

Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:	For further information contact:
Committee Room 2 – Senedd	Gareth Williams
Meeting date: Monday, 7 March 2016	Committee Clerk
Meeting time: 14.30	0300 200 6565
	SeneddCLA@Assembly.Wales

- 1 Introduction, apologies, substitutions and declarations of interest
- 2 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3

(Pages 1 – 6)

**CLA(4)–05–16 – Paper 1 – Statutory Instruments with clear reports
Negative Resolution Instruments**

**CLA680 –The Commissioner for Older People in Wales (Appointment)
(Amendment) Regulations 2016**

Negative procedure: Date made: 8 February 2016; Date laid: 11 February 2016;
Coming into force date: 4 April 2016

**CLA681 – The Education (Amendments Relating to the Intervals for Inspection of
Education and Training) (Wales) Regulations 2016**

Negative procedure; Date made: 3 February 2016; Date laid: 11 February 2016;
Coming into force date: 1 September 2016

**CLA685 – Duty of Letting Agents to Publicise Fees (Exclusion) (Wales) Regulations
2016**



Negative procedure; Date made: 8 February 2016; Date laid: 16 February 2016;
Coming into force date: 15 March 2016

CLA692 –The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) (Secondary Legislation) Regulations 2016

Negative procedure; Date made: 19 February 2016; Date laid: 24 February 2016;
Coming into force date: 6 April 2016

CLA693 –The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) and Care Planning, Placement and Case Review (Miscellaneous Amendments)

Negative procedure; Date made: 19 February 2016; Date laid: 24 February 2016;
Coming into force date: 6 April 2016

CLA694 –The Common Agricultural Policy (Amendment) (No. 2) (Wales) Regulations 2016

Negative procedure; Date made: 189 February 2016; Date laid: 24 February 2016;
Coming into force date: 6 April 2016

CLA695 –The Higher Education (Fee and Access Plans) (Notices, Procedure and Publication) (Wales) Regulations 2016

Negative procedure: Date made: 23 February 2016; Date laid: 25 February 2016;
Coming into force date: 28 March 2016

Affirmative Resolution Instruments

CLA677 –The Water Resources (Control of Pollution) (Oil Storage) (Wales) Regulations 2016

Affirmative procedure; Date made: 14 March 2016; Date laid: Not stated; Coming into force date: 15 March 2016

CLA686 –The Food Hygiene Rating (Promotion of Food Hygiene Rating) (Wales) Regulations 2016

Affirmative procedure; Date made: Not stated; Date laid: 22 February 2016;
Coming into force date: 28 November 2016

**CLA687 – The Welsh Language (Wales) Measure 2011 (Amendment of Schedule 6)
(No. 2) Order 2016**

Affirmative procedure; Date made: Not stated; Date laid: 23 February 2016;
Coming into force date: 21 March 2016

CLA688 – The Welsh Language Standards (No. 3) Regulations 2016

Affirmative procedure; Date made: Not stated; Date laid: 23 February 2016;
Coming into force date; 22 March 2016

CLA689 –The Welsh Language Standards (No. 4) Regulations 2016

Affirmative procedure; Date made: Not stated; Date laid: 23 February 2016;
Coming into force date: 22 March 2016

CLA690 –The Welsh Language Standards (No. 5) Regulations 2016

Affirmative procedure; Date made: Not stated; Date laid: 23 February 2016;
Coming into force date: 22 March 2016

**CLA691 –The Welsh Language (Wales) Measure 2011 (Consequential Provisions)
Order 2016**

Affirmative procedure; Date made: Not stated; Date laid: 23 February 2016;
Coming into force date: 31 March 2016

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

Negative Resolution Instruments

CLA683 – The Common Agricultural Policy (Amendment) (Wales) Regulations 2016

(Pages 7 – 26)

Negative procedure; Date made: 2 February 2016; Date laid: 12 February 2016;
Coming into force date: 23 February 2016

CLA(4)-05-16 – Paper 2 – Report

CLA(4)-05-16 – Paper 3 – Regulations

CLA(4)-05-16 – Paper 4 – Explanatory Memorandum

CLA(4)-05-16 – Paper 5 – Letter from the Minister

Composite Negative Resolution Instruments

**CLA678 –The Environmental Permitting (England and Wales) (Amendment)
Regulations 2016**

(Pages 27 – 36)

Composite Negative procedure: Date made: 4 February 2016; Date laid: 10
February 2016; Coming into force date: 13 May 2016

CLA(4)-05-16 – Paper 6 – Report

CLA(4)-05-16 – Paper 7 – Regulations

CLA(4)-05-16 – Paper 8 – Explanatory Memorandum

**CLA679 –The Water Environment (Water Framework Directive) (England and Wales)
(Amendment) Regulations 2016**

(Pages 37 – 48)

Composite Negative procedure; Date made: 9 February 2016; Date laid: 10
February 2016; Coming into force date: 3 March 2016

CLA(4)-05-16 – Paper 9 – Report

CLA(4)-05-16 – Paper 10 – Regulations

CLA(4)-05-16 – Paper 11 – Explanatory Memorandum

4 Subsidiarity Monitoring Report September 2015 to February 2016

(Pages 49 – 57)

CLA(4)-05-16 – Paper 12 – Subsidiarity Monitoring Report

5 Papers to note

(Pages 58 – 64)

CLA(4)-05-16 - Paper 13 - Letter from Rt Hon Michael Gove MP to Chair of Joint Committee on Human Rights, 11 February 2016

CLA(4)-05-16 - Paper 14 - Wales Office, Press Release: Wales Bill, 29 February 2016

CLA(4)-05-16 - Paper 15 - Statement from the First Minister: Wales Bill, 1 March 2016

CLA(4)-05-16 - Paper 16 - Letter from Presiding Officer to the Chair of the Enterprise and Business Committee

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

(ix) any matter relating to the internal business of the committee, or of the Assembly, is to be discussed

Final Legacy Report

(Pages 65 - 109)

CLA(4)-05-16 - Paper 17 - Final Legacy Report

Correspondence on the UK Government's EU Reform Agenda

(Pages 110 - 111)

CLA(4)-05-16 - Paper 18 - Draft Correspondence

Statutory Instruments with Clear Reports

7 March 2016

CLA680 - The Commissioner for Older People in Wales (Appointment)
(Amendment) Regulations 2016

Procedure: Negative

These Regulations amend the Commissioner for Older People in Wales (Appointment) Regulations 2007 (SI 2007/396) to provide the First Minister with a discretionary power to extend the term of the Older People's Commissioner ("OPC") who is in a first appointment, for a maximum period of two years.

Further, these Regulations also provide that if the First Minister extends the OPC's term, the OPC may not be reappointed for a second term.

CLA681 - The Education (Amendments Relating to the Intervals for
Inspection of Education and Training) (Wales) Regulations 2016

Procedure: Negative

These Regulations amend the following regulations:

- The Inspection of Education and Training (Wales) Regulations 2001;
- The Education (School Inspection) (Wales) Regulations 2006;
- The Inspection of the Careers and Related Services (Wales) Regulations 2006; and
- The Education (Inspection of Nursery Education) (Wales) Regulations 2015.

The effect of the amendments is to enable Estyn to release resource to assist the Welsh Government with implementing the recommendations from the Donaldson review 'Successful Futures'. The Regulations require Her Majesty's Chief Inspector of Education and Training in Wales to inspect at least once within a seven year period beginning on 1 September 2016 and ending on 31 August 2023 and at least once within every subsequent six year period



CLA685 - The Duty of Letting Agents to Publicise Fees (Exclusion) (Wales) Regulations 2016

Procedure: Negative

These Regulations provide that legal professionals acting in a legal capacity on lettings-related work are not letting agents. Therefore, provisions in the Consumer Rights Act 2015 requiring the display of fees will not apply, unless the legal professionals also carry out other aspects of letting agency work.

CLA692 - The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) (Secondary Legislation) Regulations 2016

Procedure: Negative

These Regulations provide for the revocation of Wales only secondary legislation and the disapplication in relation to Wales of England and Wales secondary legislation made under any of the provisions of primary legislation that have been repealed as a consequence of the commencement of the Social services and Well-being (Wales) 2014 Act ("the 2014 Act"). They also make consequential and incidental amendments to secondary legislation required as a consequence of the commencement of the 2014 Act together with saving and transitional provisions relating to the provisions of care and support and the continuation of any child practice review undertaken but not completed before the coming into force of the 2014 Act.

CLA693 - The Social Services and Well-being Act 2014 (Consequential Amendments) and Care Planning, Placement and Case Review (Miscellaneous Amendments) (Wales) regulations 2016

Procedure: Negative

These Regulations replace, in relation to Wales, provision formally made under part 3 of the Children Act 1989. The Regulations amend secondary legislation relating to looked after and accommodated children in relation to care planning, placement decisions and case reviews.

CLA694 - The Common Agricultural Policy (Amendment) (No.2) (Wales) Regulations 2016

Procedure: Negative



These Regulations amend the Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015 and the Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014. The changes relate to administrative aspects of the Basic Payment Scheme and an amendment of the Cross Compliance Regulations to allow farmers to leave a rough surface over winter. The Regulations also revoke the Common Agricultural Policy (Amendment) (Wales) Regulations 2016.

CLA695 - The Higher Education (Fee and Access Plans) (Notices, Procedure and Publication) (Wales) Regulations 2016

Procedure: Negative

These Regulations make provision in respect of notices under sections 37, 38 and 39 of the Higher Education (Wales) Act 2015 and how and when the Higher Education Funding Council for Wales is to comply with its duties under section 40(1) of the 2015 Act.

CLA677 - The Water Resources (Control of Pollution) (Oil Storage) (Wales) Regulations 2016

Procedure: Affirmative

These Regulations require a person with custody or control of oil to comply with certain requirements with regard to storing and handling. They aim to reduce and prevent water pollution.

The main requirements of these Regulations include:

- oil must be stored in containers of sufficient strength
- oil containers must be situated within secondary containment systems
- steps must be taken to prevent leakage/spillage from tanks, pumps and pipes etc.

The Regulations also cover the storing and handling of agricultural fuel oil, thus replacing the current provisions for such oil in the Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (Wales) Regulations 2010.

CLA686 - The Food Hygiene Rating (Promotion of Food Hygiene Rating) (Wales) Regulations 2016

Procedure: Affirmative

These Regulations make provision in relation to the promotion of food hygiene ratings under the Food Hygiene Rating (Wales) Act 2013. They require takeaway food businesses to display a



bilingual statement on defined hard copy materials (e.g. menus and leaflets), directing the consumer to the food hygiene ratings website and encouraging the consumer to ask the food business for their rating. The Regulations also make provision for the voluntary use of food hygiene rating images and prescribing their format including the creation of offences and enforcement powers.

CLA687 - Welsh Language (Wales) Measure 2011 (amendment of Schedule 6) (No 2) Order 2016

Procedure: Affirmative

This Order updates, by the insertion of new organisations, Schedule 6 of the Welsh Language (Wales) Measure 2011 so enabling the Welsh Ministers (by separate regulations) to make Welsh Language Standards in respect of these organisations and authorising the Welsh Language Commissioner to require those organisation to comply with standards

CLA688 - The Welsh Language Standards (No.3) Regulations 2016

Procedure: Affirmative

These Regulations specify standards in relation to the conduct of 27 bodies in the education sector.

The 27 education sector bodies are:

- Career Choices Dewis Gyrfa Limited
- Further Education institutions (Coleg Ceredigion, Coleg Sir Gâr, Merthyr Tydfil College Limited, the governing body of Saint David’s Catholic College, WEA YMCA CC Cymru)
- Further Education corporations (Cardiff and Vale College, Coleg Cambria, Coleg y Cymoedd, Gower College Swansea, Coleg Gwent, Bridgend College, Pembrokeshire College, Grŵp Llandrillo Menai, NPTC Group)
- Higher Education institutions (Aberystwyth University, Bangor University, Cardiff University, Open University, Royal Welsh College of Music and Drama Limited, Swansea University, the University of Wales, University of Wales: Trinity St David)
- Higher Education corporations (Cardiff Metropolitan University, Glyndŵr University, the University of South Wales)
- The Higher Education Funding Council for Wales.



