

Constitutional and Legislative Affairs Committee

Meeting Venue:
Committee Room 2 – Senedd

Meeting date:
20 April 2015

Meeting time:
14.30

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



For further information please contact:

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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 – 4)

CLA(4)–10–15 – Paper 1 – Statutory instruments with clear reports

Negative Resolution Instruments

CLA512 – The Cycle Racing on Highways (Amendment) (Wales) Regulations 2015

Negative procedure; Date made: 10 March 2015; Date laid: 16 March 2015; Coming into force date: 7 April 2015.

CLA514 – The Housing (Wales) Act 2014 (Consequential Amendments) Regulations 2015

Negative procedure; Date made: 16 March 2015; Date laid: 18 March 2015; Coming into force date: 27 April 2015.

CLA515 – The Plant Health (Fees) (Wales) (Amendment) Regulations 2015

Negative procedure; Date made: 17 March 2015; Date laid: 19 March 2015; Coming into force date: 9 April 2015.

CLA516 – The Use of Invalid Carriages on Highways (Amendment) (Wales) Regulations 2015

Negative procedure; Date made: 18 March 2015; Date laid: 19 March 2015; Coming into force 9 April 2015.

CLA520 – The Agricultural Holdings (Units of Production) (Wales) Order 2015

Negative procedure; Date made: 27 March 2015; Date laid: 31 March 2015; Coming into force date: 21 April 2015.

CLA521 – The M4 Motorway (West for Junction 23A (Magor) to East of Junction 29 (Castleton)) (Variable Speed Limits) Regulations 2015

Negative procedure; Date made: 30 March 2015; Date laid: 31 March 2015; Coming into force date: 21 April 2015.

Affirmative Resolution Instruments

CLA517 – The Anti-social Behaviour, Crime and Policing Act 2014 (Consequential Amendments) (Wales) Order 2015

Affirmative procedure; Date made: Not stated; Date laid: Not stated; Coming into force date: 19 May 2015.

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

Composite Negative Resolution Instrument

CLA518 – The Milk Marketing Board (England and Wales) (Revocations) Regulations 2015 (Pages 5 – 11)

Composite Negative procedure; Date made: 26 March 2015; Date laid: 27 March 2015; Coming into force date: 1 July 2015

CLA(4)–10–15 – Paper 2 – Report

CLA(4)–10–15 – Paper 3 – Regulations

CLA(4)-10-15 – Paper 4 – Explanatory Memorandum

4 Papers to note (Pages 12 – 22)

CLA(4)-10-15 – Paper 5 – Letter from the Chair of the Health and Social Care Committee regarding the Small Business, Enterprise and Employment Bill

CLA(4)-10-15 – Paper 6 – Letter from First Vice President of the European Commission, Mr Frans Timmermans

CLA(4)-10-15 – Paper 7 – Written statement: Response from the UK Government to the Legislative Consent Motion vote on the Medical Innovation Bill

CLA(4)-10-15 – Paper 8 and Annex– Letter from the Auditor General for Wales, Making Laws in the Fourth Assembly

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

(vi) the committee is deliberating on the content, conclusions or recommendations of a report it proposes to publish; or is preparing itself to take evidence from any person;

Draft report on the Local Government (Wales) Bill (Pages 23 – 44)

CLA(4)-10-15 – Paper 9 – Draft Report

Draft Report on the Safe Nurse Staffing Levels (Wales) Bill (Pages 45 – 58)

CLA(4)-10-15 – Paper 10 – Draft report

Forward Work Programme (Pages 59 – 61)

CLA(4)-10-15 – Paper 11 – Forward Work Programme

Agenda Item 2

**Constitutional and Legislative Affairs Committee
Statutory Instruments with Clear Reports
20 April 2015**

CLA512 – The Cycle Racing (Amendment) (Wales) Regulations 2015

Procedure: Negative

These Regulations amend and update the Cycle Racing on Highways Regulations 1960 to reflect current road conditions and modern approaches to public and competitor safety.

CLA514 – The Housing (Wales) Act (Consequential Amendments) Regulations 2015

Procedure: Negative

These Regulations make consequential amendments to the Local Authorities (Contracting Out of Allocation of Housing and Homelessness Functions) Order 1996 in light of the Housing (Wales) Act 2015.

