) was amended by section 105(1) of, and paragraph 62 of Schedule 11 to, the Natural Environment and Rural Communities Act 2006 (c. 16); section 132 of, and paragraph 8 of Schedule 9 to, the Environmental Protection Act 1990 (c. 43); and article 4(1) of, and paragraph 158 of Schedule 2 to, Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755) (W.90); subsection 3 was amended by section 37(2) of the Fisheries Act 1981 (c. 29).

into force of these Regulations, is to be taken to be a permit under these Regulations authorising the keeping of fish or the introduction of fish into inland waters.

Repeal of section 30 of the Salmon and Freshwater Fisheries Act 1975

18. Section 30 of the Salmon and Freshwater Fisheries Act 1975⁽¹⁾ is repealed.

Carl Sargeant

Minister for Natural Resources, one of the Welsh Ministers

Date

(1) 1975 c.51. Section 30 was amended by article 4(1) of, and paragraph 127 and 142 of Schedule 2 to, Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755) (W.90); sections 105 and 120 of, and paragraph 17 of Schedule 15 and Schedule 24 to, the Environment Act 1995 (c. 25); and section 190 of, and Part 1 of Schedule 27 to, the Water Act 1989 (c. 15); section 34 of the Salmon Act 1986 (c. 62).

THE SCHEDULE

Regulation 5(2)

PART 1

Fish that may not be kept without a permit

<i>Taxonomic Order</i>	<i>Common name</i>
Acipenseriformes	Sturgeons, Paddlefish
Amiiformes	Bowfin
Anguilliformes	Eels
Atheriniformes	Silversides
Batrachoidiformes	Toadfish
Beloniformes	Needlefish, Flyingfish
Ceratodontiformes	Lungfish
Characiformes	Tetras, Characins, Headstanders
Clupeiformes	Herrings, Anchovies, Shads
Cypriniformes	Carps, Loaches, Minnows
Cyprinodontiformes	Killifish, Pupfish
Esociformes	Pike
Gasterosteiformes	Sticklebacks
Gonorynchiformes	Shellears
Gymnotiformes	Knifefish
Lepidosireniformes	South American and African Lungfish
Lepisosteiformes	Gar or Garpike
Myliobatiformes	Stingrays
Osmeriformes	Smelt, Noodlefish
Osteoglossiformes	Arapaima, Bonytongues
Perciformes	Perches, Butterflyfish, Cichlids, Tunas
Percopsiformes	Trout-Perch, Cavefish
Petromyzontiformes	Lampreys
Pleuronectiformes	Flounders and Sole
Polypteriformes	Bichirs
Salmoniformes	Salmon, Trout, Whitefish
Scorpaeniformes	Scorpionfish, Sculpins
Siluriformes	Catfish
Synbranchiformes	Spiny Eels
Syngnathiformes	Pipefish, Seahorses
Tetraodontiformes	Pufferfish

PART 2

Species of fish that may be kept without a permit

<i>Taxonomic Order</i>	<i>Species</i>	
	<i>Common name</i>	<i>Species name</i>
Anguilliformes	European eel	Anguilla anguilla
Clupeiformes	Allis shad	Alosa alosa
	Twaite shad	Alosa fallax
Cypriniformes	European barbel	Barbus barbus
	Bleak	Alburnus alburnus
	Common bream	Abramis brama
	Silver bream	Blicca bjoerkna
	Chub	Leuciscus cephalus
	Common carp ⁽¹⁾	Cyprinus carpio
	Crucian carp	Carassius carassius
	Dace	Leuciscus leuciscus
	Goldfish ⁽²⁾	Carassius auratus
	Gudgeon	Gobio gobio
	Ide ⁽³⁾	Leuciscus idus
	Spined loach	Cobitis taenia
	Stone loach	Barbatula barbatula
	European minnow	Phoxinus phoxinus
Roach	Rutilus rutilus	
Rudd	Scardinius erythro-phthalmus	
Tench	Tinca tinca	
Esociformes	Northern Pike	Esox lucius
Gasterosteiformes	Three-spined stickleback	Gasterosteus aculeatus
	Nine-spined stickleback	Pungitius pungitius
Osmeriformes	Smelt	Osmerus eperlanus
Perciformes	Eurasian perch	Perca fluviatilis
	Ruffe	Gymnocephalus cernuus
Petromyzonti-	Sea lamprey	Petromyzon

formes		marinus
	Brook lamprey	Lampetra planeri
	River lamprey	Lampetra fluviatilis
Salmoniformes	Brown trout or sea trout	Salmo trutta
	Rainbow trout, except the anadromous steelhead	Oncorhynchus mykiss
	Salmon	Salmo salar
	Grayling	Thymallus thymallus
	Arctic char	Salvelinus alpinus
	Vendace	Coregonus albula
	Powan, Schelly or Gwyniad	Coregonus lavaretus
Scorpaeniformes	Bullhead	Cottus gobio

⁽¹⁾Includes all varieties of the same species (e.g. Ghost Carp, Leather Carp, Koi Carp, Ogen Carp).

⁽²⁾Includes all varieties of the same species (e.g. Brown, Golden, Lion's Head, London Shubunkin).

⁽³⁾ Includes all ornamental varieties of the same species (e.g. Golden Orfe, Blue Orfe).

EXPLANATORY MEMORANDUM TO THE KEEPING AND INTRODUCTION OF FISH (WALES) REGULATIONS 2015

This explanatory memorandum has been prepared by the Marine and Fisheries Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Keeping and Introduction of Fish (Wales) Regulations 2015. I am satisfied that the benefits outweigh any costs.

Carl Sargeant

Minister for Natural Resources, one of the Welsh Ministers

14 November 2014

Explanatory Memorandum to the Keeping and Introduction of Fish (Wales) Regulations 2015

1. Description

These Regulations provide a new regulatory scheme for the introduction into, and the keeping of, fish in inland waters

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

These Regulations are subject to affirmative procedure and, at regulation 18, repeal section 30 of the Salmon and Freshwater Fisheries Act 1975 in relation to Wales.

3. Legislative Background

The Regulations would be made under the powers conferred on Welsh Ministers by sections 232 and 316 of the Marine and Coastal Access Act 2009.

The Regulations introduce a more cost effective and risk-based management system for the introduction and keeping of fish in inland fisheries, which is currently managed pursuant to section 30 of the Salmon and Freshwater Fisheries Act 1975 and licencing under the Import of Live Fish Act 1980.

4. Purpose and intended effect of the legislation

• What is being done and why

Invasive non-native species have been identified as one of the key causes of loss of biodiversity in Wales, and the world at large. These species can have significant economic and social impact, and can undermine Wales's sustainable development and biodiversity objectives. This means that requirements for the stocking of fish into inland water for recreational angling have to be balanced with appropriate safeguards for aquatic environments.

The main objective of the Regulations is to support the economic value and growth of the angling sector, whilst ensuring adequate protection for the aquatic environment from the risks associated with the use of invasive non-native and locally absent fish species. The proposed permitting scheme enables us to adopt a risk based approach to the use of such species, whereby those that are high risk are given greater scrutiny and low risk fish movements are allowed to take place more freely. This approach is consistent with Government policy in relation to the regulation of non-native species, which recognises that preventing the introduction of potentially invasive species is more cost-effective than trying to apply controls retrospectively.

