

Constitutional and Legislative Affairs Committee

Meeting Venue:
Committee Room 2 – Senedd

Meeting date:
23 November 2015

Meeting time:
13.30

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



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Agenda

1 Introduction, apologies, substitutions and declarations of interest

2 Evidence in relation to the Draft Wales Bill (Pages 1 – 30)

(Indicative time 13.30)

Rt Hon Stephen Crabb MP, Secretary of State for Wales;
Geth Williams, Wales Office;
Sue Olley, Wales Office

CLA(4)–29–15 – Paper 1 – Written Evidence

CLA(4)–29–15 – Research Service Briefing

CLA(4)–29–15 – Legal Advice

3 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3 (Page 31)

CLA(4)–29–15 – Paper 2 – Statutory instruments with clear reports

Negative Resolution Instruments

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CLA617 – The Home Loss Payments (Prescribed Amounts) (Wales) Regulations 2015
Negative procedure; Date made: 9 November 2015; Date laid: 13 November 2015;
Coming into force date: 10 December 2015

Affirmative Resolution Instruments

CLA618 – The Housing Act 1985 (Amendment of Schedule 2A) (Serious Offences) (Wales) Order 2016

Affirmative procedure; Date made: not stated; Date made: Not stated; Coming into force date: 16 February 2016

CLA619 – The Agricultural Sector (Wales) Act 2014 (Consequential Modification) Order 2015

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

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

Negative Resolution Instruments

CLA616 – The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015 (Pages 32 – 116)

Negative procedure; Date made: 4 November 2015; Date laid: 6 November 2015;
Coming into force date: 28 November 2015

CLA(4)–29–15 – Paper 3 – Report

CLA(4)–29–15 – Paper 4 – Regulations

CLA(4)–29–15 – Paper 5 – Explanatory Memorandum

5 Papers to note (Pages 117 – 167)

CLA(4)–29–15 – Paper 6 – Letter from the Chair of the Welsh Affairs Select

Committee of the House of Commons

CLA(4)–29–15 – Paper 7 – Letter from the Chair of the Enterprise and Business Committee in relation to the Draft Wales Bill

CLA(4)–29–15 – Paper 8 – Letter from the Communities Equality and Local Government Committee in relation to the Draft Wales Bill

CLA(4)–29–15 – Paper 9 – Letter from the Chair of the Health and Social Care Committee in relation to the Draft Wales Bill

CLA(4)–29–15 – Paper 10 – Letter from the Chair of the Children Young People and Education Committee in relation to the Draft Wales Bill

CLA(4)–29–15 – Paper 11 – Letter from the Chair of the Environment and Sustainability Committee in relation to the Draft Wales Bill

6 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;

Consideration of Oral Evidence

Note of Strengthening the Draft Wales Bill Legislation Workshop (Pages 168 – 176)

CLA(4)–29–15 – Paper 12 – Note of Strengthening the Draft Wales Bill Legislation Workshop

Consideration of the Committee's work on the UK Government's EU reform agenda (Pages 177 – 186)

CLA(4)–29–15– Paper 13 – the UK Government's EU reform agenda

CLA(4)–29–15– Paper 13 Annex

Draft Letter to Business Committee (Pages 187 – 188)

CLA(4)–29–15 – Paper 14 – Draft Letter to Business Committee regarding legacy work

Forward Work Programme (Page 189)

CLA(4)–29–15 – Paper 15 – Work Programme

Agenda Item 2

THE DRAFT WALES BILL

Written Evidence submitted to the Constitutional and Legislative Affairs Committee of the National Assembly for Wales by the Secretary of State for Wales

1. I welcome this opportunity to submit written evidence on the draft Wales Bill in advance of giving oral evidence to the Committee on 23 November.

Overview

2. The draft Bill delivers a clear devolution settlement for Wales based on a new reserved powers model. Implementing the new model was a key recommendation in the Silk Commission's second report, and was supported by political consensus in the St David's Day Agreement.

3. The draft Bill also strengthens Welsh devolution by devolving important new powers over energy, transport and local government and Assembly elections that can make a real difference to the lives of people in Wales. For the first time, it will enshrine the National Assembly and Welsh Government as permanent parts of the United Kingdom's constitutional arrangements. It will enable the National Assembly to call itself a Parliament and to decide how its Members are elected - and whether 16 and 17 year olds should be able to vote in Assembly elections.

4. I should make one thing clear from the outset. In developing the reserved powers model the starting point has been the current devolution settlement: the twenty devolved subjects listed in Part 1 of Schedule 7 to the Government of Wales Act 2006 on which the National Assembly assumed full legislative competence following the 2011 referendum.

5. The UK Government established the Silk Commission following the referendum to set a course for the future of devolution in Wales. While the Silk Commission included representatives from the four main political parties in Wales, they did not have a mandate to bind their respective parties to the recommendations that Silk made. I established the St David's Day process this time last year to identify the recommendations in the second Silk report which had political consensus to be implemented. The St David's Day Agreement, announced in February, confirmed that there is consensus to base Welsh devolution on a reserved powers model, and to devolve a strong package of further powers to the Assembly, implementing many of the recommendations in Silk II. The Government is implementing or has already implemented over two thirds of the recommendations for which it is responsible; not all require primary legislative change and some are being taken forward in different ways.

6. So there has been a long, well established process which has led to the draft Wales Bill. Some commentators have called for fundamental changes to the draft legislation; for the reserved powers model to include a significant expansion of devolution, based on the principle of subsidiarity. But this draft Bill is not a vehicle for expanding devolution by the back door. It reflects the broad consensus reached in the St David's Day process.

7. Our General Election manifesto committed to implement the St David's Day Agreement in full. The Wales Bill, when introduced, will reflect the outcomes of St David's Day.

8. I believe it is time to draw a line under the constitutional debates that have dominated Welsh politics since devolution so that the Welsh Government and the Assembly can focus on using the powers they have to grow the Welsh economy, to create jobs and to deliver better public services in Wales. I believe the new settlement and the new powers devolved in the Wales Bill, along with the funding floor we will implement alongside the forthcoming Spending Review, will allow us to do that.

The Reserved Powers Model

9. The current conferred powers model of devolution in Wales lacks clarity and is incomplete. Indeed, it is silent about many areas of policy such as defence, policing, the criminal justice system and employment. This lack of definition has proved to be a recipe for confusion and dispute, and there is widespread acceptance that it is fundamentally flawed.

10. The new reserved powers model provides the clarity the current model lacks. It lists the subjects which are reserved to the UK level. The Assembly can legislate in all other areas and in relation to subjects that are excepted from those reservations. It provides a clear boundary between reserved and devolved subjects. The Assembly will continue to legislate in devolved areas as it does now. The consent of UK Government Ministers would be needed if the Assembly wished to place functions on reserved bodies.

11. I have read many incorrect and inaccurate comments about the new draft model in terms of the constraints it places on the Assembly in exercising its legislative competence. I would like to take this opportunity to put the record straight:

- **The Assembly will continue to be able to legislate in devolved areas without the need for any consent.** The Assembly will be able to legislate in any area not specified as a reservation in Schedule 1 to the draft Bill and in those areas specified as exceptions to reservations. The Assembly will need the consent of UK Ministers to legislate about reserved bodies. It is surely right that UK Ministers consent when an Assembly Bill imposes functions on reserved bodies, just as Assembly consent is obtained when Parliament legislates in devolved areas.

Some have argued that the new model rolls back on the result of the 2011 referendum. That referendum gave voice to the vast majority of people in Wales who wanted the Assembly to gain its full law-making powers - legislative competence in all twenty areas devolved to the Assembly under the Government of Wales Act 2006. The Assembly will continue to exercise legislative competence in devolved areas under the new model. I utterly refute the suggestion that the draft Bill somehow cuts across the result of the 2011 referendum.

- **The Bill implements a reserved powers model within the single legal jurisdiction of England and Wales.** I know that a separate jurisdiction is the ambition of some critics of the draft Bill, but that is not our policy. The Bill makes no provision to alter the single legal jurisdiction, which has served both Wales and England well. But there is a need to reflect the impact on the justice system of the increasing volume of Assembly legislation, and to ensure the administrative arrangements for justice in Wales take full account of Assembly laws.

- **The Assembly will continue to be able to enforce its legislation by modifying the private law and criminal law, in the same way as it does now.** The model recognises that the Assembly has a legitimate need to modify the law in respect of devolved matters in order to give full and proper effect to its legislation. It will continue, for example, to be able to create offences and impose penalties to enforce the laws that it makes.
- **The Assembly will continue to have the flexibility to be able to make “ancillary” provision in relation to England and to modify the law on reserved matters.** The model acknowledges that the Assembly needs the flexibility to legislate outside devolved areas of competence to make laws within devolved competence work effectively. The Bill allows the Assembly to do so by making “ancillary” provision. A provision is ancillary to another provision if it provides for the enforcement of the other provision; is otherwise appropriate for making it effective; or is otherwise incidental to, or consequential on, that provision.
- **The *no greater effect than necessary* test is designed to address occasions where the Assembly seeks to enforce its laws by legislating in relation to England, the law on reserved matters and the general principles of private law and criminal law.** The model enables the Assembly to modify the general principles of the private law and criminal law if that is needed to give effect to its laws. But we do not want to see those modifications lead to significant divergence in the fundamental legal landscape of England and Wales. Any modification of private law and criminal law should be proportionate to the devolved provision the Assembly is seeking to enforce. It is subject therefore to the *no greater effect than necessary* test: any modification must have no greater effect on the general application of the private law and criminal law than is necessary to give effect to the devolved provision.

The test also applies when the Assembly enforces its laws by legislating in relation to England and where it modifies the law on reserved matters. We believe it is reasonable to set a limit on the extent to which the Assembly can legislate beyond Wales or change the law on reserved matters. The test has operated with no difficulty as part of the reserved powers model in Scotland since the start of devolution.

- **The way in which reserved authorities and Welsh public authorities are defined in the draft Bill will not change the devolution boundary or the status of these bodies.** Bodies which are “devolved bodies” now - those which exercise wholly or mainly devolved functions - will continue to be devolved under the new model.
- **The Assembly will continue to be able to legislate on the Welsh language.** The reservations listed in Schedule 1 to the draft Bill do not prevent the Assembly from legislating on the Welsh language. In particular, the equal opportunities reservation specifically excludes language from the definition of equal opportunities.

12. I am open to ideas about how the model can be improved. I look forward to the outcome of the Committee’s work, and to that of the House of Commons Welsh Affairs Committee’s pre-legislative scrutiny of the Bill, and to reading the

recommendations of both Committees on the modifications they believe will improve the draft Bill.

Conclusion

13. The draft Bill delivers a new devolution settlement for Wales and devolves important new powers as part of this. It forms part of a new devolution deal for Wales which includes, for the first time, introducing a floor for Wales's funding relative to that of England. I would also like income tax devolution to be part of the new arrangements to strengthen the bond of accountability between the Welsh Assembly and Welsh taxpayers.

14. I want a devolution settlement for Wales that is built to last. The draft Bill provides the foundation for a strong, robust settlement with a clear boundary between the powers that are devolved and those that are reserved. It will make devolution work better and give the Assembly and the Welsh Government a sharper focus on the job they have to do.

15. I look forward to receiving the Committee's contribution to the scrutiny.

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

Document is Restricted

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

Document is Restricted

Statutory Instruments with Clear Reports

23 November 2015

CLA617 - The Home Loss Payments (Prescribed Amounts) (Wales) Regulations 2015

Procedure: Negative

These Regulations, which apply in relation to Wales, increase the maximum and minimum amounts of home loss payments payable under the Land Compensation Act 1973 (“the Act”) to a person who is displaced from a dwelling by compulsory purchase or other circumstances specified in section 29 of the Act.

CLA618 - The Housing Act 1985 (Amendment of Schedule 2A) (Serious Offences) (Wales) Order 2016

Procedure: Affirmative

This Order adds the offences of slavery, servitude and forced or compulsory labour and human trafficking introduced by sections 1 and 2 of the Modern Slavery Act 2015 to the list of serious offences in Schedule 2A of the Housing Act 1985. This list relates to the grounds on which the landlord of a secure tenancy may seek a possession order against a tenant on the basis of serious anti-social behaviour.

CLA619 - The Agricultural Sector (Wales) Act 2014 (Consequential Modification) Order 2015

Procedure: Affirmative

These Regulations, which apply in relation to Wales, increase the maximum and minimum amounts of home loss payments payable under the Land Compensation Act 1973 (“the Act”) to a person who is displaced from a dwelling by compulsory purchase or other circumstances specified in section 29 of the Act.



CLA616 - The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015

Procedure:

Negative

Background

These Regulations consolidate all European and domestic requirements relating to natural mineral water, spring water and bottled drinking water. For example:

Part 2 sets out the conditions for recognising water as “natural mineral water” and requirements relating to treating, bottling, labelling, advertising and selling natural mineral water.

Part 3 applies restrictions on exploiting springs, and requirements relating to treating, bottling, labelling, advertising and selling “spring water”.

Part 4 applies restrictions on bottling, labelling, advertising and selling “bottled drinking water”.

Parts 5 and 6 set out the monitoring and enforcement regimes, including requiring food authorities to enforce the Regulations.

Technical Scrutiny

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

Merits Scrutiny

One point is identified for reporting under Standing Order 21.3(ii) in respect of this instrument, in that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly:

Under Schedule 1, when a food authority recognises water extracted from the ground in Wales as “natural mineral water”, the food authority must publish such recognition and the grounds for granting the recognition in the London Gazette.

The London Gazette is the gazette for “England and Wales”. However, if the purpose of the publication is to inform the people of Wales of the status of water extracted from Welsh ground, the Committee considers it may be useful to publish the recognition in Welsh newspapers / periodicals.



Legal Advisers
Constitutional and Legislative Affairs Committee
19 November 2015



Cynulliad
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National
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Wales

2015 No. 1867 (W. 274)

FOOD, WALES

**The Natural Mineral Water, Spring
Water and Bottled Drinking Water
(Wales) Regulations 2015**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply in Wales, implement and enforce the following European instruments—

- (a) Council Directive 98/83/EC relating to the quality of water intended for human consumption (OJ No L 330, 3.11.1998, p 32), so far as it applies to water intended to be labelled and sold as “spring water” or “dŵr ffynnon” and bottled drinking water;
- (b) Directive 2009/54/EC of the European Parliament and of the Council on the exploitation and marketing of natural mineral waters (OJ No L 164, 26.6.2009, p 45);
- (c) Commission Directive 2003/40/EC establishing the list, concentration limits and labelling requirements for the constituents of natural mineral waters and the conditions for using ozone-enriched air for the treatment of natural mineral waters and spring waters (OJ No L 126, 22.5.2003, p 34);
- (d) Commission Regulation (EU) No 115/2010 laying down the conditions for use of activated alumina for the removal of fluoride from natural mineral waters and spring waters (OJ No L 37, 10.2.2010, p 13); and
- (e) Council Directive 2013/51/Euratom laying down the requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption (OJ No L 296, 7.11.2013, p 12), so far as it applies to water intended to be labelled and sold as “spring water” or “dŵr ffynnon” and bottled drinking water.

The Regulations revoke and replace the Natural Mineral Water, Spring Water and Bottled Water (Wales) Regulations 2007 (S.I. 2007/3165 (W.276)) and amending instruments.

Part 1 is introductory and includes relevant definitions.

Part 2 prescribes the conditions for recognising natural mineral water. Regulation 5 enables a food authority to refuse to grant or withdraw recognition of natural mineral water and provides a right to appeal against such a decision. Part 2 also applies restrictions on exploiting natural mineral water springs as well as the treatment, bottling, labelling, advertisement and sale of natural mineral water.

Part 3 applies restrictions on exploiting springs and the treatment, bottling, labelling, advertisement and sale of water intended to be sold as “spring water” or “dŵr ffynnon”.

Part 4 applies restrictions on the bottling, labelling, advertisement and sale of bottled drinking water.

Part 5 prescribes the requirements for monitoring natural mineral water, water bottled and labelled as “spring water” or “dŵr ffynnon” and bottled drinking water for the purpose of ensuring that the requirements of these Regulations are satisfied.

Regulation 26 prescribes the remedial action that must be taken by a food authority in relation to water bottled and labelled as “spring water” or “dŵr ffynnon” and bottled drinking water in the event of non-compliance with the parametric values for the parameters set out in Schedule 7.

Part 6 provides for enforcement, transitional provisions, revocations and amendments to other legislation. Regulation 32 imposes an obligation on food authorities to execute and enforce the Regulations.

Regulations 33 to 35 and Schedule 12 apply certain provisions of the Food Safety Act 1990 (1990 c. 16), with modifications. This includes the application (with modifications) of section 10(1), enabling an improvement notice to be served requiring compliance with specified provisions of the Regulations. The provisions, as applied, make the failure to comply with an improvement notice an offence.

Regulation 38 and Schedule 13 make amendments to the Private Water Supplies (Wales) Regulations 2010, the Food Safety (Sampling and Qualifications) (Wales) Regulations 2013 and the Food Information (Wales) Regulations 2014.

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 the Food Standards Agency at Food Standards Agency Wales, 11th Floor, Southgate House, Wood Street, Cardiff, CF10 1EW or from the Agency's website at www.food.gov.uk/wales.

2015 No. 1867 (W. 274)

FOOD, WALES

**The Natural Mineral Water, Spring
Water and Bottled Drinking Water
(Wales) Regulations 2015**

Made 4 November 2015

Laid before the National Assembly for Wales

6 November 2015

Coming into force 28 November 2015

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The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 6(4)(1), 16(1)(2), 17(1)(3), 26(1) and (3)(4), 31(5) and 48(1)(6) of the Food Safety Act 1990(7) and paragraph 1A of Schedule 2 to the European Communities Act 1972 (8)

The Welsh Ministers have had regard to the relevant advice given by the Food Standards Agency in accordance with section 48(4A) of the Food Safety Act 1990(9).

There has been consultation during the preparation and evaluation of the following Regulations, as required by Article 9 of Regulation (EC) No 178/2002 of the

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- (1) Section 6(4) was amended by section 31 of, and paragraph 6 of Schedule 9 to, the Deregulation and Contracting Out Act 1994 (c. 40), section 40(1) and (4) of, and paragraph 10(1) and (3) of Schedule 5 and Schedule 6 to, the Food Standards Act 1999 (c. 28) (“the 1999 Act”), and S.I. 2002/794.
 - (2) Section 16(1) was amended by section 40(1) of, and paragraphs 7 and 8 of Schedule 5 to, the 1999 Act.
 - (3) Section 17(1) was amended by section 40(1) of, and paragraphs 8 and 12(a) of Schedule 5 to, the 1999 Act, and S.I. 2011/1043.
 - (4) Section 26(3) was partially repealed by section 40(4) of, and Schedule 6 to, the 1999 Act.
 - (5) Section 31 was amended by section 40(1) of, and paragraph 8 of Schedule 5, to the 1999 Act.
 - (6) Section 48(1) was amended by section 40(1) of, and paragraph 8 of Schedule 5 to, the 1999 Act.
 - (7) 1990 c. 16. Functions formerly exercisable by “the Ministers”, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by S.I. 1999/672 as read with section 40(3) of the 1999 Act, and subsequently transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).
 - (8) 1972 c. 68. Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51).
 - (9) Section 48(4A) was inserted by section 40(1) of, and paragraph 21 of Schedule 5 to, the 1999 Act.

European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety⁽¹⁾.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972⁽²⁾ and it appears to the Welsh Ministers that it is expedient for the references in these Regulations to the Annexes to the EU Instruments listed in regulation 2(3) to be construed as references to those Annexes as amended from time to time.

PART 1

Introductory

Title, commencement and application

1.—(1) The title of these Regulations is the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015.

(2) These Regulations come into force on 28 November 2015 and apply in relation to Wales.

Interpretation

2.—(1) In these Regulations—

“the Act” (“*y Ddeddf*”) means the Food Safety Act 1990;

“advertisement” (“*hysbyseb*”) means a representation in any form in connection with a trade or business in order to promote the supply of goods, and “advertise” (“*hysbysebu*”) is to be construed accordingly;

“the Agency” (“*yr Asiantaeth*”) means the Food Standards Agency;

“bottle” (“*potel*”) where used as a noun, means a closed container of any kind in which water is sold for drinking by humans or from which water sold for drinking by humans is derived, and “bottle” (“*potelu*”), where used as a verb, and cognate expressions, are to be construed accordingly;

“Directive 98/83” (“*Cyfarwydddeb 98/83*”) means Council Directive 98/83/EC on the quality of water intended for human consumption⁽³⁾;

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- (1) OJ No L 31, 1.2.2002, p 1, last amended by Regulation (EU) No 652/2014 of the European Parliament and of the Council (OJ No L 189, 27.6.2014, p 1).
- (2) Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7).
- (3) OJ No L 330, 5.12.1998 p 32, last amended by Commission Directive (EU) 2015/1787 (OJ No L 260 7.10.2015, p 6).

“Directive 2003/40” (“*Cyfarwyddeb 2003/40*”) means Commission Directive 2003/40/EC establishing the list, concentration limits and labelling requirements for the constituents of natural mineral waters and the conditions for using ozone-enriched air for the treatment of natural mineral waters and spring waters(1);

“Directive 2009/54” (“*Cyfarwyddeb 2009/54*”) means Directive 2009/54/EC of the European Parliament and of the Council on the exploitation and marketing of natural mineral waters(2);

“Directive 2013/51” (“*Cyfarwyddeb 2013/51*”) means Council Directive 2013/51/EURATOM laying down requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption(3);

“drinking water” (“*dŵr yfed*”) means water which is intended for sale for drinking by humans other than—

- (a) natural mineral water, or
- (b) water intended to be labelled and sold as “spring water”, “*dŵr ffynnon*”, or its equivalent in any other language;

“effervescent natural mineral water” (“*dŵr mwynol naturiol eferw*”) means natural mineral water which, at source or after bottling, gives off carbon dioxide spontaneously and in a clearly visible manner under normal conditions of temperature and pressure;

“fluoride removal treatment” (“*triniaeth tynnu fflworid*”) means—

- (a) a treatment of natural mineral water or water intended to be bottled and labelled as “spring water”, “*dŵr ffynnon*”, or its equivalent in any other language, with activated alumina in order to remove fluoride which is authorised in accordance with regulations 9(1)(a)(iii) or 15(a)(iii) and Schedule 2, or
- (b) in the case of water brought into Wales from another part of the United Kingdom or from another EEA state, a treatment which complies with Articles 1 to 3 of Regulation 115/2010;

“label” (“*label*”) means any tag, brand, mark, pictorial or other descriptive matter, which is written, printed, stencilled, marked, embossed or impressed on, or attached to the bottle of water, and “labelled” (“*wedi’i labelu*”) and “labelling” (“*labelu*”) are to be construed accordingly;

(1) OJ No L 126, 22.5.2003, p 34.
(2) OJ No L 164, 26.6.2009, p 45.
(3) OJ No L 296, 7.11.2013, p 12.

“natural mineral water” (“*dŵr mwynol naturiol*”) means water which—

- (a) is microbiologically wholesome within the meaning of Article 5 of Directive 2009/54,
- (b) originates in an underground water table or deposit and emerges from a spring tapped at one or more natural or bore exits,
- (c) can be clearly distinguished from drinking water on account of the following characteristics having been preserved intact because of the underground origin of the water, which has been protected from all risk of pollution—
 - (i) its nature, which is characterised by its mineral content, trace elements or other constituents and, where appropriate, by certain effects, and
 - (ii) its original purity, and
- (d) is for the time being recognised pursuant to and in accordance with regulation 4;

“ozone-enriched air treatment” (“*triniaeth aer a gyfoethogir ag osôn*”) means—

- (a) a treatment of natural mineral water or water intended to be bottled and labelled as “spring water”, “*dŵr ffynnon*”, or its equivalent in any other language, with ozone-enriched air which is authorised in accordance with regulations 9(1)(a)(iv) or 15(a)(iv) and Schedule 3, or
- (b) in the case of water brought into Wales from other parts of the United Kingdom or from another EEA State, a treatment which complies with Article 5 of Directive 2003/40, as implemented in that part of the United Kingdom or that EEA State;

“parameter” (“*paramedr*”) means a property, element, organism or substance listed in the second column of any table in Part 2, Part 3 or Part 4 of Schedule 7;

“Regulation 115/2010” (“*Rheoliad 115/2010*”) means Commission Regulation (EU) No 115/2010 laying down the conditions for use of activated alumina for the removal of fluoride from natural mineral waters and spring waters⁽¹⁾; and

“sell” (“*gwerthu*”) includes possess for sale and offer, expose or advertise for sale, and “sale” (“*gwerthiant*”) is to be construed accordingly.

(2) Expressions used in these Regulations that are also used in Directive 98/83, Directive 2009/54, Regulation 115/2010 or Directive 2013/51 have the

(1) OJ No L 37, 10.2.2010, p 13.

same meaning in these Regulations as they have in those Directives or that Regulation.

(3) References to the Annexes to Directive 98/83, Directive 2003/40, Directive 2009/54, Regulation 115/2010 and Directive 2013/51 are references to those Annexes as amended from time to time.

(4) Any reference in these Regulations to the labelling of a bottle includes labelling done before any water is bottled and labelling after bottling.

Exemptions

3.—(1) These Regulations do not apply to any water which—

- (a) is a medicinal product within the meaning of Directive 2001/83 of the European Parliament and of the Council on the Community code relating to medicinal products for human use⁽¹⁾ ;
- (b) is a natural mineral water which is used at source for curative purposes in thermal or hydromineral establishments;
- (c) is not intended for sale for drinking by humans; or
- (d) is a natural mineral water intended for export to a country other than an EEA State.