Regulations are being used to amend an Order. This is not normally permissible, but is appropriate in relation to Consequential Amendments.

CLA515 – The Plant Health (Fees) (Wales) (Amendment) Regulations 2015

Procedure: Negative

These Regulations amend the Plant Health (Fees) (Wales) Regulations 2014 (S.I. 2014/1792 (W. 185)) (“the principal Regulations”).

The principal Regulations implement Article 13d of Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (OJ No L 169, 10.7.2000, p. 1) (“the Directive”). Article 13d of the Directive requires Member States to charge fees to cover the costs of documentary, identity and plant health checks of

certain imports of plants, plant products and other objects from third countries set out in Annex V, Part B of the Directive.

Regulation 3 amends regulation 2(3) of the principal Regulations to clarify the fees that are payable in respect of plant health checks carried out on consignments (or parts of consignments) outside daytime working hours.

Schedule 2 to the principal Regulations sets out reduced rate fees for certain plants and plant products which are subject to reduced levels of plant health checks agreed under the procedure provided for in Articles 13a(2) and 18(2) of the Directive. Regulation 4 of these Regulations amends Schedule 2 to give effect to the notification published by the European Commission on 30 September 2014 of the reduced levels of plant health checks which are applicable to certain plants and plant products.

The Explanatory Memorandum confirms that there have been no direct imports of these products into Wales since the date of the Commission notification. Accordingly, no importers have been disadvantaged by the time that has elapsed since the introduction of the reduced checks was permitted.

CLA516 – The Use of Invalid Carriages on Highways (Amendment) (Wales) Regulations 2015

Procedure: Negative

The Use of Invalid Carriages on Highways Regulations 1988 (“the 1988 Regulations”) make provision regarding the requirements with which invalid carriages must comply, and the conditions in accordance with which invalid carriages must be used, in order to benefit from certain exemptions from road traffic legislation which are set out in section 20 of the Chronically Sick and Disabled Persons Act 1970.

These Regulations substitute regulation 7 of the 1988 Regulations to introduce a new requirement which relates to invalid carriages which include necessary user equipment.

CLA520 – The Agricultural Holdings (Units of Production) (Wales) Order 2015

Procedure: Negative

This Order prescribes units of production for the assessment of the productive capacity of agricultural land situated in Wales. It also sets out the amount which is to be regarded as the net annual income from each such unit for the year 12 September 2014 to 11 September 2015 for certain purposes of the Agricultural Holdings Act 1986 (“the 1986 Act”). This Order revokes the Agricultural Holdings (Units of Production) (Wales) Order 2014 (S.I. 2014/41 (W.3)).

CLA521 – The M4 Motorway (West of Junction 23A (Magor) to East of Junction 29 (Castleton)) (Variable Speed Limits) Regulations 2015

Procedure: Negative

These regulations provide for variable speed limits along a length of the M4 around Newport. These regulations revoke the corresponding regulations of 2011 because some stretches of the M4 entry/exit slip roads are covered by both the 2011 regulations and other road traffic orders. These regulations remove that overlap and ensure that each stretch of this part of the M4 is regulated by one instrument only.

CLA517 – The Anti-social Behaviour, Crime and Policing Act 2014 (Consequential Amendments) (Wales) Order 2015

Procedure: Affirmative

This Order makes consequential amendments to the Housing Act 1996 (the ‘1996 Act’) arising as a result of the Anti-social Behaviour, Crime and Policing Act 2014 (the ‘2014 Act’).

Section 160A of the 1996 Act provides that a local authority must not allocate housing accommodation to ineligible persons. Section 160A(8)

provides that behaviour which would entitle the local authority to a possession order under the Housing Act 1985 (the '1985 Act') would render the person who engaged in that behaviour ineligible.

The 2014 Act amended the 1985 Act to add a new ground for possession. This Order makes consequential amendments to the 1996 Act so that it now additionally refers to the new ground for possession.