An Improved enforcement requirement that will enable the National Resources Body for Wales ('NRW') to remove inappropriate fish from inland waters will ensure fishery owners are fully accountable for the actions they take, or actions they allow others to take, in their inland waters. The deficiencies in the current legislation mean that unless someone is caught in the act of releasing fish

without authorisation it is difficult to prove. NRW are also not able to intercept suspicious movements, but must wait until there is clear evidence of intent to undertake the unauthorised release of fish. Given that the environmental damage arising from inappropriate fish releases may be irreversible, these new Regulations provide a more effective means of enforcement. The Regulations will also give NRW powers, (which they currently do not possess), to remove inappropriate fish from inland waters.

These Regulations allow any decisions concerning the granting of permits, enforcement and notices for the keeping or introduction of fish into inland waters to be appealed, as well as for NRW to repeal these authorisations.

- **Consolidation**

The Regulations consolidate and repeal, as appropriate, section 30 of the Salmon and Freshwater Fisheries Act 1975 and section 1 of the Import of Live Fish Act 1980. This will also have the effect of simplifying the system such that it is managed by a single Regulator rather than the two-Regulator system which is currently in place.

5. Consultation outcome

Formal public consultation on the proposal took place between 16 December 2009 and 10 March 2010. A total of 22 responses were received during the consultation. The majority of respondents (17 -77%) agreed that the proposed risk based permit scheme should be introduced. Those who supported retention of the *status quo* (3) argued that the current regulation of movements was adequate, and that the new scheme presents benefits only to the regulator.

The Government response was published in April 2010 and whilst recognising the concerns expressed we still consider that the current scheme is overly bureaucratic and inflexible. All fish movements, whether high or low risk, require consents and if, for whatever reason, the movement does not happen on the specified day or time a new consent must be sought.

One of the key motivation for the new scheme was to reduce burdens on industry, and this is supported by the analysis in the regulatory impact assessment below. In response to the concerns raised, NRW has provided more guidance to industry on what the permit scheme will contain. There may be an increase in work for all parties for the first few months or so of the new scheme, while the new site permits are drawn up. However, the brunt of that burden will be carried by NRW who plan to proactively issue permits in anticipation of the start of the new scheme. We consider that once an owner or occupier has their permit, overall administrative burdens will decrease considerably, and that controls will be firmly but fairly enforced, and that those involved in low risk removals or releases of fish will be able to do so without excessive oversight. This will make the legal trade in fish more straightforward.

In summary the Government believes that this will be a more effective regulatory system, reducing burdens for industry, enabling NRW to more effectively use its own resources, but at the same time safeguarding biodiversity in Wales.

REGULATORY IMPACT ASSESSMENT

The policy proposal

Under the new system fishery owners will require a single site permit (Live Fish Movement (“LFM”) site permit), and fish suppliers would require a supplier Permit to move fish between sites (LFM supplier permit). Once the site and supplier Permits are in place, the same fish movement operations would only require the fish supplier to give advanced notification of high risk movements (estimated to be 20% of all movements) rather than all fish movements as at present. Notification would be required 2 full working days in advance of the movement of the fish. In addition, on-line applications may also allow the printing of consignments notes.

Options

Option 1 – Business as usual/do nothing

Doing nothing - this will maintain the current policy position whereby a consent will be required to introduce any fish to an inland water site under section 30 of the Salmon and Freshwater Fisheries Act 1975 (section 30 consent). Import of Live Fish Act 1980 (ILFA) and Wildlife and Countryside Act (WCA) licences will continue to be issued separately.

Option 2 – Introduce a permit scheme with a risk based approach to controls on keeping, and releasing live fish in inland waters.

Under this option, Welsh Government would introduce a live fish movement scheme which would reduce the number of licences required for keeping of non-native fish in inland water (removing entirely the ILFA licence in inland water) and reducing the number of permits needed from one for every movement of fish to one site permit per company for low risk activities (which accounts for the majority of fish movements). This scheme will be managed entirely by Natural Resources Wales (NRW), whereby any inland water in Wales which is stocked, cropped or which contains certain species of fish would require a Live Fish Movement (LFM) site permit.

The site permit will:

- Set out what species can be introduced or released or removed from the site, and in the case of non-native species, or native species in certain waters (for example within or in proximity to designated waters), which species may be kept;
- Be held by a ‘responsible person’ with a long term interest in the water (the owner, manager or an angling club official);
- Set out permissible fish movements consistent with the long term requirements of the holder, without risking harm to connected fisheries or the wider environment; and
- Include fixed conditions under which fish can be introduced or released, and kept, and other related requirements.

Once the limitations of allowed movements are set on the permits, there should be no need for further regulatory intervention, and movements will then be determined by the owner/occupier. In addition, the Permit will condition under what circumstances advanced notification to NRW by a fish supplier will be required. The Permits will be issued on a permanent basis. NRW would retain the right to revoke, suspend or amend them. Equally, the permit holder may apply to amend the permit at any time, or may surrender or transfer the permit. By also regulating the keeping of fish, fishery owners can be held responsible for illegal fish introductions.

An LFM Supplier Permit would be required for those suppliers wishing to move fish between sites. This permit will be automatically given to those businesses already authorised under the Aquatic Animal Health Regulations by the Centre for Environment, Fisheries and Aquaculture Science (CEFAS) as Authorised Production Businesses (APBs) on behalf of Welsh Ministers. Other organisations (such as angling clubs or commercial fisheries that move their own fish) will need to apply for such a supplier permit. NRW would issue a parallel authorisation to use otherwise prohibited gear when moving fish (e.g. nets, electric fishing equipment etc), thus obviating the need to apply for each separate removal authorisation. The fish supplier would be required to carry relevant consignment documentation specifying the fish in transit. The LFM Supplier Permit will condition the fish supplier to meet the conditions of the LFM site based Permits for waters they introduce fish to. Again NRW will retain the right to revoke or suspend permits.

The LFM Site Permit will require the supplier to provide NRW with advance notification of movement of fish of high risk cases (defined according to species); only 20% of all live fish movements are currently regarded as high risk cases. Notification would be required 2 full working days in advance of the movement of the fish. Notification will not require the permit holder to await permission from NRW. In addition, on-line applications may also allow the printing of consignment notes.

The new scheme will reduce the administrative costs and regulatory burden in respect of the majority of fish movements regarded as low risk movements. Low risk movements are those movements that currently do not warrant tight controls. At the outset of the new measures, NRW will set out the criteria for which movements will be deemed high risk and permit holders will be advised. No additional costs have been estimated for this as the assessment will largely be based on existing work. To expedite smooth transition of the new scheme NRW will proactively issue site permit licences to approximately 175 existing water body owners/businesses.

Option 3 – Introduce a permit scheme with tighter controls on keeping, releasing and removal of all live fish in inland waters (covering all releases not on a risk-based approach as set out in option 2).

The only difference between this option and option 2 is that notifications of movement of fish will be required for all releases (rather than just high risk as under option 2). The scheme will cover all movements of fish, both native and non-native. This will offer a much higher level of protection against threats to fisheries and biodiversity, as all notifications are scrutinised. However, this will

increase administration and enforcement costs including for those movements that NRW would not normally warrant tighter controls.

Costs & benefits

Option 1

There are no additional costs associated with Option 1. The following section presents a summary of the costs incurred under the current arrangements.

Costs to industry

No charges are levied on industry for permits and consents. However, there are administration costs associated with applying for the permits and consents.

Section 30 Consents: Currently, a site owner has to apply for consent (known as Section 30 consent) whenever they wish to release fish into a river or lake that is connected to open waters. On average, NRW process 300 consents for individual introductions of fish every year. In applying for consent industry has to provide details of the fish species and numbers of fish concerned, and the inland water site conditions they will be released into. It has been estimated by NRW that this application process will take industry an average of 1 hour to complete at a cost of approximately £28 per hour. This equates to approximately £8,400 per annum.