CLA689 - The Welsh Language Standards (No.4) Regulations 2016

Procedure: Affirmative

These Regulations specify standards in relation to the conduct of the bodies listed in Schedule 6 to the Regulations. The listed bodies are:

- Agricultural Land Tribunal
- Education Workforce Council
- the Mental Health Review Tribunal for Wales
- the Residential Property Tribunal Wales
- the Special Educational Needs Tribunal for Wales
- Valuation Tribunal for Wales.

CLA690 - The Welsh Language Standards (No 5) Regulations 2016

Procedure: Affirmative

These Regulations specify standards in relation to the conduct of the bodies listed in Schedule 6 to the Regulations. The bodies are:

- the chief constables of the police forces that operate in Wales (the British Transport Police, the Civil Nuclear Constabulary, Dyfed-Powys Police, Gwent Police, North Wales Police and South Wales Police);
- the British Transport Police Authority;
- the Civil Nuclear Police Authority;
- the Police and Crime Commissioners for Dyfed-Powys, Gwent, North Wales and South Wales;
- the Independent Police Complaints Commission;
- the Fire and Rescue Authorities that operate in Wales (Mid and West Wales FRA, North Wales FRA and South Wales FRA).



CLA691 - Welsh Language (Wales) Measure 2011 (Consequential Provisions) Order 2016

Procedure: Affirmative

This Order amends the Government of Wales Act 2006 to remove the duties of the Welsh Ministers in relation to their Welsh Language Scheme. As 31 March 2016, the Welsh Ministers will be required to comply with Welsh Language Standards.



CLA683 - The Common Agricultural Policy (Amendment) (Wales) Regulations 2016

Procedure

Negative

Background

These Regulations amend the Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015 and the Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014. The changes relate to administrative aspects of the Basic Payment Scheme and an amendment of the Cross Compliance Regulations to allow farmers to leave a rough surface over winter.

Technical Scrutiny

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

Merits Scrutiny

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

In accordance with Section 11A (4) of the Statutory Instruments Act 1946, as inserted by paragraph 3 of Schedule 10 to the Government of Wales Act 2006, the Minister for Finance and Government Business wrote to the Presiding Officer on 12th February 2016 to advise her that the “21 day rule” will be breached for the introduction of this instrument. The letter stated that Welsh Government Legal Services had been instructed to revoke and remake the Regulations so as to allow the appropriate 21 days between laying and coming into force. The Regulations revoking this instrument (The Common Agricultural Policy (Amendment) (No 2) (Wales) Regulations) were laid on 25 February 2016 and come into force on 18 March.

Legal Advisers
Constitutional and Legislative Affairs Committee
02 March 2016



2016 No. 131 (W. 64)

AGRICULTURE, WALES

**The Common Agricultural Policy
(Amendment) (Wales) Regulations
2016**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015 (S.I. 2015/1252) (W. 84) (“the Basic Payment Regulations”) and the Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014 (S.I. 2014/3223) (W. 328) (“the Cross Compliance Regulations”).

Regulation 2(2) makes a minor amendment to regulation 16(3)(a) of the Basic Payment Regulations to incorporate wooded strips. Regulation 2(3) revokes regulation 17 of the same Regulations.

Regulation 2(4) amends the Basic Payment Regulations by inserting provisions which provide that there will be a national reserve established by the Welsh Ministers setting out, in priority order, how funds in that reserve will be used. Regulation 2(4) also inserts a provision setting out the application of the “greening” component of direct payments, linking payments to agricultural practices beneficial for the climate and environment.

Regulation 2(5) revokes Part 2 of the Schedule to the Basic Payment Regulations.

Regulation 3 amends regulation 6 of, and paragraphs 4 and 5 of Schedule 1 to, the Cross Compliance Regulations. Regulation 3(2) amends regulation 6 in respect of how the rate of interest applicable will be calculated. Regulation 3(3) and (4) make amendments to the Schedule to permit a beneficiary to leave rough surface cover post harvest provided the requisite risk assessment has been undertaken and notified to the Welsh Ministers.

The Regulatory Impact Assessment applicable to these Regulations is obtainable from the Department of Natural Resources, Welsh Government, Cathays Park, Cardiff, CF10 3NQ and on the Welsh Government website at www.gov.wales.

2016 No. 131 (W. 64)

AGRICULTURE, WALES

**The Common Agricultural Policy
(Amendment) (Wales) Regulations
2016**

Made 2 February 2016

*Laid before the National Assembly
for Wales* 12 February 2016

Coming into force 23 February 2016

The Welsh Ministers are designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to the common agricultural policy of the European Union.

These Regulations make provision for a purpose mentioned in that section and it appears to the Welsh Ministers that it is expedient for any reference in these Regulations to EU instruments to be construed as a reference to those instruments as amended from time to time.

The Welsh Ministers make these Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972.

Title, application and commencement

1.—(1) The title of these Regulations is the Common Agricultural Policy (Amendment) (Wales) Regulations 2016.

(2) These Regulations apply in relation to Wales.

(1) S.I. 2010/2690.
(2) 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7). Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006.

(3) These Regulations come into force on 23 February 2016.

Amendment to the Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015

2.—(1) The Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015⁽¹⁾ are amended as follows.

(2) In regulation 16(3)(a) after “hedges” insert “and wooded strips”.

(3) Regulation 17 is revoked.

(4) After regulation 16 insert—

□ **National reserve**

18.—(1) The Welsh Ministers will establish a national reserve, in accordance with Article 30(1) of the Direct Payments Regulation.

(2) The Welsh Ministers will use the national reserve, in the following priority order, to—

- (a) allocate payment entitlements to young farmers and to farmers commencing their agricultural activity, in accordance with Article 30(6) of the Direct Payments Regulation;
- (b) allocate payment entitlements to farmers who were prevented from being allocated payment entitlements under the basic payment scheme as a result of force majeure or exceptional circumstances, in accordance with Article 30(7)(c) of the Direct Payments Regulation;
- (c) cover the yearly needs for payments to young farmers, in accordance with Article 30(7)(f) of the Direct Payments Regulation; and
- (d) permanently linearly increase the value of all payment entitlements under the basic payment scheme if the national reserve exceeds 0.5% of the annual national ceiling for the basic payment scheme, in accordance with Article 30(7)(e) of the Direct Payments Regulation.

Payment for agricultural practices beneficial for the climate and the environment

19.—(1) The Welsh Ministers will grant the payment for agricultural practices beneficial for

(1) S.I. 2015/1252 (W. 84).

the climate and the environment as a percentage of the total value of the payment entitlements that the farmer has activated in accordance with article 33(1) of the Direct Payments Regulation for each relevant year, in accordance with the third sub-paragraph of article 43(9) of the Direct Payments Regulation.

(2) The percentage referred to in paragraph (1) will be calculated in accordance with the fourth sub-paragraph of article 43(9) of the Direct Payments Regulation. □

(5) Part 2 of the Schedule is revoked.

Amendment to the Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014

3.—(1) The Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014⁽¹⁾ are amended as follows.

(2) In regulation 6, for “that day”, substitute “the first working day of each calendar month”.

(3) In paragraph 4(1) of Schedule 1 replace “mean breaching” with “conflict with”.

(4) For paragraph 5(2) of Schedule 1 substitute—

□(2) Where site specific conditions minimise risk of soil erosion and where a beneficiary leaves land without a covering of crops, stubbles, residues or other vegetation post cultivation, a beneficiary must:

- (a) leave a rough surface cover; and
- (b) not allow soil erosion down slope or off-site; and
- (c) complete a rough surface soil risk assessment and submit it to the Welsh Ministers on or before the day the land is cultivated to leave a rough surface.

(3) In this paragraph—

“off-site” (“*oddi ar y safle*”) means any area beyond the boundary of a field on a holding, including another field that is part of the same holding. □

Rebecca Evans

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

2 February 2016

(1) S.I. 2014/3223 (W. 328).

Explanatory Memorandum to the Common Agricultural Policy (Amendment) (Wales) Regulations 2016

This Explanatory Memorandum has been prepared by the Department of Natural Resources and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Common Agricultural Policy (Amendment) (Wales) Regulations 2016. I am satisfied that the benefits outweigh any costs.

Rebecca Evans
Deputy Minister for Farming and Food
12 February 2016

1. Description

The Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2016 (the Basic Payment Scheme Regulations) and the Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) Wales Regulations 2014 (the Cross Compliance Regulations) require amending in line with policy objectives and further details from the European Commission. As the two pieces of legislation cover the same subject matter of the Common Agricultural Policy in Wales, it is possible to amend both using a single Statutory Instrument. The changes relate to administrative aspects of the Basic Payment Scheme and an amendment of the Cross Compliance Regulations to allow farmers to leave a rough surface over winter.

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

None

3. Legislative background

The Welsh Ministers are designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to the Common Agricultural Policy (CAP) of the European Union (EU) by virtue of SI 2010/2690. This designation allows Welsh Ministers to make regulations for the purposes of implementing any EU obligation in exercise of the powers contained in section 2(2).

These amending Regulations are made subject to the negative procedure and therefore require a period of 21 days after the date they have been laid before the National Assembly for Wales to have passed prior to coming into force and effecting the amendment.

4. Purpose & intended effect of the legislation

The EU periodically reforms the CAP. The current changes taking place are for the period 2014-2020 but owing to the time taken for all institutions and Member States to reach agreement they were not implemented until 2015. The EU Regulations' contain both compulsory and optional provisions. Some of the compulsory elements also offer choices as to how they may be implemented. The amendments to the Basic Payment Scheme Regulations deal with the administration of the Scheme.

5. Consultation

1. Basic Payment Scheme

The Welsh Government has developed its Pillar 1 proposals and made decisions on the basis of extensive consultation activity from 2011 onwards. There have been four consultations throughout the process along with public meetings throughout Wales. Developing policy decisions have been shared with and commented on by a working group which has included as members the FUW, NFU (Cymru), CLA, CAAV, YFC and TFA.

2. Cross Compliance

Formal consultation on GAEC's 4 and 5 took place in 2014 during the development of 'The Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014'. Subsequent engagement with industry stakeholders brought to light further issues relating to the rough surface allowance. Officials engaged with key industry stakeholders through the development of the amendment and its related guidance.

PART 2 – REGULATORY IMPACT ASSESSMENT

Options

This paper is split into sections for ease of reading:

1. Basic Payment Scheme – Greening
2. Basic Payment Scheme – National Reserve
3. Basic Payment Scheme – Non-Agricultural Activities
4. Cross Compliance – Rough ploughing
5. Basic Payment Scheme - [Method for Calculating Interest on Debt](#)

1. Basic Payment Scheme – Greening

The EU Direct Payments Regulation 1307/2013¹ states that Member States can decide how the greening payment is calculated.

- Option A is to calculate the payment based on the total number of eligible hectares claimed by all claimants; this gives every claimant the same payment value per entitlement for greening.
- Option B calculates the greening payment as a percentage of the total value of the payment entitlements a claimant has individually activated.

The Welsh Government discussed this issue with key stakeholders and Option B has been chosen. This option will ensure that transition to area payments is smoother as all claimants will be getting a greening payment linked to their own entitlements.

This decision will affect all claimants although the option chosen will be more beneficial to those who are currently claiming as it will smooth their transition.

Addition to the Ecological Focus Area list

The Welsh Government was asked to provide a list of landscape features which would be eligible as Ecological Focus Areas. The chosen features for Wales included hedges. Since this decision was made the European Commission has considered Ecological Focus Area in greater detail and has advised that where a Member State has selected hedges as landscape features, they must also include wooded strips.