Agenda Item 3.1

Constitutional and Legislative Affairs Committee Draft Report

CLA518 - The Milk Marketing Board (England and Wales) (Revocations) Regulations 2015

These Regulations revoke three pieces of 'obsolete' subordinate legislation as a consequence of the Red Tape Challenge. The instruments in question relate to the Milk Marketing Board for England and Wales - in particular, to disputes arising as a result of its reorganisation and to the winding up of its affairs. These instruments are redundant, as the Board was dissolved on 31 January 2002 (by SI 2002/128).

Procedure: Negative

Technical Scrutiny

These Regulations will apply to England and Wales and are subject to approval by both Houses of Parliament and the National Assembly for Wales. They are therefore made only in English.

Standing Order 21.2(ix): the instrument is not made or to be made in both English and Welsh

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
April 2015

2015 No. 955

AGRICULTURE, ENGLAND AND WALES

**The Milk Marketing Board (England and Wales) (Revocations)
Regulations 2015**

<i>Made</i>	- - - -	26th March 2015
<i>Laid before Parliament</i>		27th March 2015
<i>Laid before the National Assembly for Wales</i>		27th March 2015
<i>Coming into force</i>		1st July 2015

The Secretary of State and the Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 14(2) and (3) and 62(1) and (2) of, and paragraphs 42(3)(a), 43(3) and 44(2)(a) of Schedule 2 to, the Agriculture Act 1993⁽¹⁾, and now vested in them⁽²⁾:

Citation and commencement

These Regulations may be referred to as the Milk Marketing Board (England and Wales) (Revocations) Regulations 2015 and come into force on 1st July 2015.

Revocations

The following Regulations are revoked—

- the Milk Marketing Board Scheme of Reorganisation (Third Party Rights) Regulations 1994⁽³⁾;
- the Milk Marketing Board (Residuary Functions) Regulations 1994⁽⁴⁾; and
- the Milk Marketing Board (Residuary Functions) (Amendment) Regulations 2001⁽⁵⁾.

⁽¹⁾ 1993 c. 37.

⁽²⁾ The functions of the Minister of Agriculture, Fisheries and Food were transferred to the Secretary of State by article 2 of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794); under the Government of Wales Act 1998 (c. 38), sections 22 and 24, and the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2 and Schedule 1, the functions of the Secretary of State under the Agriculture Act 1993 in relation to Wales were transferred to National Assembly for Wales and subsequently, by the Government of Wales Act 2006 (c.32), section 162, and paragraph 30 to Schedule 11, to the Welsh Ministers.

⁽³⁾ S.I. 1994/2460.

⁽⁴⁾ S.I. 1994/2759.

⁽⁵⁾ S.I. 2001/3507.

25th March 2015

George Eustice
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

26th March 2015

Rebecca Evans
Deputy Minister for Farming and Food,
under authority of the Minister for Natural Resources, one of the Welsh Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke three statutory instruments in relation to the Milk Marketing Board that are now spent or redundant.

No impact assessment has been produced for this instrument as no impact on the private or voluntary sector is foreseen. An Explanatory Memorandum is available alongside the instrument at www.legislation.gov.uk

EXPLANATORY MEMORANDUM TO THE MILK MARKETING BOARD (ENGLAND AND WALES) (REVOCATIONS) REGULATIONS 2015

This Explanatory Memorandum has been prepared by Agriculture and Rural Affairs Department 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 Milk Marketing Board (England and Wales) (Revocations) Regulations 2015.

Rebecca Evans
Deputy Minister for Farming and Food

26 March 2015

1. Description

This instrument revokes three Regulations:

- The Milk Marketing Board Scheme of Reorganisation (Third Party Rights) Regulations 1994;
- The Milk Marketing Board (Residuary Functions) Regulations 1994; and
- The Milk Marketing Board (Residuary Functions) (Amendment) Regulations 2001.

The Regulations being revoked are no longer relevant as the Milk Marketing Board was dissolved in 2002.

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

As part of the UK Government's Red Tape Challenge initiative a number of regulations were identified as redundant and suitable for revoking. These Regulations are being made to revoke three Regulations relating to the Milk Marketing Board.