ILFA/WCA licences: Currently, anyone wishing to keep or introduce non-native freshwater fish in Wales will require an ILFA license. Anyone wishing to introduce non-native freshwater fish or shellfish into the wild will require a WCA license. Cefas' Fish Health Inspectorate (FHI) processes on average 4 full licence applications and 1 renewal in Wales per year. In applying for a licence industry has to provide details of the fish species and numbers of fish concerned, and the site conditions they will be released into. It has been estimated by the FHI that this will take industry on average 1 hour to complete a renewal and 1.25 hours for a new application. At an estimated industry hourly rate of £28, this equates to a cost of approximately £170 per annum.

The total cost to industry over a ten year period under this option is, therefore, estimated to be £85,700.

Costs to Government

The cost to government is made up by the cost of processing section 30 consents, ILFA/WCA licences and enforcement.

Section 30 consents: In processing consents, NRW has to consider the environmental risks associated with the fish concerned and the suitability of the site conditions for release and keeping of the fish. Of the 300 applications for introduction of fish into inland water – the majority of these applications that take an hour to assess, for a small number where simple changes, such as where date changes are required it is estimated to take 15 minutes to complete. However, for the calculations it has been assumed that all applications take 1 hour to process. Using an hourly wage rate of £38.00, the annual total cost to

NRW in processes consents is estimated to be £11,400 per annum. The total cost over a ten-year period is, therefore, estimated to £114,000.

ILFAWCA licences: Cefas' FHI administration costs: Processing a licence involves a mixture of administrative tasks and inspectorate input. The FHI consider the environmental risks associated with the fish concerned and the suitability of the site conditions. Cefas' Fish Health Inspectorate process on average 4 full licences a year and 1 renewal at an estimated cost of £500 per annum on behalf of Welsh Ministers. Over a ten-year period, the cost is estimated to be £5,000.

Enforcement costs are not expected to change under any of the options and so have not been quantified in this RIA.

The total costs to Government under this option are, therefore, estimated to be approximately £11,900 per annum or £119,000 over a ten-year period.

Table 1. Summary of the costs to industry and government under Option 1 (£)

	Annual cost		Cost over ten-years	
	Industry	Government	Industry	Government
Section 30 consents	8,400	11,400	84,000	114,000
License applications and renewals	170	500	1,700	5,000
Total	8,570	11,900	85,700	119,000

Benefits

There are no additional benefits from Option 1.

Risks

By doing nothing, there would be no reduction in the administration costs for both business and government. There would also be no improvement in the ability to regulate fish movements, and no introduction of proportionate risk based management tools. By doing nothing, there would also be no ability to address existing problems, where fish have been inappropriately stocked. Given the inadequacies of enforcement under section 30 of the SAFFA (paragraph 12 and 23), there would be a continued risk arising from the spread of non-native species, arising from predation, displacement of fish, harm to freshwater fish habitats and the introduction of diseases not controlled by European legislation. This could inadvertently have a significant impact on business operation and, therefore, affect profitability should dedicated angling sites be affected by outbreaks of an invasive species or be closed down as a result of an eradication exercise.

Option 2

Overall, there are no additional costs to business or government for this option compared to option 1 as this is a deregulatory measure which reduces the burden on business and cost to government. The following sections present a summary of the costs incurred under this Option. The Section 30 consent and licensing costs identified under Option 1 are not incurred.

Costs to industry

The savings to industry from this new permitting system are based on the reduction in the number of consents/notifications required to move fish relative to baseline levels; this is driven by a risk based approach of this regime. The rationale for the numbers included and the profiling in the analysis is explained below.

Site permits: NRW has estimated there are 175 waters that they know will need/want to be permitted from the induction of the legislation. These comprise primarily of still water trout fisheries, and waters containing non-natives, within or affecting SACs/SSSIs. NRW will prepare site permits for these existing low risk fisheries in advance (2014), so they can be issued as soon as the regulations come into force, therefore the cost to industry will be minimal and is estimated to take 15 minutes of their time in checking information at a cost of approximately £7 per site. The total cost to these businesses is approximately £1,225.

The remaining site permits for existing stocked fisheries will be issued in subsequent years, as and when those fisheries need to restock. Based on current S.30 consent applications, NRW estimate that around 70 sites per annum will apply for permission in the first few years (these are the regular stockers/croppers of fish), this falls to around 35 (the less regular operators) in subsequent years with all 400 waters being permitted within 7 years. It is estimated that it will take owners an average of 2 hours to complete the application. Based on an average cost of £56 per application, the total cost is estimated to be approximately £3,920 in the initial years (when 70 sites permits are applied for) falling to approximately £1,960 per annum in later years and eventually £0.

In addition, there is expected to be an administrative cost incurred where a site owner wishes to transfer or amend a site permit but this cost is expected to be minimal.

New site permits: Based on current understanding of the industry and using previous new site take-up rates, NRW estimate that between 5 and 15 new sites will require a permit each year. Again, assuming that it takes an average of 2 hours to complete the application form (at a cost of £28 per hour), this equates to a cost of £280 - £840 per annum.

Supplier Permits: There are approx. 150 known fish suppliers which will require permits at the beginning of the scheme. The application for a supplier permit is expected to take an average of 10 minutes to complete. Based on the cost of £28 per hour, this equates to a total cost of approximately £700 in the initial year. Again based on recent experience, there are likely to be between 0 and 5 new entrants to the sector who will require a supplier permit in each subsequent year. Assuming the same average cost to complete the application, the cost to industry in each subsequent year will be between £0 and £25.

Notifications: NRW has estimated that each site makes 1.2 fish movements per year on average. Under this option, notifications will only be required for high risk fish movements (which currently account for approximately 20% of all fish movements). The notification process is simply a notice of movement to NRW and each notification is expected to take 6 minutes of the site owner's time. The total cost to industry of making these notifications is estimated to be between £100 and £300 per annum.

Consignment notes: Similarly, site owners will be required to provide consignment notes which record the species and number of fish being moved. Based on current experience, each consignment notice is expected to take 6 minutes on average. A consignment notice will be required for every fish movement and so the cost to industry is estimated to be between £640 and £1,670 per annum. The overall cost to industry for notifications and consignment notes increases as more sites and suppliers gain permits in the scheme; this cost will eventually plateau.

The total cost to industry of this option over a ten-year period is estimated to be £36,200. This represents a saving of approximately £49,500 over ten years compared to Option 1.

Costs to Government

Site Permits: Each site permit application is expected to take 2 hours to process, this equates to an administration cost of £76 per site permit. The transitional cost to NRW for issuing the 175 permits that will be required on introduction of the legislation is, therefore, £13,300.

The cost to NRW to administer the remaining permits is estimated to be between £2,660 and £5,320 per annum (based on 35-70 applications per annum). All of the existing sites are expected to be permitted by the 7th year of the scheme.

New site permits: As stated above, there are expected to be between 5 and 15 new entrants to the sector each year and the cost of processing these site permit applications is estimated to be between £380 and £1,140 per annum.

Supplier permits: The process for issuing supplier permits is estimated to take 30 minutes with an estimated cost to NRW of £19 per permit. The cost to issue permits to the 150 known fish suppliers who will require a supplier permit at the start of the scheme is therefor estimated to be £2,850.