The Welsh Government is obligated to comply with the Commission's ruling on this issue and the list of landscape features will be increased to show hedges and wooded strips.

This is likely to benefit all claimants as it will provide further features which claimants can include in their list of eligible features. The Welsh Government

¹ Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy.

sent revised Greening Guidance during August 2015 to affected customers. An article briefly explaining the changes appeared in the November edition of Gwlad.

2. Basic Payment Scheme – National Reserve

Article 30 of the EU Direct Payments Regulation 1307/2013 allows the use of a National or Regional Reserve. This allows new entrants to enter the Basic Payment Scheme by allocating them entitlements which are available up to the budget ceiling. The National Reserve budget is approximately €5 million; this is around 3% of the overall Direct Payment ceiling. The Welsh Government has a choice of using either:

- Option A – National Reserve
- Option B – Regional Reserve

The Welsh Government is applying Option A; National Reserve. Option B can only be applied if regional payment rates were used in Wales. Wales is using a flat rate payment system with redistributive payments over a transition period to 2019.

3. Basic Payment Scheme – Non-Agricultural Activities

Article 9 of the EU Direct Payments Regulation 1307/2013 states that no direct payments shall be granted to natural or legal persons, or to groups of natural or legal persons, who operate airports, railway services, waterworks, real estate services, and permanent sport and recreational grounds. Member States may, on the basis of objective and non-discriminatory criteria, decide to add any other similar non-agricultural businesses or activities to the list above (and subsequently withdraw these additions).

The Welsh Government had previously proposed that within the list of non-agricultural activities in the Schedule to the Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015, golf courses in Wales which were situated on areas of Common Land that are used for grazing animals should be eligible to for the Basic Payment Scheme. The farmer would need to evidence that the agricultural activity on these areas was not significantly hampered by intensity, nature, duration and timing of the non-agricultural activity to be eligible for the Basic Payment Scheme.

A recent judgement from the Court of Justice of the European Union has ruled that it may now be possible to claim for any area which meets the definition of eligible hectares regardless of where that area is. As a result the list included in the Part 2 of the Schedule to the Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015 will now be removed from the Common Agricultural Policy (Amendment) (Wales) Regulations 2016.

4. Cross Compliance – Rough Surface

Background and options

Representations from the agriculture industry raised concerns about the removal of the provision 'allowing rough surface as minimum soil cover' from Cross Compliance in 'The Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014'. This provision had previously existed during the previous period of the CAP. The industry were concerned that preventing farmers from this agronomic practice may, in certain circumstances, exacerbate soil erosion, increase pesticide use and be detrimental to soil condition, carbon footprint and climate adaptation. Farmers Unions have also highlighted the impact on producers of early harvested potatoes as a rough surface is needed to weather and break down the soil.

Option A - Do nothing. Do not amend The Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014.

Under the previous Cross Compliance regime in Wales, Good Agricultural and Environmental Condition A ('GAEC A) – Soils and the post-harvest management of land', land could be left with a rough surface after cultivation to allow infiltration of rain, as a 'minimum soil cover'. The current Cross Compliance regime, which came into force on 1 January 2015, removed the allowance for farmers to leave a rough surface over winter following criticism from EC auditors.

Option B - To amend the Welsh Cross Compliance regime by incorporating within GAEC 5 a provision that would allow farmers to leave a rough surface at any date where site specific conditions that limit soil erosion can be demonstrated.

Farmers wishing to leave a rough surface will be required to undertake and submit a soil risk assessment to Welsh Government. This must demonstrate that rough ploughing practice was not being undertaken on a field where there was a high risk of soil erosion e.g. due to slope/soil type etc.

Rural Inspectorate Wales will ensure, during their routine Cross Compliance inspections, that where the rough ploughing practice has been carried out, the site was not high risk and that the Welsh Government had received notification of the farmer's intention along with a complete risk assessment that accurately reflected on-farm activity.

Preferred option: B

Operational flexibility will be improved for farmers at harvest as Option B will allow a rough surface to be left over winter; this will improve farmers' ability to achieve optimal sowing dates for crops and will allow the soil to be broken down by the frost. The requirement to complete a soil risk assessment to prevent the practice being implemented on an inappropriate site will reduce risk of soil loss.

Costs and benefits

Option A - Do nothing

No change.

Option B - Allowing farmers to leave land with a rough surface post-harvest

Costs

Leaving a rough surface post-tillage, before 2015, was one of four post-harvest options which could be employed to limit soil degradation with corresponding impacts for soil erosion and surface water runoff.

ADAS (2013) ranked post-harvest management options in terms of their efficacy in reducing soil degradation risk (Table 1). Where crops are harvested in late autumn (e.g. vegetables, potatoes, sugar beet, maize, and salad crops) a switch from cover crops, next crop or stubbles to rough surfaces, could reduce soil degradation. Where crops are harvested in early autumn, allowance of the rough surface option could exacerbate soil loss. To reduce risk of soil loss on any site that a farmer is considering leaving a rough surface, farmers will be required to complete a soil risk assessment.

Table 1: Soil Degradation Risk Associated with Post-Harvest Management

Option	Risk (Lowest to Highest)
Cover crop (sown early autumn) – good vegetation cover	1
Next crop (sown early autumn) – good vegetation cover	2
Stubble with additional crop residue/mulch	3
Stubble – compaction removed where present	4
Rough surface	5
Stale seedbeds (cultivation sequence to control weeds)	6
Cover crop (sown post late autumn harvest)	7
Next crop (sown late autumn)	8

(Adapted from ADAS, 2013)

The implications of crop choice for current erosion rates in Wales are estimated in Table 2. This multiplies the known area of crop cover in Wales with erosion coefficients for these crops established in Boardman (2013). Even though the later-sown crops have much higher mean erosion rates, they represent a smaller component of overall erosion than earlier sown autumn crops, due to their scale.

Table 2: Erosion Rates Associated with UK Crops in Wales

Mean Rate (m ³ /ha/yr.)	Welsh Crop Area (ha)	Total erosion (m ³ /yr.)
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Crop			
Vegetables	5.08	456	2,316
Potatoes	2.53	1,705	4,314
Maize	4.48	12,805	57,366
Total Late Crops		14,966	63,997
Other Fodder	2.1	9011	18,923
Rape	1.92	5215	10,013
Cereals	1.8	55,066	99,119
Other	2.67	4,604	12,293
Total Other Crops		73,896	140,347
Total		88,862	204,344

(Adapted from Boardman, 2013; WAG, 2011)

A survey of English farmers (ADAS, 2012) suggests that 21% favour the rough surface method for cereals, oilseed rape or grain legumes, whilst 28% favour this method for potatoes, beet, maize, vegetables, salads, bulbs, and rhizomes. If these statistics were applied to Wales, and we assume that allowing the rough surface method would decrease erosion in late autumn sown crops, but increase erosion in earlier sown crops, the change would most likely increase the c. 29,500 m³/yr. of soil loss from earlier sown crops and decrease the 17,900 m³/yr. of soil loss from late autumn harvested crops. It should be stressed, however, that the statistics above do not take into account the relative magnitude of the change in soil loss due to the change in management regime, only the ranking. Furthermore, the spatial distribution of soil loss may not be even as this will be determined by the location of crops in a given catchment and the collective decisions of farmers post this change.

Overall, the change could potentially be net negative and so the soil risk assessment will be required to mitigate against this loss and to ensure the rough surface method is not implemented on high risk sites.

Assigning a monetary value to possible soil loss is also challenging because the magnitude of actual erosion reduction cannot be estimated. If this were possible, then the costs could be estimated with reference to the total off-farm costs of erosion from agriculture (£106 million in 1996 in the UK according to Pretty et al. 2000: An assessment of the total external costs of UK agriculture, *Agric. Syst.* 65:113-136). In the absence of this data, no estimate of monetary valuation can be provided.

If a farmer were to get a consultant to complete the soil risk assessment notification, it would likely cost around £500; this is based on one day of work at standard consultancy rates. Alternatively farmers can complete the risk assessment themselves, based on 12 hours at £12 an hour, this would cost £144. This cost would be mitigated against by decrease in labour, fuel and seed costs that would be necessary for sowing and ploughing up a cover crop and the increased flexibility in establishing a crop.

Summary of cost:

The costs of allowing a rough surface and a farmer completing a soil risk assessment are considered to be outweighed by the benefit. It is a business decision for the farmer to make to implement the rough plough practice and so if the cost outweighed the benefits he/she would choose another option for winter cover, however the reintroduction of the rough surface practice would increase operational flexibility for farmers.

Benefits

Under particular circumstances rough surfaces can provide storage for rainwater allowing water to collect before it soaks into the soil, thus helping to slow down run-off and prevent soil erosion. Rough surfaces can also reduce wind speed at the surface helping to prevent soil erosion caused by wind.

Sowing a cover crop could minimise soil erosion, however it could be detrimental to soil compaction which in turn could lead to erosion. This increases the risk of ploughing being carried out at inappropriate times to get spring crops established with associated impacts, such as smearing and compaction of sub-soils which have the potential to contribute to increased run-off and erosion. Over-working of soils in the spring can also lead to further run-off and erosion. Introducing the flexibility of allowing a farmer to leave a rough surface where a risk assessment shows that site specific conditions minimise the risk of soil erosion may, therefore, lessen soil compaction, without the need for additional mechanical input, and benefit soil structure and reduce erosion.

Allowing a rough surface to be left over winter would remove costs of sowing a cover crop and may decrease the need for pesticides and herbicides. In addition, minimising the mechanical input would decrease the carbon footprint of the produce. A lower carbon footprint is also valued by retailers. Additional flexibility of allowing a rough surface would also help farmers adapt to climate change.

Currently, where a farmer sows a cover crop, to get crops drilled at the optimal time, one approach would be to get help from contractors to speed up the operation of going from stubble to drilled crop close to the ideal time. One way to represent this is to assume that all oilseed rape in Wales is followed by winter wheat and that assistance from contractors would be required for 50% of the area with the current GAEC in force. The area of oilseed rape in Wales in 2011 was 5,215 hectares so contract help would be needed with 2,608 hectares at a cost of £60.54 per hectare. This gives a total cost to farmers per year of £0.158 million (precise calculation £157,858 per year) or an NPV (Net Present Value) over five years of £0.709 million.

Summary of benefits:

Arable farmers in Wales would benefit from the increased flexibility in establishing crops. The annual benefit is estimated at approx. £0.16 million per year in addition to the fuel; seed cost and labour saving made where a cover crop might otherwise have been sown.

In 2014 there were 359 potato farmers (0.17% of declared land) in Wales within Cross Compliance. In total 2,779 farmers grew potatoes, cereals and other crops who may choose to take advantage of any flexibility provided under option B.

5. Basic Payment Scheme - Method for Calculating Interest on Debt

This describes the method for calculating debts which was previously calculated on a daily basis. The amendment will calculate debt on the first day of each month. This is an administrative change only and has no discernible impact for farm businesses.

Consultation

1. Basic Payment Scheme

There has been extensive consultation through the CAP Reform period. There have been four written consultation documents completed; December 2011, February 2013, July 2013 and March 2015. The links to these are below:

<http://gov.wales/consultations/environmentandcountryside/basic-payment-scheme-proposals/?status=closed&lang=en>

<http://gov.wales/consultations/environmentandcountryside/proposals-for-direct-payments-to-farmers/?status=closed&lang=en>

<http://gov.wales/consultations/environmentandcountryside/130206cap-reform-direct-payments-to-farmers-next-steps/?status=closed&lang=en>

<http://gov.wales/topics/environmentcountryside/farmingandcountryside/cap/pillar-1-direct-payments/documents/111219capconversation/?lang=en>

Accompanying the consultation were three rounds of evening meetings throughout Wales. One series took place in the spring of 2013; another in autumn 2013 and the final round early 2014.