(2) These Regulations do not apply to packaged ice portions intended for use in cooling food.

PART 2

Natural mineral water

Recognition as natural mineral water

4.—(1) Natural mineral water may only be sold as natural mineral water if it is recognised in accordance with paragraph (2).

(2) Water is recognised as natural mineral water where—

- (a) in the case of water extracted from the ground in Wales, a food authority grants recognition in accordance with Part 1 of Schedule 1;
- (b) in the case of water extracted from the ground in another part of the United Kingdom, the responsible authority of that part of the United Kingdom recognises it pursuant to Directive 2009/54;
- (c) in the case of water extracted from the ground in an EEA State other than the United

(1) OJ No L 311, 28.11.2001 p 67, last amended by Directive 2012/26/EU (OJ No L 299, 27.10.2012, p 1).

Kingdom, a responsible authority of that EEA State recognises it pursuant to Directive 2009/54;

- (d) in the case of water extracted from the ground in a country other than an EEA State—
 - (i) the Agency grants recognition in accordance with Part 2 of Schedule 1; or
 - (ii) it has an equivalent recognition, given by a responsible authority of—
 - (aa) another part of the United Kingdom; or
 - (bb) an EEA State other than the United Kingdom.

(3) The publication in the Official Journal of the European Union of the name of any water as a natural mineral water recognised in the European Union for the purposes of Directive 2009/54 is, except where recognition is granted in accordance with Schedule 1, conclusive evidence that water is recognised for the purposes of that Directive.

Declining to grant or withdrawing recognition

5.—(1) Where, in relation to any water that has been recognised under regulation 4(2)(a) or 4(2)(d)(i), it is found that—

- (a) by analysis in accordance with Part 3 of Schedule 1, the requirements of paragraph 10(c) of that Part are not met;
- (b) the requirements of Schedule 4 are not met; or
- (c) the content of the water is not in accordance with paragraph 1(c) of Part 1 or, as the case may be, paragraph 5(c) of Part 2 of Schedule 1,

the food authority or, as the case may be, the Agency may withdraw that recognition until such time as the requirements concerned are met.

(2) Where the food authority or, as the case may be, the Agency declines to grant or withdraws recognition of a water, the person who exploits or wishes to exploit the spring from which that water emerges or, if different, the person who owns the land on which that spring is situated, may within 6 months of being notified of the decision, appeal against it to a person appointed for the purpose by the Agency.

(3) The appointed person must consider the appeal and any representations made by the food authority or the Agency, as appropriate, and within 3 months report in writing with a recommended course of action to the Agency.

(4) The Agency must either—

- (a) confirm the decision together with the reasons; or

- (b) direct the food authority to grant or restore, or itself restore, as appropriate, recognition of the water in question.

(5) Where a food authority is directed by the Agency under paragraph (4)(b) to grant or restore recognition, it must immediately comply with that direction.

Application to withdraw recognition

6. A person who exploits a spring from which water is extracted which is recognised as natural mineral water in accordance with regulation 4(2)(a) or 4(2)(d)(i), may apply to the food authority or the Agency, as appropriate, to have that recognition withdrawn.

Notification of changes

7. A food authority must immediately notify the Agency if—

- (a) it grants, restores or withdraws recognition of a natural mineral water; or
- (b) it is notified of any change to the trade description of a natural mineral water or to the name of a spring from which natural mineral water has been extracted.

Exploitation of natural mineral water springs

8.—(1) No person may exploit a spring for the purpose of marketing the water from it as natural mineral water unless—

- (a) the water extracted from that spring is natural mineral water;
- (b) the food authority of the area in which the spring is located has given permission for that spring to be exploited; and
- (c) the requirements of Schedule 4 are met.

(2) Where it is found during exploitation that natural mineral water is polluted and that bottling of the water would contravene paragraphs 6, 7 or 8 of Schedule 4, no person may exploit the spring from which the water is extracted until the cause of the pollution is eradicated and the bottling of the water would comply with those paragraphs.

Treatments and additions for natural mineral water

9.—(1) No person may subject natural mineral water in its state at source to—

- (a) any treatment other than—
 - (i) the separation of its unstable elements, such as iron and sulphur compounds, by

- filtration or decanting, whether or not preceded by oxygenation, in so far as the treatment does not alter the composition of the water as regards the essential constituents which give it its properties;
 - (ii) the total or partial elimination of free carbon dioxide by exclusively physical methods;
 - (iii) a fluoride removal treatment which is authorised in accordance with Schedule 2; or
 - (iv) an ozone-enriched air oxidation treatment which is authorised in accordance with Schedule 3;
- (b) any addition other than the introduction or the re-introduction of carbon dioxide to produce effervescent natural mineral water; or
- (c) any disinfection treatment by whatever means, or, subject to paragraph (1)(b), the addition of bacteriostatic elements or any other treatment likely to change the viable colony count of the natural mineral water.

(2) Paragraph (1) does not prevent the use of natural mineral water in the manufacture of soft drinks.

Bottling of natural mineral water

10.—(1) No person may bottle natural mineral water—

- (a) unless the requirements of Schedule 4 are met;
- (b) in a container other than a container which is fitted with closures designed to avoid any possibility of adulteration or contamination; and
- (c) which, at the time of bottling, contains any substance listed in Part 1 of Schedule 5 at a level which exceeds the maximum limit specified in relation to that substance in that Schedule.

(2) The methods used for detection of the substances listed in Part 1 of Schedule 5 must conform to the performance characteristics for analysis specified in Part 2 of Schedule 5.

Labelling of natural mineral water

11.—(1) No person may bottle natural mineral water and label it with—

- (a) a trade description which includes the name of a locality, hamlet or other place, unless that trade description refers to a natural mineral water, the spring of which is exploited at the place indicated by that name, and is not

misleading as regards the place of exploitation of the spring;

- (b) a trade description which is different from the name of the spring or the place of its exploitation, unless the name of the spring or the place of exploitation is also labelled on the bottle, using letters at least one and a half times the height and width of the largest of the letters used for that trade description;
 - (c) any indication, designation, trade mark, brand name, picture or other sign, whether figurative or not, the use of which suggests a characteristic which the water does not possess, in particular as regards its origin, the date of authorisation to exploit the spring, the results of analyses or any similar references to guarantees of authenticity;
 - (d) any indication other than those specified in sub-paragraphs (f) and (g), attributing to the natural mineral water properties relating to the prevention, treatment or cure of a human illness;
 - (e) any indication listed in the first column of the Table in Schedule 6, except where the natural mineral water meets the criterion so listed and corresponds to the indication;
 - (f) the indication “may be diuretic”, “gall fod yn ddiwretig”, or “may be laxative”, “gall fod yn garthydd”, or the equivalent in any other language, unless the natural mineral water has been assessed as possessing the property attributed by the indication in accordance with physico-chemical analysis and pharmacological, physiological or clinical examination as appropriate; or
 - (g) the indication “stimulates digestion”, “mae'n ysgogi treuliad”, or “may facilitate the hepatobiliary functions”, “gall hyrwyddo'r swyddogaethau hepato-bustlog”, or the equivalent in any other language, unless the natural mineral water has been assessed as possessing the property attributed by the indication in accordance with the physico-chemical analysis and pharmacological, physiological and clinical examination.
- (2) No person may bottle natural mineral water and label it with a sales description other than—
- (a) “natural mineral water”; or
 - (b) in the case of an effervescent natural mineral water, one of the following, as appropriate—
 - (i) “naturally carbonated natural mineral water” to describe water whose content of carbon dioxide from the spring after decanting, if any, and bottling is the same

as at source, taking into account where appropriate, the reintroduction of a quantity of carbon dioxide from the same water table or deposit equivalent to that released in the course of those operations and subject to the usual technical tolerances;

- (ii) “natural mineral water fortified with gas from the spring” to describe water whose content of carbon dioxide from the same water table or the same deposit after decanting, if any, and bottling is greater than that established at source; or
 - (iii) “carbonated natural mineral water” to describe water to which has been added carbon dioxide of an origin other than the water table or deposit from which the water comes;
- (c) nothing in sub-paragraph (a) prevents a person from using the words “dŵr mwynol naturiol” in addition to the words “natural mineral water”;
 - (d) nothing in sub-paragraph (b) prevents the use of the words “dŵr mwynol naturiol wedi'i garboneiddio'n naturiol” in addition to “naturally carbonated natural mineral water”, “dŵr mwynol naturiol wedi'i gryfhau â nwy o'r ffynnon” in addition to “natural mineral water fortified with gas from the spring”, “dŵr mwynol naturiol wedi'i garboneiddio” in addition to “carbonated natural mineral water”; and
 - (e) nothing in sub-paragraphs (a), (b), (c) or (d) prevents the use of equivalent words in any other language in addition to Welsh and English.
- (3) No person may bottle natural mineral water unless the bottle is labelled with—
- (a) a statement of analytical composition indicating the characteristic constituents of the water;
 - (b) the name of the place where the spring is exploited and the name of the spring;
 - (c) where the water has undergone the treatment of total or partial elimination of free carbon dioxide by exclusively physical methods, the indication “fully de-carbonated” or “partially de-carbonated”, as appropriate;
 - (d) where the water has undergone an ozone-enriched air treatment, the words “water subjected to an authorised ozone-enriched air oxidation technique”, which must appear in proximity to the analytical composition of characteristic constituents;

- (e) where its fluoride concentration exceeds 1.5 mg/l—
 - (i) the words “contains more than 1.5 mg/l of fluoride; not suitable for regular consumption by infants and children under 7 years of age”, which must appear in immediate proximity to the trade name and in clearly visible characters; and
 - (ii) the actual fluoride content in relation to the physico-chemical composition, which must be included within the statement referred to in paragraph (3)(a);
- (f) nothing in sub-paragraph (c) prevents the use of the indication “cwbl ddad-garbonedig” in addition to “fully de-carbonated”, or “rhannol ddad-garbonedig” in addition to “partially de-carbonated”;
- (g) nothing in sub-paragraph (d) prevents the use of the words “dŵr wedi ei drin â thechneg awdurdodedig i’w ocsideiddio ag aer a gyfoethogir ag osôn” in addition to “water subjected to an authorised ozone-enriched air oxidation technique”;
- (h) nothing in sub-paragraph (e)(i) prevents the use of the words “yn cynnwys mwy na 1.5 mg/l o fflworid; nid yw’n addas i’w yfed yn rheolaidd gan blant bach a phlant o dan 7 oed” in addition to “contains more than 1.5 mg/l of fluoride; not suitable for regular consumption by infants and children under 7 years of age”; and
- (i) nothing in sub-paragraphs (c), (d), (e)(i), (f), (g) and (h) prevents the use of equivalent words in any other language in addition to Welsh and English.

Advertising of natural mineral water

12.—(1) Where, in accordance with regulation 11(1)(b) a bottle containing natural mineral water is required to be labelled with the name of the spring or the place of its exploitation—

- (a) the same requirement also applies to any written advertisement for that natural mineral water; and
- (b) in any other advertisement, at least equivalent prominence must be given to the place of exploitation or the name of the spring as is given to the trade description.

(2) No person may advertise natural mineral water in contravention of paragraph (1).

(3) No person may advertise natural mineral water under any indication, designation, trade mark, brand name, picture or other sign, whether figurative or not,

the use of which suggests a characteristic which the water does not possess, in particular as regards its origin, the date of authorisation to exploit it, the results of analyses or any similar references to guarantees of authenticity.

Sale of natural mineral water

13.—(1) No person may sell water which is bottled and labelled “natural mineral water”, “dŵr mwynol naturiol”, or its equivalent in any other language, unless that water is natural mineral water recognised in accordance with regulation 4(2).

(2) No person may sell bottled natural mineral water if it—

- (a) has been extracted from a spring which is exploited in contravention of regulation 8;
- (b) has been subjected to any treatment or addition in contravention of regulation 9;
- (c) is bottled in contravention of regulation 10;
- (d) is labelled in contravention of regulation 11; or
- (e) is advertised in contravention of regulation 12.

(3) No person may sell bottled natural mineral water—

- (a) which contains—
 - (i) parasites or pathogenic micro-organisms;
 - (ii) *Escherichia coli* or other coliforms and faecal streptococci in any 250ml sample examined;
 - (iii) sporulated sulphite-reducing anaerobes in any 50ml sample examined; or
 - (iv) *Pseudomonas aeruginosa* in any 250ml sample examined;
- (b) where the total colony count of the water at the source from which that water was taken does not comply with paragraph 7 of Schedule 4;
- (c) where the revivable total colony count of that water is in excess of that which would result from the normal increase in the bacterial count which it had at source; or
- (d) where that water contains any organoleptic defect.

(4) No person may sell natural mineral water from the same spring under more than one trade description.

PART 3

Water intended to be sold as “spring water” or
“dŵr ffynnon”

Exploitation of springs and bottling of water intended to be labelled and sold as “spring water” or “dŵr ffynnon”

14.—(1) No person may bottle water intended to be labelled and sold as “spring water”, “dŵr ffynnon”, or its equivalent in any other language, unless—

- (a) the water has been extracted from a spring and is bottled at source;
- (b) the water is intended for human consumption in its natural state;
- (c) the requirements of Schedule 4 are met; and
- (d) the water meets the requirements of Schedule 7.

(2) Where it is found during exploitation that water from a spring is polluted and that bottling of the water would contravene paragraphs 6, 7 or 8 of Schedule 4, no person may exploit the spring from which the water is extracted until the cause of the pollution is eradicated and the bottling of the water would comply with those paragraphs.

Treatments and additions for water intended to be labelled and sold as “spring water” or “dŵr ffynnon”

15. No person may subject water intended to be labelled and sold as “spring water”, “dŵr ffynnon”, or its equivalent in any other language, in its state at source to—

- (a) any treatment, other than—
 - (i) the separation of its unstable elements, such as iron and sulphur compounds, by filtration or decanting, whether or not preceded by oxygenation, in so far as the treatment does not alter the composition of the water as regards the essential constituents which give it its properties;
 - (ii) the total or partial elimination of free carbon dioxide by exclusively physical methods;
 - (iii) a fluoride removal treatment which is authorised in accordance with Schedule 2; or
 - (iv) an ozone-enriched air treatment which is authorised in accordance with Schedule 3; or
- (b) any addition other than the introduction or the re-introduction of carbon dioxide; or

- (c) any disinfection treatment by whatever means, or, subject to paragraph (1)(b), the addition of bacteriostatic elements, or any other treatment likely to change the viable colony count of the water.

Labelling of water as “spring water” or “dŵr ffynnon”

16.—(1) No person may label a bottle of water as “spring water”, “dŵr ffynnon”, or its equivalent in any other language, unless the water contained in it—

- (a) meets the requirements of regulation 14(1); and
- (b) if treated, has undergone a treatment or addition permitted under regulation 15.

(2) If a bottle of water is labelled as “spring water”, “dŵr ffynnon”, or its equivalent in any other language, no person may label that bottle with a trade description which—

- (a) includes the name of a locality, hamlet or other place, unless that trade description refers to water, the spring of which is exploited at the place indicated by that name, and is not misleading as regards the place of exploitation of the spring; or
- (b) is different from the name of the spring or the place of its exploitation unless the name of the spring or the place of exploitation is also labelled on the bottle, using letters at least one and a half times the height and width of the largest of the letters used for that trade description.

(3) No person may label a bottle of water as “spring water”, “dŵr ffynnon”, or its equivalent in any other language, unless the bottle is also labelled with—

- (a) the name of the place where the spring is exploited;
- (b) the name of the spring;
- (c) where the water has undergone an ozone-enriched air treatment, the words “water subjected to an authorised ozone-enriched air oxidation technique”, which must appear in proximity to the particulars referred to in sub-paragraphs (a) and (b);
- (d) nothing in sub-paragraph (c) prevents the use of the words “dŵr wedi ei drin â thechneg awdurdodedig i’w ocsideiddio ag aer a gyfoethogir ag osôn” in addition to “water subjected to an authorised ozone-enriched air oxidation technique”; and
- (e) nothing in sub-paragraphs (c) or (d) prevents the use of equivalent words in any other language in addition to Welsh and English.

Advertising of water as “spring water” or “dŵr ffynnon”

17.—(1) Where, in accordance with regulation 16(2)(b), a bottle of water is required to be labelled with the name of the spring or its place of exploitation in addition to a trade description—

- (a) the same requirement also applies to any written advertisement for that water; and
- (b) in any other advertisement, at least equivalent prominence must be given to the place of exploitation or the name of the spring as is given to the trade description.

(2) No person may advertise a bottle of water as “spring water”, “dŵr ffynnon”, or its equivalent in any other language, in contravention of paragraph (1).

Sale of water as “spring water” or “dŵr ffynnon”

18.—(1) No person may sell water which is bottled or labelled as “spring water”, “dŵr ffynnon”, or its equivalent in any other language, if it—

- (a) is bottled in contravention of regulation 14(1);
- (b) has been subjected to a treatment or addition in contravention of regulation 15;
- (c) is labelled in contravention of regulation 16;
or
- (d) is advertised in contravention of regulation 17.

(2) No person may sell water from the same spring as “spring water”, “dŵr ffynnon”, or its equivalent in any other language, under more than one trade description.

PART 4

Bottled drinking water

Bottling of drinking water

19. No person may bottle drinking water unless that water meets the requirements of Schedule 7.

Labelling of bottled drinking water

20. No person may bottle drinking water and label it with—

- (a) a designation, proprietary name, trade mark, brand name, illustration or other sign, whether emblematic or not, the use of which is liable to cause confusion of the drinking water with a natural mineral water, or

- (b) the description “mineral water”, “dŵr mwynol”, or its equivalent in any other language.

Advertising of bottled drinking water

21. No person may advertise bottled drinking water under—

- (a) a designation, proprietary name, trade mark, brand name, illustration or other sign, whether emblematic or not, the use of which is liable to cause confusion of the water with a natural mineral water, or
- (b) the description “mineral water”, “dŵr mwynol”, or its equivalent in any other language.

Sale of bottled drinking water

22. No person may sell bottled drinking water which is—

- (a) bottled in contravention of regulation 19;
- (b) labelled in contravention of regulation 20; or
- (c) advertised in contravention of regulation 21.

PART 5

Monitoring and sampling

CHAPTER 1

Natural mineral water

Monitoring of natural mineral water

23. In the case of natural mineral water, each food authority must carry out periodic checks to ensure that—

- (a) the composition, temperature and other essential characteristics of the water remain stable within the limits of natural fluctuation;
- (b) without prejudice to paragraph (a), the composition, temperature and other essential characteristics of the water are unaffected by any variations in the rate of flow;
- (c) the viable colony count at source (before the water is subjected to any treatment) is reasonably constant, taking into account the qualitative and quantitative composition of the water considered in the recognition of the water and whether it continues to satisfy the requirements of Part 1 of Schedule 1; and

- (d) the requirements of Schedule 4 are met in relation to the water.

CHAPTER 2

Water bottled and labelled as “spring water” or “dŵr ffynnon” and bottled drinking water

Monitoring of water bottled and labelled as “spring water” or “dŵr ffynnon” and bottled drinking water

24.—(1) In the case of water bottled and labelled as “spring water”, “dŵr ffynnon”, or its equivalent in any other language, and bottled drinking water, each food authority must carry out regular monitoring of the quality of the water to check that—

- (a) it satisfies the requirements of Directive 98/83 and in particular complies with the parametric values set in accordance with Schedule 7; and
- (b) where disinfection forms part of the preparation or distribution of bottled drinking water, the disinfection treatment applied is efficient and any contamination from disinfection by-products is kept as low as possible without compromising the disinfection.

(2) In order to comply with paragraph (1), each food authority must carry out—

- (a) monitoring in accordance with Schedule 8 to check whether the water complies with the relevant parametric values specified in Parts 2 and 3 of Schedule 7; and
- (b) monitoring in accordance with Schedule 9 to check whether the water complies with the relevant parametric values specified in Part 4 of Schedule 7.

(3) Each food authority must carry out additional monitoring, on a case-by-case basis, in relation to any property, element, substance or organism other than a parameter specified in Schedule 7, if the food authority has reason to suspect that it may be present in the water concerned in an amount or number which constitutes a potential danger to human health.

Samples and analysis

25.—(1) For the purpose of monitoring water bottled and labelled as “spring water”, “dŵr ffynnon”, or its equivalent in any other language, and bottled drinking water, each food authority must carry out—

- (a) sampling and analysis in accordance with Schedule 10 to check compliance with the parametric values specified in Parts 2 and 3 of Schedule 7; and

- (b) sampling and analysis in accordance with Schedule 11 to check compliance with the parametric value for indicative dose specified in Part 4 of Schedule 7.

(2) Each food authority must take samples at the point at which the water is bottled.

Remedial action

26.—(1) If a food authority determines that water bottled and labelled as “spring water”, “dŵr ffynnon”, or its equivalent in any other language, or bottled drinking water, does not comply with the parametric concentrations or values specified in Schedule 7, the food authority must—

- (a) immediately investigate the non-compliance in order to identify the cause;
- (b) assess whether the non-compliance poses a risk to human health which requires action;
- (c) require the business operator to take remedial action as soon as possible to restore the quality of the water where that is necessary to protect human health;
- (d) in respect of any parameter specified in Parts 2 and 3 of Schedule 7, notify the general public of the remedial action taken, unless the food authority considers that non-compliance with the parametric value is trivial; and
- (e) in respect of any parameter specified in Part 4 of Schedule 7, notify the general public of the risks and remedial action taken and advise the general public on any additional precautionary measures that may be needed for the protection of human health in respect of radioactive substances.

(2) If water bottled and labelled as “spring water”, “dŵr ffynnon”, or its equivalent in any other language, or bottled drinking water, constitutes a potential danger to human health, irrespective of whether it meets the relevant parametric values in Schedule 7, the food authority must—

- (a) prohibit or restrict the supply of that water in its area or take such other action as is necessary to protect human health; and
- (b) inform the general public promptly of that fact and provide advice where necessary.

(3) A food authority is not required to prohibit or restrict the supply of water under paragraph (2)(a) if it considers that such action will give rise to an unacceptable risk to human health.

CHAPTER 3

Treatments

Monitoring of certain treatments

27.—(1) Each food authority must carry out periodic checks on any fluoride removal treatment which it has authorised to ensure that the requirements of paragraph 3 of Schedule 2 continue to be satisfied.

(2) Each food authority must carry out periodic checks on any ozone-enriched air treatment which it has authorised to ensure that the requirements of paragraph 4 of Schedule 3 continue to be satisfied.

CHAPTER 4

Samples

General

28. The food authority must ensure that each sample is representative of the quality of the water concerned consumed throughout the year in which the sample is taken.

Delivery

29.—(1) An authorised officer of a food authority who has procured a sample under section 29 of the Act and is required to give part of that sample to the owner in accordance with regulation 7(3)(c) of the Food Safety (Sampling and Qualifications) (Wales) Regulations 2013⁽¹⁾ may deliver that sample—

- (a) directly to the owner or the owner's agent; or
- (b) by registered post or recorded delivery service.

(2) If, after reasonable enquiry, the authorised officer is unable to ascertain the name and address of the owner, the authorised officer may retain the sample.

(3) In this regulation, “owner” has the same meaning as in the Food Safety (Sampling and Qualifications) (Wales) Regulations 2013.

Notification

30.—(1) An authorised officer of a food authority who has procured a sample of water under section 29 of the Act for the purpose of analysis by a public analyst must serve notice in accordance with paragraph (2) if it appears that the water was exploited or bottled by a person (other than the owner) having a name and an address in the United Kingdom displayed on the bottle.

(1) S.I. 2013/479 (W. 55), amended by S.I. 2013/2493 (W. 242).

(2) The authorised officer must, within 3 days of procuring the sample, send to that person a notice informing them—

- (a) that the sample has been procured by the officer; and
- (b) where the sample was taken or, as the case may be, from who it was purchased.

(3) Paragraph (1) does not apply if the authorised officer decides not to have the sample analysed.

Analysis by the Government Chemist

31.—(1) Paragraphs (2) to (6) apply where a part of a sample procured under section 29 of the Act has been submitted for analysis and another part of the sample has been retained in accordance with regulation 7(3)(e) of the Food Safety (Sampling and Qualifications) (Wales) Regulations 2013 and—

- (a) an improvement notice has been served on a person under section 10(1) of the Act, as applied and modified by regulation 33.(1), as read with Schedule 12, for a contravention of a provision of these Regulations in connection with that sample;
- (b) an appeal against that improvement notice has been made by that person to the magistrates' court; and
- (c) the authorised officer intends to adduce as evidence the result of the analysis mentioned above.

(2) An authorised officer may send the retained part of the sample to the Government Chemist for analysis but must send it—

- (a) if requested by the magistrates' court; or
- (b) subject to paragraph (6), if requested by the recipient of the improvement notice.

(3) The Government Chemist must analyse, or direct a food analyst to analyse, the part of the sample sent under paragraph (2) and send to the authorised officer a Government Chemist's certificate of analysis.

(4) Any certificate sent by the Government Chemist must be signed by or on behalf of the Government Chemist, but the analysis may be carried out by a person under the direction of the person who signs the certificate.

(5) On receipt of the certificate the authorised officer must, as soon as is reasonably practicable, supply a copy of it to the magistrates' court and to the recipient of the improvement notice.

(6) Where a request is made under paragraph (2)(b), the authorised officer may request payment of a fee specified in writing from the recipient of the improvement notice to defray some or all of the

Government Chemist's charges for performing the functions under paragraph (3).