Between 0 and 5 new supplier permit applications are expected in subsequent years at a cost of between £0 and £95.

Notifications: The process for dealing with fish movement notifications is estimated to take 5 minutes with an annual cost of between £120 and £320.

There are no costs to NRW associated with consignment notices. Similarly, it is anticipated that there will be no increase in monitoring or enforcement costs under this option.

The total cost to Government under this option is estimated to be approximately £43,930 over a ten-year period, this equates to a cost-saving of approximately £75,070 relative to Option 1.

Table 2. Summary of the costs to industry and government under Option 2 (£)

	Annual cost		Cost over ten-years	
	Industry	Government	Industry	Government
Site permits			13,820	30,400
<i>Initial year</i>	1,225	13,300		
<i>Years 2-6</i>	1,960-3,920	2,660 - 5,320		
New site permits	280-840	380 - 1,140	5,320	7,220
Supplier permits			910	3,710
<i>Intital year</i>	700	2,850		
<i>Years 2-10</i>	0 - 25	0 - 95		
Notifications	100 - 300	120 - 320	2,310	2,600
Consignment notes	640-1,670	-	13,840	-
Total	2,210 - 6,200	780 - 17,410	36,200	43,930

Benefits

Benefits to industry

The new proposal would be less onerous than the current arrangements of having to apply for both Section 30 consents and ILFAWCA licences. Long term permits for most inland waters (under the new scheme) will lead to a significant reduction in suppliers' time and costs associated with fish movement applications, and will remove the current 20 day period for consent approval. This will allow greater freedom for fish suppliers and fisheries, particularly those engaged in low risk operations.

Once the site and supplier permits are in place, the same fish movement operations would only require the fish supplier to give advanced notification of high risk movements (estimated to be 20% of movements). Low risk movements will no longer be subject to the same administrative demands and level of assessment as high risk movements as is currently required. As is demonstrated above, this is expected to result in a reduction in the administrative burden placed on the industry and a reduction in costs.

Benefits to Government

Relative to option 1, this option will lead to a reduction in annual NRW costs of processing permit applications. These cost savings represent the benefit to Government of this policy option. This is a conservative estimate of the potential benefits as it does not take into account the likely reduced need for NRW expenditure on removing non-native fish species from inland waters.

The new live fish movement scheme will enable NRW to redeploy resources from administration to focus on high risk categories of fish movements, illegal activity and, through setting and reviewing LFM Permits, work with fishery owners and operators to improve fisheries management and sustainability.

The savings in administration will enable NRW to focus on enforcement of the illegal fish movements. This is a key deterrent to further illegal introductions of

fish, particularly non-native species. To this end, NRW is currently reviewing its operational enforcement activities, including how to make better use of intelligence information. NRW will monitor the high risk notifications for compliance.

These measures contribute to healthy and sustainable fisheries from which social and economic benefits are derived. However, it has not been possible to quantify these potential benefits. Better targeted measures will also reduce the risks arising from the spread of non-native species, arising from predation, displacement of fish, harm to freshwater fish habitats and the introduction of diseases not controlled by European legislation.

Risks

The risks for biodiversity under option 2 are mainly associated with the requirement to notify only high risk cases. The new live fish movement scheme will enable NRW to redeploy resources from administration to focus on high risk categories of fish movements, illegal activity and, through setting and reviewing Live Fish Movement Permits, work with fishery owners and operators to improve fisheries management and sustainability.

Option 3

Overall there are no additional costs to business or government from this option as it is a deregulatory measure which reduces the burden on business and costs to government.

Costs to industry

The only difference in the cost to industry between Options 2 and 3 relates to the cost of completing notifications. Under this option, all fish movements will require a notification. Assuming an average of 1.2 fish movements per site and a cost per notification of approximately £2.80 (6 minutes at £28 per hour), this equates to a cost of approximately £840 per annum.

All other costs to industry are as set out under Option 2. The total cost to industry of this option over a ten-year period is estimated to be approximately £42,320. This represents a saving of approximately £43,380 over ten years compared to Option 1.

Costs to Government

The only difference in the cost to government between Options 2 and 3 relates to the cost of processing notifications. Under this option, all fish movements will require a notification. The cost to NRW for processing the notifications is estimated to be approximately £950 per annum.

All other costs to Government are as set out under Option 2. The total cost to Government under this option is estimated to be approximately £50,830 over a ten-year period, this equates to a cost-saving of approximately £68,170 relative to Option 1.

Table 3. Summary of the costs to industry and government under Option 3 (£)

	Annual cost		Cost over ten-years	
	Industry	Government	Industry	Government
Site permits			13,820	30,400
<i>Initial year</i>	1,225	13,300		
<i>Years 2-6</i>	1,960-3,920	2,660 - 5,320		
New site permits	280-840	380 - 1,140	5,320	7,220
Supplier permits			910	3,710
<i>Intital year</i>	700	2,850		
<i>Years 2-10</i>	0 - 25	0 - 95		
Notifications	840	950	8,430	9,500
Consignment notes	640-1,670	-	13,840	-
Total	2,760 - 6,840	1,420 - 18,240	42,320	50,830

Benefits

As with Option 2, this option is expected to be less onerous for the industry and government compared to the current regime, generating cost-savings for both.

This option will allow NRW to monitor all live fish movements and allow for improvements to biodiversity security in Wales. However, by requiring notification of all live fish movements, the cost incurred by both industry and government is higher under this option than Option 2.

These measures contribute to healthy and sustainable fisheries from which social and economic benefits are derived. However, it has not been possible to quantify these potential benefits. Better targeted measures reduce the risks arising from the spread of non-native species, arising from predation, displacement of fish, harm to freshwater fish habitats and the introduction of diseases not controlled by European legislation.

Risks

Option 3 will impose controls on all fish movements to and from inland waters. However, this option does not recognise that the majority of movements are of low environmental risk. A requirement to control each movement would impose an un-necessary burden on both the industry and NRW and is considered disproportionate.

Summary of the preferred option

Option 2 is preferred as it ensures inland fisheries and the wider environment are protected in the most proportionate and effective way through focusing monitoring and enforcement efforts on high risk activities and streamlining processes for routine low risk activities. Option 2 reduces the administrative and financial costs for most operations and for the fish supply industry overall. Over a ten-year period, the total cost-savings to industry and Government from Option 2 are estimated to be almost £125,000.

Table 4. Comparison of the costs associated with each option (£)

	Cost over ten-years			Cost-savings compared to Option 1		
	Industry	Government	Total	Industry	Government	Total
Option 1	85,700	119,000	204,700	-	-	-
Option 2	36,200	43,930	80,130	49,500	75,070	124,570
Option 3	42,320	50,830	93,150	43,380	68,170	111,550

Whilst the introduction of permits and any resultant restrictions on movements will affect some parties more than others, this will be directly proportionate to the risk of the activities involved and the overall burden on both industry and the NRW is expected to be reduced.

Introducing these responsibilities and requirements for both owners/occupiers and suppliers will allow for better enforcement of the industry, which will in turn provide better protection to biological diversity and local fisheries.