Further to the consultations carried out we have engaged industry stakeholders throughout the process with the NFU, FUW, CLA, CAAV, TFA and YFC sitting as members of the CAP Modelling Group and CAP High Level Group. These met on a monthly/bimonthly basis throughout the process to discuss all of the options for the BPS along with all other aspects of the reform of the CAP.

2. Cross Compliance

Formal consultation on GAEC's 4 and 5 took place in 2014 during the development of 'The Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014'. Subsequent engagement with industry stakeholders brought to light further issues relating to the rough surface allowance. Officials

engaged with key industry stakeholders through the development of the amendment and its related guidance.

Competition Assessment

The amendment in Cross Compliance Regulations to allow farmers to leave a rough surface over winter will not have a significant detrimental impact on competition and it may improve a farmer's ability to compete with farmers from across the UK. Operational flexibility will be improved for farmers following harvest, this will impact on farmers equally and there is no obligation for a farmer to modify his/her practice in response to the amendment. A Competition Filter Test has been completed and is attached at Annex A.

APPENDIX A

The competition filter test

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

Jane Hutt AC / AM
Y Gweinidog Cyllid a Busnes y Llywodraeth
Minister for Finance and Government Business



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref MA-L-RE-0150-16

Dame Rosemary Butler AM
Presiding Officer
National Assembly for Wales

12th February 2016

Dear Rosemary,

**THE COMMON AGRICULTURAL POLICY (AMENDMENT) (WALES) REGULATIONS
2016**

I am writing to notify you, pursuant to section 11A(4) of the Statutory Instruments Act 1946, that the Common Agricultural Policy (Amendment) (Wales) Regulations 2016 were not laid at least 21 days before they will come into force.

Due to an unfortunate oversight, the dates stated on the Regulations for laying and coming into force were incorrect, which means that they will breach the "21 day" rule. They will come into force on 23 February 2016.

The Deputy Minister for Farming and Food has instructed Legal Services to urgently draft instruments to revoke and remake these Regulations so as to allow the appropriate 21 days between laying and coming into force.

Please accept my apologies for this oversight.

Yours sincerely,

Jane Hutt AC / AM
Y Gweinidog Cyllid a Busnes y Llywodraeth
Minister for Finance and Government Business

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

English Enquiry Line 0300 0603300
Llinell Ymholiadau Cymraeg 0300 0604400
Correspondence.Jane.Hutt@wales.gsi.gov.uk

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

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

CLA678 - The Environmental Permitting (England and Wales) (Amendment) Regulations 2016

Procedure

Composite Negative

Background

These composite Regulations amend the Environmental Permitting (England and Wales) Regulations 2010 to take account of new EU requirements relating to certifying and testing petrol vapour recovery equipment.

Technical Scrutiny

One point is identified for reporting under Standing Order 21.2(ix) in respect of this instrument, in that it is not made or to be made in both English and Welsh.

This is a composite instrument, and is made in English only. The Committee notes the explanation in the Explanatory Memorandum to the Regulations, which states:

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

Merits Scrutiny

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

Government Response

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

Legal Advisers
Constitutional and Legislative Affairs Committee
02 March 2016



STATUTORY INSTRUMENTS

2016 No. 149

ENVIRONMENTAL PROTECTION, ENGLAND AND WALES

**The Environmental Permitting (England and Wales)
(Amendment) Regulations 2016**

Made - - - - *4th February 2016*
Laid before Parliament *10th February 2016*
Laid before the National Assembly for Wales *10th February 2016*
Coming into force - - *13th May 2016*

The Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales, make these Regulations in exercise of the powers conferred by sections 2 and 7(9)(a) of, and Schedule 1 to, the Pollution Prevention and Control Act 1999(a).

The Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales, have in accordance with section 2(4) of that Act consulted—

- (a) the Environment Agency;
- (b) the Natural Resources Body for Wales;
- (c) such bodies or persons appearing to them to be representative of the interests of local government, industry, agriculture and small businesses as they consider appropriate; and
- (d) such other bodies or persons as they consider appropriate.

Citation and commencement

1. These Regulations may be cited as the Environmental Permitting (England and Wales) (Amendment) Regulations 2016 and come into force on 13th May 2016.

Amendment of the Environmental Permitting (England and Wales) Regulations 2010

2. The Environmental Permitting (England and Wales) Regulations 2010(b) are amended in accordance with regulations 3 and 4.

-
- (a) 1999 c. 24. Section 2 was amended by the Water Act 2014 (c. 21), section 62(13) and by S.I. 2013/755. Functions of the Secretary of State under or in relation to section 2, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales, except in relation to offshore oil and gas exploration and exploitation, by the National Assembly for Wales (Transfer of Functions) Order 2005 (S.I. 2005/1958), article 3(1). Functions of the National Assembly for Wales were transferred to the Welsh Ministers by the Government of Wales Act 2006 (c. 32), Schedule 11, paragraph 30. Schedule 1 was amended by the Waste and Emissions Trading Act 2003 (c. 33), section 38, the Clean Neighbourhoods and Environment Act 2005 (c. 16), section 105(1) and S.I. 2005/925, 2011/1043, 2012/2788 and 2015/664.
- (b) S.I. 2010/675, amended by S.I. 2011/2933; there are other amending instruments but none is relevant.

Amendment of Part 2 of Schedule 1

3.—(1) In Schedule 1, Part 2 (activities)(a) is amended as follows.

(2) In Section 1.2, in *Interpretation of Part B*, in paragraph 2, for “Directive 2009/126/EC on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations” substitute “Directive 2009/126/EC on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations”(b).

Amendment of Part 2 of Schedule 18

4. In Schedule 18, in Part 2 (PVR II)(c), for paragraph 2 substitute—

“Interpretation

2. In this Part, “PVR II” means Directive 2009/126/EC of the European Parliament and of the Council on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations.”(d).

4th February 2016

Rory Stewart
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

2nd February 2016

Carl Sargeant
Minister for Natural Resources
One of the Welsh Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Commission Directive 2014/99/EU (OJ No L 304, 23.10.2014, p. 89), which amends Directive 2009/126/EC (OJ No L 285, 31.10.2009, p. 36) as regards the test methods to certify petrol vapour recovery systems for use in service stations and the test methods to verify the operation of such systems.

Regulation 3 amends the Environmental Permitting Regulations (England and Wales) 2010 (S.I. 2010/675) to substitute the reference to Directive 2009/126/EC in Section 1.2 of Part 2 of Schedule 1, so as to take account of the amendment of that Directive by Commission Directive 2014/99/EU. Regulation 4 amends those Regulations to substitute the definition of “PVR II” in paragraph 2 of Part 2 of Schedule 18 so that the updated definition refers to that Directive as amended by Commission Directive 2014/99/EU.

An Impact Assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the Better Regulation Programme, Department for Environment, Food and Rural Affairs, 17 Smith Square, London SW1P 3JR and is published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.

-
- (a) As amended by S.I. 2011/2933; there are other amending instruments but none is relevant.
(b) OJ No L 285, 31.10.2009, p. 36, as last amended by Commission Directive 2014/99/EU (OJ No L 304, 23.10.2014, p. 89). The effect of section 20A of the Interpretation Act 1978 (c. 30) is that the updated reference to Directive 2009/126/EC is to that Directive as amended by Commission Directive 2014/99/EU.
(c) Schedule 18 was substituted by S.I. 2011/2933.
(d) OJ No L 285, 31.10.2009, p. 36, as last amended by Commission Directive 2014/99/EU (OJ No L 304, 23.10.2014, p. 89). The effect of section 20A of the Interpretation Act 1978 (c. 30) is that the updated definition of PVR II refers to that Directive as amended by Commission Directive 2014/99/EU.

Explanatory Memorandum to the Environmental Permitting (England and Wales) (Amendment) Regulations 2016

This Explanatory Memorandum has been prepared by the Department for Natural Resources and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Environmental Permitting (England and Wales)(Amendment) Regulations 2016. I am satisfied that the benefits outweigh any costs.

Carl Sargeant AM
Minister for Natural Resources
10 February 2016

Description

These Regulations amend the Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675) ("the 2010 Regulations") to specify that new European Committee for Standardisation (CEN) standards must be used to

certify and test new equipment for recovering petrol vapour during refuelling of motor vehicles at service stations.

Matters of special interest to the Constitutional and Legislative Affairs Committee

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

Legislative background

Section 2 of the Pollution Prevention and Control Act 1999 (“the 1999 Act”) enables the Welsh Ministers (in relation to Wales) to make provision by regulations for, or in connection with, regulating activities capable of causing environmental pollution. The Environmental Permitting (England and Wales) Regulations 2010, and subsequent amendments, were made under this power.

Paragraph 20(1)(b) of Schedule 1 to the 1999 Act provides that regulations made under Section 2 of that Act may make any provision made, or capable of being made under Section 2(2) European Communities Act 1972 in connection with a relevant directive. Paragraph 20(2)(c) enables the Welsh Ministers to, by order, designate any EU Directive as a ‘relevant directive’. In order to make use of this power, a further statutory instrument will need to be made prior the principal amendment regulations being made. That instrument can also be composite in nature, made by the Secretary of State in relation to England and by the Welsh Ministers in relation to Wales. There is no Parliamentary or Assembly procedure for this Order.

The 2014 Directive, amending the 2009 Directive on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations, requires transposition by 13 May 2016. The instrument that is the subject of this Memorandum will amend the 2010 Regulations so as to transpose the 2014 Directive. It applies to England and Wales.

Purpose & intended effect of the legislation

Petrol vapours can cause harm to human health and the environment. Existing legislation aims to reduce the emissions of petrol vapour to the atmosphere at various stages during the storage and distribution of petrol. Stage II petrol vapour recovery involves recovering the petrol vapour displaced from the fuel tank of a motor vehicle during refuelling at a service station and transferring that petrol vapour to an underground storage tank at the service station or back to the petrol dispenser for resale. The 2009 Directive established a minimum level of Stage II petrol vapour recovery across Member States.

The 2009 Directive has recently been amended by the 2014 Directive. The changes introduced are minor technical amendments which specify the new

European Committee for Standardisation (CEN) standards which must be used to certify and test PVR equipment, replacing the option of different national methodologies. UK industry was involved in development of these standards and will benefit from certifying to common EU standards rather than having to comply with varied national standards.

Consultation

A public consultation was held between 20 November 2015 and 11 January 2016. The consultation received 7 responses as a result of the low impact and technical nature of the change. All the responses supported the proposed amendment to the 2010 Regulations. No issues or concerns were raised.

Industry representatives and regulators responding to the consultation agreed that the regulations will not place excessive burdens on industry but rather that the proposals mandate standards already adopted in England and Wales voluntarily, and will have a positive effect on businesses which operate in other Member States.

Regulatory Impact Assessment (RIA)

Rationale for intervention and intended effects

New EU legislation on Stage II petrol vapour recovery (PVR) during the refuelling of motor vehicles at service stations has been introduced. Directive 2014/99/EU on Stage II PVR ('the 2014 Directive') amends previous PVR legislation (Directive 2009/126/EC – 'the 2009 Directive') such that Stage II PVR systems, and the testing of their efficiency, will need to comply with new European Committee for Standardisation (CEN) standards by 13 May 2016.

In order to transpose the 2014 Directive, we are proposing to introduce an amendment to the Environmental Permitting (England and Wales) Regulations 2010/675. Our amending Regulations will update the definition of 'PVRII' in paragraph 2 of Part 2 of Schedule 18 and also the reference in Schedule 1, Part 2 (activities), Section 1.2, Interpretation of Part B, paragraph 2 of the Environmental Permitting Regulations, so that it reflects the amendments introduced through the 2014 Directive.

The regulations will permit us to introduce the necessary technical changes whilst maintaining the existing legislative framework for PVR, meaning, for example, that the current system of fines and penalties for non-compliance will be maintained. The amending Regulations will have the effect of ensuring that England and Wales are compliant with the 2014 Directive.