(7) Where a notice is served under paragraph (6) and the recipient of the improvement notice refuses to pay the fee specified in the notice, the authorised officer may refuse to comply with the request made under paragraph (2)(b).

PART 6

Enforcement and miscellaneous provisions

Enforcement

32. Each food authority must execute and enforce these Regulations in its area.

Application of the Act: improvement notices

33.—(1) The provisions of section 10 of the Act specified in column 1 of Table 1 of Schedule 12 apply for the purpose of these Regulations, with the modifications specified in column 2 of that table to enable an authorised officer of a food authority to serve an improvement notice on any person who is failing to comply with regulations 8 to 22 of these Regulations or a provision of Regulation 115/2010 mentioned in column 2 of Table 1 of Schedule 12.

(2) Paragraph (1) is without prejudice to the application of section 10 of the Act for purposes other than those specified in paragraph (1).

(3) An authorised officer of a food authority must not serve an improvement notice under section 10(1) of the Act, as applied and modified in accordance with paragraph (1), if—

- (a) the improvement notice would relate to water bottled and labelled before 28 November 2015; and
- (b) the matters constituting the alleged contravention would not have constituted an offence under the Regulations listed in regulation 37.

(4) If water bottled and labelled as “spring water”, “dŵr ffynnon”, or its equivalent in any other language, or bottled drinking water, does not meet the requirements of paragraph 1(c) of Part 1 of Schedule 7, an authorised officer of a food authority must not serve an improvement notice under section 10(1) of the Act, as applied and modified in accordance with paragraph (1), if—

- (a) the water in question was bottled or sold in an EEA State other than the United Kingdom; and

- (b) the water complied with the law in that EEA State when it was bottled or sold.

Application of the Act: powers of entry

34.—(1) The provisions of section 32 of the Act specified in column 1 of Table 2 of Schedule 12 apply for the purposes of enabling these Regulations, with the modifications specified in column 2 of that table, to enable an authorised officer of a food authority—

- (a) to exercise a power of entry to ascertain whether there is, or has been, any contravention of a provision of Regulation 115/2010 mentioned in column 2 of that table;
- (b) to exercise a power of entry to ascertain whether there is any evidence of any contravention of such provisions; and
- (c) where exercising a power of entry under the applied section 32 provisions, to exercise the associated powers in subsections (5) and (6) relating to records.

(2) Paragraph (1) is without prejudice to the application of section 32 of the Act for purposes other than those specified in paragraph (1).

Application of other provisions of the Act

35. The provisions of the Act specified in column 1 of Table 3 of Schedule 12 apply for the purposes of these Regulations, with the modifications specified in column 2 of that table.

Savings and transitional provisions

36.—(1) Any recognition of water as natural mineral water granted under the Natural Mineral Waters Regulations 1985, the Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999, or the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2007 and subsisting on the date that these Regulations come into force shall—

- (a) in the case of water extracted from the ground in Wales, be treated as if it were recognition granted by the food authority under regulation 4(2)(a); and
- (b) in the case of water extracted from the ground in a country other than an EEA State, be treated as if it were recognition granted by the Agency under regulation 4(2)(d)(i).

(2) The revocation of the Regulations listed in regulation 37 does not affect the validity of any authorisation, recognition or notification made or given by the Agency or the food authority as the relevant authority under those Regulations, and any

such authorisation, recognition or notification continues in effect.

(3) Where an application has been made under the Regulations listed in regulation 37 to a food authority for recognition of water as natural mineral water, the application is to be treated as if it had been made under Parts 1 or 2 of Schedule 1 to these Regulations.

Revocations

37. The following Regulations are revoked—

- (a) the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2007(1);
- (b) the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) (Amendment) Regulations 2009(2);
- (c) the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) (Amendment) Regulations 2010(3);
- (d) the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) (Amendment) Regulations 2011(4).

Amendments to other legislation

38. Schedule 13 (amendments to other legislation) has effect.

Vaughan Gething

Deputy Minister for Health, one of the Welsh Ministers

4 November 2015

(1) S.I. 2007/3165 (W. 276), amended by S.I. 2009/1897 (W. 170), 2010/748 (W.76), 2011/400 (W.57).
(2) S.I. 2009/1897.
(3) S.I. 2010/748.
(4) S.I. 2011/400.

SCHEDULE 1 Regulation 4(2)(a) and 4(2)(d)(i)

Recognition of natural mineral water

PART 1

Natural mineral water extracted from the ground in Wales

1. A person seeking to have water which is extracted from the ground in Wales recognised as natural mineral water for the purposes of Article 1 of Directive 2009/54 must apply in writing to the food authority within whose area the water is extracted, giving the following information—

- (a) the particulars specified in paragraph 10(a) of Part 3;
- (b) the information obtained as a result of the surveys and analyses required under paragraph 10(b) and (c), as read with paragraph 11, of Part 3; and
- (c) evidence to show that the water contains no substance listed in Part 1 of Schedule 5 at a level which exceeds the maximum limit specified in relation to that substance in that Schedule.

2. Where information on the anions, cations, non-ionised compounds and trace elements is required to be given pursuant to paragraph 1(b), the concentration of each anion, cation, non-ionised compound and trace element specified in the first column of the tables in Part 4 of this Schedule must be expressed in the unit of measurement specified in the second column of the tables in Part 4.

3. Where information required by paragraph 1 has been given, the food authority must assess it and must recognise the water to which the information relates as natural mineral water if it is satisfied that—

- (a) the water is natural mineral water which complies with paragraph 3 of Section I of Annex 1 to Directive 2009/54;
- (b) the characteristics of the water have been assessed in accordance with—
 - (i) the points numbered 1 to 4 in paragraph 2(a) of Section I of Annex 1 to Directive 2009/54;
 - (ii) the particulars and criteria listed in Part 3 of this Schedule, and
 - (iii) recognised scientific methods.

4. The food authority must, on recognising a natural mineral water in accordance with paragraph 3, publish an announcement of such recognition and the grounds on which it has been granted in the London Gazette.

PART 2

Natural mineral water extracted from the ground in a country other than an EEA State

5. A person seeking to have a water which is extracted from the ground in a country other than an EEA State recognised as a natural mineral water for the purposes of Article 1 of Directive 2009/54 must apply in writing to the Agency, giving the following information—

- (a) the particulars specified in paragraph 10(a) of Part 3;
- (b) the information obtained as a result of the surveys and analyses required under paragraph 10(b) and (c), as read with paragraph 11, of Part 3; and
- (c) evidence to show that the water contains no substance listed in Part 1 of Schedule 5 at a level which exceeds the maximum limit specified in relation to that substance in that Schedule.

6. Where information on the anions, cations, non-ionised compounds and trace elements is required to be given pursuant to paragraph 5(b), the concentration of each anion, cation, non-ionised compound and trace element specified in the first column of the tables in Part 4 of this Schedule must be expressed in the unit of measurement specified in the second column of the tables in Part 4.

7. The Agency must recognise such a water if the responsible authority of the country in which the water is extracted has certified that—

- (a) it is satisfied—
 - (i) that the requirements in paragraph 10(b) and (c) of Part 3 are established;
 - (ii) with the evidence given pursuant to paragraph 5(c); and
- (b) periodic checks are made to ascertain that—
 - (i) the water is natural mineral water which complies with paragraph 3 of Section I of Annex I to Directive 2009/54;
 - (ii) the characteristics of the water are assessed in accordance with—
 - (aa) points numbered 1 to 4 in paragraph 2(a) of Section I of Annex I to Directive 2009/54;

- (bb) the particulars and criteria listed in Part 3 of this Schedule; and
- (cc) recognised scientific methods; and
- (iii) the provisions of Schedule 4 are being applied by the person exploiting the spring.

8. Recognition of such water lapses after a period of five years unless the responsible authority of the country in which the water is extracted has renewed the certification required by paragraph 7.

9. The Agency must, on recognising water in accordance with this Part, publish an announcement of such recognition in the London Gazette, the Edinburgh Gazette and the Belfast Gazette.

PART 3

Requirements and criteria for recognition as a natural mineral water

10. A person seeking to have water recognised as natural mineral water in accordance with paragraph 1 of Part 1 or paragraph 5 of Part 2 of this Schedule, must carry out—

- (a) geological and hydrological surveys which include the following particulars—
 - (i) the exact site of the catchment with an indication of its altitude, on a map with a scale of not more than 1:1,000;
 - (ii) a detailed geological report on the origin and nature of the terrain;
 - (iii) the stratigraphy of the hydrogeological layer;
 - (iv) a description of the catchment operations; and
 - (v) the demarcation of the area or details of other measures protecting the spring against pollution;
- (b) physical, chemical and physico-chemical surveys which must establish—
 - (i) the rate of flow of the spring;
 - (ii) the temperature of the water at source and the ambient temperature;
 - (iii) the relationship between the nature of the terrain and the nature and type of minerals in the water;
 - (iv) the dry residues at 180°C and 260°C;
 - (v) the electrical conductivity or resistivity, with the measurement temperature being specified;

- (vi) the hydrogen ion concentration (pH);
 - (vii) the anions and cations;
 - (viii) the non-ionised elements;
 - (ix) the trace elements;
 - (x) the radio-actinological properties at source;
 - (xi) where appropriate, the relative isotope levels of the constituent elements of water, oxygen (^{16}O – ^{18}O) and hydrogen (protium, deuterium, tritium); and
 - (xii) the toxicity of certain constituent elements of the water, taking account of the limits laid down for each of them;
- (c) a microbiological analysis at source which must show—
- (i) the absence of parasites and pathogenic micro-organisms;
 - (ii) quantitative determination of the revivable colony count indicative of faecal contamination, demonstrating an absence of—
 - (aa) *Escherichia coli* and other coliforms in 250ml at 37°C and 44.5°C,
 - (bb) faecal streptococci in 250ml,
 - (cc) sporulated sulphite-reducing anaerobes in 50ml, and
 - (dd) *Pseudomonas aeruginosa* in 250ml; and
 - (iii) the revivable total colony count per ml of water—
 - (aa) at 20 to 22°C in 72 hours on agar-agar or an agar-gelatine mixture, and
 - (bb) at 37°C in 24 hours on agar-agar.

11.—(1) Subject to sub-paragraph (2), a person seeking to have water recognised as natural mineral water in accordance with paragraph 1 of Part 1 or paragraph 5 of Part 2 of this Schedule, must carry out clinical and pharmacological analyses in accordance with scientifically recognised methods which should be suited to the particular characteristics of the natural mineral water and its effect on the human body, such as diuresis, gastric and intestinal functions, and compensation for mineral deficiencies.

(2) Clinical analyses may, in appropriate cases, take the place of the pharmacological analyses referred to in sub-paragraph (1), provided that the consistency and concordance of a substantial number of clinical observations enable the same results to be obtained.

PART 4

Particulars of anions, cations, non-ionised compounds and trace elements

Table A

<i>Anions</i>	<i>Unit of measurement</i>
Borate BO_3^-	mg/l
Carbonate CO_3^{2-}	mg/l
Chloride Cl^-	mg/l
Fluoride F^-	mg/l
Hydrogen Carbonate HCO_3^-	mg/l
Nitrate NO_3^-	mg/l
Nitrite NO_2^-	mg/l
Phosphate PO_4^{3-}	mg/l
Silicate SiO_2^{2-}	mg/l
Sulphate SO_4^{2-}	mg/l
Sulphide S^{2-}	mg/l

Table B

<i>Cations</i>	<i>Unit of measurement</i>
Aluminium Al	mg/l
Ammonium NH_4^+	mg/l
Calcium Ca	mg/l
Magnesium Mg	mg/l
Potassium K	mg/l
Sodium Na	mg/l

Table C

<i>Non-ionised compounds</i>	<i>Unit of measurement</i>
Total organic carbon C	mg/l
Free carbon dioxide CO_2	mg/l
Silica SiO_2	mg/l

Table D

<i>Trace elements</i>	<i>Unit of measurement</i>
Barium Ba	mg/l
Bromine (total) Br	mg/l
Cobalt Co	mg/l
Copper Cu	mg/l
Iodine (total) I	mg/l
Iron Fe	mg/l
Lithium Li	mg/l
Manganese Mn	mg/l
Molybdenum Mo	mg/l
Strontium Sr	mg/l

SCHEDULE 2 Regulations 9(1)(a)(iii) and 15(a)(iii)**Fluoride removal treatment**

1. No person may carry out fluoride removal treatment on natural mineral water or water intended to be bottled and labelled as “spring water”, “dŵr ffynnon”, or its equivalent in any other language, unless that treatment is authorised by the food authority within whose area the water is extracted.

2. A person seeking authorisation to carry out fluoride removal treatment must—

- (a) apply in writing to the food authority within whose area the water is extracted;
- (b) permit representatives of that authority to examine the proposed method of treatment and place of treatment and take samples for analysis; and
- (c) provide such information in support of the application as is requested by the food authority.

3. The food authority must assess the application and any supporting information and must authorise the fluoride removal treatment if it is satisfied that—

- (a) Articles 1 to 3 of Regulation 115/2010 are complied with in relation to the treatment; and
- (b) the treatment does not have a disinfectant action.

4. Where the food authority decides to authorise a fluoride removal treatment pursuant to paragraph 3, it must inform the applicant in writing and state the date from which the authorisation for use of the treatment has effect.

5. Where the food authority decides to refuse to authorise a fluoride removal treatment pursuant to paragraph 3, it must inform the applicant in writing, stating its reasons.

6. Where a fluoride removal treatment has been authorised pursuant to paragraph 3, the person carrying out the treatment must, for the purpose of enabling the food authority to assess whether the conditions in paragraph 3 continue to be satisfied—

- (a) permit representatives of the authority to examine the method of treatment and place of treatment and take samples for analysis; and
- (b) provide such information related to the treatment as is requested by the food authority.

7. The food authority may withdraw authorisation of a fluoride removal treatment if it is satisfied that the conditions specified in paragraph 3 are no longer fulfilled, by giving the person operating the treatment a written notice stating the grounds for withdrawal.

8. Where the food authority notifies a person seeking authorisation of a fluoride removal treatment of the authority's refusal to authorise a treatment under paragraph 3, or notifies the person operating a treatment of its decision to withdraw authorisation under paragraph 7, that person may, within 6 months of being notified of the decision, apply to the Agency for a review.

9. The Agency, upon receiving an application under paragraph 8, must within 3 months from the date of that application—

- (a) make such inquiries into the matter as the Agency considers appropriate;
- (b) consider the results of those inquiries and any other relevant facts; and
- (c) either—
 - (i) confirm the decision; or
 - (ii) direct the food authority to grant or restore authorisation of a fluoride removal treatment as appropriate.

10. The food authority must immediately comply with a direction of the Agency under paragraph 9(c)(ii).

SCHEDULE 3 Regulations 9(1)(a)(iv) and 15(a)(iv)

Ozone-enriched air treatment

1. No person may carry out an ozone-enriched air treatment on natural mineral water or water intended to be bottled and labelled as “spring water”, “dŵr ffynnon”, or its equivalent in any other language, unless—

- (a) it is for the purpose of separating compounds of iron, manganese, sulphur and arsenic from water in which they occur naturally at source;
- (b) prior to treatment the requirements of paragraphs 3, 4 and 5 of Schedule 4 are satisfied; and
- (c) the treatment does not have a disinfectant action.

2. An ozone-enriched air treatment must not—

- (a) modify the physico-chemical composition of the water in terms of its characteristic constituents; or

- (b) leave residues in the water which could pose a risk to public health, or, in the case of the substances listed below, above the levels specified.

<i>Treatment residue</i>	<i>Maximum limit ug/l</i>
Dissolved ozone	50
Bromate	3
Bromoform	1

3. A person seeking authorisation to carry out an ozone-enriched air treatment must—

- (a) make an application in writing to the food authority in whose area the water is extracted;
- (b) permit representatives of that authority to examine the proposed method of treatment and place of treatment and take samples for analysis; and
- (c) provide such information in support of the application as is requested by the food authority.

4. The food authority must assess the application and any supporting information and must authorise the ozone-enriched air treatment if it is satisfied that—

- (a) the treatment process is justified by the composition of the water at source in terms of compounds of iron, manganese, sulphur and arsenic;
- (b) the person carrying out the treatment is taking all necessary measures to ensure that the treatment is effective and safe; and
- (c) the treatment otherwise complies with paragraphs 1 and 2.

5. Where the food authority decides to authorise an ozone-enriched air treatment pursuant to paragraph 4, it must inform the applicant in writing and state the date from which the authorisation for use of the treatment has effect.

6. Where the food authority refuses to authorise an ozone-enriched air treatment pursuant to paragraph 4, it must inform the applicant in writing, stating its reasons.

7. Where an ozone-enriched air treatment has been authorised pursuant to paragraph 4, the person carrying out the treatment must, for the purpose of enabling the food authority to assess whether the conditions in paragraph 4(a) and (b) continue to be satisfied—

- (a) permit representatives of the authority to examine the method of treatment and place of treatment and take samples for analysis; and

- (b) provide such information related to the treatment as is requested by the food authority.

8. The food authority may withdraw authorisation of an ozone-enriched air treatment if it is satisfied that the conditions specified in paragraph 4 are no longer fulfilled, by giving the person operating the treatment a written notice stating the grounds for withdrawal.

9. Where the food authority notifies a person seeking authorisation of an ozone-enriched air treatment of the authority's refusal to authorise a treatment under paragraph 4, or notifies the person operating a treatment of its decision to withdraw authorisation under paragraph 8, that person may, within 6 months of being notified of the decision, apply to the Agency for a review.

10. The Agency, upon receiving an application under paragraph 9, must within 3 months from the date of that application—

- (a) make such inquiries into the matter as the Agency considers appropriate;
- (b) consider the results of those inquiries and any other relevant facts; and
- (c) either—
 - (i) confirm the decision; or
 - (ii) direct the food authority to grant or restore authorisation of the ozone-enriched air treatment as appropriate.

11. The food authority must immediately comply with a direction of the Agency under paragraph 10(c)(ii).

SCHEDULE 4 Regulations 8, 10, 13 and 14

Exploitation and bottling requirements for natural mineral water and water intended to be labelled and sold as “spring water” or “dŵr ffynnon”

1. Equipment for exploiting the water must be so installed as to avoid any possibility of contamination and to preserve the properties corresponding to those ascribed to it which the water possesses at source.

2. The spring or outlet must be protected against the risks of pollution.

3. The catchment, pipes and reservoirs must be of materials suitable for water and so built as to prevent any chemical, physico-chemical or microbiological alteration of the water.

4. The conditions of exploitation, particularly the washing and bottling equipment, must meet hygiene requirements including, in particular, that containers must be so treated or manufactured as to avoid adverse effects on the microbiological and chemical characteristics of the water.

5.—(1) Subject to sub-paragraphs (2) and (3), water must not be transported in containers other than those authorised for distribution to the ultimate consumer.

(2) Natural mineral water may be transported from the spring to the bottling plant in a container which is not for distribution to the ultimate consumer if on or before 17 July 1980 water from that spring was so transported.

(3) Water intended to be labelled and sold as “spring water”, “dŵr ffynnon”, or its equivalent in any other language, may be transported from the spring to the bottling plant in a container which is not for distribution to the ultimate consumer if, on or before 13 December 1996, water from that spring was so transported.

6.—(1) The revivable total colony count of the water at source, determined according to sub-paragraph (2), must conform to the normal viable colony count of that water and must not show that the source of that water is contaminated.

(2) The colony count is that determined per ml of water—

- (a) at 20 to 22°C in 72 hours on agar-agar or an agar-gelatine mixture; and
- (b) at 37°C in 24 hours on agar-agar.

7.—(1) After bottling, the total colony count of the water at source may not exceed—

- (a) 100 per ml at 20 to 22°C in 72 hours on agar-agar or on agar-gelatine mixture; and
- (b) 20 per ml at 37°C in 24 hours on agar-agar.

(2) The total colony count of the water must be measured within a period of 12 hours following bottling, the water being maintained at 4°C +/- 1°C during that period.

8. Water must be free from—

- (a) parasites and pathogenic micro-organisms;
- (b) *Escherichia coli* and other coliforms and faecal streptococci in any 250ml sample examined;
- (c) sporulated sulphite-reducing anaerobes in any 50ml sample examined; and
- (d) *Pseudomonas aeruginosa* in any 250ml sample examined.

SCHEDULE 5 Regulation 10

Constituents of natural mineral water

PART 1

Maximum limits for constituents of natural mineral water

<i>Constituents⁽¹⁾</i>	<i>Maximum limits (mg/l)</i>
Antimony	0.0050
Arsenic	0.010 (as total)
Barium	1.0
Cadmium	0.003
Chromium	0.050
Copper	1.0
Cyanide	0.070
Fluoride	5.0
Lead	0.010
Manganese	0.50
Mercury	0.0010
Nickel	0.020
Nitrate	50
Nitrite	0.1
Selenium	0.010

(1) The constituents described above refer to constituents naturally present in the water at source and not to substances present as the result of contamination.

PART 2

Performance characteristics for analysing the constituents in Part 1

<i>Constituents⁽¹⁾</i>	<i>Accuracy parametric value⁽²⁾</i>	<i>of Precision value in parametric value⁽³⁾</i>	<i>of Detection limit of parametric value in % ⁽⁴⁾</i>
Antimony	25	25	25
Arsenic	10	10	10
Barium	25	25	25
Cadmium	10	10	10
Chromium	10	10	10
Copper	10	10	10
Cyanide ⁽⁵⁾	10	10	10
Fluoride	10	10	10
Lead	10	10	10
Manganese	10	10	10
Mercury	20	10	20
Nickel	10	10	10
Nitrate	10	10	10
Nitrite	10	10	10
Selenium	10	10	10

⁽¹⁾ The method of analysis used to measure the concentration of the constituents in Part 1 must be capable of measuring concentrations equal to the parametric value with the specified accuracy, precision and detection limits. Regardless of the sensitivity of the method of analysis, the result must be expressed to at least the same number of decimal places as the maximum limit set out in Part 1 for the particular constituent being analysed.

⁽²⁾ Accuracy is the systematic error and represents the difference between the average value of a large number of repeated measurements and the exact value.

⁽³⁾ Precision represents the random error and is expressed in general as the standard deviation (within a batch and between batches) of a sample of results from the average. Acceptable precision is equal to twice the relative standard deviation.

⁽⁴⁾ The detection limit is—

(a) three times the relative standard deviation within a batch of a natural sample containing a low concentration of the constituent; or

(b) five times the relative standard deviation within a batch of a virgin sample.

⁽⁵⁾ The method should make it possible to determine cyanide in all its forms.

SCHEDULE 6 Regulation 11(1)(e)

Labelling indications for natural mineral water

<i>Indication</i>	<i>Criteria</i>
Low mineral content	Mineral salt content, calculated as a fixed residue, not greater than 500 mg/l
Very low mineral content	Mineral salt content, calculated as a fixed residue, not greater than 50 mg/l
Rich in mineral salts	Mineral salt content, calculated as a fixed residue, greater than 1500 mg/l
Contains bicarbonate	Bicarbonate content greater than 600 mg/l
Contains sulphate	Sulphate content greater than 200 mg/l
Contains chloride	Chloride content greater than 200 mg/l
Contains calcium	Calcium content greater than 150 mg/l
Contains magnesium	Magnesium content greater than 50 mg/l
Contains fluoride	Fluoride content greater than 1 mg/l
Contains iron	Bivalent iron content greater than 1 mg/l
Acidic	Free carbon dioxide content greater than 250 mg/l
Contains sodium	Sodium content greater than 200 mg/l
Suitable for a low-sodium diet	Sodium content less than 20 mg/l

SCHEDULE 7 Regulations 14(1)(d) and 19

Requirements for water bottled and labelled as “spring water” or “dŵr ffynnon” and bottled drinking water including prescribed concentrations or values of parameters

PART 1

Requirements for water bottled and labelled as “spring water” or “dŵr ffynnon” and bottled drinking water

1. Water satisfies the requirements of this Schedule if—

- (a) the water does not contain any micro-organism (other than a parameter) or parasite, or any property, element or substance (other than a parameter) at a concentration or value which would constitute a potential danger to human health;
- (b) the water does not contain any substance (whether or not a parameter) at a concentration or value which, in conjunction with any other property, element, substance or organism it contains (whether or not a parameter), would constitute a potential danger to human health; and
- (c) the water does not contain concentrations or values of any of the parameters listed in the tables in Part 2, Part 3 and Part 4 of this Schedule in excess of the prescribed concentrations or values.

2. The concentrations or values of the parameters listed in the tables in Part 2, Part 3 and Part 4 of this Schedule must be read in conjunction with the notes to those tables.

PART 2

Parametric values for microbiological and chemical parameters

Table A: Microbiological Parameters

<i>Item</i>	<i>Parameter</i>	<i>Units of Measurement</i>	<i>Maximum Concentration or Value</i>
1.	<i>Escherichia coli</i> (<i>E coli</i>)	number/250 ml	0/250 ml
2.	Enterococci	number/250 ml	0/250 ml
3.	<i>Pseudomonas aeruginosa</i>	number/250ml	0/250 ml
4.	Colony count 22°C	number/ml	100/ml ⁽¹⁾⁽²⁾
5.	Colony count 37°C	number/ml	20/ml ⁽¹⁾⁽³⁾

⁽¹⁾ The total viable colony count should be measured within 12 hours of bottling, with the sample water being kept at a constant temperature during that 12 hour period. Any increase in the total viable colony count of the water between 12 hours after bottling and the time of sale should not be greater than that normally expected.