Consultation

Defra carried out a formal public consultation on an England and Wales basis and the proposal took place between 16 December 2009 and 10 March 2010. A total of 22 responses were received during the consultation. The majority of respondents (17 i.e. 77%) agreed that the proposed risk based permit scheme should be introduced. Those who supported retention of the status quo (3) argued that the current regulation of movements was adequate, and that the current regulation of movements was adequate, and that the new scheme presents benefits only to the regulator. There were no comments received on the times and costs presented in the impact assessment. No further information on costs was provided by any stakeholders. Stakeholders generally wanted further details on how the scheme would operate. In response to the concerns raised, the Environment Agency, including Environment Agency Wales (the predecessor of NRW) provided more guidance to industry on what the permit scheme will contain. The brunt of the transitional burden of the new scheme will be on the NRW in Wales who plan to proactively issue permits for the start of the scheme. We consider that once an owner or occupier has their permit, overall administrative burdens will decrease considerably, that controls will be firmly but fairly enforced, and that those involved in low risk removals or releases will be able to do so without excessive oversight. This will make the legal trade in fish more straightforward.

The UK Government response (to which Welsh Government consented) was published in April 2010, and whilst recognising the concerns expressed we still consider that the current scheme is overly bureaucratic and inflexible. All fish movements, whether high or low risk, require consents and if, for whatever reason, the movement does not happen on the specified day or time a new consent must be sought. The numbers and timings which form the basis for this current impact assessment have not changed materially since the original consultation.

APPENDIX A

The Competition Assessment

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

Y Pwyllgor Amgylchedd a Chynaliadwyedd Environment and Sustainability Committee

Cynulliad
Cenedlaethol
Cymru
National
Assembly for
Wales



Rebecca Evans AM
Deputy Minister for Farming and Food
Welsh Government

CC: David Melding AM, Chair of the
Constitutional and Legislative Affairs
Committee; William Powell AM, Chair of the
Petitions Committee

25 November 2014

Annwyl Rebecca

Roundtable discussion on animal welfare

You will be aware that the Environment and Sustainability Committee held two roundtable discussions on animal welfare at its meeting on 5 November 2014. The aim of the session was to gain an insight from stakeholders on progress in relation to current animal welfare issues in Wales.

The purpose of this letter is to draw your attention to the issues discussed, and to raise some specific points emerging from the discussion.

1. Control of Dogs

During the discussion, it became clear that stakeholders continue to regret that Welsh legislation on control of dogs was not progressed. Despite this, it was also clear that that Welsh stakeholders are keen to see the new powers provided for in the UK's Anti-Social Behaviour, Crime and Policing Act 2014 ('the Act') working effectively.

We heard concerns, however, about the lack of training provision for local authorities on the new powers and their effective implementation. Several stakeholders expressed concerns that without proper training enforcement officers could 'unwittingly' introduce Orders that compromise dog welfare

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and stigmatise dog owners. Concern was also expressed that, due to the nature of the Act, communication about guidance and enforcement has been provided via the community protection network and has by-passed a number of relevant officers within Welsh local authorities.

Therefore, we would be grateful if you could outline:

- **What steps the Welsh Government is taking to ensure that effective communication takes place with Welsh local authorities about the new powers available to them;**
- **To confirm whether the Welsh Government intends to provide any guidance to local authorities on the use of these enforcement powers; and**
- **To outline whether training will be made available to local authority enforcement officers on the effective use of the powers provided to them.**

Stakeholders welcomed the commitment made by the previous Minister for Natural Resources and Food to keep the effectiveness of the powers provided for in the Act under review.

We also heard that the Working Group on responsible dog ownership was welcomed by stakeholders, in the light of Welsh legislation being dropped.

We note that discussions with RSPCA Cymru about the remit and terms of reference for the group are on-going. **We would, however, like your assurance that the group will include a wide range of organisations and individuals, including representatives of working dogs such as gamekeeper organisations, BASC and the Countryside Alliance.** In addition, we would be grateful if you could set out:

- **The remit, terms of reference, and timescales for establishment of the group; and**
- **The timescale for the review of the effectiveness Crime and Policing Act 2014 in addressing dog control issues in Wales.**

2. Electric shock collars

The evidence received from stakeholders at the session confirmed the widespread support for the Animal Welfare (Electronic Collars) (Wales) Regulations 2010.

We note that the previous Minister, Alun Davies, indicated that the Welsh Government would be reviewing this legislation over the summer of

2014. We have not yet heard the outcome, therefore we ask that you provide us with the timescale for this review.

3. Dog breeding

We welcome the laying of the Animal Welfare (Breeding of Dogs) (Wales) Regulations on 18 November 2014. We note that, as a result of the concerns raised by the Constitution and Legislative Affairs Committee, the provisions in relation to microchipping originally contained in the regulation have been removed. The concerns raised by the Constitution and Legislative Affairs Committee were borne out in evidence we received from stakeholders.

However, stakeholders also noted the importance of the microchipping provisions for the effective enforcement of the breeding of dogs regulations. Whilst we warmly welcomes your commitment to addressing the serious concerns raised about the microchipping provisions we would urge the Welsh Government to bring forward the microchipping regulations as soon as possible. **We welcome your commitment to keep Members updated as work on the microchipping regulations progressed but would also be grateful if you could outline the timeline for the re-laying of the Animal Welfare (Identification of Dogs) (Wales) Regulations.**

As you will be aware, stakeholders have on-going concerns about the ratio of staff to dogs, the way in which the staff ratio applies to puppies and the situation of working dogs including hounds in packs. We note that you have acknowledged these concerns in your written statement on the introduction of the revised regulations and that local authorities will be asked to feedback on the effectiveness of the regulations.

We would be grateful if you could confirm:

- **When local authorities will be required to feedback on the effectiveness of these regulations;**
- **Whether you remain open to revisiting the regulations and the concerns of stakeholders should they not prove effective in improving the welfare of animals kept and bred in relevant establishments; and**
- **Whether the working group on dog ownership will have any role in reviewing the effectiveness of these regulations.**

4. Microchipping

As set out above, we note that some stakeholders continue to have concerns about the delays to the introduction of the regulations and **we ask that you clarify the timescale for their introduction.** The local authorities'

representative in particular told us that not knowing the timescale for the introduction of this legislation makes it difficult to protect existing resource and make bids for additional resource to deliver these functions.

Having said this, we also note that stakeholders have said that the delays provide an opportunity to improve the content of the regulations previously laid before the Assembly. Specifically stakeholders called for:

- The need for the responsibility for micro-chipping to be on the seller, rather than the owner;
- A single point of contact for the various databases and ease of communication between databases;
- The need for databases to be linked to Europetnet;
- Provision for local authorities to be able to issue fixed penalties for non-compliance with the regulations; and
- The need to remove barriers to a multi-agency approach to enforcement.

5. Circus animals

We are aware that you have made a commitment to push for legislation on the prohibition of wild animals in circuses to be formally included within the UK Government's legislative programme. **We would like an update on progress in this regard.**

6. Animal Sanctuaries

The animal welfare charities, the British Veterinary Association and Torfaen County Borough Council expressed serious concerns about this issue. We note that an Animal Welfare Network Wales report, '*The Case for the Regulation of Animal Welfare Establishments in Wales*', which investigated the need to regulate animal sanctuaries was provided to the Welsh Government in 2012.

We aware of the Petitions Committee's letter to the previous Minister in March 2014 asking for the outcome of his considerations of the report and that this committee has yet to receive a response to its letter. **We therefore ask that you confirm whether the Welsh Government has any plans to develop regulations in relation to animal welfare sanctuaries in Wales.**

7. Resources for local authorities

You will already be aware of our concerns about the adequate resourcing of local authorities to deliver the animal welfare enforcement functions effectively (raised by us in our letter on the 2015-16 Draft Budget proposals).