Impact

The Stage II Petrol Vapour Recovery (PVR) Directive (2009/126/EC) aims to reduce the emissions of petrol vapour during the refuelling of motor vehicles at service stations by setting requirements for the certification and testing of vapour recovery equipment. That Directive contains a provision for adaptation to technical progress, specifically in the event that European Committee for Standardisation (CEN) standards on stage II PVR are developed. CEN standards on the certification and testing of stage II PVR equipment were introduced in 2013 (standard EN16321-1:2013 concerns certification and standard EN16321-2:2013 concerns in-service efficiency testing). The 2014 Directive was introduced in order to amend the 2009 Directive as a result of technical progress by making the use of the new CEN standards mandatory across the EU.

The impact on business is expected to be minimal. The new CEN standards have been developed at the request of industry and are based on practices which were already in common use in the UK. The UK was involved in the development of the CEN standards, and their mandatory use will provide a level playing field across the EU and reduce costs of businesses selling across the EU market. Businesses will not have to invest in new PVR technology in order to comply with the 2014 Directive. It is estimated that there will be a one-off cost of approximately £10,500-£36,000 to one UK manufacturer associated with re-certifying their products. The consultation confirmed that industry representatives agreed with the assessment of impact of transposing the Directive. There is no impact on charities or voluntary bodies. There is no impact on the public sector as the inspection rate for Local Authority regulators is unchanged by this amendment.

The intended effect of the transposing Regulations is that compliance with the new CEN standards on Stage II PVR will now be mandatory for manufacturers of stage II PVR equipment and service stations.

Service Stations

Figures from the Petrol Retailers Association (PRA) estimate that there are 8,611 service stations in the UK in total. These businesses will all be required to comply with the amendments to the 2010 Regulations we propose to introduce. Following public consultation, we consider that the impact on service stations will be extremely low. The reason for this is twofold. Firstly, the new CEN standards are largely based upon an existing set of German technical guidelines (VDI2405) which have historically been used to regulate stage II PVR equipment in the UK. Hence, service stations will not be required to invest in new PVR equipment and there will be no significant monetisable costs arising from transposition. The second reason is that the 2014 Directive makes no changes to the existing regulatory regime for PVR. It maintains the current system of the inspection and testing of stage II PVR equipment in service stations. Therefore, there will be no increase in the regulatory burden on business arising from transposition.

Stage II PVR Equipment Manufacturers

Industry representatives estimate the cost to manufacturers of re-certifying their products in accordance with the new standards to be approximately €15-50k per manufacturer, depending on the size of their operations. We understand that there is one site in the UK involved in the manufacture of stage II PVR equipment which will directly bear this cost. Hence, the monetisable impact on the manufacturing sector will be limited.

Furthermore, it was European manufacturers of stage II PVR equipment who pressed for the development of EU-wide CEN standards. The rationale for this was that it was deemed to be preferable, both in terms of economic benefit and regulatory burden, to introduce mandatory compliance with pan-EU standards than for manufacturers to certify their equipment in accordance with a variety of national technical guidelines. So, whilst there may be some costs involved in re-certifying equipment in accordance with the CEN standards, this will be less financially burdensome than having to certify the same products to show their compliance with many sets of technical standards. The UK was involved in the development of the CEN standards.

Impact on Small Businesses

The legislation applies to activities that are undertaken by small businesses. However, independent service stations will not be required to invest in new PVR equipment once compliance with the CEN standards becomes mandatory as their existing technology will already meet their requirements. They will also not experience an increase in regulatory burden as frequency of testing and inspection will remain unchanged.

The PVR equipment manufacturer mentioned in the *Stage II PVR Equipment Manufacturers* section is run by a large company and hence the limited cost of product re-certification will not be borne by small business at all.

Conclusion

The transposition of the 2014 Directive by amending the 2010 Regulations will have a limited impact on businesses, in terms of both financial and regulatory burdens. Consultation with the key stakeholders such as the Petrol Retailers Association and representatives of manufacturers of PVR equipment has been carried out and their views have been taken on board in the assessment of the impacts of the Directive. A public consultation held between November 2015 - January 2016 confirmed this assessment.

The reasons for our conclusion are summarised below:

1. European manufacturers of Stage II PVR equipment pressed for the establishment of European Committee for Standardisation (CEN) Standards on certification and testing as it was deemed to be less burdensome, both technically and financially, to introduce pan-European standards rather than to have multiple different, national sets of technical guidelines.
2. The CEN standards made mandatory by the 2014 Directive are largely based upon an existing set of technical guidelines (VDI2405), which had been used to regulate Stage II PVR in the UK. Hence, petrol retailers will not need to invest in new PVR technology because their existing equipment will already comply with the CEN Standards when they become mandatory.
3. There will be no alteration to the frequency of inspections of PVR equipment at service stations, as the 2009 Directive required that they be inspected at least once a year and this is not changed by the 2014 Directive.
4. There will be some re-certification costs for manufacturers of PVR equipment. We understand that these costs will be approximately €15-50k per manufacturer, depending on the scale of their operations. We understand, from consultation with industry, that there is only one UK site manufacturing PVR equipment which will directly bear the costs of recertification, as most manufacturers are based in other Member States.

Therefore, the total cost in the UK will be approximately £10,500-£36,000 (€15-50k).

5. We do not expect the transposition of the 2014 Directive to have an impact on small businesses, as service stations will be able to continue their operations as normal and the UK site producing PVR equipment is run by a large manufacturer.
6. The 2014 Directive aims to reduce the emissions of volatile organic compounds (VOCs) from the refuelling of vehicles at service stations. VOCs are a precursor to ozone. The reduction of their emissions across Europe arising from the implementation of an EU-wide regulatory regime for Stage II PVR will help to reduce the trans-boundary effects of pollution and lead to associated social and economic benefits.

**CLA679 - The Water Environment (Water Framework Directive)
(England and Wales) (Amendment) Regulations 2016**

Procedure

Composite Negative

Background

These Regulations amend the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 to provide specific powers for the designation of transitional and coastal waters where shellfish are commercially harvested and to place requirements regarding the monitoring of any designated waters.

These amendments are made following the repeal of the Shellfish Waters Directive (79/923/EEC) by the Water Framework Directive (2000/60/EC) and are intended to ensure that the protections provided by the Shellfish Waters Directive continue. These Regulations also revoke the Surface Waters (Shellfish) (Classification) Regulations 1997, which implemented the Shellfish Waters Directive.

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2(ix) that it is not made or to be made in both English and Welsh.

The Explanatory Memorandum states

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

Merits Scrutiny

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

Legal Advisers
Constitutional and Legislative Affairs Committee
02 March 2016



STATUTORY INSTRUMENTS

2016 No. 138

WATER RESOURCES, ENGLAND AND WALES

The Water Environment (Water Framework Directive) (England and Wales) (Amendment) Regulations 2016

Made - - - - - *9th February 2016*
Laid before Parliament *10th February 2016*
Laid before the National Assembly for Wales *10th February 2016*
Coming into force - - - *3rd March 2016*

The Secretary of State makes these Regulations in exercise of the powers conferred by—

- (a) section 2(2) of the European Communities Act 1972 (“the 1972 Act”)(a), in relation to river basin districts that are wholly in England(b);
- (b) sections 82 and 219(2) of the Water Resources Act 1991 (“the 1991 Act”)(c), in relation to England, and with the agreement of the Welsh Ministers, in respect of those parts of Wales(d) within the catchment areas of the rivers Dee, Wye and Severn(e); and
- (c) section 102 of the 1991 Act(f), in relation to river basin districts in England and Wales.

The Welsh Ministers make these Regulations in exercise of the powers conferred by—

- (a) section 2(2) of the 1972 Act in relation to river basin districts that are wholly in Wales; and
- (b) sections 82 and 219(2) of the 1991 Act, in relation to those parts of Wales not within the catchment areas of the rivers Dee, Wye and Severn.

The Secretary of State and the Welsh Ministers make these Regulations jointly in exercise of the powers conferred by section 2(2) of the 1972 Act in relation to river basin districts that are partly in England and partly in Wales.

(a) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7).
 (b) “River basin district” and “England” are defined in regulation 2(1) of S.I. 2003/3242.
 (c) 1991 c. 57; section 219(2) was amended by paragraph 176(a) of Schedule 22, and Schedule 24, to the Environment Act 1995 (c. 25) and paragraph 28(4) of Part 2 of Schedule 7 to the Water Act 2003 (c. 37).
 (d) “Wales” is defined in regulation 2(1) of S.I. 2003/3242.
 (e) The functions of the Secretary of State, in relation to Wales, under section 82 (except in relation to those parts of Wales which are within the catchment areas of the rivers Dee, Wye and Severn) and section 219(2) of the Water Resources Act 1991 were transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). Those functions are now exercisable by the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32). By virtue of article 5 and Schedule 2 to S.I. 1999/672, and paragraph 30 of Schedule 11 to the Government of Wales Act 2006, the functions of the Secretary of State under section 82 of the Water Resources Act 1991 are exercisable only with the agreement of the Welsh Ministers in relation to those parts of Wales which are within the catchment areas of the rivers Dee, Wye and Severn.
 (f) Section 102 was amended by S.I. 2011/1043.

The Secretary of State is a Minister designated for the purposes of section 2(2) of the 1972 Act in relation to the environment^(a) and the Welsh Ministers are designated for the purposes of that provision in relation to measures relating to water resources^(b).

Citation, extent and commencement

1. These Regulations—

- (a) may be cited as the Water Environment (Water Framework Directive) (England and Wales) (Amendment) Regulations 2016;
- (b) extend to England and Wales; and
- (c) come into force on 3rd March 2016.

Amendment of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003

2. The Water Environment (Water Framework Directive) (England and Wales) Regulations 2003^(c) are amended in accordance with regulations 3 to 10.

Amendment of regulation 2 (interpretation)

3.—(1) In regulation 2(1)—

- (a) in the definition of “appropriate agency”, before “means” insert “, except as provided for by regulation 7A(8),”;
- (b) in the definition of “appropriate authority”, before “means” insert “, except as provided for by regulation 7A(8),”;
- (c) for the definition of “environmental objectives” substitute—
 - ““environmental objectives”, in relation to a river basin district, means—
 - (a) the objectives required to comply with Article 4 of the Directive (environmental objectives) including any objectives required to comply with Article 7(2) and (3) of the Directive (waters used for the abstraction of drinking water), and the EQS Directive; and
 - (b) in relation to a shellfish water protected area, without prejudice to the objectives under paragraph (a) for the river basin district in which the shellfish water protected area is situated, the water quality objectives necessary or desirable to improve or protect that shellfish water protected area in order to support shellfish life and growth and to contribute to the high quality of shellfish products suitable for human consumption;”;
- (d) after the definition of “river basin district”, insert—
 - ““shellfish” means any bivalve or gastropod mollusc;
 - “shellfish water objectives” means the objectives referred to in paragraph (b) of the definition of environmental objectives;
 - “shellfish water protected area” means an area of water designated under regulation 7A(1);”.
- (2) In regulation 2(1A), before “statement” insert “list,”; and
- (3) In regulation 2(1B), before “statement” insert “list,”.

(a) S.I. 2008/301.
 (b) S.I. 2003/2901, to which there are amendments not relevant to these Regulations. The functions conferred on the National Assembly for Wales by means of that Order are now exercisable by the Welsh Ministers by virtue of paragraph 28(1) of Schedule 11 to the Government of Wales Act 2006.
 (c) S.I. 2003/3242, amended by S.I. 2005/2035, 2011/603, 2011/1043, 2013/755, 2015/1623; there are other amending instruments but none are relevant.

New regulation 7A (designation of shellfish waters)

4. After regulation 7 insert—

“Designation of shellfish waters

7A.—(1) Subject to paragraph (4), the appropriate authority may designate any area of coastal or transitional water within a river basin district as a shellfish water protected area by including it in the relevant list.

(2) In relation to a shellfish water protected area which is wholly in England, the relevant list is the list entitled “Shellfish Waters (England) 2016” and dated 8th February 2016.