The three Regulations, which apply to England and Wales, could be revoked in England only but this would leave the redundant legislation in place in Wales. The Welsh Ministers' powers to make these Regulations must in any event be exercised jointly with the Secretary of State.

These Regulations will apply to England and Wales and are subject to negative resolution procedure in the National Assembly for Wales and in the UK Parliament. Because the Regulations will be subject to UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually.

3. Legislative Background

These Regulations are made under sections 14(2) and (3), 62(1) and (2) and paragraphs 42(3)(a), 43(3) and 442(2)(a) of Schedule 2 to the Agriculture Act 1993.

Sections 14(2) and (3), 62(1) and (2) and paragraph 43(3) of Schedule 2 to the Agriculture Act 1993 confer powers to make the Regulations on 'the appropriate authority'. Section 24(2) specifies that references to the appropriate authority, in the case of a milk marketing board whose area is England and Wales, are references to the Minister of Agriculture, Fisheries and Food and the Secretary of State, acting jointly. By Article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), the Secretary of State's functions under the Agriculture Act 1993 were transferred to the National Assembly for Wales. These functions were later transferred to the Welsh Ministers by operation of section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act

2006.

Paragraphs 42(3)(a) and 44(2)(a) of Schedule 2 to the Agriculture Act 1993, confer a power on the Minister for Agriculture Fisheries and Food and the Secretary of State acting jointly to make Regulations. By Article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), the Secretary of State's functions under the Agriculture Act 1993 were transferred to the National Assembly for Wales. These functions were later transferred to the Welsh Ministers by operation of section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

The Regulations are subject to annulment (the negative procedure).

4. Purpose and intended effect of the legislation

These Regulations will revoke the following Regulations:

- The Milk Marketing Board Scheme of Reorganisation (Third Party Rights) Regulations 1994;
- The Milk Marketing Board (Residuary Functions) Regulations 1994; and
- The Milk Marketing Board (Residuary Functions) (Amendment) Regulations 2001.

The Milk Marketing Board Scheme of Reorganisation (Third Party Rights) Regulations 1994 provide for the appointment of arbitrators should disputes arise under paragraphs 42 and 44 of Schedule 2 to the Agriculture Act 1993 (1993 Act). Further, the Regulations provide for the giving of notices to qualifying parties following an approved scheme of reorganisation under paragraph 43 of Schedule 2 to the 1993 Act, the provision of certificates of compliance in relation to certain types of contracts and their service.

The Milk Marketing Board (Residuary Functions) Regulations 1994 make provision for the purpose of giving effect to an approved scheme of reorganisation, providing that the Milk Marketing Board will not be dissolved, but shall continue to exist in a residuary form to enable the Milk Marketing Board to wind up its affairs. The Milk Marketing Board's functions are set out in Regulations 4(1) and 21, and the methods of winding up are specifically set out in Regulation 27.

The Milk Marketing Board (Residuary Functions) (Amendment) Regulations 2001 amend the 1994 Regulations and facilitate the winding up of the affairs of the Milk Marketing Board. Specifically, the Regulations deal with the transfer of property, rights and liabilities, and the holding of assets following the winding up of the Milk Marketing Board.

The Milk Marketing Board was dissolved in 2002.

5. Consultation

The revocation of the Regulations is not contentious and no consultation has been undertaken.

6. Regulatory Impact Assessment (RIA)

Having considered the Welsh Ministers' code of practice, a Regulatory Impact Assessment has not been prepared for these Regulations. These Regulations have no impact on business, charities or voluntary bodies as these Regulations revoke obsolete legislation.

There is no impact on the public sector as these Regulations revoke obsolete legislation.

Agenda Item 4

Y Pwyllgor Iechyd a Gofal Cymdeithasol
Health and Social Care Committee

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

Dame Rosemary Butler AM
Chair of the Business Committee



26 March 2015

Dear Rosemary,

Supplementary Legislative Consent Memorandum on the Small Business Enterprise and Employment Bill

Thank you for your letter of 11 March regarding the Supplementary Legislative Consent Memorandum (SLCM) on the Small Business Enterprise and Employment Bill.