⁽²⁾ In 72 hours on agar-agar or an agar-gelatine mixture.

⁽³⁾ In 24 hours on agar-agar.

Table B: Chemical Parameters

<i>Item</i>	<i>Parameter</i>	<i>Units of Measurement</i>	<i>Maximum Concentration or Value</i>
1.	Acrylamide	µg/l	0.10 ⁽¹⁾
2.	Antimony	µg Sb/l	5
3.	Arsenic	µg As/l	10
4.	Benzene	µg/l	1.0
5.	Benzo (a) pyrene	µg/l	0.010
6.	Boron	mg/l	1.0
7.	Bromate	µg/l BrO ₃ /l	10
8.	Cadmium	µg Cd/l	5
9.	Chromium	µg Cr/l	50
10.	Copper	mg Cu/l	2
11.	Cyanide	µg CN/l	50
12.	1,2-dichloroethane	µg/l	3.0
13.	Epichlorohydrin	µg/l	0.10 ⁽¹⁾
14.	Fluoride	mg F/l	1.5
15.	Lead	µg Pb/l	10
16.	Mercury	µg Hg/l	1
17.	Nickel	µg Ni/l	20
18.	Nitrate	mg NO ₃ /l	50 ⁽²⁾
19.	Nitrite	mg NO ₂ /l	0.5 ⁽²⁾
20.	Pesticides and related products:		
	- individual substances	µg/l	0.10 ⁽³⁾⁽⁴⁾
	- total substances	µg/l	0.50 ⁽³⁾⁽⁵⁾
21.	Polycyclic aromatic hydrocarbons	µg/l	0.1 sum of concentrations of specified compounds ⁽⁶⁾
22.	Selenium	µg Se/l	10
23.	Tetrachloroethene and Trichloroethene	µg/l	10 ⁽⁷⁾

24.	Trichloromethane, Dichlorobromomethane, Dibromochloromethane and Tribromomethane	µg/l	100 ⁽⁷⁾
25.	Vinyl chloride	µg/l	0.50 ⁽¹⁾

⁽¹⁾ The parametric value refers to the residual monomer concentration in the water as calculated according to specifications of the maximum release from the corresponding polymer in contact with the water.

⁽²⁾ The concentration (mg/l) of nitrate divided by 50 added to the concentration (mg/l) of nitrite divided by 3 must not exceed 1.

⁽³⁾ "Pesticides" means:

- organic insecticides,
- organic herbicides,
- organic fungicides,
- organic nematocides,
- organic acaricides,
- organic algicides,
- organic rodenticides,
- organic slimicides, and
- related products (*inter alia*, growth regulators) and their relevant metabolites, degradation and reaction products.

Only those pesticides which are likely to be present in a given water need to be monitored.

⁽⁴⁾ The maximum concentration applies to each individual pesticide. In the case of aldrin, dieldrin, heptachlor and heptachlor epoxide the maximum concentration is 0.030 µg/l.

⁽⁵⁾ The maximum concentration for "total substances" refers to the sum of the concentrations of all individual pesticides detected and quantified in the monitoring procedure.

⁽⁶⁾ The specified compounds are benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(ghi)perylene, indeno(1,2,3-cd)pyrene.

⁽⁷⁾ The maximum concentration specified applies to the sum of the concentrations of the specified parameters.

PART 3

Parametric values for indicator parameters

Table C: Indicator Parameters

<i>Item</i>	<i>Parameter</i>	<i>Units of Measurement</i>	<i>Maximum Concentration or Value</i>
1.	Aluminium	µg/l	200
2.	Ammonium	mg/l	0.50
3.	Chloride	mg/l	250 ⁽¹⁾
4.	<i>Clostridium perfringens</i> (including spores)	number/100ml	0 ⁽²⁾
5.	Colour	Mg/l Pt/Co scale	20
6.	Conductivity	µS cm ⁻¹ at 20°C	2500 ⁽¹⁾
7.	Hydrogen ion concentration	pH units	4.5 (minimum) 9.5 (maximum) ⁽¹⁾
8.	Iron	µg/l	200
9.	Manganese	µg/l	50
10.	Odour	Dilution number	3 at 25°C
11.	Oxidisability	mg/l O ₂	5 ⁽³⁾
12.	Sulphate	mg/l	250 ⁽¹⁾

13.	Sodium	mg/l	200
14.	Taste	Dilution number	3 at 25°C
15.	Colony Count 22°C	No abnormal change	
16.	Coliform bacteria	number/250ml	0
17.	Total Organic Carbon	No abnormal change	(4)
18.	Turbidity	Acceptable to consumers and no abnormal change	

(1) The water must not be aggressive.

(2) Necessary only if the water originates from or is influenced by surface water.

(3) This parameter need not be measured if the parameter Total Organic Carbon is analysed.

(4) This parameter need not be measured for supplies of less than 10,000m³ a day.

PART 4

Parametric values for radon, tritium and indicative dose (ID)

Table D:

<i>Item</i>	<i>Parameter</i>	<i>Unit of Measurement</i>	<i>Maximum Concentration or Value</i>
1.	Radon	Bq/l	100 ⁽¹⁾
2.	Tritium	Bq/l	100 ⁽²⁾
3.	Indicative Dose	mSv	0.10

(1) Remedial action is deemed to be justified on radiological protection grounds, without further consideration, where radon concentrations exceed 1000 Bq/l.

(2) Elevated levels of tritium may indicate the presence of other artificial radionuclides. If the tritium concentration exceeds its parametric value, an analysis of the presence of other artificial radionuclides is required.

SCHEDULE 8 Regulation 24(2)(a)

Monitoring for parameters other than radioactive substances in water bottled and labelled as “spring water” or “dŵr ffynnon” and bottled drinking water

PART 1

Check monitoring

Sampling

1. Each food authority must undertake check monitoring in accordance with this Part.

2. Check monitoring means sampling water bottled and labelled as “spring water”, “dŵr ffynnon”, or its equivalent in any other language, and bottled drinking water, for each parameter listed in Table 1 in the circumstances listed in that table in order—

- (a) to determine whether the water complies with the relevant parametric concentrations or values specified in Parts 2 and 3 of Schedule 7;
- (b) to provide information on the organoleptic and microbiological quality of the water; and
- (c) to establish the effectiveness of the treatment of the water, including disinfection.

Table 1

<i>Parameter</i>	<i>Circumstances</i>
Aluminium	Necessary only when used as flocculant.
Ammonium	In all supplies
Colour	In all supplies
Conductivity	In all supplies
<i>Clostridium perfringens</i> (including spores)	Necessary only if the water originates from or is influenced by surface water.
<i>Escherichia coli</i> (<i>E. Coli</i>)	In all supplies
Hydrogen ion concentration	In all supplies
Iron	Necessary only when used as flocculant.
Nitrite	Necessary only when chloramination is used as a disinfectant.
Odour	In all supplies

<i>Pseudomonas aeruginosa</i>	In all supplies
Taste	In all supplies
Colony count 22°C and 37°C	In all supplies
Coliform bacteria	In all supplies
Turbidity	In all supplies

Frequency of sampling

3. Sampling must be carried out at the frequencies specified in Table 2.

Table 2

<i>Volume of water produced for offering for sale in bottles or containers each day (m³)⁽¹⁾</i>	<i>Number of samples per year</i>
≤ 10	1
> 10 ≤ 60	12
> 60	1 for each 5m ³ and part thereof of the total volume

⁽¹⁾ The volumes are calculated as averages taken over a calendar year.

PART 2

Audit monitoring

Sampling

4. Each food authority must undertake audit monitoring in accordance with this Part.

5. Audit monitoring means sampling water bottled and labelled as “spring water”, “dŵr ffynnon”, or its equivalent in any other language, and drinking water in a bottle, for each parameter specified in Parts 2 and 3 of Schedule 7 (other than parameters already being sampled under check monitoring) in order to—

- (a) provide the information necessary to determine whether the water complies with the relevant parametric concentrations or values specified in Parts 2 and 3 of Schedule 7; and
- (b) check that, if disinfection is used in the case of bottled drinking water, disinfection by-products are kept as low as possible without compromising disinfection.

Frequency of sampling

6. Sampling must be carried out at the frequencies specified in Table 3.

Table 3

<i>Volume of water produced for offering for sale in bottles or containers each day (m³)⁽¹⁾</i>	<i>Number of samples per year</i>
≤ 10	1
> 10 ≤ 60	1
> 60	1 for each 100 m ³ and part thereof of the total volume

⁽¹⁾ The volumes are calculated as averages taken over a calendar year.

SCHEDULE 9 Regulation 24(2)(b)

Monitoring for radioactive substances in water bottled and labelled as “spring water” or “dŵr ffynnon” and bottled drinking water

PART 1

General

1. Each food authority must monitor water bottled and labelled as “spring water”, “dŵr ffynnon”, or its equivalent in any other language, and bottled drinking water, for radon, tritium and indicative dose in accordance with this Part.

Radon

2. Each food authority must undertake representative surveys to determine the scale and nature of likely exposure to radon originating from different types of ground water sources and wells in different geological areas.

3. The representative surveys must be designed in such a way that underlying parameters, including the geology and hydrology of the area, radioactivity of rock or soil and well type, can be identified and used to direct further action to areas of likely high exposure.

4. Each food authority must monitor for radon if there is reason to believe, on the basis of the results of the representative surveys or other reliable information, that the parametric value for radon specified in Part 4 of Schedule 7 might be exceeded.

Tritium

5. Each food authority must monitor for tritium if an anthropogenic source of tritium or other artificial radionuclide is present within the catchment area and it cannot be shown on the basis of other surveillance programmes or investigations that the level of tritium is below the parametric value specified in Part 4 of Schedule 7.

6. Sampling must be carried out at the frequencies specified in the Table in Part 2 of this Schedule.

7. If the concentration of tritium exceeds the parametric value specified in Part 4 of Schedule 7, the food authority must investigate the presence of other artificial radionuclides.

Indicative dose

8. Each food authority must monitor for indicative dose if a source of artificial or elevated natural radioactivity is present and it cannot be shown on the basis of representative monitoring programmes or other investigations that the level of indicative dose is below the parametric value specified in Part 4 of Schedule 7.

9. Sampling must be carried out at the frequencies specified in the Table in Part 2 of this Schedule.

10. The food authority may use various reliable screening strategies to monitor for the parametric indicator value for indicative dose.

11. If the food authority screens for an individual radionuclide or certain radionuclides and—

(a) one of the activity concentrations exceeds 20% of the corresponding derived value specified in Table 1 in Part 2 of Schedule 11; or

(b) where applicable, the concentration of tritium exceeds the parametric value specified in Part 4 of Schedule 7,

the food authority must investigate the presence of other radionuclides, as determined by the food authority, taking into account all relevant information about likely sources of radioactivity.

12.—(1) If the food authority screens for gross alpha activity and gross beta activity and—

(a) the screening level for gross alpha activity exceeds 0.1 Bq/l; or

(b) the screening level for gross beta activity exceeds 1.0 Bq/l,

the food authority must investigate the presence of other radionuclides as determined

by the food authority, taking into account all relevant information about likely sources of radioactivity.

(2) The food authority may set alternative screening levels for gross alpha activity and gross beta activity if it can demonstrate that the alternative levels are in compliance with an indicative dose of 0.1mSv.

(3) If elevated levels of tritium are detected which indicate the presence of other artificial radionuclides, tritium, gross alpha activity and gross beta activity must be measured in the same sample.

(4) If the gross alpha activity and gross beta activity are less than 0.1 Bq/l and 1.0 Bq/l respectively, the food authority may assume that the indicative dose is less than the parametric value of 0.1 mSv in which case further radiological investigation is not required unless it is known from other sources of information that specific radionuclides are present in the water that are liable to cause an indicative dose in excess of 0.1 mSv.

Exemption from monitoring

13. A food authority is not required to monitor water bottled and labelled as “spring water”, “dŵr ffynnon”, or its equivalent in any other language, or bottled drinking water, for radon, tritium or indicative dose if—

- (a) it is satisfied on the basis of representative surveys, monitoring data or other reliable information that, for a minimum period of 5 years, the parameter in question will remain below the respective parametric value specified in Part 4 of Schedule 7; and
- (b) it notifies the Agency of that decision and provides the Agency with a copy of the representative surveys, monitoring data or other reliable information referred to in subparagraph (a).

Treatment of bottled drinking water

14. Where bottled drinking water has been treated to reduce the level of radionuclides, the food authority must carry out monitoring at the frequencies indicated in the Table in Part 2 to ensure the continued efficacy of that treatment.

Averaging

15. If a parametric value specified in Part 4 of Schedule 7 is exceeded in a sample of water, the food authority must take further samples as appropriate, having regard to guidance issued by the Agency, to ensure that the measured values are representative of an average activity concentration for a full year.

PART 2

Minimum sampling and analysis frequencies

<i>Volume of water produced each day within a supply zone ⁽¹⁾⁽²⁾</i> <i>m³</i>	<i>Number of samples per year ⁽³⁾</i>
volume ≤ 100	1
100 < volume ≤ 100	1
1,000 < volume ≤ 10,000	1 +1 for each 3,300m ³ /d and part thereof of the total volume
10, 000 < volume ≤ 100,000	3 +1 for each 10,000 m ³ /d and part thereof of the total volume
volume > 100,000	10 +1 for each 25,000 m ³ /d and part thereof of the total volume

⁽¹⁾ A supply zone is a geographically defined area within which water intended for human consumption comes from one or more sources and within which water quality may be considered as being approximately uniform.

⁽²⁾ The volumes are calculated as averages taken over a calendar year.

⁽³⁾ As far as possible, the number of samples should be distributed equally in time and location.

SCHEDULE 10 Regulation 25(1)(a)

Sampling and analysis for parameters other than radioactive substances in water bottled and labelled as “spring water” or “dŵr ffynnon” and bottled drinking water

PART 1

General

Analysis of samples

1.—(1) The food authority must ensure that each sample is analysed in accordance with Annex III to Directive 98/83 and this Schedule.

(2) For each parameter specified in the first column of Table 1 in Part 2 of this Schedule the method of analysis is specified in the second column of that table.

(3) For each parameter specified in the first column of Table 2 in Part 2 of this Schedule the method of analysis is one that is capable of—

- (a) measuring concentrations and values with the trueness and precision specified in the second and third columns of that table; and
- (b) detecting the parameter at the limit of detection specified in the fourth column of that table.

(4) For hydrogen ion, the method of analysis must be capable of measuring a value with a trueness of 0.2pH unit and a precision of 0.2pH unit.

(5) The method of analysis used for odour and taste parameters must be capable of measuring values equal to the parametric value with a precision of 1 dilution number at 25°C.

(6) For the purposes of this paragraph—

“limit of detection” (“*terfyn canfod*”) is—

- (a) three times the relative within-batch standard deviation of a natural sample containing a low concentration of the parameter; or
- (b) five times the relative within-batch standard deviation of a blank sample;

“precision” (“*trachywiredd*”) (the random error) is twice the standard deviation (within a batch and between batches) of the spread of results about the mean;

“trueness” (“*cywirdeb*”) (the systematic error) is the difference between the mean value of the large

number of repeated measurements and the true value.

Authorisation of alternative methods of analysis

2.—(1) The Agency may authorise a method different from that set out in Part 2 of this Schedule if satisfied that it is at least as reliable.

(2) An authorisation may be time-limited and may be revoked at any time.

Sampling and analysis by persons other than food authorities

3.—(1) A food authority may enter into an arrangement for any person to take and analyse samples on its behalf.

(2) A food authority must not enter into an arrangement under sub-paragraph (1) unless—

- (a) it is satisfied that the task will be carried out promptly by a person competent to perform it; and
- (b) it has made arrangements that ensure that any breach of these Regulations is communicated to it immediately, and any other result is communicated to it within 28 days.

PART 2

Methods of analysis and performance characteristics

Table 1

Prescribed methods of analysis

<i>Parameter</i>	<i>Method</i>
<i>Clostridium perfringens</i> (including spores)	Membrane filtration followed by anaerobic incubation of the membrane on m-CP agar ⁽¹⁾ at 44 ±1°C for 21± 3 hours. Count opaque yellow colonies that turn pink or red after exposure to ammonium hydroxide vapours for 20 to 30 seconds.
Coliform bacteria	BS-EN ISO 9308-1
Colony count 22°C – enumeration of culturable microorganisms	BS-EN ISO 6222
Colony count 37°C – enumeration of culturable microorganisms	BS-EN ISO 6222
Enterococci	BS-EN ISO 7899-2
<i>Escherichia coli</i> (<i>E. Coli</i>)	BS-EN ISO 9308-1
<i>Pseudomonas aeruginosa</i>	BS-EN ISO 12780

⁽¹⁾ Use the following method to make m-CP agar:

Make a basal medium consisting of—

Tryptose	30.0g
Yeast extract	20.0g
Sucrose	5.0g
L-cysteine hydrochloride	1.0g
MgSO ₄ .7H ₂ O	0.1g
Bromocresol purple	40.0mg
Agar	15.0g
Water	1,000.0ml

Dissolve the ingredients of basal medium, adjust pH to 7.6 and autoclave at 121°C for 15 minutes. Allow the medium to cool.

Dissolve—

D-cycloserine	400.0mg
Polymyxine-B sulphate	25.0mg
Indoxl-β-D-glucoside	60.0mg

into 8ml sterile water and add it to the medium.

Add to the medium—

Filter-sterilised 0.5% phenolphthalein diphosphate solution	20.0ml
Filter-sterilised 4.5% FeCl ₃ .6H ₂ O	2.0ml

Table 2

Prescribed performance characteristics for methods of analysis

<i>Parameters</i>	<i>Trueness</i>	<i>% of</i>	<i>Precision</i>	<i>% of</i>	<i>Limit of detection</i>	<i>%</i>
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	<i>prescribed concentration or value or specification</i>	<i>prescribed concentration or value or specification</i>	<i>of prescribed concentration or value or specification</i>
Aluminium	10	10	10
Ammonium	10	10	10
Antimony	25	25	25
Arsenic	10	10	10
Benzene	25	25	25
Benzo(a)pyrene	25	25	25
Boron	10	10	10
Bromate	25	25	25
Cadmium	10	10	10
Chloride	10	10	10
Chromium	10	10	10
Conductivity	10	10	10
Copper	10	10	10
Cyanide ⁽¹⁾	10	10	10
1,2-dichloroethane	25	25	10
Fluoride	10	10	10
Iron	10	10	10
Lead	10	10	10
Manganese	10	10	10
Mercury	20	10	20
Nickel	10	10	10
Nitrate	10	10	10
Nitrite	10	10	10
Oxidisability ⁽²⁾	25	25	10
Pesticides and related products ⁽³⁾	25	25	25
Polycyclic aromatic hydrocarbons ⁽⁴⁾	25	25	25
Selenium	10	10	10
Sodium	10	10	10
Sulphate	10	10	10
Tetrachloroethene ⁽⁵⁾	25	25	10
Trichloroethene ⁽⁵⁾	25	25	10
Trihalomethanes ⁽⁴⁾	25	25	10

⁽¹⁾ The method of analysis should determine total cyanide in all forms.

⁽²⁾ Oxidation should be carried out for 10 minutes at 100°C under acid conditions using permanganate.

⁽³⁾ The performance characteristics apply to each individual pesticide and will depend on the pesticide concerned.

⁽⁴⁾ The performance characteristics apply to the individual substances specified at 25% of the parametric value in Table B in Part 2, Schedule 7.

⁽⁵⁾ The performance characteristics apply to the individual substance specified at 50% of the parametric value in Table B in Part 2, Schedule 7.

SCHEDULE 11 Regulation 25(1)(b)

Sampling and analysis for indicative dose in water bottled and labelled as “spring water” or “dŵr ffynnon” and bottled drinking water

PART 1

General

Analysis of samples

1. The food authority must ensure that each sample is analysed for indicative dose in accordance with Annex III to Directive 2013/51 and this Part.

2. For each parameter and radionuclide specified in the first column of Table 1 in Part 2 of this Schedule, the derived concentration and dose coefficient for calculating the indicative dose is specified in the second column of that table.

3. For each parameter specified in the first column of Table 2 in Part 2 of this Schedule, the method of analysis must be one that is capable of detecting the parameter at the limit of detection specified in the second column of that table.

4. If the following formula is satisfied, the indicative dose is considered to be less than the parametric value of 0.1 mSv and no further investigation is required—

$$\sum_{i=1}^n \frac{C_i(obs)}{C_i(der)} \leq 1$$

where

$C_i(obs)$ = observed concentration radionuclide i

$C_i(der)$ = derived concentration of radionuclide i

n = number of radionuclides detected

PART 2

Methods of analysis and performance characteristics

Table 1

Derived concentrations for radioactivity

<i>Origin</i>	<i>Nuclide</i>	<i>Derived concentration</i>
Natural	U-238 ⁽¹⁾	3.0 Bq/l
	U-234 ⁽¹⁾	2.8 Bq/l
	Ra-226	0.5 Bq/l
	Ra-228	0.2 Bq/l
	Pb-210	0.2 Bq/l
	Po-210	0.1 Bq/l
Artificial	C-14	240 Bq/l
	Sr-90	4.9 Bq/l

Pu-239/Pu-240	0.6 Bq/l
Am-241	0.7 Bq/l
Co-60	40 Bq/l
Cs-134	7.2 Bq/l
Cs-137	11 Bq/l
I-131	6.2 Bq/l

⁽¹⁾ This table allows only for the radiological properties of uranium, not for its chemical toxicity.

Table 2

Performance characteristics and methods of analysis

<i>Parameters and radionuclides</i>	<i>Limit of detection ⁽¹⁾⁽²⁾</i>
Tritium	10 Bq/l ⁽³⁾
Radon	10 Bq/l ⁽³⁾
gross alpha activity	0.04 Bq/l ⁽⁴⁾
gross beta activity	0.4 Bq/l ⁽⁴⁾
U-238	0.02 Bq/l
U-234	0.02 Bq/l
Ra-226	0.04 Bq/l
Ra-228	0.02 Bq/l ⁽⁵⁾
Pb-210	0.02 Bq/l
Po-210	0.01 Bq/l
C-14	20 Bq/l
Sr-90	0.4 Bq/l
Pu-239/Pu-240	0.04 Bq/l
Am-241	0.06 Bq/l
Co-60	0.5 Bq/l
Cs-134	0.5 Bq/l
Cs-137	0.5 Bq/l
I-131	0.5 Bq/l

⁽¹⁾ The limit of detection is calculated according to the ISO standard 11929: Determination of the characteristic limits (decision threshold, detection limit and limits of the confidence interval) for measurements of ionising radiation – Fundamentals and application, with probabilities of errors of 1st and 2nd kind of 0.05 each.

⁽²⁾ Measurement uncertainties are calculated and reported as complete standard uncertainties, or as expanded standard uncertainties with an expansion factor of 1.96, according to the ISO Guide for the Expression of Uncertainty in Measurement.

⁽³⁾ The limit of detection for tritium and for radon is 10% of its parametric value of 100 Bq/l.

⁽⁴⁾ The limit of detection for gross alpha activity and gross beta activities are 40% of the screening values of 0.1 and 1.0 Bq/l respectively.

⁽⁵⁾ This limit of detection applies only to initial screening for indicative dose for a new water source. If initial checking indicates that it is not plausible that Ra-228 exceeds 20% of the derived concentration, the limit of detection may be increased to 0.08 Bq/l for routine Ra-228 nuclide specific measurements, until a subsequent re-check is required.

SCHEDULE 12 Regulations 33, 34 and 35

Application and modification of provisions of the Act

Table 1
Improvement notices

<i>Provision of the Act</i>	<i>Modifications</i>
Section 10(1) and (2) (improvement notices)	<p>For subsection (1) substitute—</p> <p>□(1) If an authorised officer of an enforcement authority has reasonable grounds for believing that a person is failing to comply with any provision specified in subsection (1A) or is carrying out either a fluoride removal treatment or an ozone-enriched air treatment that has a disinfectant action, the authorised officer may, by a notice served on that person (in this Act referred to as an “improvement notice”)—</p> <ul style="list-style-type: none"> (a) state the authorised officer’s grounds for believing that the person is failing to comply with the relevant provision; (b) specify the matters which constitute the person’s failure so to comply; (c) specify the measures which, in the officer’s opinion, the person must take in order to secure compliance; and (d) require the person to take those measures or measures that are at least equivalent to them, within such period as may be specified in the notice. <p>(1A) The provisions referred to in subsection (1) are—</p> <ul style="list-style-type: none"> (a) any of regulations 8 to 22 of the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015; and (b) any of the following provisions of Commission Regulation (EU) No 115/2010 laying down the conditions for use of activated alumina for the removal of fluoride from natural mineral waters and spring waters⁽¹⁾— <ul style="list-style-type: none"> (i) Article 1.2 (requirement that any fluoride removal treatment be performed in accordance with the technical requirements set out in the Annex); (ii) the first sentence of Article 2 (requirement that the release of

(1) OJ No L 37, 10.2.2010, p 13.

- residues into natural mineral water or spring water as a result of any fluoride removal treatment be as low as technically feasible according to the best practices and not pose a risk to public health);
- (iii) the second sentence of Article 2 (requirement to ensure compliance with the first sentence of Article 2, operators implement and monitor the critical processing steps set out in the Annex);
 - (iv) Article 3.1 (requirement that the application of any fluoride removal treatment be notified to the competent authorities at least three months prior to use); and
 - (v) Article 4 (requirement that the label on natural mineral water or spring water subjected to any fluoride removal treatment include specified information in proximity to the statement of the analytical composition).”