(3) In relation to a shellfish water protected area which is wholly in Wales, the relevant list is the list entitled “Shellfish Waters (Wales) 2016” and dated 8th February 2016.

(4) An area of coastal or transitional water may not be included in the relevant list unless the appropriate authority considers that to do so is necessary or desirable in order to protect or develop economically significant shellfish production.

(5) The appropriate authority may from time to time review each designation made under paragraph (1).

(6) The first review under this regulation must be completed by 22nd December 2021 and afterwards reviews must be completed at intervals not exceeding 6 years.

(7) The appropriate agency must ensure that the relevant list is—

- (a) published on its website; and
- (b) made available to the public at its principal offices.

(8) In this regulation—

“appropriate agency” means—

- (a) in relation to a shellfish water protected area that is wholly in England, the Agency;
- (b) in relation to a shellfish water protected area that is wholly in Wales, the NRBW;

“appropriate authority” means—

- (a) in relation to a shellfish water protected area or proposed area that is wholly in England, the Secretary of State;
- (b) in relation to a shellfish water protected area or proposed area that is wholly in Wales, the Welsh Ministers.”.

Amendment of regulation 8 (register of protected areas)

5. In regulation 8(2)—

- (a) at the end of paragraph (a) omit “and”;
- (b) after paragraph (a) insert—
“(aa) a shellfish water protected area;”.

Amendment of regulation 9 (monitoring)

6. In regulation 9, after paragraph (5) insert—

“(6) The appropriate agency must maintain, in relation to each shellfish water protected area, a monitoring programme for the purposes of enabling a reliable assessment of whether the shellfish water objectives have been or will be achieved.”.

Amendment of regulation 11 (river basin management plans)

7. In regulation 11(2)—

- (a) at the end of paragraph (a) omit “and”;
- (b) at the end of paragraph (b) insert—
 - “; and
- (c) in relation to any shellfish water protected area, include equivalent information relating to the shellfish water objectives as is required by regulation 11(3)(d) to be included for the objectives referred to in paragraph (a) of the definition of environmental objectives”.

Amendment of regulation 12 (river basin management plans: public participation)

8. In regulation 12, after paragraph (4)(f) insert—

“(fa)where any part of the river basin district contains a shellfish water protected area, the Food Standards Agency;”.

Amendment of regulation 15 (river basin management plans: review)

9. In regulation 15, for paragraph (4) substitute—

“(4) The revised plan must include (in addition to the matters required to be included by regulation 11(2)(b) and (c) and (3))—

- (a) the information specified in Part B of Annex VII to the Directive (additional information for inclusion in updated river basin management plans); and
- (b) in relation to any shellfish water protected area, equivalent information relating to the shellfish water objectives as is specified in Part B of Annex VII to the Directive to be included for the objectives referred to in paragraph (a) of the definition of environmental objectives.”.

Amendment of Schedule 2 (enactments in relation to which duties in regulation 3 apply)

10. In Part 2 of Schedule 2, omit paragraph 12.

Revocations

11. The following Regulations are revoked—

- (a) the Surface Waters (Shellfish) (Classification) Regulations 1997(a);
- (b) the Surface Waters (Shellfish) (Classification) (Amendment) Regulations 2009(b).

8th February 2016

Rory Stewart
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

9th February 2016

Carl Sargeant
Minister for Natural Resources
One of the Welsh Ministers

(a) S.I. 1997/1332, amended by S.I. 2009/1266, 2013/755.
(b) S.I. 2009/1266.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 (S.I. 2003/3242) to include shellfish water protected areas. These Regulations are made due to the revocation of Directive 2006/113/EC of the European Parliament and of the Council on the quality required of shellfish waters (OJ No L 376, 27.12.2006, p 14), so that protections under that Directive are continued. Similar provision is being made for the Solway Tweed River Basin in a separate instrument.

The effect of these Regulations is to ensure that any necessary environmental objectives required to improve or protect the water quality of a shellfish water protected area to support shellfish life and growth are set, that monitoring in relation to such objectives takes place in those areas, and that information about them is included in the river basin management plan.

The power to designate shellfish water protected areas is provided in new regulation 7A. The Secretary of State and the Welsh Ministers may designate an area within a river basin district as a shellfish water protected area by including it on a list. The list of shellfish water protected areas located in England may be obtained from, or inspected on request in writing to, the Shellfish Waters Team, the Department for Environment, Food and Rural Affairs, Area 3D, Nobel House, 17 Smith Square, London SW1P 3JR, or by emailing shellfishwater@defra.gsi.gov.uk or it can be downloaded from the Department's website at www.gov.uk/defra. A copy of the Welsh list may be obtained from, or inspected on request in writing to, the Water Branch, the Welsh Government, Cathays Park, Cardiff CF10 3NQ, or by emailing water@wales.gsi.gov.uk or it can be downloaded from the Welsh Government's website at www.wales.gov.uk.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or business sector is foreseen.

Explanatory Memorandum to: The Water Environment (Water Framework Directive) (England and Wales) (Amendment) Regulations 2016.

This Explanatory Memorandum has been prepared by the Department for Economy, Skills and Natural Resources and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of The Water Environment (Water Framework Directive) (England and Wales) (Amendment) Regulations 2016.

Carl Sargeant,
Minister for Natural Resources
One of the Welsh Ministers

10 February 2016

1. Description

These Regulations amend the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 (“2003 Regulations”) to provide specific powers for the designation of transitional and coastal waters where shellfish are commercially harvested and to place requirements regarding the monitoring of any designated waters.

These amendments are made following the repeal of the Shellfish Waters Directive (79/923/EEC) by the Water Framework Directive (2000/60/EC) and are intended to ensure that the protections provided by the Shellfish Waters Directive continue. These Regulations also revoke the Surface Waters (Shellfish) (Classification) Regulations 1997, which implemented the Shellfish Waters Directive.

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

For the reasons set out in paragraph 3, in so far as these Regulations relate to cross-border river basins, they are to be made jointly with the Secretary of State. In so far as relating to river basin districts wholly in Wales or wholly in England, the Regulations are to be made compositely. The Regulations will apply to England and Wales and are subject to negative resolution procedure in the National Assembly for Wales and in both Houses of the UK Parliament.

Because the Regulations will be subject to UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually.

To date, the Welsh Government has tended towards transposing EU Directives compositely with Defra. This was due in part, to the fact that the Environment Agency acted as the main environment regulator for both the Welsh Government and UK Government.

With the creation of Natural Resources Wales in 2013, there is more scope to operate differently in Wales; however with respect to this particular Directive, there is limited scope to transpose directions differently due to the river basin areas that are partly in Wales and partly in England.

The Welsh Ministers have the power to give Natural Resources Wales directions for the implementation of EU obligations such as this. However, that power only covers river basin districts wholly in Wales. If the Welsh Government were to undertake a separate transposition it would only apply to the Western Wales river basin and the Severn and Dee River Basins would still need to be directed jointly with Defra.

Transposing the Directive jointly with the UK Government also ensures there is consistency in delivery something that the European Commission is keen to see with regards to the overall Water Framework Directive.

These Regulations are made in reliance on section 2(2) of the European Communities Act 1972. By virtue of section 59(3) of the Government of Wales Act 2006, the Welsh

Ministers are to determine whether an instrument made in exercise of the section 2(2) powers is to be subject to the negative or affirmative procedure.

This statutory instrument is subject to annulment of the Assembly (negative procedure). The Regulations are made to ensure correct transposition of the Water Framework Directive and so there is little discretion involved. The Regulations do not amend any provision of an Assembly Act or Measure. Accordingly, the Welsh Ministers have determined that these Regulations are to be subject to the negative resolution procedure.

3. Legislative background

The Shellfish Waters Directive (79/923/EEC) was implemented in England and Wales by the Surface Waters (Shellfish) (Classification) Regulations 1997 (S.I. 1997/1332). In December 2013 the Shellfish Waters Directive was repealed by the Water Framework Directive (2000/60/EC). Article 4.9 of the Water Framework Directive sets out that it offers a level of protection at least equal to any Directive which it repeals. These Regulations amend the 2003 Regulations to continue the protections which were provided by the Shellfish Waters Directive.

Section 80 of the Government of Wales Act 2006 (“GOWA 2006”) states that an obligation of the UK is also an obligation of the Welsh Ministers if and to the extent that the obligation could be implemented (or enabled to be implemented) or complied with by the exercise by the Welsh Ministers of any of their functions.

Section 59 of GOWA 2006 enables the Welsh Ministers to be designated for the purposes of section 2 (2) of the European Communities Act 1972 (“the ECA 1972”). Section 2 (2) of the ECA 1972 enables designated Ministers or departments to implement EU obligations and rights. The Welsh Ministers are designated for the purposes of section 2(2) of the ECA 1972 in relation to water resources by virtue of Article 3 of European Communities (Designation) (No. 4) Order 2003/2901 (the original designation has transferred to the Welsh Ministers from the National Assembly for Wales by virtue of sections 59 and 162 of, and paragraph 28 of Schedule 11 to the Government of Wales Act 2006). . That designation also provides that where regulations are to be made under this designation in relation to or identifying river basin districts which lie partly in England and partly in Wales, they shall be made jointly with the Secretary of State.

The Welsh Ministers can therefore make the Regulations using the enabling powers in section 2(2) of the ECA 1972 in relation to river basin districts which lie wholly in Wales, and jointly with the Secretary of State in relation to districts lying partly in England and partly in Wales.

The powers in sections 82 and 219(2) of the Water Resources Act 1991 are also being used in so far as they relate to the revocation of the Surface Waters (Shellfish) (Classification) Regulations 1997 and the Surface Waters (Shellfish) (Classification) (Amendment) Regulations 2009. Section 102 of that Act is also

being exercised by the Secretary of State for the same purpose, but this power has not been transferred to the Welsh Ministers

The Welsh Ministers therefore have the power to amend the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 under section 2(2) of the European Communities Act 1972, having been designated in relation to water resources.

These Regulations will apply to England and Wales and are subject to negative resolution procedure in both Houses of the UK Parliament and the National Assembly for Wales.

4. Purpose & intended effect of the legislation

The Surface Waters (Shellfish) (Classification) Regulations 1997 (“Shellfish Regulations 1997”) implemented the Shellfish Waters Directive (79/923/EEC as amended), and aimed to protect shellfish growth and contribute to a high quality product for human consumption. Directive 79/923/EEC has now been repealed by the Water Framework Directive (2000/60/EC) which is intended to replace its protections.

For the majority of parameters in the Shellfish Waters Directive, the Water Framework Directive provides a necessary update to the 1970s standards set in the Shellfish Waters Directive. These offer the same or improved levels of protection of shellfish growing in protected waters based on modern scientific recommendations.

The Water Framework Directive is designed to protect the ecological health of the water body, including the shellfish growing within it. Technical advice from the UK technical advisory group for the implementation of the Water Framework Directive and the European Commission indicates that the physical and chemical parameters set down within the Water Framework Directive for protecting water quality are equivalent or better than the requirements which were set in the Shellfish Waters Directive.

However the Water Framework Directive does not include the non-mandatory faecal indicator organism standard which was contained in the Shellfish Waters Directive. The aim of the faecal indicator organism standard is to contribute to a high quality shellfish product for human consumption. Shellfish hygiene rules set quality standards for human consumption based on faecal indicator organisms and protects human health from poor quality shellfish. These hygiene rules are the responsibility of the Food Standards Agency.

The amendments to the 2003 Regulations provide that the Welsh Ministers (in relation to areas wholly in Wales) may designate waters where shellfish are commercially harvested as “shellfish water protected areas”. Waters are designated through inclusion in a ‘relevant list’ that will be made by the Welsh Ministers prior to the making of the Regulations. Any subsequent amendments to the list of designated waters will require an amendment to the 2003

Regulations. Inclusion in the 'relevant list' places a requirement to include those protected areas in the water quality planning regime of the Water Framework Directive.