The scrutiny of LCMs is an integral part of the Assembly's scrutiny of legislation which affects Wales. It is important, therefore, that wherever possible, the relevant committee has sufficient time to undertake appropriate scrutiny in order to inform the Assembly's consideration of the Legislative Consent Motion.

The Committee acknowledges that this Bill is at a late stage of its progress through Parliament. We accept that time constraints mean it has not been possible for the SLCM to be referred to us for scrutiny on this occasion.

Yours sincerely,

David Rees AM
Chair, Health and Social Care Committee

cc David Melding AM, Chair of the Constitutional and Legislative Affairs Committee

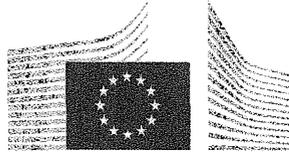
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Croesewir gohebiaeth yn y Gymraeg a'r Saesneg / We welcome correspondence in both English and Welsh



EUROPEAN COMMISSION
Office of the First Vice-President Mr Frans Timmermans
Head of Cabinet

Brussels, **23 MARS 2015**
Ares (2015) 868420

Dear Mr Melding,

The First Vice-President of the European Commission, Mr Frans Timmermans, has asked me to thank you for your letter of 27 February 2015 on EU governance.

The Commission welcomes the interest of the National Assembly for Wales in EU affairs and has taken note of your committee's March 2014 report on Wales' role in the EU decision-making process.

As you have recognised, strengthening the democratic legitimacy of the EU is one of this Commission's key priorities and the Commission acknowledges the important role that both national and regional Parliaments have to play in this regard by engaging with their electorates and feeding views into the EU policy cycle.

The Commission attaches high importance to engaging with stakeholders at an early stage in the policy-formation phase, and interested parties, including regional Parliaments, are invited to make contributions to public consultations. The Commission and its services also remain at the disposal of regional bodies to discuss constructive proposals in the framework of their respective competences.

Finally, the Commission would like to recall that the provisions of Protocol 2 on the application of the principles of subsidiarity and proportionality provide for regional Parliaments with legislative powers, such as the National Assembly for Wales, to be consulted where appropriate by their respective national Parliaments.

Yours sincerely,

Ben SMULDERS

Mr David MELDING AM
Chair, Constitutional and Legislative Affairs Committee
National Assembly for Wales

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Llywodraeth Cymru
Welsh Government

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **Response from the UK Government to the Legislative Consent
Motion vote on the Medical Innovation Bill**

DATE **31 March 2015**

BY **Mark Drakeford AM, Minister for Health and Social Services**

You will be aware that Lord Saatchi's Medical Innovation Bill has been making its passage through Parliament. The Welsh Government has grave concerns about this Bill and requested that the provisions within the Bill did not apply to Wales.

I laid a legislative consent memorandum on 10 December 2014, and we debated the related motion in the Chamber on 3 February 2015. There was cross-party consensus in the Assembly that we should not consent to the Bill applying to Wales, with 54 votes to 0 voting with the Government, against the motion.

As a consequence of that vote, I wrote to the Parliamentary Under Secretary of State for Quality (Lords), Earl Howe, to register again the concerns of the Welsh Government, and to convey the outcome of the Assembly's vote on the LCM relating to this Bill. I also confirmed I would share the response from Earl Howe once I received it.

I am disappointed to convey that the UK Government has maintained its position that the provisions within the Bill relate to non-devolved matters, 'clinical negligence and the common law of tort', as opposed to subjects under the 'health and health services' heading in Schedule 7 to the Government of Wales Act. The Welsh Government remains strongly of the view that the Bill's provisions do relate to the latter. However, this is now immaterial in the context of this Bill as it has run out of parliamentary time and will not progress further within this Parliament.

The UK Government has confirmed it will continue to explore how best to encourage medical innovation and has pledged its commitment to work with the Welsh Government to ensure high standards of care for patients on both sides of the border.

This statement is being issued during recess in order to keep members informed. Should members wish me to make a further statement or to answer questions on this when the Assembly returns I would be happy to do so.