This issue was raised again by stakeholders during the roundtable session. **We consider this to be a serious issue and look forward to receiving a response to the concerns we raised in our letter to the Finance Committee.**

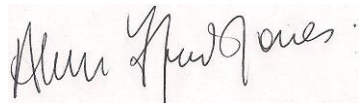
8. Non-stun slaughter

You will be aware that two of our stakeholders, namely the RSPCA and the British Veterinary Association, have launched separate petitions calling for an end to non-stun slaughter of animals. **We would, therefore, like further information on the extent to which non-stun slaughter currently takes place in Wales and any discussions you have held with interested stakeholders about this issue.**

Hybu Cig Cymru told us about scientific reviews being undertaken by the European Commission on this subject which are due to be completed by the end of 2014. **We are sure that the Welsh Government will be giving consideration to the findings of this work and ask that you provide us with details of how you intend consider these reviews.**

As a number of these issues relate to issues being considered by the Petitions Committee and the Constitution and Legislative Affairs Committee, this letter has been copied to the Chairs of those committees.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Alun Ffred Jones', is written on a light-colored rectangular piece of paper.

Alun Ffred Jones AM
Chair of the Environment and Sustainability Committee

Y Pwyllgor Iechyd a Gofal Cymdeithasol
Health and Social Care Committee

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Wales



David Melding AM

Chair of the Constitutional and Legislative Affairs Committee

26 November 2014

Dear David,

The Health and Social Care Committee received a factual briefing on 20 November 2014 from Welsh Government officials on the implementation of the Social Services and Well-being (Wales) Act 2014. I am aware from the correspondence you have had with the Minister for Health and Social Services that the timetable for the implementation of this Act, particularly the making of subordinate legislation, is of interest to you and the members of your Committee. I would therefore like to draw to your attention the paper which was provided by Welsh Government officials (attached at Annex A) and to the Record of Committee Proceedings from the HSC Committee's meeting on 20 November.

As you will be aware, during the progress through the Assembly of the then Social Services and Well-being (Wales) Bill, the HSC Committee took a keen interest in the subordinate legislation which is to be made under the Act, particularly in relation to eligibility for care and support services. While the scrutiny of subordinate legislation falls within the remit of the CLA Committee, given the key health and social care policy implications of these regulations, the HSC Committee intends to include consideration of the draft regulations within its forward work programme.

Yours sincerely,

David Rees AM

Chair, Health and Social Care Committee

cc Mark Drakeford AM, Minister for Health and Social Services

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Croesewir gohebiaeth yn y Gymraeg a'r Saesneg / We welcome correspondence in both English and Welsh

REPORT TO THE HEALTH AND SOCIAL CARE COMMITTEE - IMPLEMENTATION OF THE SOCIAL SERVICES AND WELL-BEING (WALES) ACT 2014.

Background

1. The Social Services and Well-being (Wales) Act¹ received Royal Assent on 1st May 2014. Its purpose is to specify the core legislative framework for social services and social care in Wales, giving effect to the policy stated in the White Paper *Sustainable Social Services for Wales: A Framework for Action*². The Act will transform the way social services are delivered through an approach that is focused on achieving the outcomes necessary to promote a person's well-being - as an individual, as part of a family and as part of their community.
2. To do this it requires that people have access to clear information, advice and assistance and that their voice is placed at the centre of decisions about their care and support. The Act introduces a strong statutory framework for the protection of adults, and national leadership arrangements for safeguarding people. It also recognises both the key role played by carers, through giving them rights to support which are equivalent to the rights of those they care for, and also the importance of prevention and early intervention to help people live independently.
3. While the core components of the new legislative framework are set out on the face of the Act, the Act is enabling in nature and will require the Welsh Ministers to make a suite of subordinate legislation, as well as issue codes of practice and guidance, to fill in the details of the new system and support its implementation.
4. Implementation is being taken forward in line with an implementation handling plan, dealing with the approach to consulting upon and laying of regulations and codes of practice, agreed by the Deputy Minister for Social Services. The broad approach was the subject of a Ministerial Statement on 16 July 2014³. Ministers have agreed that the Act should come into force from April 2016.

¹ <http://www.legislation.gov.uk/anaw/2014/4/enacted>

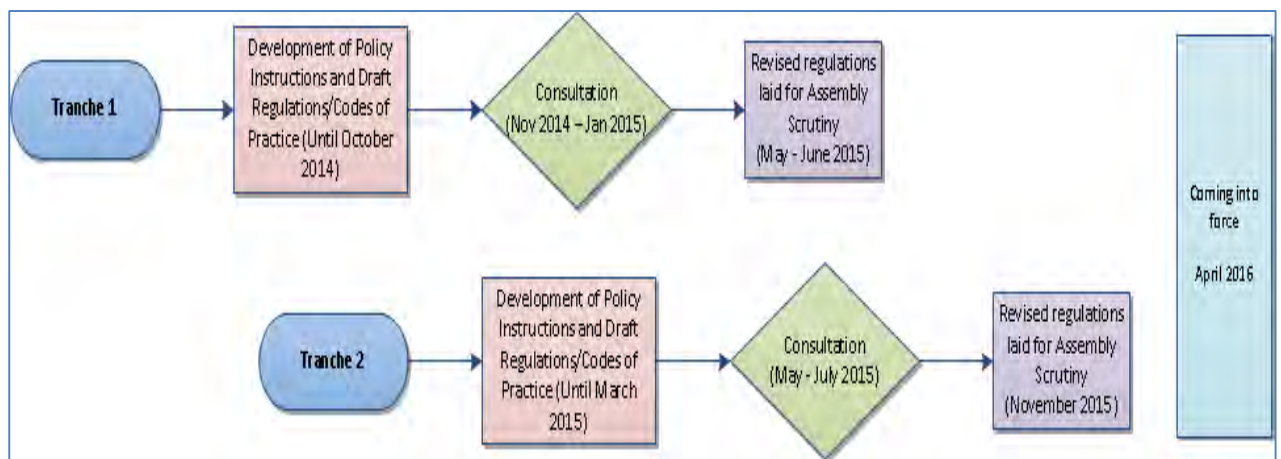
² <http://wales.gov.uk/topics/health/publications/socialcare/guidance1/services/?lang=en>

³ <http://wales.gov.uk/about/cabinet/cabinetstatements/2014/sswellbeing/?lang=en>

Implementation: timetable for subordinate legislation to be made under the Act

5. Laying of the regulations and codes of practice is being phased, with a first tranche of regulations (with their associated codes of practice and/or statutory guidance) to be consulted upon for twelve weeks from November 2014 to January 2015. Two consultation events, one in North Wales and one in South Wales, will take place to support this consultation. The regulations as amended following this consultation will then be laid before the Assembly in May 2015. This tranche includes the regulations on eligibility under section 32 of the Act.
6. A second tranche of regulations will be consulted upon in the summer of 2015, and laid, alongside the full suite of codes, before the Assembly in November 2015.
7. Full explanatory memoranda and regulatory impact assessments will be laid alongside the regulations in their respective tranches.
8. This timetable will deliver full implementation of the Act and allow it to come into force in April 2016.

High Level 'Tranche' Timetable



9. A consolidated statement of policy intent for the major pieces of subordinate legislation under the Act was published on 30 January 2014 and has been used to form the basis of the development of regulations, statutory guidance and codes of practice to underpin the Act.
10. The core provisions within **tranche 1** relate to eligibility, assessment, care and support planning and direct payments in parts 2 to 4 of the Act, together with safeguarding (part 7) and prisoners and ordinary residence in part 11. This tranche consists of 13 sets of regulations

(listed at **annex A**), four codes of practice, and one statutory guidance document. The timings of this tranche have been set to support the making of the legislative framework around these key provisions in summer 2015, thus giving the social care and health sectors time to adjust to the new requirements ahead of implementation in April 2016.