In addition to the general environmental objectives that must be pursued in relation to river basin districts there is an additional objective to be pursued in relation to shellfish water protected areas, as inserted by regulation 3. This objective is set under the definition of "environmental objectives" in regulation 2 of the 2003 Regulations and relates to 'the water quality objectives necessary or desirable to improve or protect a shellfish water protected area in order to support shellfish life and growth and to contribute to the high quality of the shellfish products suitable for human consumption'. This wording follows the objectives of the original Shellfish Waters Directive and ensures compliance with the requirement in article 4.9 of the Water Framework Directive to afford the same level of protection to shellfish waters as existed under previous Community legislation. Directions made by the Welsh Ministers to Natural Resources Wales in relation to Welsh areas (made compositely with Secretary of State in relation to areas partly in Wales and partly in Wales) will be used to set the technical details of the objectives, and will be used to ensure appropriate protection is afforded to shellfish waters in line with the Water Framework Directive. The first direction of this nature is the Shellfish Water Protected Areas (England and Wales) Directions 2016 which sets out that Natural Resources Wales, when meeting the water quality objectives placed by these Regulations, must also endeavour to meet the faecal indicator organism standard, that is, the microbial standard in shellfish protected waters. There is no substantive change to policy as the overall effect of the amendments is to replicate the requirements from the Shellfish Regulations 1997 and the Shellfish Waters Directive. Retaining these protections is important as shellfish are bio accumulators of pollution in the environment, and in order to protect and improve their quality, environmental standards for water quality are required to protect them from pollution from point and diffuse sources.

The only change to policy is to subject water quality improvements for shellfish waters to an explicit test of cost and benefit, which is a fundamental part of the Water Framework Directive. As a non-mandatory standard in the Shellfish Waters Regulations 1997, improvements were subject to an implicit process of cost benefit assessment in the past. As part of the Water Framework Directive, this process will now be open, explicit and offer stakeholders opportunities to comment on and inform the assessment.

5. Consultation

These amending Regulations affect functions of the Environment Agency, Natural Resources Wales, the Secretary of State and the Welsh Ministers. There is no substantive change to policy as the overall effect of the amendments is to replicate the requirements from the Shellfish Regulations 1997; since they do not have any novel implications for industry or the public, there has been no public consultation exercise, however, Natural Resources Wales have been engaged in the consideration of these amendments and their comments have been taken into account.

6. Regulatory Impact Assessment (RIA)

Since the amending Regulations have no direct impact on statutory duties or statutory partners, a separate impact assessment has not been prepared for this instrument.

Subsidiarity monitoring report September 2015 to February 2016

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol | Mawrth 7, 2016
Constitutional and Legislative Affairs Committee | 7 March 2016

Research Briefing

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1. Introduction

Under Standing Order 21, a ‘responsible committee’ in the Assembly (currently the Constitutional and Legislative Affairs Committee) is empowered to consider draft EU legislation that relates to matters within the legislative competence of the Assembly or to the functions of the Welsh Ministers and of the Counsel General, to identify whether it complies with the principle of subsidiarity.

The principle of subsidiarity is enshrined in Article 5 of the Treaty on European Union:

1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.
2. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.
3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.

4. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.

The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality.

In addition, the application of the principle is governed by the Protocol on the Application of the Principles of Subsidiarity and Proportionality. The relevant part in relation to the work of the Assembly is included in the first paragraph of Article 6:

Any national Parliament or any chamber of a national Parliament may, within eight weeks from the date of transmission of a draft legislative act, in the official languages of the Union, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity. It will be for each national Parliament or

each chamber of a national Parliament to consult, where appropriate, regional parliaments with legislative powers.

2. The monitoring process

In order to ensure that the Constitutional and Legislative Affairs Committee fulfils its subsidiarity monitoring function effectively as set out in Standing Orders, Assembly officials monitor all draft EU legislative proposals that apply to Wales on a systematic basis to check whether they raise any subsidiarity concerns. The way in which Assembly officials monitor these proposals is outlined below for information:

- The Assembly in the first instance is notified of all proposals published by the European Commission for consideration through a list (known as the “batch list”) which is sent by the Foreign and Commonwealth Office on behalf of the UK Government to the Assembly’s Research Service for information.
- The relevant UK Government department will then prepare an Explanatory Memorandum (EM) based on the proposals included on the batch list usually within 4 to 6 weeks of the initial notification by the Foreign and Commonwealth Office. Each EM includes an assessment of the policy impact of the proposals (including whether the UK Government department believes the proposal raises any subsidiarity concerns). Copies of each EM are sent to the Assembly via the Research Service.
- The Research Service filters the EMs received to check whether the proposal they relate to are ‘legislative’ or ‘non-legislative’ and whether they encompass issues which may be of interest to the Assembly (i.e. relating to devolved matters).
- Those EMs that relate to proposals that are both ‘legislative’ and deal with issues of interest to the Assembly are then checked further by officials from the Assembly’s Legal Services, Brussels Office and the Research Service to see whether they raise any potential subsidiarity concerns.
- If a proposal raises subsidiarity concerns, Assembly officials will alert the Constitutional and Legislative Affairs Committee immediately whereupon Members will be asked to consider whether the Committee should ask either or both Houses at Westminster to issue a ‘reasoned opinion’ on the proposal or not.
- Those proposals which are ‘legislative’ and relate to devolved matters but raise no subsidiarity concerns are then collated in a monitoring report produced by the Research Service which is considered as a paper to note by the Constitutional and Legislative Affairs Committee usually during each term in an Assembly year (Autumn [September–December], Spring [January–April] and Summer [May – August]).

This report therefore includes a general overview of those draft EU legislative proposals received by the Assembly's Research Service between 1 September 2015 and 29 February 2016, and provides further information about those proposals that were identified by Assembly officials as being both 'legislative' in nature and relating to devolved matters.

Please note however that this report primarily monitors 'legislative' proposals, in the main it does not contain details of 'non-legislative proposals' that may be relevant to the work of the Assembly. These are monitored on a separate basis by the Research Service.

3. Overview of draft EU proposals received (September 2015 to February 2016)

A total of 371 UK Government EMs relating to EU proposals were received by the Assembly's Research Service from the UK Government between 1 September 2015 and 29 February 2016.

Of these, 71 EMs were of policy interest to the Assembly and were shared with the Research Service and 11 were identified by Assembly officials as being both 'legislative' in nature and of interest to the Assembly.

Following further analysis by officials from the Assembly's Legal Service, Brussels Office and Research Service, none of the proposals were identified as raising subsidiarity concerns although details of other concerns are included for information. Those proposals which relate, wholly or in part, to devolved areas but which do not raise subsidiarity concerns are listed in table 3.1.

Legislative proposals under the new European Commission

In general the number of EU legislative proposals has declined under the new European Commission following the European elections in May 2014. There has been a quite radical shift in approach by the European Commission to its forward planning; one of a number of changes introduced by the new Juncker Commission which took office in November 2014.

This is reflected in the European Commission Work Programme for 2016 which contains only 23 new initiatives of which 18 are legislative. This is a major departure from the previous Commission which would, on average table over 100 legislative proposals each year, and it is indicative of the overall approach of this Commission which is to streamline the process of policy and law-making by the EU. The 2016 Work Programme also includes a significant number of proposals for the withdrawal or modification of legislation and identifies 27 acts to be reviewed, recast, merged, replaced or shortened as part of the Commission's Regulatory Fitness (REFIT) programme.

3.1 EU legislative proposals that did not raise any subsidiarity concerns

Date emailed	Title and description
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16/9/15	<i>Proposal for a Council Regulation amending Regulation (EC) No 850/2004 of the European Parliament and of the Council on persistent organic pollutants as regards annex 1.</i> (COM(2015) 409)
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The Commission Proposal is for a Council Regulation amending Regulation (EC) No 850/2004 of the European Parliament and of the Council on Persistent Organic Pollutants as regards Annex I of that Regulation. The proposal is to list the flame retarding substance hexabromocyclododecane (HBCDD) with a specific exemption on immediate use or other specifications in Annex I. This would be implemented in the European Union to prohibit production, use, import and export of that substance required under the Stockholm Convention on Persistent Organic Pollutants (“the Convention”). Environmental protection and public health are devolved matters and the environment is an area of shared competence under Article 4(2) of the Treaty on the Functioning of the European Union. No subsidiarity issues have been identified.

12/10/15	<i>Proposal for a Council Recommendation on the integration of the long-term unemployed into the labour market.</i> (COM(2015) 462/2)
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This Commission recommendation aims to provide guidance on service delivery to increase the rate of transition of people from long-term unemployment to employment in those Member States that have little or no support in place, and to build on measures already available in other Member States. The UK Government considers the UK to be a Member State which already has such arrangements in place and states that the proposals closely reflect UK policy in this area.

Employment policy is not devolved to Wales although education and training policy are devolved and the issues covered by the EM are likely to be of interest to Welsh Ministers.

The proposal is non-binding and the UK Government has not identified any subsidiarity issues.

26/10/15	<i>Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation.</i> (SOC 246 JAI 368 MI 411)
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This draft equal treatment directive was first proposed in 2008, since when it has undergone a number of modifications following negotiations between Member States. The directive would prohibit discrimination on grounds of religion or belief, age, disability and sexual orientation in the provision of services and the exercise of public functions. It also proposes to ban

harassment in relation to these protected characteristics and provide protection from victimisation. If adopted, the directive would complete the EU's protection coverage of the recognised protected characteristics in the field of services and public functions, the Council having prohibited discrimination on grounds of gender and race in these fields some years ago, together with prohibitions in all protected grounds in employment and vocational training.

Some aspects of equal opportunities are devolved to Wales, although equal opportunities legislation as a whole is a reserved matter. The directive impacts on some areas of devolved policy e.g. education.

During negotiations on the draft directive the UK Government sought to ensure the principle of subsidiarity was satisfied, in particular regarding its application only to access to a particular service and not to issues of eligibility, and it now considers the draft directive to satisfy subsidiarity criteria.

**Not received
-accessed
via Scottish
Parliament
14/1/16**

This Explanatory Memorandum relates to four documents on a **Commission waste proposal** which is part of a larger Circular Economy package and which aim, in part, to review recycling and other waste-related targets.

The EM covers proposed amendments to six Directives on the handling of waste:

- Directive 2000/53/EC on end-of-life vehicles;
- Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators;
- Directive 2012/19/EC on waste electrical and electronic equipment;
- Directive 1999/31/EC on the landfill of waste;
- Directive 2008/98/EC on waste; and
- Directive 94/62/EC on packaging and packaging waste.

The UK Government has identified subsidiarity concerns regarding both the proposal to insert a new article 8a into the Waste Framework Directive which it believes will diminish local discretion, and the proposed requirement that Member States put in place financial incentives to achieve waste prevention and recycling objectives.

Although some of the proposals concern devolved matters, there are no specifically Welsh concerns about subsidiarity.

22/2/16

Proposal for a Regulation of the European Parliament and of the Council on

mercury, and repealing Regulation (EC) No 1102/2008 (COM(2016) 39)

The proposed Regulation would fill in a limited number of regulatory gaps between the requirements of the Minamata Convention on Mercury (which the Council is proposing to ratify) and current EU legislation. To do so efficiently, repeal of Regulation (EC) No 1102/2008 on the banning of exports of metallic mercury and certain mercury compounds and mixtures and the safe storage of metallic mercury is proposed, although many of that Regulation's requirements would be retained.

The proposal relates to environmental protection which is a devolved matter. The UK Government does not identify any subsidiarity issues with the proposals.

3.2 Other EU legislative proposal that may be of interest

Date emailed Title and description

4/1/16

European Parliament Resolution of 11 November 2015 on the reform of the electoral law of the European Union

Proposal for a Council Decision adopting the provisions amending the Act concerning the election of the members of the European Parliament by direct universal suffrage

This is a European Parliament proposal (and is therefore relatively unusual since most legislative proposals originate in the European Commission). The proposed reforms are wide-ranging and most are concerned with amending EU law in relation to the conduct of elections to the European Parliament (EP).