Table 2

Powers of entry

<i>Provision of the Act</i>	<i>Modifications</i>
Section 32(1) to (7) (powers of entry)	<p>In subsection (1), for paragraphs (a) to (c) substitute—</p> <p>□(a) to enter any premises within the authority’s area for the purpose of ascertaining whether there is or has been on the premises a contravention of any of the following provisions of Commission Regulation (EU) No 115/2010 laying down the conditions for use of activated alumina for the removal of fluoride from natural mineral waters and spring waters—</p> <ul style="list-style-type: none"> (i) Article 1.2 (requirement that any fluoride removal treatment be performed in accordance with the technical requirements set out in the Annex); (ii) the first sentence of Article 2 (requirement that the release of residues into natural mineral water or spring water as a result of any fluoride removal treatment be as low as technically feasible according to the best practices and

- not pose a risk to public health);
- (iii) the second sentence of Article 2 (requirement to ensure compliance with the first sentence of Article 2, operators implement and monitor the critical processing steps set out in the Annex);
 - (iv) Article 3.1 (requirement that the application of any fluoride removal treatment be notified to the competent authorities at least three months prior to use); and
 - (v) Article 4 (requirement that the label on natural mineral water or spring water subjected to any fluoride removal treatment include specified information in proximity to the statement of the analytical composition); and
- (b) to enter any business premises, whether within or outside the authority's area, for the purpose of ascertaining whether there is on the premises any evidence of any contravention within that area of the provisions set out in paragraph (a);□.

Table 3
Other provisions of the Act

<i>Provision of the Act</i>	<i>Modifications</i>
Section 2(1) (extended meaning of “sale” etc.)	In subsection (1), for “this Act” substitute “the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015”. In subsection (2), for “This Act” substitute “The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015”.
Section 3 (presumptions that food intended for human consumption)	In subsection (1), for “this Act” substitute “the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015”.
Section 20 (offences due to fault of another person)	For “any of the preceding provisions of this part” substitute “section 10(2) as applied by regulation 33 of, and Schedule 12 to, the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015”.
Section 21(1) and (5)(2) (defence of due diligence)	In subsection (1), for “any of the preceding provisions of this Part” substitute “section 10(2)

(1) Section 2(1) was amended by the section 40(1) of, and paragraph 8 of Schedule 5 to, the Food Standards Act 1999 (c. 28).
(2) Section 21(2) was amended by S.I. 2004/3279.

	as applied by regulation 33 of, and Schedule 12 to, the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015.”.
Section 22 (defence of publication in the course of business)	For “any of the preceding provisions of this Part” substitute “section 10(2) as applied by regulation 33 of, and Schedule 12 to, the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015”.
Section 29 (procurement of samples)	In paragraph (b)(ii), after “under section 32 below”, insert “as applied by regulation 34 of, and Schedule 12 to, the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015”.
Section 30(6) and (8) (which relates to evidence of certificates given by a food analyst or examiner)	In subsection (8), for “this Act” substitute “the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015”.
Section 33 (obstruction etc. of officers)	In subsection (1), for “this Act” (in each place where it occurs) substitute “the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015”.
Section 35(1)(1) and (2) (punishment of offences)	In subsection (1), after “section 33(1) above” insert “, as applied and modified by regulation 35 of, and Schedule 12 to, the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015,”. After subsection (1), insert— “(1A) A person guilty of an offence under section 10(2), as applied by regulation 33 of, and Schedule 12 to, the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015 shall be liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.□ In subsection (2), in the opening words, for “any other offence under this Act” substitute “an offence under section 33(2), as applied by regulation 35 of, and Schedule 12 to, the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015,”.
Section 36 (offences by bodies corporate)	In subsection (1), for “this Act” substitute “section 10(2) as applied by regulation 33 of, and Schedule 12 to, the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015”.
Section 36A(2) (offences by Scottish partnerships)	For “this Act” substitute “section 10(2) as applied by regulation 33 of, and Schedule 12 to, the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations

(1) Section 35(1) is to be amended by section 280(2) of, and paragraph 42 of Schedule 26 to, the Criminal Justice Act 2003 (c. 44) from a date to be appointed.
(2) Section 36A was inserted by section 40(1) of, and paragraph 16 of Schedule 5 to, the Food Standards Act 1999.

Section 37(1) and (6) (appeals)	<p>2015”.</p> <p>For subsection (1) substitute—</p> <p>“Any person who is aggrieved by a decision of an authorised officer of an enforcement authority to serve an improvement notice under section 10(1), as applied and modified by regulation 33 of, and Schedule 12 to, the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015, may appeal to a magistrates’ court.□</p>
Section 39 (appeals against improvement notices)	<p>In subsection (6)—</p> <p>for “(3) and (4)” substitute “(1)”; and</p> <p>in paragraph (a), omit “or to the sheriff□.</p> <p>For subsection (1) substitute—</p> <p>(1) On an appeal against an improvement notice served under section 10(1), as applied and modified by regulation 33 of, and Schedule 12 to the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015, the magistrates’ court may either cancel or affirm the notice and, if it affirms it, may do so either in its original form or with such modifications as the magistrates’ court may in the circumstances think fit.□</p>
Section 44 (protection of officers acting in good faith)	<p>In subsection (3), omit “for want of prosecution”.</p> <p>For “this Act” (in each place where it occurs) substitute “the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015”.</p>

Amendments to other legislation

The Private Water Supplies (Wales) Regulations 2010

1. The Private Water Supplies (Wales) Regulations 2010(1) are amended as follows.

2. In regulation 3(a), for “the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2007” substitute “the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015”.

The Food Safety (Sampling and Qualifications) (Wales) Regulations 2013

3. The Food Safety (Sampling and Qualifications) (Wales) Regulations 2013(2) are amended as follows.

4. In Schedule 1, omit the reference to “The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2007”.

The Food Information (Wales) Regulations 2014

5. The Food Information (Wales) Regulations 2014(3) are amended as follows.

6. In Schedule 7, omit paragraphs 49 and 50.

(1) S.I. 2010/66 (W. 16).
(2) S.I. 2013/479 (W.55), amended by S.I. 2013/2493 (W.242).
(3) S.I. 2014/2303 (W.227).

EXPLANATORY MEMORANDUM TO

The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015

This Explanatory Memorandum has been prepared by the Food Standards Agency (FSA) and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Member's Declaration

In my view the Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015. I am satisfied that the (monetised and non-monetised) benefits identified in the appraisal outweigh the costs.

Vaughan Gething

Deputy Minister for Health, one of the Welsh Ministers

4 November 2015

EXPLANATORY MEMORANDUM TO

The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015

1. Description

The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015 will consolidate all European and domestic requirements relating to Natural Mineral Water, Spring Water and Bottled Drinking Water into a single Statutory Instrument.

2. Matters of Special Interest to the Constitutional and Legislative Affairs Committee

None.

3. Legislative Background

The Regulations are made in exercise of the powers conferred on the Welsh Ministers by paragraph 1A of Schedule 2 to the European Communities Act 1972 ("the 1972 Act") and sections 6(4), 16(1), 17(1), 26(1), 31 and 48(1) of the Food Safety Act 1990 ("the 1990 Act").

The Welsh Ministers are designated for the purposes of section 2(2) of the 1972 Act in relation to measures relating to food (including drink) including the primary production of food and measures in relation to the veterinary and phytosanitary fields for the protection of public health. The relevant designation orders are the European Communities (Designation) (No. 2) Order 2005 and the European Communities (Designation) (No. 2) Order 2008. The 2005 Order conferred functions on the National Assembly for Wales. Those functions were transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

4. Purpose and Intended Effect of the Legislation

The objective of the Regulations is to

1. Consolidate existing Regulations
2. Introduce civil sanctions for most instances of non-compliance
3. Include new EU requirements for monitoring of radioactivity in water
4. Clarify permitted treatments for spring water in line with European requirements
5. No longer require the fortification of water with calcium up to a level of 60 mg/l in the case where it has been softened or desalinated

1) Consolidation of existing Regulations

The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2007 (“The 2007 Regulations”) have been separately amended three times in 2009, 2010 and 2011, so a consolidation of these amendments into a single Statutory Instrument would be helpful to businesses, regulators and enforcers.

2) Introduction of civil sanctions for most instances of non-compliance

Food authorities in Wales are responsible for the enforcement of the proposed Regulations. Where it becomes necessary to take formal enforcement action for a contravention of a provision of the Regulations, enforcement officers will have the power to serve an improvement notice under section 10 of the Food Safety Act 1990 (as modified by the proposed Regulations). A food business operator who fails to comply with the requirements of the improvement notice will be guilty of a criminal offence and may be prosecuted for not complying with the notice.

Any person served with an improvement notice has the right of appeal. It is proposed that appeals continue to be referred to the Magistrates’ Court as is currently the case in respect of comparable appeals under the Food Hygiene (Wales) Regulations 2006 and the Food Information (Wales) Regulations 2014. In relation to the equivalent Regulations in England led by Defra, Ministry of Justice advice is that appellants are referred to the General Regulatory Chamber of the First-Tier Tribunal (FTT) in England.

3) New EU requirements for monitoring of radioactivity in water

The Council of the European Union adopted a new Directive under the Euratom Treaty on 22 October 2013; Council Directive 2013/51/Euratom¹ laying down requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption (the “Directive”).

The Directive sets out parametric values, and frequencies and performance characteristics for analytical methods for monitoring radioactive substances in water intended for human consumption. This includes water as defined in the scope of the Drinking Water Directive 98/83/EC for drinking, cooking, food preparation or other domestic purposes supplied from a distribution network, tanker or in bottles or containers. It also includes all water used in any food production undertaking for the manufacture, processing, preservation or marketing of products or substances intended for human consumption.

Natural mineral waters are exempt from the requirements of the Directive.

¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0051&from=EN>

4) Clarifying permitted treatments for spring water in line with European requirements

Directive 2009/54/EC² [recast] on the exploitation and marketing of natural mineral water (the “Natural Mineral Water Directive”) states that natural mineral water and spring water must be free from pollution and pathogenic bacteria at source and that disinfection treatment must not be used at any stage in their production.

The Natural Mineral Water Directive has been transposed into national legislation. In Wales, the relevant legislation is the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2007³ (the “2007 Regulations”). However, the implementing legislation in force in the UK, including in Wales, has been unintentionally under-implementing the Directive by permitting the use of disinfection treatments in the production of spring water, as opposed to natural mineral water. The under-implementation was due to the misinterpretation of a particular provision in the Directive which appeared to allow Member States to continue with national treatments for spring water, which for the UK, was the use of ultraviolet (UV) disinfection treatment.

The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015 will ensure compliance with EU law.

5) No longer requiring the fortification of water with calcium up to a level of 60 mg/l in the case where it has been softened or desalinated

The 2007 regulations contain a national provision which calls for the re-calcification up to 60 mg/l for any bottled water or spring water which had been softened or desalinated. While this was no longer required by EU regulations⁴, the UK retained the requirement for minimum hardness as a national provision in SI 1999 No. 1540⁵ and its replacement in relation to Wales, SI 2007 No. 3165 (W. 276)⁶. This was done on health grounds, based on advice at the time from the Committee on Medical Aspects of Food Policy⁷, which claimed that calcium helped prevent coronary heart disease. The original EU requirement was therefore maintained as a national provision.

² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:164:0045:0058:EN:PDF>

³ <http://www.legislation.gov.uk/wsi/2007/3165/contents/made>

⁴ Directive 80/778/EEC (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1980:229:0011:0029:EN:PDF>) first detailed the original requirement for a minimum level of calcium in water. When the directive was repealed, the replacement directive (98/83 EC <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1998:330:0032:0054:EN:PDF>) did not retain the requirement, and thus many Member States’ (MS) legislation no longer stipulated the minimum calcium level based on scientific evidence.

⁵ <http://www.legislation.gov.uk/ukSI/1999/1540/contents/made>

⁶ <http://www.legislation.gov.uk/wsi/2007/3165/contents/made>

⁷ The Committee on Medical Aspects of Food Policy was disbanded in 2000 and advice in this area is now provided by the Scientific Committee on Nutrition.

More recent (2010) national scientific evidence produced by the Scientific Advisory Committee on Nutrition⁸ shows the national provision no longer has a scientific basis, as the validity of the original evidence is disputed.

5. Consultation

A public consultation exercise was carried out by the Food Standards Agency (FSA) between 1 June 2015 and 24 August 2015.

Responses were received from the following organisations:

- British Retail Consortium (BRC)
- British Soft Drinks Association (BSDA)
- Wales Food Safety Expert Panel (FSEP)
- Powys County Council
- Water Health Partnership for Wales (WHPW)
- The Government Chemist (GC)

A detailed summary of responses will be placed on the FSA website.

Summary of consultation responses

1) Consolidate existing Regulations

There was broad support and no objections to this measure.

2) Introduce civil sanctions for most instances of non-compliance

While there was broad support from other responders, the BRC has objected to this measure across all Regulations where it applies. It is clear policy to move, where appropriate, to civil sanctions, with a backstop offence of failing to comply with an Improvement Notice. This policy has been agreed by the Minister for Health and Social Services in response to **LF/MD/0592/13**. No new objection to this policy has been raised that applies specifically to these Regulations.

3) Include new EU requirements for monitoring of radioactivity in water

FSEP and Powys council have challenged assumptions regarding the costs associated with this measure and these challenges are taken into account in the impact assessment below. They have also queried whether the costs of the sampling should be borne by local authorities. The responsibility in the Directive is on the Competent Authority (and those with delegated authority from the Competent Authority) so currently there is no mechanism for passing those costs to industry.

⁸ http://www.sacn.gov.uk/pdfs/sacn_position_statement_hard_water_and_cardiovascular_disease.pdf

4) Clarify permitted treatments for spring water in line with European requirements

BRC has objected to this on the grounds that the FSA has not adequately reflected the secondary costs to businesses that use Spring Water as an ingredient. However, the BDSA suggest that “members that did use UV for this purpose [decontamination of spring water] have invested in changes to their manufacturing facilities during discussions on the consolidated regulations.” In addition, BRC, which is well placed to supply evidence in this area, has not taken the opportunity provided by the 12-week public consultation exercise to provide any evidence to back up its assertion.

Use of spring water as an ingredient or processing aid is a commercial decision. It is not the place of regulators to be involved in the commercial decisions of food business operators. The remit of a regulator is to ensure compliance with Regulation. The food industry is one where the supply chain is constantly changing to reflect changes in price, availability and a great many other factors. To suggest that requiring compliance with this Regulation would be solely responsible for significant changes in the supply chains of large sectors of the industry is not a credible assertion, particularly without any supporting evidence.

The FSA has subsequently been in touch with a spring water producer operating in Wales that uses the spring water to produce a composite product (i.e. a product with Spring Water as an ingredient). Evidence supplied by this producer will be incorporated into the impact assessment as part of the Explanatory Memorandum.

5) No longer require the fortification of water with calcium up to a level of 60 mg/l in the case where it has been softened or desalinated

There was broad agreement and no objection to this measure.

Consultations in other administrations

Of the other UK administrations, only Northern Ireland carried out a consultation at the same time as Wales. FSA Northern Ireland received two responses. One from the BRC which mirrored the response to Wales and one from a local authority, principally concerned with the size of the market in Northern Ireland.

Scotland and England have latterly launched consultations on significantly different regulations, but the responses to these consultations are not available at the time of preparing this Explanatory Memorandum.

Regulatory position in other administrations.

The table below shows which measures the UK administrations will be bringing in as part of the first Regulations in 2015/16.

Measure	Wales	Northern Ireland	Scotland	England
Consolidate existing Regulations	November 2015	November 2015	(amending Regulations in 2016)	2015 (or early 2016)
Introduce civil sanctions for most instances of non-compliance	November 2015	November 2015	Unknown	2015 (or early 2016)
Include new EU requirements for monitoring of radioactivity in water	November 2015	November 2015	November 2015	2015 (or early 2016)
Clarify permitted treatments for spring water in line with EU Directive 2009/54/EC	November 2015	November 2015	No indication of date of Regulations required to comply with EU Directive 2009/54/EC	No indication of date of Regulations required to comply with EU Directive 2009/54/EC
No longer require the fortification of water with calcium up to a level of 60 mg/l in the case where it has been softened or desalinated	November 2015	November 2015	(amending Regulations in 2016)	2015 (or early 2016)

It is not currently known if Regulations in England and Scotland will be made to address the requirements of Directive 2009/54/EC regarding the use of disinfection treatment in the production of spring water. However, producers in England and Scotland that continue to subject spring water to disinfection treatment will be prohibited from placing that product on the market in Wales (and Northern Ireland). Spring water produced according to the Regulations in Wales (and Northern Ireland)

can still be place on the market in England and Scotland, and by conforming with all EU Regulations, will be compliant with the requirements of the European market. Therefore, Welsh producers will not be disadvantaged in their access to the market in any territory by the Regulations in Wales.

6. Regulatory Impact Assessment

Options

Option 1: Do nothing: leave the regulatory framework as it is.

Option 2: Transpose the Euratom Directive and enforce compliance with EU Directive 2009/54/EC. Consolidate Regulations and remove minimum hardness requirement.

Option 2 is the preferred option.

Costs and Benefits

The costs and benefits associated with the Regulations have been appraised over a ten-year period 2015-16 to 2024-25. Historic prices used in the original consultation impact assessment have been uprated to 2015 prices using the GDP deflators. The HM Treasury central discount rate of 3.5% has been used throughout.

Option 1

Costs to Government:

By not transposing the Euratom Directive and not properly enforcing Directive 2009/54/EC the UK will be risking infraction by the EU. Fines for infraction are significant and ongoing.

Benefits

There are no incremental benefits associated with Option 1. This is the baseline which all other options are appraise against.

Option 2

This section details the costs and benefits of:

- 1) Consolidation of existing Regulations
- 2) Introduction of civil sanctions for most instances of non-compliance
- 3) New EU requirements for monitoring of radioactivity in water
- 4) Clarification of permitted treatments for spring water in line with European requirement
- 5) No longer requiring the fortification of water with calcium up to a level of 60 mg/l in the case where it has been softened or desalinated

1) Consolidation of existing regulations

Industry and Enforcement

Costs Apart from familiarisation costs (see page 13 below), there are no additional costs associated with this measure.

Benefits

There may be benefits to enforcement bodies and businesses in terms of simplification as a result of the consolidations. After the change, any new entrants into the sector would only need to familiarise themselves with one statutory instruments as opposed to the four at present. It is difficult to estimate how many new businesses will enter the sector over the next ten years (which is the expected lifespan of the policy). Also the FSA does not record the number of new entrant officers and therefore it is not possible to separate new entrants out from the data on numbers of food law enforcement officers. We are therefore unable to monetise the benefits at this time for the reduced familiarisation.

2) Introduction of civil sanctions for most instances of non-compliance

Industry and Enforcement

Costs

There are no additional costs associated with this measure. Civil sanctions have already been introduced for a number of Regulations and enforcement authorities will therefore already be familiar with this measure

Benefits

There is a benefit to industry and Government in terms of moving from the current criminal sanctions regime to the new civil sanctions regime by way of compliance notice. This would be followed up by a criminal offence in those cases where a compliance notice is not complied with. It is anticipated that the gains will originate from time saved to businesses and Government officials in resolving issues rapidly. There is presumed to be a reduction in costs which will materialise as only the most serious offences would need to be escalated to a magistrate court, the vast majority being resolved through the issuing of improvement notices.

3) New EU requirements for monitoring of radioactivity in water

Industry

Costs

Apart from familiarisation costs (see page x below), there are no additional costs associated with this measure. As testing is to be carried out by local authority enforcement officers, there is not expected to be any additional costs to industry from this measure.

Enforcement

Costs

According to responses to the public consultation, the estimated cost of taking a sample for Radon contamination is approximately £250. It is expected that one sample per spring will enable an exemption from further sampling to be granted for five years, so the total cost per spring over the 10 year policy cycle is £500 for each producer of spring water.

A survey of all local authorities in Wales carried out separately from the public consultation identified six spring water producers in Wales. Therefore the cost of radon testing can be put at £3,000 over the period 2015-16 to 2024-25.

Consumers

Benefits

No monetised benefits are identified for this measure. This policy has been introduced by the European Commission to protect consumers from radon contamination from potable water sources, in line with expert scientific advice. The health risks from inhalation of radon have long been known. The risks associated with ingestion have not been as extensively documented because most of the radon in water will escape before it is ingested. The level where action is required in a domestic dwelling is 200 Bq/l air. The level where remedial action is required for water is 1000 Bq/l. The latter figure is higher to account for radon loss before ingestion. Nonetheless, if radon is ingested in significant levels, it can damage the lining of the stomach.

There is therefore, some benefit to consumer health from the new safeguards that will be put in place in terms of the assessment of risk of the presence of radon. However the risk to consumer health is currently very low. We do not have the evidence available on the exact impact on consumer health and how much consumers would value this benefit and it is disproportionately costly to try and gather this information.

4) Clarification of permitted treatments for spring water in line with European requirement

Industry

Costs

Decommissioning of UV equipment

Industry estimates for complying with the requirements of the Regulations were received from a producer that draws spring water for use (on the same site) in a composite “flavoured water” product. Options identified and their estimated costs for decommissioning the UV unit as up to £27,000. This contrasts with figures provided by the British Soft Drinks Association (BSDA) that suggest the associated cost for removal of UV equipment includes a one off cost of between £3,000 and £5,000 per business (2013 prices). Indeed, the BSDA, in response to the public consultation has suggested that its members “have invested in changes to their manufacturing facilities during discussions on the consolidated regulations” and so this cost is likely in most cases to have already been incurred.

One of the six identified businesses producing spring water in Wales has advised that it has a UV unit that can be isolated in-situ by the operation of a bypass valve at zero cost so that their production line can be used for either spring water or bottled drinking water production.

Allowing for the estimate of £27,000 for one business, zero for another, and using the BSDA median estimate of £4,100 (2015 prices) for the other four identified businesses, a total of £43,400 is identified as the one off cost to industry of decommissioning UV units. A zero salvage value for sale of this equipment is assumed.

“Write off” costs

The lifespan of a UV unit is not known, nor is the age of any UV unit being used in Wales. At least one producer has suggested that the UV unit will continue to be used for bottled drinking water production, while another has suggested that the unit may be moved elsewhere in its production process where its use will be compliant with the Regulations. As there is no evidence to suggest costs for “write-off” of any existing UV unit, this cost will not be included in this impact assessment.

Additional microbial sampling

In terms of microbiological testing for assurance once a UV unit is decommissioned, BSDA has advised that additional microbiological testing would be necessary for a defined amount of time (estimated at three months). Depending on the water source, industry could test for a longer period of time such as six months upon changing manufacturing methods such as removal of a UV installation. However industry has advised that it is unlikely that additional testing would go beyond three months.

BSDA has advised that this additional testing is likely to be a one off cost for each business per month of around £500 (2013 prices). Using a best estimate of a three month period of additional testing for six businesses, this equates to a one off cost of £9,200 (2015 prices). If a business wishes to continue testing beyond this point, it will be a commercial decision, rather than a cost associated with these Regulations.

There will be additional remedial costs incurred by a business **if** the microbiological testing identifies an issue. These costs are likely to vary on a case by case basis and as such it is not possible to quantify them in this RIA.

Benefits

We have been advised by a supplier of UV equipment that electricity consumption may vary according to the rate of the water flow being treated and that realistically most sites will have a small UV system. Electricity costs for a small UV system are estimated to be approximately £300 per annum. Large UV systems are assumed to have electricity costs of £4,000 per annum (2013 prices). For the purposes of this RIA, we adopt a mid-point estimate of £2,200 per annum for each business (2015 prices). For the six businesses, this is equivalent to a central estimate of £124,300 over the period 2015-16 to 2024-25.

The BSDA has indicated that incremental cost savings for not using UV would be for new lamps, safe disposal of spent lamps and preventative maintenance plans. This is estimated at between £300 and £3,000 per annum, depending on the size of the business (2013 prices). For the RIA, we have used a mid-point of the range at £1,690 per business (2015 prices). For the six businesses, this is equivalent to a central estimate of £95,100 over the period 2015-16 to 2024-25..

Since the Regulations will be introduced in November 2015, it is assumed that only part of the annual benefits identified above will accrue in 2015-16.

Enforcement

Costs

As familiarisation costs with the entirety of the Regulations is taken into account elsewhere, and verification of industry compliance with the Regulations is likely to take place within the normal intervention programme of the local authority, no additional costs are expected in respect of this aspect of the Regulations.

Consumers

Benefits

Rectifying the market failure is of ultimate benefit to the UK consumer who will be better informed about the category of bottled water product they choose to purchase, regardless of which EU MS it was produced in. We currently do not have data on how much consumers actually value this increased information therefore it has not been possible to monetise this benefit to consumers. Gathering this data would be a costly exercise which would not be an appropriate or proportionate use of resources,

given that the under-implementation of EU law must be addressed regardless of the market failure and only a minority of consumers use such information in their purchasing decision making processes. However it should be noted that the consumers who use bottled water information in their purchasing decisions will have increased information and will benefit from Policy Option 2. Therefore this impact assessment underestimates the net benefit of Policy Option 2.

5) No longer requiring the fortification of water with calcium up to a level of 60 mg/l in the case where it has been softened or desalinated

Industry

Costs

No businesses that are affected by this measure have been identified. Therefore there are no monetised costs for industry and enforcement.

Benefits

No businesses that are affected by this measure have been identified. Therefore there are no monetised benefits to this measure.