11. **Tranche 2**, dealing principally with the framework for implementing provisions around paying for care in part 5 of the Act, and looked-after and accommodated children in part 6, is to be consulted on in the summer of 2015, with a view to laying the regulations, together with the codes of practice for the whole Act, in November 2015.

Implementation: developing the subordinate legislation to be made under the Act

12. Recognising the importance of the technical expertise of the sector during the development of the Regulations and Codes of Practice for consultation, officials leading the development of policy across tranche 1 established Technical Groups, whilst advisory input in relation to safeguarding was provided by the Safeguarding Advisory Panel⁴. These groups provided the relevant expertise to inform the detailed development of policy instructions for regulations and the content of the Codes of Practice and statutory guidance. Over two hundred people across local government, the NHS, private care providers and the third sector were engaged in this work, with a view to securing a wide spread of engagement and expertise. Copies of the reports of a number of these technical groups can be found on the Welsh Government website⁵.
13. Members of the technical groups were brought together in a stakeholder event, held on 11 September 2014 at the University of Glyndwr, Wrexham. This event looked specifically at the issue of coherence across the developing legislative framework to inform the package put forward for consultation.
14. Officials leading the development of policy across **tranche 2** of the regulations and codes of practice have commenced forming Technical Groups or other engagement mechanisms to inform the development and finalisation of policy.

Integration of Health and Social Services

15. The Act seeks to promote integration between health and social services. It has been developed through close working with NHS colleagues and with the active involvement of the national Partnership Forum and Leadership Group, both of which include representatives of the health sector in Wales.

⁴ <http://wales.gov.uk/topics/health/publications/socialcare/reports/advisory/?lang=en>

⁵ <http://wales.gov.uk/topics/health/socialcare/act/resources/draft-regulations/?lang=en>

16. A focus on integration and joint working is specifically enshrined in Section 165 of the Act, which requires Health Boards and NHS Trusts to cooperate with and provide information to local authorities, when requested, to enable them to exercise their social services functions.
17. In addition, there are a number of duties expressly placed upon Local Health Boards and NHS Trusts by the Act. These relate to fields such as *population and individual assessment and planning*, the *provision of information, advice and assistance*, *safeguarding* and *collaboration and co-operation* itself. These duties are listed at **annex B** to this paper.

Financial implications and support for implementation

18. The Regulatory Impact Assessment (and the Explanatory Memorandum of which it forms part) in relation to the Act was agreed by the previous Deputy Minister for Social Services and the First Minister and published as part of the Explanatory Memorandum on the Bill on introduction on 28 January 2013. A revised version was laid on 28 January 2014, after the conclusion of stage 2. The National Assembly for Wales agreed the Financial Resolution of the Bill on 8 October 2013.
19. The detailed financial implications of implementing the regulations will be set out in the Regulatory Impact Assessments for the individual sets of regulations, developed to support the scrutiny process. This position is consistent with the Explanatory Memorandum as revised at stage 2. We will be seeking information to inform these assessments as part of the consultation process.
20. As outlined in the 29 January Cabinet written statement on implementation⁶, a grant of £1.5 million has been made available to local government and partners including Local Health Boards and the Welsh NHS Confederation to support implementation activity in 2014-15.
21. This grant builds upon that provided in 2013-14 but has been tailored further to drive implementation activity in the regions.
22. The chosen regional delivery footprint for sustainable social services is coterminous with the Local Health Board footprint and is intended to drive collaboration between the Local Health Board and local authorities in its footprint area to achieve the aims of *Sustainable Social Services*. To reinforce this collaboration, the terms of the 2014-15 grant include the requirement to develop regional governance which reflects the national steering and engagement structure⁷ of (political)

⁶ <http://wales.gov.uk/about/cabinet/cabinetstatements/2014/8414016/?lang=en>

⁷ <http://wales.gov.uk/topics/health/socialcare/partnership/?lang=en>

Partnership Forum and (executive) Leadership Group. An operational structure is to be in place by 31 January 2015.

23. A further key deliverable of the regional grant is the development of a comprehensive regional implementation plan by the end of the 2014-15 financial year. These plans will be used alongside the response to the consultation on tranche 1 in order to inform the identification of any additional support needed by the sector to support implementation.
24. Provision is also made for grants at national level to support strategic engagement and enable regional delivery. National grant recipients are the Association of Directors of Social Services Cymru and Welsh NHS Confederation, and (for the first time) the Health and Social Care Alliance and to Care Forum Wales. The latter awards recognise the key contribution of the private and voluntary sectors to successful implementation.

Support for implementation: communications

25. The “Communicating the Changes” project of the Sustainable Social Services for Wales Programme is dedicating a workstream solely to implementation, replacing the former Social Services and Well-being (Wales) Bill workstream.
26. Proposals are being explored and collated for a public information campaign to be delivered during 2015-16, and communications planning for the remainder of this year includes a variety of targeted activity directed at local authority, independent care provider and NHS staff, together with stakeholders and with citizens. The key messages of Sustainable Social Services will continue to be disseminated through the range of existing channels, and those set up as part of the communications project.

Support for implementation: training

27. Training requirements for implementation are being captured under the Strong and Confident Delivery Team (workforce) project within the Sustainable Social Services Programme. A first level training programme for all core staff and partner agencies, including the NHS, involved in delivering the Act is currently being designed. This will be produced as a ready to use ‘pack’, with a framework for delivery, and a programme to train trainers to deliver this pack will be put in place. We expect this first wave of training to commence this financial year, with local authorities having a lead role in planning and delivering the training with their partners in line with the expectations of their role in the Social Care Workforce Development Programme.
28. Alongside this, work is in hand to ensure that current training and qualifications are appropriately aligned to the Act as well as further

development of bespoke training packages to support particular elements of the Act. These will be made available during 2015-16.

29. Officials are progressing this work in full partnership with key stakeholders including Care Council for Wales, university partners and local authorities, supported by the development of an overall plan to co-ordinate this activity.

The implementation project: governance

30. An Implementation Project and Board have been set up under the Sustainable Social Services for Wales programme to steer implementation-related activity within the Welsh Government. The project focuses on managing the development, consultation upon, and enactment of the package of subordinate legislation and supporting Codes of Practice arising from the Act and maintains links with key implementation-related activity being led elsewhere in the Programme.