In its explanatory memorandum the UK Government expresses subsidiarity concerns about the proposals since Member states have competence in the administration of elections which includes the procedures around European parliamentary elections within their own territories, providing they comply with the 1976 Act and do not affect the essentially proportional nature of the voting system.

Such competence, the UK Government argues, allows for consistency with other elections, such as those to national or regional parliaments of assemblies and the proposals which seek to promote uniform practice across states concern matters which the UK Government considers should be decided at national level. It is sceptical about the likely effectiveness of the proposals and is seeking further clarity as to what is intended.

The EM sets out the current system for elections to the European Parliament which in the UK comprises 12 electoral regions, of which Wales is one, the 73 UK MEP seats being distributed amongst the regions in proportion to their electorates and subject to a minimum of 3 seats in each region. The region with the largest number of seats is the south east with 10 seats. Therefore no region in the UK would be affected by the proposal to introduce mandatory thresholds to win seats in the EP in constituencies that have more than 26 seats. Nevertheless the UK Government is opposed to the introduction of mandatory thresholds and states that it will wish to carefully consider the proposal for the adoption of such a principle.

The proposal to set a common deadline of at least 12 weeks from the start of polling across Member States for the establishment of the lists of

candidates standing for election would be inconsistent with the later deadline under the current UK electoral arrangements and would therefore make it difficult to align EP elections with other elections.

The EP proposal that a common deadline of 8 weeks before polling can begin should be set across Member States for the establishment of the lists of eligible electors is also at variance with the UK deadline of 12 working days before the election (with some flexibility for late adjustments). The UK Government is opposed to such a move which it believes would restrict participation and reduce the flexibility of the current arrangements.

The UK Government also does not support the proposed use of legal quotas to secure gender equality amongst election candidates.

The UK Government has reservations about the proposed adoption of electronic and internet voting at European elections on the grounds of security, transparency and cost, and what it sees as a lack of clear public support in the UK.

The EM states that the proposal to prevent the holding of both MEP and regional parliament or assembly office (where these have legislative powers) requires further consideration and, the UK government concludes, may be better decided at Member state level.

A number of other issues are also highlighted in the UK Government's EM.

On 3 February 2016 the House of Commons European Scrutiny issued a *Reasoned Opinion of the House of Commons concerning a Proposed Council Decision adopting the provisions amending the Act concerning the election of the members of the European Parliament by direct universal suffrage ("the proposal")*.

Rt Hon Harriet Harman MP
Chair of Joint Committee on Human Rights
Committee Office
House of Commons
London
SW1A 0AA

(11/2) February 2016

Harriet Harman

THE GOVERNMENT'S PROPOSALS FOR A BILL OF RIGHTS

Thank you for your letter of 20 January raising your concerns in relation to the possibility of overlap between the consultation on proposals for a Bill of Rights and elections to the devolved legislatures.

The government was elected with a mandate to reform and modernise the UK Human Rights Framework. I have made clear that the government is committed to consulting fully on proposals prior to the introduction of any legislation. My ministerial colleagues and I have already engaged with the devolved administrations on human rights reform and I am committed to continuing to do so throughout the process. We will also engage fully with the public and with legal, academic and civil society stakeholders in all parts of the UK, and, indeed, we have already made a start in this process.

In terms of the timing of our consultation, we will publish our proposals in due course and we will, of course, adhere to any guidance published by the Cabinet Office in respect of the pre-election periods.

Furthermore, I very much welcome any further engagement from the Committee as part of the consultation process.

Yours, with every good wish
Michael

MICHAEL GOVE



Press release

Amended Wales Bill will deliver a stronger devolution settlement

From: Wales Office (<https://www.gov.uk/government/organisations/wales-office>) and The Rt Hon Stephen Crabb MP (<https://www.gov.uk/government/people/stephen-crabb>)

First published: 29 February 2016

Secretary of State for Wales Stephen Crabb today announced changes to the Wales Bill to remove constitutional red tape and deliver a stronger devolution settlement for Wales.



Speaking at a press conference in Cardiff Bay, one year on from the St David's Day Agreement, Stephen Crabb announced that he will:

Remove the so-called 'necessity test', so that the Assembly will be able to change the law to help enforce its legislation without first applying the test

- Reduce the number of reservations in the Bill

- Remove the general restriction on the Assembly modifying a Minister of the Crown function in devolved areas

These changes follow a four month period of pre-legislative scrutiny during which the Welsh Affairs Committee in the House of Commons and the Constitution and Legislative Affairs Committee in the Welsh Assembly heard evidence on how a reserved powers model will work in Wales.

Necessity

On the so-called "necessity test" as it applies to the general principles of the law, the Secretary of State said that he had considered representations to replace it with a different test but concluded that the best way to proceed is to remove the restriction all together.

Given that a key aim is to reduce complexity, removing the "necessity test" will cut the constitutional red tape which risks fettering the ability of the Assembly to modify the law to enforce its legislation for which it is responsible.

Consents

When the Welsh Government wants the Assembly to legislate on matters that affect a reserved body (a body for which the UK Government is responsible) they seek the consent of the UK Government to do so.

Consent is currently also needed for the Assembly to legislate about Minister of the Crown functions in devolved areas as a result of a general restriction on so called "pre-commencement functions". The Secretary of State today announced that he will remove that restriction and look at each of these functions with a view to devolving as many as possible.

Legal jurisdiction

The Secretary of State has also considered calls for a "distinct jurisdiction" or a "separate jurisdiction". With the Assembly being given full law-making powers in 2011, there is now a growing body of distinct Welsh law. At present, this makes up a tiny fraction of the overall body of law for England and Wales which has developed over 500 years of legal history. The Secretary of State today made clear that there is not a case at present for dividing the single jurisdiction of England and Wales which has worked well for the people of this country and continues to do so.

However, he announced today that there is a clear need to look at the delivery of justice in Wales to take account of the distinct and growing body of Welsh law. The Secretary of State will therefore establish a working group with the Ministry of Justice, the Lord Chief Justice's office, and the Welsh Government, to consider what distinct arrangements are required to recognise Wales's needs within the England and Wales jurisdiction when the reserved powers model is implemented.

Reservations

The Secretary of State has instructed officials in the Wales Office to work through the list of reservations with Cabinet colleagues, to see where the number of reservations can be reduced and the list simplified.

Stephen Crabb said:

" Last year I set out my vision for a Welsh devolution settlement that will stand the test of time by delivering a reserved powers model for Wales and giving further powers to both the Assembly and the Welsh Government.

This pre-legislative scrutiny process has led to a vigorous debate on the detail and I am grateful to the Welsh Affairs Committee and the Assembly's Constitutional and Legislative Affairs Committee, as well as those that gave evidence from civic society, who have helped guide the decisions I have made.

Today's announcement helps deliver on the commitments I made one year ago to introduce a historic funding floor, to devolve more powers and remove constitutional and legal red tape to create a stronger and clearer devolution for Wales

I am optimistic that we can now deliver a better Bill, and a better settlement, as a result."

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STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Draft Wales Bill**

DATE **1st March 2016**

BY **Rt. Hon. Carwyn Jones AM, First Minister of Wales**

Llywydd, I would like to make a statement responding to the Secretary of State's announcement yesterday that the Wales Bill is to be "paused".

We do now have an opportunity - if the will is truly there - to repair the damage done by a flawed process and produce a genuinely meaningful piece of legislation.

I should first make clear to the Assembly that I know no more about the Secretary of State's intentions than has appeared in the press. The Welsh Government was not notified beforehand of the content of the Secretary of State's announcement, nor has there been any follow-up communication as to what might happen next. If there is to be any real progress with this Bill, it must be a Bill made with Wales, not for Wales, as recognised by both the Assembly's committee on constitutional and legal affairs and more recently the Welsh Affairs Select Committee.

The UK Government's press release about the announcement makes a number of points, and I deal with these in turn.

First, on the overall model of devolution, the so-called 'necessity' test is to be removed. On the face of it, this is to be welcomed, and of course reflects the views of this Assembly, and of many others who have commented on the Bill. But it remains unclear exactly what the announcement implies. Sadly I cannot envisage a situation where there will be no restrictions at all on the Assembly's powers to modify the private and criminal law. Unfortunately, it is impossible for me to comment further without seeing more detail.

That is also true of the second element of yesterday's announcement, on Ministerial powers and consents. The Welsh Government's position has been clear for many months and is on the record. The Secretary of State announced that he will look at each of these with a view to devolving as many as possible. That is good, but this cannot be a matter for the Secretary of State alone: if there are to be exceptions to the general principle, these must be agreed between the two governments, and that will require dialogue. Welsh Government officials have held two meetings with Wales Office officials where this was on the agenda and I wrote to the Secretary of

State specifically on this issue on 23 November 2015. Other than his public indication yesterday that the English veto on Welsh laws was never his intention, we have had no response.

The same point needs to be made in relation to reservations. Here, we are told that the Wales Office is to review the existing list in discussion with Whitehall departments, and that each reservation will have to be “justified”. My officials held 15 meetings with UK Government officials between October and January and have provided a full and comprehensive view on each of the reservations to them. Again, no response.

If this process remains entirely internal to the UK Government, I can have little confidence that this won't be another Bill made for Wales, not with Wales.

Finally, I turn to the question of legal jurisdiction. Here, it is clear that the Secretary of State has rejected the unanimous view of this Assembly, and that of the Welsh Affairs Committee; that this is a matter meriting further examination. Instead, we are to have a working group “to consider what distinct arrangements are required to recognise Wales’ needs” within the existing jurisdiction. From the press announcement, it appears that the Welsh Government is to be represented on this group, but we've not yet been approached.

I would, however, like to make a more general point. I believe that the creation of a legal jurisdiction for Wales is an inevitable constitutional development within the United Kingdom. I have urged the Secretary of State to take a more far-sighted view and I would like to see the UK Government move towards this now, rather than under the pressure of events later on.

Llywydd, last October, in a statement to the Assembly about publication of the draft Bill, I said this:

“A Wales Bill should provide an opportunity to improve the way Wales is governed. But unless significant changes are made to make the Bill fit for purpose that opportunity will be lost. We will continue our constructive dialogue to help achieve that, and we look to the UK Government to respond accordingly in line with the needs of the people of Wales”.

Those words are as true today as they were six months ago. Much more needs to be done to secure a constitutional basis for the governance of Wales in the UK that meets the Secretary of State's own tests of clarity, coherence, stability, workability and sustainability.

William Graham AM
Chair
Enterprise and Business Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Your ref:
Our ref: PO/RB/LJ

2 March 2016

Dear William

At its meeting last week, the Business Committee considered a paper from the Government regarding a Supplementary Legislative Consent Memorandum (Memorandum No. 5) in relation to the UK Government's Enterprise Bill.

The Supplementary Legislative Consent Memorandum relates to amendments that create data sharing powers between Her Majesty's Revenue and Customs (HMRC), the Secretary of State and the Devolved Administrations in the context of apprenticeship functions. Business Managers agreed that the subject matter of the Supplementary Legislative Consent Memorandum was of most topical relevance to the Enterprise and Business Committee.

Due to the time constraints with the approach of the Assembly's dissolution, and the government's intention to schedule the Legislative Consent Motion for debate on 15 March, the Business Committee agreed not to refer the Supplementary Legislative Consent Memorandum to a Committee for scrutiny but noted however that the Presiding Officer should write to the Enterprise and Business Committee.

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

I am also sending a copy of this letter to the Chair of the Constitutional and Legislative Affairs Committee to note the decision of the Business Committee.

Best wishes,



**Dame Rosemary Butler AM
Presiding Officer
Chair, Business Committee**

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Agenda Item 6.2

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

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