Familiarisation

There is a one-off familiarisation cost associated with the proposed package of Regulations:

Costs to Industry:

Affected businesses will need to become familiar with the new regulations. It is estimated that it would take two full time production manager/director in the manufacturing industry per business 6 hours in total to learn about these Regulations and disseminate information to key staff (4.5 hours for learning and 1.5 hours for dissemination). The median hourly pay rate for full time production managers/directors is around £26.12 (ASHE Provisional 2014 Estimates in 2014 prices, with a 30% overhead uplift in accordance with the UK standard cost model). Assuming 15 affected bottled water firms (including those producing spring water and natural mineral water, the total one-off learning and dissemination cost to businesses in Wales is approximately £2,350.

Costs to enforcement:

Local authority trading standard officers will also need to become familiar with the new regulation. Estimates from local authority responses to the public consultation suggest that it would take one trading standards officer one day (7.5 hours) to read

the regulations and disseminate information to key staff, as well as carry out additional work required by the Regulations. The median hourly pay rate for a trading standards officer is around £19.37 (ASHE Provisional 2014 Estimates in 2014 prices, with a 30% overhead uplift in accordance with the UK standard cost model). There are 22 local authorities in Wales. The total one-off familiarisation cost to enforcement bodies in Wales is approximately £3,200.

Costs to Consumers

It is quite possible that any costs borne by the industry from any of these Regulations could be passed onto consumers by higher prices for bottled water products. We currently do not have information on whether this would happen so this impact assessment assumes no pass-through to consumers.

Benefits to Government

By making the regulations Welsh Government is protected from contribution to any infraction fines incurred by the UK if other administrations do not meet the requirements of EU Directives

Summary

Table 1 presents a summary of the monetised costs and benefits associated with introducing these Regulations. The total monetised net impact to society is estimated to be £126,100 over 10 years (in present value terms). However, this does not include the unquantified benefits (identified in the preceding text) nor a share of the potential infraction fines if these Regulations are not introduced.

Table 1: Summary of costs and benefits (£)

	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25
COSTS										
Local Authorities										
Learning and Dissemination	3,200									
Radon sampling	1,500					1,500				
Total cost to Local authorities:	4,700	-	-	-	-	1,500	-	-	-	-
Industry										
Learning and Dissemination	2,350									
Removal of UV Equipment	43,400									
Additional microbial sampling	9,200									
Total cost to industry	54,950	-	-	-	-	-	-	-	-	-
Total cost	59,650	-	-	-	-	1,500	-	-	-	-
Present Value	60,900									
BENEFITS										
Industry										
Electricity cost savings	5,500	13,200	13,200	13,200	13,200	13,200	13,200	13,200	13,200	13,200
UV lamp cost savings	4,200	10,100	10,100	10,100	10,100	10,100	10,100	10,100	10,100	10,100
Total benefit	9,700	23,300								
Present Value	187,000									
Net Present Value	126,100									



Welsh Affairs Committee

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David Melding, Chair of the Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

16 November 2015

Dear David

Thank you, again, for hosting our committees' joint meeting to scrutinise the draft Wales Bill at the Senedd last week. I am sure that you will agree that the occasion was highly successful.

As you may know, our Standing Order No. 137A(3) states that the Welsh Affairs Committee "may invite members of any specified committee of the National Assembly for Wales to attend and participate in its proceedings (but not to vote)". Committees of the National Assembly enjoy a general power (17.54) to "meet concurrently with any committee or joint committee of any legislature in the UK".

Recommendation 54a of 'Silk II' stated that:

*there should be improved inter-parliamentary cooperation to increase mutual understanding of the work of the National Assembly and both Houses of Parliament, **especially in terms of committee-to-committee cooperation** (including attendance by Ministers from each administration at Committees of the other legislature); information-sharing should be improved; [...]*

Relations between the National Assembly and House of Commons have changed significantly since our Standing Order was passed by the House in July 2005. I am therefore minded to explore the extension of the specific power granted to the Welsh Affairs Committee to a more general power which might be enjoyed by other select committees.

I should be interested in your views, both as Chair of the Constitutional and Legislative Affairs Committee and Deputy Presiding Officer, on the merits of the broader wording of your Standing Order, and whether you believe that inter-parliamentary cooperation between Cardiff and Westminster would be improved, were other Westminster committees able to meet as we have done. I may then explore the matter further with colleagues here in Westminster.

David

David T.C. Davies MP
Chair of the Welsh Affairs Committee

Rt Hon Stephen Crabb MP
Wales Office
Gwydr House
Whitehall
London
SW1A 2NP

16 November 2015

Dear Stephen,

Draft Wales Bill

The Enterprise and Business Committee took the opportunity to discuss the Draft Wales Bill at our meeting on 5 November 2015.

While we understand that this is a draft bill, and far from the finished product, nonetheless the Committee has grave concerns about the Bill as it is currently drafted. I understand that there will be further discussions between the Welsh Government and the Wales Office but we feel that in many areas there is a level of ambiguity in the drafting such that we are not able to comment on it without further clarification.

The Assembly's Constitution and Legislative Affairs Committee is leading in relation to the 'tests' that apply to the Assembly's legislative competence, so I have restricted the committee's initial comments to the reservations that relate to our remit.

In our committee discussion, a room full of experienced legislators struggled to understand what the bill does and what it is seeking to do. For those who are not used to reading and drafting laws, it is – in its present form – very difficult to understand. Clarity and workability are important principles when it comes to legislation, and I am sure that more can be done in this regard.



Within the Committee's remit there are a number of areas which are directly affected by the proposed Reservations listed in Schedule 7A of the draft Bill and grouped under three main 'Heads': Trade and Industry, Transport and Employment.

In Annex A I have set out a summary of the concerns the Committee has in those areas and specific questions. I am writing in the hope that your office will provide the Committee with a clear steer of the effect of the provisions on the existing competence of the National Assembly for Wales, and an explanation where the competence has been reduced.

These questions set out our initial concerns regarding the scope of the Bill. We anticipate having further discussions as a committee once greater detail emerges and I will write to you as the Bill progresses.

Kind regards,



William Graham

Chair, Enterprise and Business Committee

Cc. David Melding, Chair, Constitutional and Legislative Affairs Committee,
National Assembly for Wales

David Davies, Chair, Welsh Affairs Committee



The Draft Wales Bill – Enterprise and Business Committee

Annex A

The Enterprise and Business Committee of the National Assembly for Wales is seeking clarification on the following specific areas of the Draft Wales Bill:

Schedule 7A – Head C – Trade and Industry

1.0 Section C6 Consumer protection

- 1.1 The current exception in Schedule 7' GOWA prevents the Assembly from legislating about *'consumer protection, including the sale and supply of goods to consumers, consumer guarantees, hire purchase, trade descriptions, advertising and price indication.....'*
- 1.2 The new settlement includes a more detailed description of what the reservation 'consumer protection' includes. For example, in reservation 70 the additional words 'supply of services to consumers'
- 1.3 are included in the new settlement which do not appear in the current exception in relation to consumer protection Schedule 7, GOWA This wording of this reservation is therefore, narrower.

The Committee would like clarification of whether the supply of services to consumers applies only within the context of the Sale of Goods Act 1979 or is it intended to apply further across different types of services to consumers more generally, e.g. bus services etc.

- 1.4 Further, the new settlement includes the wording *'safety of, and liability for, services supplied to consumers'*. This wording is also not currently contained in Schedule 7, GOWA and is therefore, a **reduction** of the Assembly's competence.

The Committee wishes to understand why this competence is potentially reduced.

- 1.5 In relation to reservation 72 and reference to 'estate agents', as the Assembly is currently able to legislate on the 'promotion of business and competitiveness' and 'estate agents' are not specifically referred to in Schedule 7 this reservation therefore, **potentially reduces** the Assembly's competence in relation to 'estate agents'.



The Committee wishes to understand the intention of this potential reduction of competence.

2.0 Reservation C7 Product standards, safety and liability

2.1 The new settlement reservation refers to *'technical standards and requirement in relation to products in pursuance of an obligation under EU law'*

2.2 It is not clear if this reservation has the effect of preventing the Assembly from making legislation which engages the Technical Standards Directive.

The committee would welcome further clarification on the scope of reservation 75.

2.3 The following wording is not clear – *'the national accreditation body and the accreditation of bodies which certify or assess conformity to technical standards in relation to products or environmental management systems.'*

The committee would welcome further clarification on the meaning of reservation 76.

3.0 Section C12 Assisted areas and limits on financial assistance to industry

3.1 Reservation 89 limits the Assembly's competence in relation to:

Section 1 and Section 8(5) (7) of the Industrial Development Act 1982 ('the 1982' Act)

3.2 Section 1 allows the Secretary of State by Order to specify any areas of Great Britain as a development area or intermediate area. Further, Section 8 allows the Welsh Ministers to provide financial assistance for industry.

3.3 While executive powers are retained for the Welsh Ministers under Section 8 of the 1982 Act, the inclusion of the subject matter of the 1982 Act potentially **narrows the Assembly's ability to legislate under** the current wording of Schedule 7 of GOWA and general heading 'economic regeneration and development'.

The Committee wishes to understand why the Assembly's ability to legislate is being narrowed in relation to the Industrial Development Act 1982.



3.4 C15: Assistance in connection with export of goods and services etc

3.5 Reservation 92 relates to the subject matter of '*the Export and Investment Guarantees Act 1991*'. The Welsh Ministers have some powers under the 1991 Act that enable them to support exporters. Further, some of the provisions of the 1991 Act are within the Assembly's current competence under Economic development, specifically '*the promotion of business and competitiveness*'. This is therefore, a **reduction** in the Assembly's competence

The Committee wishes to understand why this competence is being reduced and clarity of the scope of this reservation is needed.

4.0 New powers in Transport

4.1 The Assembly would **gain competence to legislate** under the new settlement in relation to:

- Registration of local bus services, and the application and enforcement of traffic regulation conditions in relation to those services
- Speed limits – save for exemptions from speed limits i.e. speed limits for emergency services
- Taxi and private hire vehicle licensing
- Private hire vehicle operator licensing
- Harbours, but not safety standards in harbours

4.3 Under the draft Bill, further **executive powers to the Welsh Ministers** will be granted in relation to:

- speed limits
- Welsh harbours
- certain executive functions in relation to Taxis
- certain executive functions in relation to Traffic Commissioners

The committee welcomes these additional powers in areas for both the Assembly to legislate and the increase of executive powers to the Welsh Ministers in relation to these specific subjects



The following sets out the Committee's view concerning specific reservations under Head E- Transport of the draft Bill.

5.0 Section E1 Road transport

5.1 Reservation 111, concerns driver licensing and includes (training, testing and certification) whereas under Schedule 7, GOWA '06 it is only referred to as 'driver licensing'.

5.2 The wording therefore, is narrower under the new settlement and the inclusion of the word 'training' could impact on the Assembly's ability to legislate in relation to the promotion of road safety.

5.3 This is therefore, a **reduction in the Assembly's competence** and further clarity on the scope of this reservation is required.

The committee would welcome further clarification on the scope of this reservation. Also, clarification is sought that the Assembly will be able to continue to legislate in relation to the promotion of road safety.

5.4 Further, the Committee notes that traffic signs are a specific reservation, 117, which doesn't seem logical, given the new powers on speed limits generally.

The Committee would welcome additional clarification of what is intended.

6.0 Section E2 Rail transport

6.1 The current exception under Schedule 7 GOWA, refers to 'provision and regulation of railway services' whereas under the new settlement, reservation 123 only states '*railway services*'

6.2 This is therefore, a **potential reduction** in competence and further clarification is needed on the scope of this reservation.

The committee would welcome further clarification on the scope of this reservation and wishes to understand the intention of this potential reduction of competence.

7.0 E3 Marine and Waterway transport



7.1 The current exception under Schedule 7, refers to ‘shipping’ with two specific exceptions relating to financial assistance for shipping services to and from or within Wales and regulation of the use of vessels carrying animals. However, the new settlement the reservation refers to *‘shipping and other marine and waterway transport including the subject matter of.....)’* This is therefore, a **reduction** in the Assembly’s competence.

The Committee wishes to understand why this competence is being reduced.

7.2 The wording of reservation 128 in relation to Search and rescue and coastguard services is unclear.

The committee would welcome clarification that this phrase does not include the fire and rescue services.

8.0 E6: other matters

8.1 The current exception in Schedule 7 refers to ‘technical specification for fuel in use of internal combustion engines’ whereas the new settlement under reservation 137 refers to the same issue:

‘technical specifications for fuel or other energy sources or processes for use in road, rail, marine waterway or air transport’

8.2 The wording under the new settlement is more restrictive and encapsulates other wider forms of transport, and means of propulsion other than internal combustion engines, so is therefore, a **reduction** in competence.

The Committee wishes to understand why this competence is being reduced.

9.0 Bus Regulation

The potential for the regulation of buses in Wales is an area which the Committee has previously been interested in and the Welsh Government has said it requires further powers. An example was provided to the Committee illustrating how Bus Regulation might be viewed in the new settlement is provided below.



- 9.1 Example: *Under the new settlement, there is now scope for the Assembly to legislate concerning local bus registration. Aside from these, Department for Transport told the Committee in September 2015 that it believed that the Assembly / Welsh Ministers already had powers to regulate buses.*
- 9.2 *There are also currently limited executive powers for the Welsh Ministers / local authorities to co-ordinate bus operations under current legislation, these are set out in the Transport Act and Local Transport Act 2008, and include Voluntary and Statutory Partnerships and Statutory Quality Contracts.*
- 9.3 *Both the above-mentioned levers in theory should allow for the regulation of buses in Wales. However, there is a caveat to this. This because some of the associated benefits of regulation include the possibility of capping and regulating fares and integrated ticketing. It is not clear whether issues such as these would be caught by the following reservations:*

***C3: Competition: reservation 67** 'Regulation of anti-competitive practices and agreements; abuse of dominant position; monopolies and mergers.'*

***C6: Consumer protection: reservation 70** 'Regulation of the sale and supply of..... services to consumers'*

The committee would welcome clarification that the draft Bill will allow for the regulation of buses in Wales – including issues such as fares and integrated ticketing not being caught by the above mentioned reservations should such an option be pursued in Wales.

10.0. Schedule 7A – Head H – Employment

10.1 Section H1 – Employment and industrial relations

- 10.2 Currently, the Assembly can legislate on 'silent subjects' i.e. (it is neither a devolved subject, nor an exception under Schedule 7) provided it is related to a 'conferred subject' under Schedule 7 of GOWA and the current settlement.



- 10.3 This was confirmed in the Supreme Court decision in light of the Agricultural Sector (Wales) Act 2014 where the Act was within competence despite it both relating to a devolved subject ‘agriculture’ and a silent subject ‘employment’
- 10.4 In the new settlement a silent subject ‘employment’ has become a specific reservation under Head H *‘Employment rights and duties and industrial relations including the subject of.....’* [and reference to a list of specific Employment legislation].
- 10.5 Further, a specific exception has been made to this Reservation which excludes *‘the subject-matter of the Agricultural Sector (Wales) Act 2014’* and protects the subject-matter of this Act.
- 10.6 Including ‘employment’ as a reservation in the current settlement in combination with the new legislative tests is a **significant reduction** in the Assembly’s competence in the context of employment.
- 10.7 There is also another Head under the new settlement – ‘the professions’ that includes not legislating on health professionals which seems a broader reservation than the current exception in Schedule 7, GOWA.
- 10.8 The Committee was provided with the following example of how might a proposed Bill in the new settlement be considered:
- *Proposed future Bill that is seeking to legislate on wages, conditions and training in social care sector – similar to Agricultural Sector (Wales) Act 2014.*
 - *Under present settlement in light of Supreme Court decision on 2014 Act – Bill concerning social care sector would be within competence.*
 - *Proposed reservation of ‘employment rights and duties and industrial relations’ under Head H, Section H1 of Schedule 7A – likely to take to same Bill **outside competence.***
 - *The single exception for the subject matter of the 2014 Act makes this more likely – implying that whilst agricultural wages, holidays and training are within competence, these will be reserved in other sectors.*

The Committee wishes to understand why this competence is being reduced in relation to legislating on ‘silent subjects’ such as Employment provided they



‘relate to’ a ‘conferred subject’ under Schedule 7. This is of great concern to the Committee.

11.0 Section H3 – Job search and support

11.1 Reservation 156 ‘Arrangements for assisting persons to select, train for, obtain and retain employment and to obtain suitable employees’ potentially narrows the Assembly competence on economic development under Schedule 7 GOWA.

The Committee wishes to understand what this reservation is expected to capture.

12.0 Particular areas of uncertainty in relation to Executive powers

12.1 Devolution of the Wales and Borders Franchise and transfer of the executive functions of the Welsh Ministers is not dealt with in the draft Bill.

12.2 The St David’s Day announcement and paragraph 2.5.10 of Powers for a Purpose document stated:

12.3 *‘The UK Government is devolving executive franchising functions to the Welsh Government, to enable them to lead on the procurement and management of the next Wales and Borders franchise.’*

The Committee would welcome clarification on how the UK Government is proposing to devolve executive functions to the Welsh Ministers in respect of the Wales and Borders Franchise, given that this is not provided for within the draft Bill.

12.4 Further, the Welsh Government has previously requested that a change be made to the Railways Act 1993 that would allow public sector bodies to bid for franchise contracts. This would mirror the position for Scotland where provision is provided for in relation clause 49 of the Scotland Bill ‘Rail: franchising of passenger services’. Similarly, provision has not been made in the draft Bill.

12.5 In discussing the implications of the Smith Commission for Wales, the St David’s Day announcement said analysis of “relevant Smith recommendations in the Welsh context” would be undertaken “to enable



decisions to be taken early in the next Parliament on which might be implemented for Wales”.

- 12.6 Department for Transport officials told the Committee in September 2015 that the issue was being actively considered: *“the UK Government agreed to consider which non-fiscal parts of the Smith Commission agreement, including that commitment, might be implemented for Wales. That consideration is on-going, and further discussions with the Welsh Government will take place shortly in the context of preparing the Wales Bill”*.

The Committee would welcome clarification on what progress has been made in including this Smith Commission provision in the Wales Bill.



David Melding AM
Chair, Constitutional and Legislative Affairs
Committee

18 November 2015

Dear David

Draft Wales Bill: implications of the proposed reserved powers model on the Assembly's legislative competence

At its meetings on 4 and 12 November, the Communities, Equality and Local Government Committee ('the Committee') met to consider the draft Wales Bill ('the draft Bill'), in particular the implications of the draft Bill for the Assembly's legislative competence in areas relevant to our remit. The Committee agreed that I should write to you to outline our views on these issues.

While the current 'conferred powers' model has enabled the Assembly to pass laws in a range of key policy areas, this process has not been without its difficulties. The lack of clarity and the complexity inherent within the conferred powers model has been demonstrated most notably by the referral of three Assembly Acts to the Supreme Court in as many years.

To this end, the Committee supports a move to a reserved powers model that delivers a more coherent and workable devolution settlement. However, we had expected such a model to be a development of the current settlement; one which, at the very least, reflects the will of the Welsh electorate in the 2011 referendum to enable the Assembly to legislate on all matters in the 20 subject areas it has powers for, without needing the UK Parliament's agreement. We are deeply disappointed that the proposed model fails to meet these expectations. Indeed, it



appears that the draft Bill does little more than apply the conferred powers approach to a reserved powers model.

In addition, while we understand the rationale for the continuation of certain reservations, such as the constitution of the United Kingdom, foreign affairs and defence, it is not clear to most of the Committee why other matters, in particular policing, should not be within the Assembly's competence as recommended by the Silk Commission. It is even more surprising that matters of general social policy such as entertainment and late night refreshment, the sale and supply of alcohol, and knives are to be reserved.

Related to the above, we believe it is difficult to ignore the question of legal jurisdiction. The historical context of the "England and Wales" jurisdiction is not, in and of itself, a sufficient justification for the continuation of a single jurisdiction. We are concerned that, without a distinct legal jurisdiction for Wales, a reserved powers model would be extremely difficult to operate in practice.

We note the Secretary of State for Wales's intention for the draft Bill to give effect to the St David's Day commitments "to create a stronger, clearer and fairer devolution settlement that will stand the test of time". While the draft Bill provides an opportunity for the UK Government to deliver on these commitments, we believe that, as currently drafted, it fails to do this.

In reporting on Assembly Bills within our remit, we have referred to the need for legislation passed by this place to be both clear and accessible. These criteria should apply to all legislation, regardless of its origin. This is particularly relevant in the case of the draft Bill, which seeks to address difficulties resulting from the conferred powers model and to make lasting changes to Wales' devolution settlement. We believe that the draft Bill fails to meet these basic criteria, and that the proposed model, as currently drafted, would be more complex than existing arrangements, thus leaving the Assembly more vulnerable to challenge when exercising its new powers.

There is clearly a divergence of opinion between the UK and Welsh Governments about the draft Bill's proposals and how the new settlement would be interpreted, and we are aware of the on-going exchanges between the Secretary of State for Wales, the First Minister and the Presiding Officer on these matters.



In the context of the above, there is increasing uncertainty about what the eventual devolution settlement will look like. We are particularly concerned about the potential impact on the ability of political parties in Wales to develop manifestos ahead of the 2016 Assembly election. It may be difficult for the parties to commit to policies that require legislation to be delivered, because of a potential reduction in the Assembly's competence.

Legislative competence and the new competence tests

We note that the draft Bill proposes a number of tests of competence to be applied to Assembly Bills. Whilst some of these are the same as current tests (for example, compatibility with the European Convention on Human Rights and with EU law), others are new and do not appear to flow inevitably from a reserved powers model. These include four new "necessity" tests which would seem to constrain the Assembly more than at present; something that concerns us greatly.

Looking back at the legislation within the Committee's remit that has been passed by, or is currently proceeding through, the Assembly¹, if we were to apply the competence tests in the draft Wales Bill to these pieces of legislation, there appear to be a number of examples where there would either have been doubts about the competence of the Assembly to legislate, or where it would have been clear that the Assembly was not able to legislate. These points are expanded in the narrative below and in Annexe A.

Reservations

We have conducted an analysis of the reservations set out in the draft Bill with particular relevance to the areas in our remit. Our detailed findings are included in Annexe A, including a brief assessment of whether competence in these areas is likely to be reduced, increased, or left unchanged.

¹ During the fourth Assembly, the Committee has considered and reported on 9 Bills: National Assembly for Wales (Official Languages) Act 2012; Local Government Byelaws (Wales) Act 2012; Local Government Democracy (Wales) Act 2013; Mobile Homes (Wales) Act 2013; Housing (Wales) Act 2014; Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015; Local Government (Wales) Bill; Renting Homes (Wales) Bill; Historic Environment (Wales) Bill.



Our analysis has shown that, in certain areas, the Assembly's competence is likely to be extended, for example in relation to specific aspects of local government elections in Wales. Overall, however, in the areas within the Committee's portfolio, the effect of the proposed reservations will mean a likely reduction in the Assembly's competence; something that we oppose strongly. There are also a number of areas where the effect of the reservation on competence would be unclear. We do not consider this to be a satisfactory position.

Restrictions on modifying private law

In addition to examining the reservations proposed in the Bill, we have also considered some of the other competence tests, specifically the restriction on modifying the private law (Test 5, Annexe B).

We understand that this proposed restriction would mean a significant reduction in the Assembly's competence, as the test does not exist under the current settlement and would lead to problems in terms of clarity and workability of the settlement. The wording of the restriction is such that there is likely to be uncertainty about the breadth of the Assembly's competence, which we believe could increase the likelihood of referral of Bills to the Supreme Court. As an example, the Mobile Homes (Wales) Act 2013 implies new terms into mobile home agreements. This requires a modification of the law of contract. Whether or not this would be within competence under the new settlement is unclear and would depend on the application of the necessity tests. A similar point could be made in the case of virtually the whole of the Renting Homes (Wales) Bill.

Restriction on modifying criminal law and civil penalties

We also considered the competence test relating to modifying criminal law and civil penalties (Test 6, Annexe B). Under the current conferred powers model, subject to certain conditions, the Assembly can create criminal offences and change the defences available or penalties applicable. Our analysis of the proposed restriction on modifying criminal law and civil penalties is that it would only permit the Assembly to make the minimum possible changes in these areas to effect its legislative intention and that the courts would be able to review the Assembly's choice in this regard.

We note that a significant number of Bills that we have considered during the course of this Assembly have relied upon the creation of criminal offences and



introduced penalties as a means of ensuring compliance with duties imposed, or prohibitions introduced. For example, the Housing (Wales) Act 2014 contains a series of enforcement provisions, including an offence of appointing an unlicensed agent and the use of fixed penalty notices.

In addition, there are provisions within the Historic Environment (Wales) Bill that seek to limit the current ‘defence of ignorance’ for charges of damage to historic monuments.

Given the wording of the proposed reservation, it is reasonable to suggest that there would have been scope for some of the above changes to criminal law and civil penalties to be subject to challenge. While this, in itself is undesirable, of greater concern to us is that the proposed restriction could potentially lead to the passing of ‘toothless’ and largely ineffectual laws in Wales.

Reserved authorities and Minister of the Crown functions

Having considered the proposed competence test relating to reserved authorities and Minister of the Crown functions, we are concerned that it is significantly wider than the current test, and that the likely effect of this will be to greatly increase the number of instances in which the Assembly needs the consent of the UK Government to legislate.

By way of illustration, the Welsh Language (Wales) Measure 2011 enables the Welsh Ministers to prescribe standards that certain public bodies must meet in relation to Welsh language provision. However, if the proposed settlement came into force, the Assembly would not be able to amend the Measure so as to affect reserved authorities in new ways not already contained within the scope of the current Measure, unless Minister of the Crown consent was given. Nor would the Assembly be able to pass a new Act imposing new Welsh–language duties on reserved authorities without that consent.