Mr David Melding AM
Chair, Constitutional & Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Date: 13 April 2015
Our ref: HVT/2310/fgb
Page: 1 of 1

Dear David

COMMITTEE INQUIRY: MAKING LAWS IN THE FOURTH ASSEMBLY

Following my recent study on the regulatory impact assessment of the Well-being of Future Generations (Wales) Bill, and given the relevance of cost estimates to informed law making, I thought it might be helpful to your Committee if I shared some reflections on the financial content of the Explanatory Memoranda for Assembly Bills. I enclose a short paper that summarises a review of the Explanatory Memoranda. As you will see, the paper identifies two main issues: lack of clarity in the presentation of cost estimates and variations in the completeness of estimates. It also suggests some potential solutions.

I should be happy to provide further explanation if the Committee would find that helpful.

Yours sincerely



HUW VAUGHAN THOMAS
AUDITOR GENERAL FOR WALES

Enc: The Financial Content of Explanatory Memoranda for Assembly Bills

THE FINANCIAL CONTENT OF EXPLANATORY MEMORANDA FOR ASSEMBLY BILLS

1. In order to support wider work on contributing to National Assembly consultations on Assembly Bills, the WAO's Compliance Section has undertaken a brief review of the financial content of the Explanatory Memoranda that have accompanied Assembly Bills since November 2011.
2. Two main findings arise from the review:
 - a. a general lack of clarity in the presentation of estimates of costs and timescales within Explanatory Memoranda regarding the proposed legislation;
 - b. variations in the completeness of estimates of costs, leading to a lack of an overall view of the cost of the legislation
3. This paper explains these findings and suggests some potential means of addressing them.

Lack of clarity of estimates of costs and timescales within Explanatory Memoranda

4. Standing Order 26.6 requires the Member in charge of a Bill to lay an Explanatory Memorandum to accompany the Bill. Standing Order 26.6 (vi) requires the Explanatory Memorandum to set out:

...best estimates of:

 - (a) *the gross administrative, compliance and other costs to which the provisions of the Bill would give rise;*
 - (b) *the timescales over which such costs would be expected to arise; and*
 - (c) *on whom the costs would fall...*
5. This requirement is entirely appropriate, given that the Assembly does not just make laws but also determines overall how much money the Welsh Government and other relevant bodies can spend on particular purposes. Clearly, the Assembly needs information on the expected costs that arise from its legislation if it is to legislate responsibly and for the overall benefit of the people of Wales.
6. The Explanatory Memoranda are all quite extensive documents containing sections labelled "Costs and Benefits". In most cases, those sections together with supporting annexes run to some 30 pages. Yet the information required by Standing Order 26.6(vi) is usually not readily apparent. Much relevant information is provided, but even for a Bill of limited scope, the reader has to do a fair amount of work to arrive at an overall understanding of the estimates of (a) the costs, (b) the timescales and (c) on whom the costs would fall.

7. Examples of this include:
 - a. **The Qualifications Wales Bill Explanatory Memorandum**—this provides a table that, at first reading, could be taken to summarise the costs of the Bill (Table 4 on page 56). However, in order to identify the real cost of the Bill, the totals in Table 1 (on page 52) must be subtracted from the totals in Table 4. The need for this is only evident from a careful reading of para 228, which says, “the highest costs shown relate to staffing costs which, for functional staff, are largely already met from Welsh Government budgets”. Table 4 also does not have a title to make clear what it is setting out, although its position in the text indicates that it is the costs of “option 3”, which is elsewhere indicated as the option pursued by the Bill. And to find the table requires the reader to consider most of the Costs and Benefits section of the Memorandum. The five year period for costs is also not explained, which could lead to an inference that costs will only be incurred for five years, unlikely though that may seem.
 - b. **The Renting Homes (Wales) Bill Explanatory Memorandum**—this identifies costs for 2015-16 to 2019-20 for the Welsh Government, private landlords, community landlords, third sector organisations and legal professionals. It considers these costs in some detail not just in terms of the option represented by the Bill but also in terms of an alternative option, as well giving some cost consideration to the “do nothing option”. Consequently, the cost information covers 27 pages, and unfortunately there is no summary table to encapsulate the estimated cost of the Bill. Again, a five year costing is given without explanation.
 - c. **The Higher Education (Wales) Bill Explanatory Memorandum**—this provides extensive cost analysis for three options. The 36 page “Costs and benefits” section provides 22 tables, and, as a result, table 8, which provides an estimate of the cost of the Bill from 2015-16 to 2019-20, is rather lost in the detail.
8. As indicated by these examples, the cost information provided in Explanatory Memoranda is in practice set out as part of an analysis of options, with such options generally including “do nothing”, “introduce legislation” (ie introduce legislation as per the Bill) and often a mid-way or enhanced variation on this. The complex and inconsistent layout means that the reader needs to exercise considerable care to avoid confusing costs that are attributable to other options with those attributable to the Bill as introduced.
9. Such detailed option analysis is not strictly required by Standing Order 26.6, though it is relevant to Standing Order 26.6(iii), which requires the Explanatory Memoranda to:

...set out whether alternative ways of achieving the policy objectives were considered and, if so, why the approach taken in the Bill was adopted...

10. It therefore appears that, as the detail of the option analysis that meets Standing Order 26.6(iii) provides material that is relevant to requirements of Standing Order 26.6(iv), those who draft Explanatory Memoranda consider that Standing Order 26.6(iv) is adequately met by such option analysis. However, it is arguable that even where such option analysis does contain all the relevant estimates, this is not a satisfactory approach because of the considerable burden it places on the reader, as explained above. It risks creating confusion amongst AMs when considering Bills and hampers effective scrutiny.
11. Given the importance of Assembly Members being informed of the cost of legislation, it is a matter of some concern that identifying the estimates of costs, timescales and those on whom costs fall in respect of individual Assembly Acts and Bills from looking at the Explanatory Memoranda laid before the Assembly is not straightforward. One solution to this problem would be amendment of Standing Order 26.6(iv) so as to provide greater clarity. Such an amendment could specifically require the completion of a table summarising the estimates of (a) the costs of the legislation, (b) the timescales for those costs and (c) on whom the costs would fall. Such a table, in a standard format, should enable all AMs to be clear about the main cost implications of each Bill that they vote on. A potential template is set out in the Annex to this paper.
12. As indicated in the Annex, given the recent passage of the Well-being of Future Generations (Wales) Bill, it might also be appropriate for there to be an additional cell to summarise the environmental and social dis-benefits that cannot be quantified financially. However, this would require an addition to the list of items currently contained in Standing Order 26.6(iv).
13. Though in some cases it might be appropriate to include a summary table for each main policy/Part of a Bill, in any event it would be helpful to have one overall summarising table for each Bill as a whole.

Variations in the completeness of estimates of costs

14. Explanatory Memoranda frequently say that estimates cannot be made for some effects of the legislation, and, as a consequence, no figures are given for those effects. It is certainly the case that it can be difficult to provide estimates when, for example, the level of take-up of a new programme is not known. However, the complete omission of any costing for some effects alongside the provision of detailed figures for other aspects (those that can be relatively easily estimated) can lead to a rather misleading picture of the overall costs of the legislation.
15. For example, the costing set out in the **Explanatory Memorandum for the Local Government (Wales) Bill** of January 2015 does not give a full overview of the likely gross or net costs of the Bill. This is not because of the understandable uncertainty about the future shape of local government in Wales, but because rather than clearly allowing for that uncertainty the Memorandum gives partial and not well-signposted information:

- a. Appendix A on page 104 of the Memorandum has the title “Costing the Options” but appears to be confined solely to the (relatively modest) cost of transition committees;
 - b. Tables 17 and 18 on pages 96 and 97 could be taken to summarise Welsh Government and local government costs, but para 208 on page 95 says “there are a few areas (notably policy intention 4) where it has not been possible to produce an estimate at this stage”;
 - c. The tables give the total additional costs for the Welsh Government and Local Government for the period 2015-16 to 2020-21 as £1.1 million and £1.2 million respectively (i.e. £2.3 million in total) on the basis of one voluntary merger. However, the Bill appears to provide complete primary legislative provision for voluntary mergers, and it would therefore be appropriate for the Explanatory Memorandum to give broad cost estimates for one or more such voluntary mergers (with the uncertainty noted);
 - d. The Memorandum provides no figures for an estimate of ongoing savings.
16. It is worth noting that, in contrast, the Assembly’s Research Service paper on the Local Government (Wales) Bill includes far more comprehensive cost estimates for local government restructuring overall. The Research Service paper refers to Chartered Institute of Public Finance & Accountancy (CIPFA) estimates for the transition costs of local government mergers (in terms of people, property, systems and programme costs) that range between £159.7 million and £267.9 million for nine mergers involving 19 authorities (and annual savings of £64.7 million a year after two or three years).
17. While not included in either CIPFA’s report or the Research Service paper, this would indicate broad brush costs of some £20 million for one merger (and annual savings of some £6 million). This indicates that the Explanatory Memorandum probably rather understates the likely initial cost, while also omitting to provide a figure for ongoing savings.
18. The Auditor General’s *Review of the Regulatory Impact Assessment of the Well-being of Future Generations (Wales) Bill* (4 December 2014), concluded that there was likely cost understatement within the Explanatory Memorandum, and that it did not present the estimates clearly enough. Furthermore, the Welsh Government’s view that the additional costs of the bill may need to be absorbed within existing resources, as expressed during the Environment and Sustainability Committee’s evidence session on 29 September 2014, was not made clear in the Explanatory Memorandum.
19. As the examples above show, there is a tendency for Explanatory Memoranda to provide an incomplete view of overall costs. To be fit for purpose, i.e. so that Assembly Members have an overall idea of the cost of the legislation, Explanatory Memoranda should give overall estimates of the costs. Clearly, this can be difficult for some effects, but it would also be more meaningful and useful for Explanatory Memoranda to give an overall broad brush estimate of a Bill’s gross cost (while acknowledging areas of

considerable uncertainty) than to provide very detailed figures on certain aspects but no overall estimate.

20. The current formulation of Standing Order 26.6 (vi) perhaps does not help ensure that an overall view of costs is given. The Standing Order requires the Explanatory Memorandum to set out "...best estimates of...the gross administrative, compliance and other costs to which the provisions of the Bill would give rise", but it does not specifically require the identification of such costs overall. It would seem relatively straightforward to include such a requirement in the Standing Order.
21. In order to improve the reasonableness of overall cost estimation it may be helpful for the Assembly to undertake or obtain some retrospective reviews of the actual costs arising against the estimates given in the relevant Explanatory Memorandum. Such reviews might well help identify some means of improving the cost estimation processes and presentation used. Another approach that might help ensure that Explanatory Memoranda include appropriate cost information would be for Standing Order 26.6 to require the inclusion of some form of certification that this is the case, as this would help AMs better understand the overall costs of the legislation they are being asked to vote on.

STANDING ORDER 26.6(IV) COST ESTIMATE SUMMARY TABLE TEMPLATE

	One-off amounts (eg initial set up costs, disposal proceeds and decommissioning costs) £M	Average annual recurring amounts £M	Number of years applying to annual recurring amounts	Total lifetime amount (lifetime of the legislation) (at Net Present Value) £M
A. Gross administrative cost of the Bill's provisions (ie the additional public expenditure arising as a consequence of the Bill before any financial savings): i) WG and related bodies, including NHS ii) Welsh local government iii) Other public bodies Total of i), ii) and iii)				
B. Estimate of administrative savings arising from the Bill: i) WG and related bodies, including NHS ii) Welsh local government iii) Other public bodies (specify) Total of i), ii) and iii)				
C. Net administrative cost of the Bill's provisions (i.e. the net additional public expenditure that will arise as a consequence of the Bill): i) WG and related bodies, including NHS ii) Welsh local government iii) Other public bodies Total of i), ii) and iii)				
D. Compliance costs (i.e. costs arising to members of public etc from complying with the Bill's requirements): i) general public; ii) businesses; iii) other non-public sector bodies (eg voluntary organisations) Total of i), ii) and iii)				
E. Any other financial costs (include brief description here)				
F. Brief description of environmental and social dis-benefits arising from the Bill that cannot be quantified financially: i) one-off ii) ongoing (Include estimates of tonnes of CO2)				

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