Annex A

Making of the legislative framework under the Social Services and Well-being (Wales) Act 2014 – Tranche 1

Tranche 1 Key Timings

Consultation	November 2014 for 12 weeks
Regulations laid before the NAFW	May 2015
Plenary debates on affirmative regulations	June-July 2015
CIF	April 2016

Type of instrument	Relevant Part of Act	Section issued under	Subject	Title (proposed)	Procedure
Regulations	2 <i>(General Functions)</i>	14	Assessment of needs for care, and support for carers and preventative services	The Care and Support (population assessment (Wales) Regulations 2015	Negative
Regulations	2	16	Promoting social enterprises	The Social Services and Well-being (Wales) Act 2014 (Social Enterprise, Co-operative and Third Sector) (Wales) Regulations 2015	Affirmative
Code of practice	2	145	Well-being, Population Assessment, Prevention, Promotion of Social Enterprises and Provision of Information, Advice and Assistance	Code of Practice and guidance on the exercise of social services functions and partnership arrangements in relation to part 2 (General Functions) of the Social Services and Well-being (Wales) Act 2014	As set out in S.146 (special)
Regulations	3 <i>(Assessing the needs of individuals)</i>	30	Regulations about assessment	The Care and Support (Assessment) (Wales) Regulations 2015	Negative

Code of practice	3	145	Assessing the needs of individuals	Code of Practice on the exercise of social services functions in relation to part 3 (Assessing the needs of individuals) of the Social Services and Well-being (Wales) Act 2014	As set out in S.146 (special)
Regulations	4 <i>(Meeting needs)</i>	32	Determination of eligibility and consideration of what to do to meet needs	The Care and Support (Eligibility) (Wales) Regulations 2015	Super Affirmative
Regulations	4	50,51,52,53	Direct Payments	The Care and Support (Direct Payments) (Wales) Regulations 2015	Negative
Regulations	4	54(5) and 55	Care and support plans and support plans	The Care and Support (Care Planning) (Wales) Regulations 2015	Negative
Code of practice	4	145	<i>eligibility, care and support planning and direct payments</i>	Code of Practice on the exercise of social services functions in relation to part 4 (Meeting needs) of the Social Services and Well-being (Wales) Act 2014	As set out in S.146 (special)
Regulations	7 <i>(Safeguarding)</i>	127(9)	Officers authorised to apply for Adult Protection and Support Orders	The Adult Protection and Support Orders (Authorised Officer) (Wales) Regulations 2015	Affirmative
Regulations	7	133	Regulations about the National Board	National Independent Safeguarding Board Regulations 2015	Negative
Regulations	7	134(1), (3) and (6) 135(4), 136(3), 138 and 139	Prescribing areas for new Safeguarding Boards and related matters concerning Board operations	The Safeguarding Boards (Functions and Procedures) (Wales) Regulations 2015 The Safeguarding Boards (General) (Wales) Regulations 2015	Negative 135(4) - Affirmative
Statutory Guidance	7	131 and 139	Adult Protection and Support Orders, the duty to report and enquire, Safeguarding Boards and the National	Statutory guidance in relation to part 7 (Safeguarding) of the Social Services and Well-being (Wales) Act 2014	None (Requirement to consult Secretary of State in relation to guidance given under s.131)

			Independent Safeguarding Board		
Regulations	9 <i>(Co-operation and partnership)</i>	166	Partnership arrangements	The Care and Support (Partnership arrangement for population assessments (Wales) Regulations 2015	Affirmative
Regulations	11 <i>(Miscellaneous and General)</i>	194 and 195	Ordinary residence and disputes about ordinary residence	The Care and Support (Ordinary Residence) (Specified Accommodation) (Wales) Regulations 2015 The Care and Support (Disputes about Ordinary Residence, etc.) (Wales) Regulations 2015	Negative
Code of practice	11	145	Adults and Children in prison, youth detention accommodation and bail accommodation, and Ordinary Residence	Code of Practice on the exercise of social services functions in relation to part 11 (Miscellaneous and General) of the Social Services and Well-being (Wales) Act	As set out in S.146 (special)

IMPLICATIONS OF THE SOCIAL SERVICES AND WELL-BEING (WALES) ACT FOR THE NHS IN WALES



Llywodraeth Cymru
Welsh Government

www.cymru.gov.uk

The key elements of the Social Services and Well-being (Wales) Act which relate to health or the provision of healthcare are set out in the following paragraphs.

Section 14: The assessment of needs for care and support, support for carers and preventative services

This requires respective local authorities and Local Health Boards to jointly assess the extent to which there are people who need care and support, or carers who need support. They should also assess the extent to which needs are not being met, and the range and level of services required to meet need.

This section also ensures that this population assessment is taken into account as part of broader integrated planning frameworks.

Section 15: Preventative services

This requires local authorities to provide services designed to prevent, delay or reduce needs for care and support. Local Health Boards are required to have regard to the importance of achieving these preventative purposes when exercising their functions.

Section 17: Provision of information, advice and assistance

A Local Health Board or an NHS trust is required to provide the local authority with information about the care and support it provides in the respective local authority area.

Section 29: Combining needs assessments and other assessments

A local authority may carry out a needs assessment for a person at the same time as it, or another body, carries out another assessment. The local authority may carry out the other assessment on behalf of, or jointly with, another body (for example the Local Health Board or NHS trust).

Section 47: Exception for provision of health services

This section specifies that local authorities cannot provide or arrange services or facilities that would be required under the NHS (Wales) 2006 Act or the NHS Act 2006, unless doing so would be incidental or ancillary to other actions within the local authority's powers.

Section 128 and 130: Duty to report adults or children at risk

This section requires Local Health Boards and NHS trusts (as relevant partners) to inform local authorities if they have reasonable cause to suspect an adult or child is at risk.

Section 134: Safeguarding Children Boards and Safeguarding Adults Boards

This section relates to the establishment of Safeguarding Children Boards and Safeguarding Adults Boards. Regulations

will set out those areas in Wales where there will be Safeguarding Boards and the respective Local Health Boards and NHS trusts will be partners and therefore will have representatives on the Boards.

Sections 162-169: Co-operation, integration of care and support and partnership arrangements

Part 9 of the Act relates to co-operation and partnership. Section 162 requires local authorities to make arrangements with their respective partners, which include Health Boards and NHS trusts, to promote co-operation. This co-operation is required in relation to adults with needs for care and support, and adults who are carers. This includes improving well-being, quality of care and support and protecting adults at risk of abuse or neglect.

Section 163 makes amendments to the Children Act 2004 and sets out arrangements for the local authority to promote co-operation with their relevant partners, including Health Boards and NHS trusts. This includes improving well-being, quality of care and support and protecting children at risk of abuse, neglect or other kinds of harm.

Section 164 requires Health Boards and NHS trusts to cooperate with and provide information to local authorities, when requested, to enable them to exercise their social services functions.

Section 166 enables regulations to be developed to specify the partnership arrangements between local authorities and Health Boards. Regulations will make provision to specify which local authorities and Health Boards should have partnership arrangements, the form of the partnership arrangements and the operation and management of these arrangements, including information sharing.

Section 167 provides for regulation to enable local authorities and Health Boards to pay towards any expenditure incurred in relation to partnership arrangements under section 166. This could include making

payments directly or by contributing to a pooled fund. A local authority and a Health Board may also provide staff, goods, services, accommodation or other resources in connection with partnership arrangements. Regulations can make provisions which require a pooled fund to be established, for determining the contributions to be made by partners to the pooled fund, for expenditure in relation to posts, services, administration or any other costs related to partnership arrangements.

Section 168 provides regulation making power to establish partnership boards, in relation to partnership arrangements. The regulations make provision to specify the membership of partnership boards (including Health Boards), the objectives, functions and procedures, the form of reports, their content, timing and publication.

Section 169 requires Welsh Ministers to issue and periodically revise guidance about partnership working in relation to section 166. This will apply to partners, which includes local authorities and Health Boards. The guidance will also apply to a team or person carrying out partnership arrangements and any partnership boards established under section 168.

Section 171: Complaints about social services

Section 171 allows for regulations to make provision for the consideration of complaints relating to services provided by local authorities. This includes services under section 33 of the National Health Services (Wales) Act 2006 or section 75 of the National Health Service Act 2006.

Section 180: Independent advocacy services for complaints about palliative care

Section 180 makes amendments to section 187 of the National Health Service (Wales) Act 2006 to include reference to independent advocacy services for palliative

Agenda Item 5.1

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

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