There are several other examples of legislation within the Committee’s remit where consent would have been needed if the proposed test were to be applied:

- The Housing (Wales) Act 2014, which requires the co-operation between local authorities (and other bodies) in England and Wales in respect of homelessness;



- The Mobile Homes (Wales) Act 2013, which creates various rights of appeal to a tribunal;
- The Renting Homes (Wales) Bill, which creates numerous rights to refer matters to the county court, the high court or the Residential Property Tribunal;
- The Historic Environment (Wales) Bill, which creates a right of appeal against an enforcement notice to a magistrates' court.

It is fair to say that the legislative competence order ('LCO') process in place prior to the move to Part 4 of the Government of Wales Act 2006 was particularly onerous and meant delays in the introduction of legislative proposals that were supported in principle by all political parties in Wales. While we do not wish to comment on the principle of consent, we consider the proposed competence test relating to reserved authorities and Minister of the Crown functions would be a retrograde step. We have some concerns about the possible lack of efficiency of the consent process, particularly given our experience of LCOs. The need for increased intergovernmental communications in negotiating consents is likely to lead to greater delays being built into the process. This is particularly pertinent given the potential increase in the number of Bills requiring consent as a result of the proposed changes to the competence test. There is, of course, no guarantee that consent will be given in all cases.

To help inform our consideration of the draft Bill, we wrote to the Welsh Language Commissioner and Public Service Ombudsman for Wales ('PSOW') seeking their views on the impact of the Bill on the areas in which they have statutory responsibilities. In the PSOW's response, he refers to "ambiguity" and "uncertainty" about whether the Office and functions of the PSOW will remain within the Assembly's competence under the new settlement. The concerns expressed by the PSOW further illustrate that the proposed model fails to provide sufficient clarity, even on matters such as these, which should be straightforward. A copy of the PSOW's letter is attached at Annexe C.

The Committee welcomes this opportunity to contribute to your work and trust that you will find our views useful. We look forward to the publication of your report.



I am copying this letter to the First Minister, the Presiding Officer and the Secretary of State for Wales.

Yours sincerely,

Chris Chapman

Christine Chapman AC / AM

Cadeirydd / Chair



Annexe A: Reservations related to the Communities, Equality and Local Government Committee's remit

Local Government elections in Wales

(Section B1, reservations 20 – 26)

1. The current settlement confers competence on the Assembly as regards 'electoral arrangements' for local government. This wording has not been tested in the courts, but it has been taken to encompass the voting system (e.g. first past the post, single transferable vote, etc) as well as the conduct of elections, matters such as boundaries and the number of councillors elected for each ward (this list is not exhaustive). There is a specific exception excluding competence for the 'franchise' – i.e. who is allowed to vote.
2. Under the draft Bill, almost all aspects of local government elections would be within the Assembly's competence. Most notably, the franchise for local elections would clearly come within the Assembly's competence, as it is not reserved. This would represent an **increase** in the Assembly's competence.
3. There are reservations from this increased competence, however. The Assembly would not have competence to do the following:
 - Change the position concerning the combination of devolved and non-devolved elections, including the proposed new powers of the Welsh Ministers in this regard (reservations 20 and 21); ("devolved elections" here means Assembly and Welsh local government elections, while "non-devolved" elections means UK Parliamentary and European elections, elections of Police and Crime Commissioners and any other elections or referendums that would be outside the Assembly's competence such as, obviously, Scottish Parliamentary elections);
 - Change the limits on election campaign expenditure for non-devolved elections (reservation 25);
 - Change the limits on election campaign expenditure where local elections are combined with non-devolved elections (reservation 24);
 - Change the registration and financial rules that apply to political parties (reservation 26).



4. As well as the increase in the Assembly's competence, the Welsh Ministers would have some **increased executive powers** in relation to local government elections in Wales. They would be able to provide for the combination of certain Assembly and local government elections in Wales, though the rules on combining Assembly **ordinary** general elections and local government **ordinary** elections would not be within that power. Similarly, the Assembly would not have competence to change the timing of ordinary local government elections if they were due to coincide with an Assembly general election.

5. The Welsh Ministers would also have the power to make regulations to allow for digital registration of voters in local elections.

Immigration

Section B2, reservation 28: Immigration, including asylum and the status and capacity of persons in the United Kingdom who are not British citizens

6. The homelessness duties imposed on local authorities under **Chapter 2 of Part 2 of the Housing (Wales) Act 2014** ('the 2014 Act') make special provision for those who are subject to immigration control.

7. It is **unclear** whether the proposed reservation 28 means that provisions like this, making specific provision for asylum-seekers and others subject to immigration control, could be made under the proposed new settlement. If not, the implications are uncertain. It could mean that a future Assembly Act on housing or homelessness would have to treat those individuals in the same way as British citizens. Alternatively, it could mean that an Assembly Act would simply not be law in so far as those persons were concerned – although this appears an extreme interpretation.

Crime, public order and policing

Section B5 reservation 38: Prevention, detection and investigation of crime

8. Local authorities are responsible for the investigation of regulatory offences (crimes) in many areas, such as non-payment of council tax and environmental matters. This reservation might **reduce** the Assembly's competence to give local authorities new duties or powers of investigation.



9. This reservation would have had significant implications for the **Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015**. Most of the 26 sections of that Act are, in one way or another, aimed at reducing crime. The specific reservation of ‘prevention...of crime’ means it is likely that the whole Act **would have been outside competence** if introduced under the proposed new settlement.

Anti-social behaviour

Section B6, reservation 42: The subject matter of the Anti-social Behaviour, Crime and Policing Act 2014

10. Currently, an exception in the Government of Wales Act 2006 (‘GOWA’) prevents the Assembly from legislating about ‘*orders to protect people from behaviour that causes or is likely to cause harassment, alarm or distress.*’

11. Reservation 42 in the draft Bill would link the subject of anti-social behaviour to a definition set out in the Anti-social Behaviour, Crime and Policing Act 2014. It would prevent the Assembly passing an Act that related to (i.e. had more than a loose or tenuous connection with):

*‘(a) conduct that has caused, or is likely to cause, harassment, alarm or distress to any person,
(b) conduct capable of causing nuisance or annoyance to a person in relation to that person’s occupation or residential premises, or
(c) conduct capable of causing housing-related nuisance or annoyance to any person.’*

12. This is considerably wider than the current exception, which only prevents the Assembly legislating on existing ‘orders’.

13. The proposed new settlement would mean that the Assembly could not legislate in respect of anti-social behaviour in a housing context. As such, **section 55 of the Renting Homes (Wales) Bill** (which imposes obligations on contract-holders not to engage in this behaviour) would have been **outside** competence.

14. It is also likely that **section 145 of that Bill** (which permits supported housing providers to exclude occupants from their homes for up to 48 hours in cases of anti-social behaviour) would have been **outside** competence.



15. Tackling anti-social behaviour is closely linked to preventing crime. The **Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015** might, therefore, have fallen **outside** competence on the basis of this reservation, as well as on the basis of the reservation relating to the prevention of crime, if the proposed new settlement had been in force.

Dangerous items

(Section B11, reservations 48–50: The subject matter of the Firearms Act 1968 to 1997; the subject-matter of the Poisons Act 1972; knives)

16. These reservations include knives, blades, axes, swords, poisons and firearms. There is no current exception in GOWA for the matters covered by the proposed reservations. These matters may seem remote from the Assembly's competence but the Assembly could in fact currently legislate in relation to these dangerous items, provided that the purpose of the Assembly Act related to one of the conferred subjects in GOWA, such as prevention of injury, protection of children and young adults, or education.² For instance, the Assembly could in principle legislate on dangerous items for the purpose of protecting children and young people on the streets of Welsh communities, or in schools and colleges. As a result of the Supreme Court judgment in the *Agricultural Sector (Wales) Bill* case, the Assembly could therefore legislate on those matters provided that the purpose of the legislation was genuinely directed at one of the subjects of competence.

17. The proposed reservations would, therefore, represent a **reduction** in competence.

Misuse or dealing in drugs and psychoactive substances

(Section B12, reservation 51)

18. This reservation appears to be wider than the current exception in GOWA, which is only for "Misuse of and dealing in drugs". However, we consider that

² This was established by the Supreme Court judgment in the case of the *Agricultural Sector (Wales) Bill*. Like employment, which was an issue in that case, dangerous items such as knives are "silent subjects" – topics which are neither subjects nor exceptions in Schedule 7 to GOWA.



these substances would, in practice, be held to fall within the existing exception. Moreover, Assembly competence to legislate about them would currently be blocked by the existence of a UK Ministerial function which, under the current settlement, could not be removed or modified without UK Government consent. Therefore, this reservation produces no real change to competence.

Entertainment and late night refreshment, including classification of films and video recordings (including video games), and the sale and supply of alcohol
(Section B14, reservations 53 and 54 and Section B15, reservation 55)

19. An exception in GOWA currently prevents the Assembly from legislating about ‘licensing of sale and supply of alcohol, provision of entertainment and late night refreshment’.

20. The proposed reservation would apply only to ‘late night’ entertainment. It would appear that the Assembly would be able to legislate about entertainment at other times of the day and therefore this would be a slight **increase** in the Assembly’s legislative competence.

21. On the other hand, GOWA currently prevents the Assembly from legislating in respect of classification of films and video recordings, but not video games. The Assembly’s competence would be slightly **reduced** by the draft Bill, as video games would be reserved.

Charities and fund-raising

Section B21, reservation 61: Charities

22. Many registered social landlords are charities. Currently, the Assembly may impose duties on them under the heading ‘housing’. As an example, **section 95 of the Housing (Wales) Act 2014** requires registered social landlords to co-operate with local authorities in housing homeless people. It is **unclear** whether this provision would be outside competence, in so far as it affected charities, under the proposed new settlement.

Health and safety

Section J6, reservation 171: Fire safety



23. Currently, the Assembly has the competence in relation to the following subjects:

- Fire and rescue services;
- Provision of automatic fire suppression systems in newly constructed or newly converted residential premises;
- Promotion of fire safety otherwise than by prohibition or regulation.

24. Reservation 171 is simply “Fire safety”. There are specific exceptions for provision of automatic fire suppression systems in newly constructed or newly converted residential premises and for promotion of fire safety otherwise than by prohibition or regulation. However, there is no exception for “fire and rescue services”.

25. The reservation, on its own, probably does not reduce competence; that it is sufficient that “fire and rescue services” are not reserved. However, the draft Bill contains a restriction on the Assembly legislating in relation to public authorities whose functions are not wholly or mainly within competence. Given that the function of “fire safety” would be reserved, the combined effect of the reservation and the restriction **causes some uncertainty** about the Assembly’s power to legislate on the constitution, functions etc. of fire and rescue authorities.

Media culture and sport

Reservations under Head K

26. Competence in this area is largely **unchanged**, but there are some noteworthy points. In the current settlement, ‘Broadcasting’ is an exception. The proposed new settlement refers to ‘Broadcasting *and other media*’ (reservation 173) and ‘*The British Broadcasting Corporation*’ (reservation 174). The reservation of the BBC is likely to be for clarity only; under the current settlement, the BBC was always regarded as non-devolved. So, the only change which may be of significance is ‘other media’. It is unclear what this means, although it appears likely to encompass social media. Consequently, it is **unclear** whether this represents a reduction in the Assembly’s competence.

27. There is a further reservation (177) relating to payments made to HMRC in respect of property accepted instead of tax. This is wider than the current exception from competence: at present, the Assembly may legislate for payments



in lieu of tax in the form of property of '*Welsh national interest*'. Therefore, this would represent a **reduction** in competence.

Local land charges

(Section M2, reservation 198: Local land charges)

28. Under the current settlement, local land charges are within competence, except for fees. The proposed new settlement would **reduce** the Assembly's competence by taking away its power to legislate on local land charges **in any way**.

Equal opportunities

(Section N1, reservation 206: Equal opportunities, including the subject-matter of the Equality Act 2006 and the Equality Act 2010)

29. The current settlement permits the Assembly to legislate on equal opportunities in relation, broadly, to public bodies in Wales which would be regarded as "devolved".

30. This would no longer be possible under the proposed new settlement. Equal opportunities, including the subject-matter of the Equality Act 2006 and the Equality Act 2010, are reserved in the draft Bill. This would be a **reduction** in the Assembly's competence.

31. However, the following would be within competence, by virtue of exceptions from the reservations:

(i) Encouragement of equal opportunities;

(ii) Imposing duties on "Welsh public authorities" and "specified public authorities" (both these terms are defined in the Bill) to make arrangements to ensure that their functions are carried out with due regard for their legal obligations as to equal opportunity;

(iii) The subject-matter of Part 1 of the Equality Act 2010 (which requires public bodies to have regard to the desirability of reducing socio-economic



inequalities in exercising their functions). Otherwise, affecting the Equality Act would be outside competence.

32. This competence is limited in scope. The competence to “encourage” (point (i)) falls short of a power to impose duties. Indeed “encouragement” in itself is something that does not require legislative action and therefore legislative competence is somewhat theoretical. The competence in point (ii) is merely to impose duties on public bodies as to how they carry out an existing legal duty. Point (iii) is however of more significance.

33. The definition of ‘equal opportunities’ does not include language. So, the Assembly’s competence to legislate in order to promote the Welsh language **appears to be unaffected**. However, restrictions on the Assembly’s competence may in fact reduce competence in this area, as already outlined in our letter.



Annexe B: Proposed competence tests in the draft Wales Bill

Test 1	Must not extend beyond the England and Wales jurisdiction.
Test 2	Must not apply otherwise than in relation to Wales or confer, impose, modify or remove functions exercisable otherwise than in relation to Wales (or give the power to do so), unless the modification is ancillary to a core competence provision AND has no greater effect beyond Wales than is necessary to give effect to the purpose of the core competence provision.
Test 3	Must not “relate to” reserved matters listed in draft Schedule 7A, which will be inserted into GOWA, replacing the present Schedule 7 (Schedule 7A can be found in Schedule 1 to the Bill).
Test 4	Must not modify the law on reserved matters (or give the power to do so), unless the modification is ancillary to a core competence provision AND has no greater effect on reserved matters than is necessary to give effect to the purpose of the core competence provision.
Test 5	<p>Must not modify private law (or give the power to do so) unless the modification is necessary for a devolved purpose, or is ancillary to a core competence provision AND has no greater effect on the general application of the private law than is necessary to give effect to that devolved purpose.</p> <p>“The private law” is defined as meaning contract law, agency law, the law of bailment, tort law, the law of unjust enrichment and restitution, property law, trusts law and succession law). This is extremely wide.</p>
Test 6	Must not modify the criminal law (or civil penalties), or give the power to do so, unless the modification is ancillary to a core competence provision AND has no greater effect on the general application of the criminal law/civil penalties than is necessary to give effect to that devolved purpose, AND is not a road traffic offence.



Test 7	Must not modify a protected enactment (listed in draft Schedule 7B, including some provisions of GOWA and some other legislation).
Test 8	<p>Must not affect Minister of the Crown functions, or those of government departments or other “reserved authorities” in a range of ways without the consent of ‘the appropriate Minister’.</p> <p>This test is similar to an existing one but has been significantly widened, i.e. has been made more restrictive of competence, in six ways:</p> <p>(i) the Assembly will not be able to remove or modify any UK Ministerial functions, current or future, unless the UK Government consents; whereas at present the prohibition only applies to functions created before 5 May 2011;</p> <p>(ii) the Assembly will not be able to remove or modify such functions where to do so would be merely incidental or consequential, unless the UK Government consents; this is a new prohibition and reverses the effect of the Supreme Court judgment in the <i>Local Government Byelaws (Wales) Bill</i> case;</p> <p>(iii) the same prohibitions apply to affecting the functions of “reserved authorities” (public authorities whose functions relate wholly or mainly to reserved matters, and public authorities which have any functions beyond Wales, even if their functions relate wholly or mainly to devolved matters) – this is a new prohibition;</p> <p>(iv) the Assembly will not be able to confer or impose any function on a reserved authority without UK Government consent (currently, this prohibition applies only to giving UK Ministers new functions);</p> <p>(v) the Assembly will not be able to confer, impose, modify or remove functions specifically exercisable in relation to a reserved authority, without UK Government consent; this is a new prohibition;</p> <p>(vi) the Assembly will not be able to modify the constitution of a reserved authority without UK Government consent; this is a new prohibition.</p>
Test 9	Must not be incompatible with the Convention rights.



Test 10	Must not be incompatible with EU law.
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Our ref: NB/SMH

Ask for: Nick Bennett

Your ref:



01656 641150

Date: 6 November 2015



Mrs Christine Chapman
Chair of the Communities, Equality
and Local Government Committee
National Assembly for Wales
Cardiff Bay
CARDIFF
CF99 1NA

Dear Mrs Chapman

Draft Wales Bill: Request for information

Thank you for your letter dated 23 October 2015 seeking my views on the draft Wales Bill published a fortnight ago. It would not be appropriate for me as Ombudsman to comment on the impact of the Bill in relation to bodies within my jurisdiction; however, I do welcome the opportunity to comment on its possible impact in relation to the office of the Public Services Ombudsman for Wales (PSOW).

First and foremost, there is ambiguity as to whether under the 'reserved model' arrangements set out in the draft Wales Bill, the office of PSOW and the functions of the office of the PSOW remains within the legislative competence of the National Assembly for Wales. Clearly this is a matter of concern and, of course, a live issue with the Assembly currently considering introducing a new PSOW Act.

As members of the Communities, Equality and Local Government Committee will be aware, currently, the Assembly has the competence to legislate for a new Public Services Ombudsman (Wales) Act, pursuant to Part 4 of the Government of Wales Act 2006 ('GOWA 2006'). The relevant provisions of GOWA 2006 are set out in section 108 and Schedule 7. Paragraph 14 of Part 1 of Schedule 7 sets out the subjects on which the Assembly may legislate under the heading of 'Public administration' and this includes 'Public Services Ombudsman for Wales'.

As members of the Committee will also be aware it is intended that Schedule 7 of the GOWA 2006 be repealed. Although there is no direct reference to the PSOW within the draft Wales Bill (apart from Schedule 7B, paragraph 7(7)(b)), it is possible that the PSOW remains within the Assembly's competence through the provision at Schedule 7A, paragraph 2(1)(b), whereby the "functions exercisable by any person acting on behalf of the Crown" is not reserved. It may be that it is this that is applicable given that the PSOW is a Crown appointment.

With the above uncertainties, however, I sincerely hope that the new draft Wales Bill will not delay or affect the Assembly's ability to introduce a new PSOW Act, should this remain its wish.

With regard to the additional areas being proposed for devolution contained in the draft Wales Bill, the key consideration from the PSOW's perspective is the potential increase in complaints to the office as a consequence. It is my view that the devolved areas being proposed (that is, elements of energy and transport, and Assembly and local government elections in Wales) will not generate a significant increase in complaints. Had the area of welfare, for example, been included in the draft Wales Bill, then that would have been a different matter. However, as things stand, I cannot see that there will be a major impact on the Ombudsman's office. I have previously given the Assembly the undertaking that, in seeking financial resources for the running of my office, I would not seek more than 0.03% of the Welsh Block. On the basis of the provisions within the draft Wales Bill, I believe that I would still be able to honour that undertaking.

I hope that this response is of at least some assistance to the Committee's considerations.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Nick Bennett', with a stylized flourish at the end.

Nick Bennett
Ombudsman

David Melding AM
Chair, Constitutional and Legislative Affairs

19 November 2015

Dear David

Draft Wales Bill: implications of the proposed powers model on the Assembly's legislative competence

At its meeting on 11 November, the Health and Social Care Committee ('the Committee') considered the draft Wales Bill, particularly its implications for the Assembly's legislative competence in areas relevant to the Committee's remit.

The Explanatory Notes to the draft Bill state that it will "create a clearer and stronger settlement in Wales which is durable and long-lasting". The Constitutional and Legislative Affairs Committee has stated that the new devolution settlement for Wales should have the principle of 'subsidiarity', i.e. the principle that decisions should, where appropriate, be taken at local level, at its core. It also stated that alongside subsidiarity, the other core principles in drafting the new model should be "clarity, simplicity, and workability".

Having considered the draft Bill carefully, the Committee is disappointed and concerned to conclude that there is little evidence that these general principles have been considered and applied in preparing the draft Bill.

The Committee's concerns are outlined overleaf.

- The history, geography and legal landscape of Scotland and Wales are very different. Therefore, it was always going to be difficult to lift the Scottish model of devolution and drop it into a Welsh context without causing damage. The Committee does not question the use of a reserved powers model, but firmly believes that Wales should have a reserved powers model

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that is tailored to Wales. This should have been the basic starting point towards creating a clearer and stronger settlement. The Committee believes that the Bill should provide for a legal jurisdiction which delivers a clear, durable and workable settlement.

- The sheer number and breadth of the reservations will present significant restrictions on the Assembly’s ability to legislate and implement policies effectively, i.e. they will present significant restrictions on the Assembly’s ability to do what it is elected to do. Any Assembly legislation which has more than a “loose or consequential connection” with any of the 200+ reservations will automatically be outside competence; this raises questions as to the workability of the proposed reserved powers model.
- The Committee believes that the UK Government should have good reasons for reserving each of the 200+ matters that are reserved, and that those reasons should be made available. While the Committee has no issue with reservations such as defence, House of Commons elections and currency, the Committee does not understand the reasoning behind other reservations.
- Of particular concern and relevance to the Committee is the reservation of the sale and supply of alcohol. Consumption of alcohol is a serious health issue on which the Committee has undertaken a significant amount of work. Moreover, it is a health issue that is best dealt with at a local level where effective and appropriate action can be taken. The Committee believes that the UK Government should clarify the reasons for reserving alcohol in Wales, particularly when (a) it is not reserved in Scotland, and (b) EU alcohol law restrictions would apply in any case.
- The Committee has reviewed the 200+ reservations from a health and social care perspective. Reservation 149 (regulation of health professionals) raises particular concern and uncertainty. Paragraph (a) of reservation 149 reserves a lengthy list of health professions; paragraph (b) of reservation 149 contains a catch-all provision which reserves “any other profession concerned with the physical or mental health of individuals”. This catch-all provision is very broad. The Committee is unclear about whether this is intended to capture social care workers such as domiciliary care workers. Such workers often have a central role to play in the physical and mental health of vulnerable persons, and it is vital that the Assembly’s competence



is not restricted in this area, where it is crucial that decisions are taken at a local level. The Committee notes that a specific exception has been carved out for the “social work profession”, which is a very narrow and specific profession. The Committee would welcome clarification as to where this leaves social care workers.

- The Committee raises a more general concern with reservation 154 (employment rights and duties) as it turns current silent subjects into detailed reservations. It appears that any Assembly legislation which has more than a loose or consequential connection with any of the long list of employment-related legislation in reservation 154 will automatically be outside competence. The Committee does not believe that this reduction in competence is appropriate, particularly in light of the Supreme Court judgment in the Agricultural Sector (Wales) Bill reference. Further, it seems that the Assembly could not legislate in relation to wages and holidays in the social care sector (not only under reservation 154, but also possibly reservation 149). This interpretation is confirmed by the inclusion of the Agricultural Sector (Wales) Act 2014 as a specific exception. The Committee is unclear where this leaves the Assembly’s competence to legislate in relation to wages and holidays in other sectors. It assumes that reservation 154 is a significant reduction in the Assembly’s competence.
- The Committee notes that in addition to Assembly legislation not being able to relate to a reservation, the draft Bill also specifies that Assembly legislation must not modify the law on reserved matters. The Committee does not see any practical difference between these two tests, and questions the need for the inclusion of them both.
- The Committee shares the concerns expressed publicly by many stakeholders about the “necessity tests”, particularly in the context of the private law test and the criminal law test. The restriction on modifying private law is likely to have a significant impact on the ability of the Assembly to legislate in relation to, for example, NHS contracts and social care agencies. The Committee is unclear about what is meant by “necessary”, as it is open to many different interpretations. However the Committee also believes that, on a higher level of principle, the Assembly should not have to demonstrate that any modification of the private law has no greater effect than is **necessary** to give effect to a devolved purpose. It



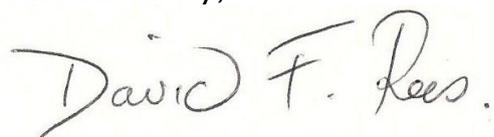
believes that it is the legitimate role of a democratically elected legislature to decide how to implement and enforce policies, and for that legislature to do so as it thinks **appropriate**. The same concerns apply to the necessity test as it applies to modifying criminal law.

- The Committee is concerned about the requirements imposed by the draft Bill for the UK Government to give consent to Assembly legislation which modifies the functions of Ministers of the Crown, government departments and reserved authorities. For example, the Committee is considering the Public Health (Wales) Bill, which applies the current restriction on using tobacco cigarettes in workplaces to e-cigarettes. "Workplaces" in this context includes the premises of what would under the draft Bill be reserved authorities, such as HMRC in Cardiff. Therefore this provision in the Public Health (Wales) Bill would require UK Government consent. The provision does not currently require such consent. Thus the draft Bill would reduce the Assembly's competence and poses a serious risk to the Assembly's ability to legislate in a comprehensive and consistent way across Wales.

The above issues are a concise summary of the issues the Committee has identified, particularly in the context of health and social care. The Committee does not believe that the draft Wales Bill delivers a clearer and stronger settlement which is durable and long lasting. Indeed, its lack of clarity, simplicity and workability appears to the Committee to do nothing more than pave the way to the Supreme Court. However, the Committee would welcome any opportunity to contribute further to the development of the draft Wales Bill, particularly in the context of health and social care, if it would be of assistance.

A copy of this letter will be shared with the Presiding Officer, the First Minister, and the Secretary of State for Wales, to inform their consideration of the draft Wales Bill.

Yours sincerely,



David Rees AM

Chair, Health and Social Care Committee



The Right Hon Stephen Crabb MP
Secretary of State for Wales

19 November 2015

Dear Secretary of State for Wales

Draft Wales Bill

The Children, Young People and Education Committee considered the draft Wales Bill in its meeting on 12 November. In doing so, we sought to answer three questions in the context of the Committee's remit and work:

- Is the draft Bill clear and are there ways it could be made clearer?
- Does the draft Bill affect the Assembly's current competence in relation to children, young people and education?
- What does the draft Bill mean for the Assembly's ability to legislate effectively in future?

We hope that our answers to these questions will assist you in taking forward the draft Bill and you will be able to reassure us that you are addressing our concerns.

Is the draft Bill clear and are there ways it could be made clearer?

The draft Bill contains over 200 specific reservations, wide-ranging general reservations, new "necessity" tests and broadened requirements for consents. The combination of these tests and reservations make it difficult for us to assess with confidence the impact of the draft Bill on those areas that fall within the Committee's remit. The extent of the specific reservations should be explained in the explanatory notes accompanying the draft Bill.

Further, it is unclear why certain policy areas have been reserved as no rationale has been provided. You have described *how* the reservations in the Bill were developed. However, the reservations should be underpinned by principles, which can be explained clearly and



simply. It is incumbent on the UK Government to explain *why* reservations have been included in the draft Bill.

It would be helpful to receive clarification as to why certain Silk recommendations have not been given effect in the draft Bill. In particular, the Committee notes that the Secretary of State gave a commitment in his letter of 3 September to the First Minister to give further consideration to the devolution of teachers' pay and conditions. The Committee would be grateful for an update on progress.

Does the draft Bill affect the Assembly's current competence in relation to children, young people and education?

During our discussions, we identified specific reservations which appear to reduce the Assembly's competence in relation to children, young people and education and the matters that affect them. We were not able to identify or consider the potential impact of all of the reservations given the time available.

Reservation 38 – The prevention, detection and investigation of crime

This reservation is potentially very wide and reduces the legislative competence of the Assembly. It could have significant implications if the Assembly wished to legislate in areas concerning child protection, for example. The Committee cannot support this proposal.

Reservation 61 – Charities

It is not clear whether this reservation applies to charity law or the regulation of charities. The Committee notes that the Wales Office's analysis of Acts passed in the 4th Assembly states that this reservation is intended to apply to charity law. However, that is not clear in the Bill. This reservation could be interpreted in such a way as to impinge on the Assembly's ability to legislate in relation to private schools with charitable status as well as institutions in the Higher and Further Education sectors.

Reservation 193 – Family Law

The current Government of Wales Act devolved the following elements of family law –

- (a) Welfare advice to Courts, representation and provision of information, advice and other support to children ordinarily resident in Wales and their families, and
- (b) Welsh family proceedings officers.



These elements are not listed as exceptions in the draft Bill. This would clearly constitute a reduction in the competence of the Assembly and the Committee cannot support this.

The Assembly's current competence as set out in Schedule 7 of GOWA includes "adoption and fostering". In the draft Bill, the family law reservation includes an exception relating to "adoption agencies and their functions". It appears that the current competence would be reduced by the draft Wales Bill. The Committee cannot support this.

Reservation 206 – Equal Opportunities

Under the current settlement the Assembly can amend equality legislation insofar as its legislation relates to Equal Opportunity public authorities. This reservation appears to remove that competence and the Committee cannot support this.

General restriction as to the criminal law.

Schedule 7B of the draft Bill provides for various general restrictions on the legislative competence of the Assembly, including restrictions related to the Criminal law. The potential effect is wide and could have a considerable impact on matters that relate to the remit of this Committee, for example, if the Assembly wished to legislate in relation to child protection.

In conclusion, we are concerned that the Assembly's competence in relation to matters affecting children, young people and education will be reduced as a result of the draft Bill. This could be addressed by ensuring that reservations and exceptions in the draft Bill accurately and fully reflect the Assembly's current competence.

How will the draft Bill affect the Assembly's ability to legislate effectively in future?

We are concerned that the reservations, necessity tests and other restrictions in the draft Bill will unnecessarily constrain the Assembly's ability to legislate effectively in areas where it already has powers or functions. Such is the extent of the reservations that there will be unintended consequences which may restrict the Assembly further than was originally intended or envisaged.

We would like to draw your attention to two examples related to the remit of the Children, Young People and Education Committee –

Under the new model, Section 134 of the Social Services and Well-being (Wales) Act 2014, which designates the Chief Officer of police as a partner on safeguarding boards, would



require Secretary of State consent, as police forces are reserved authorities. It is clear that the Act relates to a devolved purpose – social welfare, and the creation of safeguarding boards and specifying the partners thereof would be within competence. However, the consequence of this reservation means that the Assembly could not designate a Chief Officer of a Welsh police force as a partner on a safeguarding board located in Wales without the consent of the Secretary of State. The rationale for this constraint is unclear. It may be an unintended result of the designation of police forces as reserved authorities.

The second example of an area affected by the wide-ranging reservations could be the Children’s Commissioner for Wales. Under the current settlement it would be possible to extend the powers that the Commissioner has in relation to matters which relate to or affect children in Wales including “silent” subjects. However, taking into account some of the specific reservations and the general restrictions in Schedule 7B, the draft Bill limits the potential for the Assembly to do this.

In conclusion, the Committee is concerned about the lack of clarity in the draft Bill. Further, the Committee has grave concerns about the proposed reduction in the Assembly’s competence in areas that fall within the Committee’s remit. The Committee welcomes your undertaking that there will be further discussion on the content of the draft Bill and looks forward to seeing the issues outlined in this letter addressed.

Yours Sincerely



Ann Jones AC / AM
Cadeirydd / Chair

cc Constitutional and Legislative Affairs Committee



David Melding AM
Chair of Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

16 November 2015

Dear David

Draft Wales Bill

At our meeting on 4 November, we considered the draft Wales Bill. We considered:

- whether it met the Secretary of State’s aim of providing a clear and lasting devolution settlement; and
- the effect that this draft Bill would have on the policy areas we are responsible for scrutinising.

Our consideration to date has been limited due to the time we have available to consider the draft Bill, but we felt it important to input into your work within the timescale requested.

Our initial response is that the draft Bill does not provide a clear or lasting devolution settlement.

We are developing our position on these points, but currently believe that there are several examples of where the draft Bill will add complexity; create uncertainty; and reduce the Assembly’s legislative competence.

Whilst we broadly welcome the increases to legislative and executive competence, we have concerns about the basis on which some of these are being proposed and the limited opportunity they provide for truly devolved decision making. We have concerns that there are also some areas where the legislative competence of the



Assembly appears to be reduced and we will be giving further consideration to these.

I hope to provide you with further detail on these points in the coming weeks.

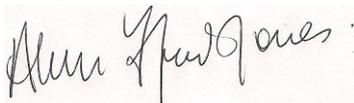
Attached to this letter is a table that sets out our analysis of the draft Bill's proposed reservations within the policy areas covered by the Environment and Sustainability Committee's remit.

You will see from this table that there remain unanswered questions about the rationale behind some of the changes to competence and what the implications of these changes might be.

We will be giving further consideration to the draft Bill and intend to write to the Secretary of State and the Welsh Affairs Committee before the Christmas recess. We will copy this correspondence to you; though note that it falls outside the time you have allocated for considering the draft Bill.

Should you require any further information I would be happy to meet with you to discuss this matter further.

Yours sincerely



Alun Ffred Jones AM

Chair of the Environment and Sustainability Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Environment and Sustainability Committee

Initial view on the reservations proposed by the draft Wales Bill that are relevant to the work of the Environment and Sustainability Committee

Reservation	Change to Assembly's legislative competence	Comments
B6 Anti-social behaviour		
42 – Anti-social behaviour	Yes	The current exception in the 2006 Act prevents the Assembly from legislating about ' <i>orders to protect people from behaviour that causes or is likely to cause harassment, alarm or distress</i> '. The draft Bill links the reservation to the subject-matter of Parts 1-6 of the Anti-social Behaviour, Crime and Policing Act 2014, which includes for example injunctions, community protection notices and public space protection orders. The definition of anti-social behaviour in section 2 of the 2014 Act is also wider than the current exception. Currently the Assembly has competence in relation to environmental nuisance. The restriction could reduce the Assembly's competence to legislate in areas such as dog fouling, noise nuisance, control of Japanese knotweed etc.
43 -Dangerous dogs and dogs out of control	Yes	At the end of 2012 the Welsh Government began its' consultation on the draft Control of Dogs (Wales) Bill which included provisions for both dangerous dogs and dogs out of control. The Bill was placed on hold because of similar provision which was to be made by the Anti-Social Behaviour Crime and Policing Act 2014. Whilst there was disagreement during the passage of that Act between the respective governments about whether the Assembly had competence to legislate in respect of dangerous dogs, no arguments were raised in respect of the control of dogs generally. The reservation is wider than the suggested reservation for 'dangerous dogs' in <i>powers for a purpose</i> . If the draft Bill became law it would mean that the Assembly would be unable to move forward with the Bill if it wished to do so.
B17 – Hunting		



57 - Hunting with dogs	No	
B18 – Scientific and educational procedures on live animals		
58-Procedures on live animals for scientific or educational purposes	Yes	The current exception is for ' <i>regulation of scientific or other experimental procedures on animals</i> '. The proposed reservation is wider and is not just confined to just the regulation of such procedures. This is unlikely to have much practical effect because of EU Law and existing Minister of the Crown functions. The Welsh Ministers do not currently exercise any executive functions under the Animals (Scientific Procedures) Act 1986
B21 – Charities and fund-raising		
61-Charities 62-Raising funds for charitable, benevolent or philanthropic purposes	Yes	Section 57 of the Environment (Wales) Bill provides that " <i>Carrier bag regulations must require the net proceeds of the charge to be applied to charitable purposes</i> ". It is not clear whether under the proposed settlement such a provision would be outside the Assembly's competence. Whilst the purpose of the provision is not to benefit charities, its effect is certainly that of raising funds for a charitable purpose. How will it affect devolved bodies which have charitable status?
C4 Intellectual property		
68-Intellectual property <i>Exception</i> Plant varieties and seeds	Yes	The previous carve-out from the ' <i>intellectual property</i> ' exception was only in respect of plant varieties. The proposal widens the carve-out so that the Assembly would have competence to legislate in respect of intellectual property for seeds as well as plant varieties.
C5 Imports, exports and movement of plants etc.		
69-Prohibition and regulation of – (a) imports and exports, and (b) the movement of food, plants, animals and other things within the United Kingdom. <i>Exceptions</i> Prohibition and regulation which relates to food, plants, animals and related things, and which is for the purposes of – (a) protecting human, animal or plant health, animal welfare or the environment, or	No – exception is however worded differently but see comments	The proposed carve out from the exception makes it clear that prohibition and regulation of the movement of plants, animals etc. for the purposes of protecting endangered species of animals and plants is reserved to the UK Government. Whilst the carve out to the existing exception under heading 1 in Schedule 7(Agriculture, forestry, animals, plants and rural development) does not specifically state this, it is likely to be because protection of endangered species is not itself a subject in Schedule 7 . The prohibition and regulation of



<p>(b) observing or implementing obligations under the Common Agricultural Policy.</p> <p>Prohibition and regulation which relates to animal feeding stuffs, fertilisers or pesticides (or things treated by virtue of an enactment as pesticides), and which is for the purposes of protecting human, animal or plant health or the environment.</p> <p>But prohibition and regulation for the purposes of protecting endangered species of plants and animals is not excepted.</p>		<p>the import and export of endangered species is also reserved in Scotland. The change is unlikely to have much practical effect as the basis for current law at a UK and EC level is the Convention on International Trade in Endangered Species (CITES).</p>
<p>C6 Consumer Protection</p>		
<p>70 -Regulation of –</p> <p>(a) the sale and supply of goods and services to consumers,</p> <p>(b) guarantees in relation to such goods and services,</p> <p>(c) hire purchase, including the subject-matter of Part 3 of the Hire-Purchase Act 1964,</p> <p>(d) trade descriptions,</p> <p>(e) misleading and comparative advertising, except regulation specifically in relation to tobacco and tobacco products,</p> <p>(f) price indications</p> <p>(g) auctions and mock auctions of goods and services, and</p> <p>(h) hallmarking and gun barrel proofing.</p> <p>71-Safety of, and liability for, services supplied to consumers.</p> <p>72-The regulation of –</p> <p>(a) estate agents,</p> <p>(b) timeshares, and</p> <p>(c) package travel and package holidays.</p> <p>73-The regulation of –</p> <p>(a) unsolicited goods and services, and</p> <p>(b) trading schemes.</p> <p>74-The subject-matter of Part 8 of the Enterprise Act 2002.</p> <p><i>Exception</i> Food, food products and food contact materials</p>	<p>Yes</p>	<p>The carve out to the reservation appears to have been narrowed.</p> <p>Under the current settlement, agricultural and horticultural products, animals and animal products, seeds, fertilisers and pesticides (and things treated by virtue of an enactment as pesticides are excluded from the general exception to ‘<i>consumer protection including the sale and supply of goods to consumers, consumer guarantees, hire purchase, trade descriptions, advertising and price indications</i>’ meaning that the Assembly could subject to passing all the other tests, legislate in respect of e.g. consumer protection for those subjects. Under the proposed settlement only legislation which concerns “<i>food, food products and food contact material</i>” has been specifically excepted from the consumer protection reservations.</p>



C7 Product standards, safety and liability		
<p>75-Technical standards and requirements in relation to products in pursuance of an obligation under EU law.</p> <p>76-The national accreditation body and the accreditation of bodies which certify or assess conformity to technical standards in relation to products or environmental management systems</p> <p>77-Product safety and liability</p> <p>78-Product labelling</p> <p><i>Exceptions</i></p> <p>Food, food products and food contact materials.</p> <p>Agricultural and horticultural produce, fish and fish products, seeds, animal feeding stuffs, fertilisers and pesticides (including anything treated as if it were a pesticide by virtue of an enactment).</p>	Yes	<p>The wording of the proposed carve out to the reservation differs from the carve out to the existing exception in Schedule 7 and has potentially been narrowed.</p> <p>It appears as though the Assembly would be able to legislate in respect of product standards, safety and liability for fish and fish products, but the change from “<i>animals and animal products</i>” to “<i>animal feeding stuffs</i>” is narrower. The wording replicates the wording in the Scotland Act.</p>
C16 Water		
<p>93- Appointment and regulation of a water undertaker whose area is not wholly or mainly in Wales</p> <p>94-Licensing and regulation of a licensed water supplier</p> <p>95- Appointment and regulation of a sewerage undertaker whose area is not wholly or mainly in Wales</p> <p>96-Licensing and regulation of a licensed sewerage licensee</p> <p>97 - The Water Services Regulation Authority</p> <p><i>Exceptions</i></p> <p>Regulation of a licensed water supplier in relation to licensed activities that use the supply system of a water undertaker whose area is wholly or mainly in Wales.</p> <p>Regulation of a sewerage licensee in relation to licensed activities that use the sewerage system of a sewerage undertaker whose area is wholly or mainly in Wales.</p>	Yes	<p>The Assembly has gained legislative competence for sewerage as set out in <i>Powers for a purpose</i>.</p> <p>The restrictions for sewerage undertakers mirror those for water undertakers.</p> <p>There is now a specific reservation in respect of the Water Services Regulation Authority (currently OFWAT). Ofwat is the economic regulator for water services and is responsible for setting price limits, encouraging competition etc. The Assembly could not make provision in respect of any of its economic activities as this is likely to fall foul of one of the other exceptions in Schedule 7 e.g. <i>regulation of anti-competitive practices</i>’ <i>price indications</i>’ etc. The Welsh Government argue in their submission to the Wales Office dated 7th September 2015, that it is possible that Assembly legislation could establish a separate water regulator for the purposes of water supply and resource management etc. As a result of appearing as a reservation, Ofwat will also be a named body placing additional restrictions on the Assembly’s competence. The</p>



		Assembly will be unable to confer, modify or remove Ofwat's functions, legislate about its constitution or confer, modify or remove functions specifically exercisable in relation to it.
C17 Non-energy minerals		
98 - The exploration for and exploitation of minerals which are not capable of producing energy	Yes	This would cover minerals such as sand, clay, chalk, gravel etc. At present ' <i>mineral workings</i> ' is a subject over which the Assembly has competence. The Assembly also presently has competence over subjects such as ' <i>coast and marine environment (including seabed)</i> ', and ' <i>environmental protection</i> ' which could provide competence for e.g. legislation which banned a type of mineral working because it had harmful effects on the environment.
D1 Electricity		
102-Generation, transmission, distribution and supply of electricity	No	
D2 Oil and Gas		
103-Oil and gas, including – (a) the ownership of, exploration for and exploitation of deposits of oil and natural gas, (b) offshore installations and pipelines, (c) the subject-matter of the Pipe-lines Act 1962 (including section 5(deemed planning permission)) so far as relating to pipelines within the meaning of section 65 of that Act, (d) pollution relating to oil and gas exploration and exploitation, but only so far as the exploration or exploitation is seaward of relevant territorial waters, (e) licensing of marine activities so far as relating to oil and gas exploration and exploitation, but only in relation to activities carried out seaward of relevant territorial waters, (f) restrictions on navigation, fishing and other activities to ensure safe operation of offshore activities, (g) liquefaction and regasification of natural gas, and (h) the conveyance, shipping and supply of gas.	Yes	<p>The reservation is much more detailed than the current exception in Schedule 7 to the 2006 Act which refers to "<i>Oil and gas.....</i>"</p> <p>The reservation is similar to that found in the Scotland Act 1998.</p> <p>The Welsh Government in their submission to the Wales Office (deposited in the library) have raised a number of queries as to what some of the reservations may mean.</p> <p>In particular it is unclear what "offshore" means in the context of some of the reservations and also why in relation to reservations 103(d) and (e) "relevant territorial waters" are defined as 3 nautical miles from the baseline rather than 12 nautical miles.</p> <p>The Assembly have however gained competence in respect of the granting and regulation of petroleum licences (save for the consideration payable) and access to land for the purpose of searching for or getting petroleum under such licences.</p>
D3 Coal		
104-Coal, including (a) the ownership and exploitation of coal,	Yes	The current exception in Schedule 7 to the 2006 Act is for ' <i>Coal, including mining and subsidence, apart from land restoration and</i>



(b) deep and opencast coal mining (c) subsidence relating to coal mining, and (d) water discharge from coal mines <i>Exception</i> Land Restoration		<i>other environmental matters</i> ’. The proposed reservation seems to widen the current exception by including ‘ <i>water discharge from mines</i> ’ which arguably <i>relates</i> to environmental protection. It also narrows the previous carve out from the exception from ‘ <i>land restoration and other environmental matters</i> ’ to simply ‘ <i>land restoration</i> ’ so it would appear that under the proposed settlement the Assembly would now be unable to make environmental provision which mitigated the effects of mining.
D4 Nuclear energy		
105-Nuclear energy and nuclear installations, including – (a) nuclear safety, security and safeguards, and (b) liability for nuclear occurrences 106-The Office for Nuclear Regulation <i>Exception</i> Disposal of very low level radioactive waste moved from a site requiring a nuclear site licence.	No – there are minor changes to the wording of the existing exception but these do not make any material change.	
D5 Energy conservation		
107-Energy conservation <i>Exception</i> The encouragement of energy efficiency otherwise than by prohibition or regulation	No	
E3 Marine and waterway transport		
126-132	No	No change in relation to matters within the Committee’s remit, e.g. carriage of animals on vessels.
G4 Veterinary Surgeons		
151-Regulation of the profession of veterinary surgeon	Yes	Under the current settlement the Assembly could legislate to make provision for veterinary surgeons in Wales so long as such legislation passed the other tests and the provision <i>related</i> to another Schedule 7 subject, for example ‘ <i>Animal health and welfare</i> ’. How much practical affect this reservation will have is not clear. Welsh Ministers do not currently exercise any functions under the Veterinary Surgeons Act 1966.
H1 Employment and industrial relations		
154- Employment rights and duties and	Yes	Whilst the subject matter of the Agricultural



<p>industrial relations, including the subject-matter of-..... (l) the Gangmasters (Licensing) Act 2004</p> <p><i>Exception</i></p> <p>The subject-matter of the Agricultural Sector (Wales) Act 2014</p>		<p>Sector (Wales) Bill is excepted from reservation 154- Employment and Industrial relations, thus retaining the status quo, it is unclear what the phrase “<i>the subject matter</i>” means. Is the Assembly able to legislate for all employment matters that relate to Agricultural Workers or are they confined to only the issues dealt with by the Act such as pay, holiday etc.? The general reservation would now mean that the Assembly is unlikely to be able to legislate in a similar manner for other groups of workers and indeed teachers’ pay and conditions is now a specific reservation.</p> <p>The Welsh Government have also raised a concern in their submission to the Wales Office dated 7th September 2015, that the exception relating to the Gangmasters (Licensing) Act 2004 could potentially reduce their competence in relation to shellfisheries.</p>
<p>J4 Medicines, medical supplies, biological substances etc.</p>		
<p>163 Veterinary medicinal products, including manufacture, authorisations for use and regulation of prices. 164 Specified feed additives. 165 Animal feeding stuffs, in relation to – (a) the incorporation in them of veterinary medicinal products or specified additives; (b) matters arising in consequence of such incorporation</p>	<p>Yes but see comments</p>	<p>The current exception in Schedule 7 is for “<i>authorisations of veterinary medicines and medicinal products</i>”. The proposed reservations would appear to be wider as they include the manufacture of products, the incorporation of them into food stuffs etc. It is uncertain whether this would have much practical effect as veterinary products, medicated animal feed etc. is regulated on an EU basis.</p>
<p>M3 Registration of agricultural charges and debentures</p>		
<p>199- The subject-matter of sections 9 and 14 of, and the Schedule to, the Agricultural Credits Act 1928</p>	<p>Yes but see comments</p>	<p>Whilst this is not a current exception to the Assembly’s legislative competence, it is tied into the reservation of land charges more generally which is not currently a subject in Schedule 7.</p>
<p>M4 Development</p>		
<p>200-The regulation of – (a) the design and construction of buildings, (b) the demolition of buildings, and (c) services, fittings and equipment provided in or in connection with</p>	<p>Yes</p>	<p>Welsh Ministers currently have executive competence to make Building Regulations save for energy infrastructure. Clause 28 of the draft Bill devolves executive functions to the Welsh Ministers in respect of such infrastructure.</p>



buildings.		<p>Whilst Building regulation is not a specific subject within Schedule 7 at present, neither is it an exception. The Assembly may therefore presently pass laws about building regulation which relate to subject areas within Schedule 7 such as <i>'listed buildings'</i> or <i>'protection of the environment'</i>, provided none of the exceptions and exemptions from legislative competence apply. In particular, the National Assembly does not have legislative competence to pass laws in relation to "Energy conservation, apart from the encouragement of energy efficiency otherwise than by prohibition or regulation. The new proposal would therefore appear to narrow the Assembly's existing competence.</p>
201- National policy statements under the Planning Act 2008.	No	
<p>202- The subject matter of Parts 3 to 8 of the Planning Act 2008, so far as relating to-</p> <p>(a) development of a kind for which development consent would have been required under that Act on the commencement date if the development were to be carried out to any extent in Wales, and</p> <p>(b) development which would have been associated development under section 155 of that Act in relation to that kind of development on that date;</p> <p>And for this purpose "the commencement date" is the date on which section 3 (1) of the Wales Act 2016 came into force.</p>	Yes	<p>Clauses 17 and 18 of the draft Bill amend the Planning Act 2008 and Electricity Act 1989 so that the Welsh Ministers are now the decision maker for all onshore wind powered generating stations in Wales and for other electricity generating stations in Wales and in Welsh territorial waters up to 350MW. Projects over 350MW (excluding wind) will continue to be dealt with by the Secretary of State through the NSIP process. Additionally the Bill provides that in respect of projects over 350MW (excluding wind) the Secretary of State will be able to make a decision on any associated development connected with the infrastructure. Currently local authorities in Wales make such decisions.</p> <p>This reservation makes it clear that such development or associated development which would have required consent from the Secretary of State on the commencement date of the new competence provisions (i.e. those projects (not including wind) over 350MW) will continue to be matters over which the Assembly has no competence.</p> <p>Clauses 17 and 18 come into force automatically 2 months after commencement. Therefore, so long as section 3 (1) is brought into force after 2 months from commencement</p>



		the Assembly will have competence over all onshore wind and other electricity generating projects up to 350MW both in Wales and in Welsh territorial waters.
203-Community Infrastructure Levy	No	
204-Compulsory purchase of land	Yes	Compulsory purchase is not currently excepted from the legislative competence of the Assembly and whilst it is unlikely that an Assembly Act could make wholesale change to the compulsory purchase system, there would appear to be no reason why Assembly legislation could not for example make changes to local authority compulsory purchase powers where this related to another subject in Schedule 7 e.g. town and country planning.
N7 Deep sea bed mining operations		
213- Activities for the purposes of deep sea bed mining operations	No	



Agenda Item 6.2

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