

Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:

Committee Room 1 – Senedd

Meeting date: Monday, 15 May 2017

Meeting time: 14.30

For further information contact:

Gareth Williams

Committee Clerk

0300 200 6362

SeneddCLA@assembly.wales

1 Introduction, apologies, substitutions and declarations of interest
14.30

2 A stronger voice for Wales inquiry: Evidence session 9
14.30 – 15.30 (Page 1)

Sir Derek Jones, Former Permanent Secretary to the Welsh Government

CLA(5)–13–17 – Research Service Briefing

3 Instruments that raise no reporting issues under Standing Order
21.2 or 21.3
15.30 – 15.35 (Page 2)

CLA(5) – 13–17 – Paper 1 – Statutory instruments with clear reports

Negative Resolution Instruments

SL(5)100 – The Town and Country Planning (Environmental Impact Assessment)
(Wales) Regulations 2017



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

15.35 – 15.40

Negative Resolution Instruments

SL(5)090 – The Education (Postgraduate Master's Degree Loans) (Wales) Regulations 2017

(Pages 3 – 47)

CLA(5)–13–17 – Paper 2 – Regulations

CLA(5)–13–17 – Paper 3 – Explanatory Memorandum

CLA(5)–13–17 – Paper 4 – Report

Joint Negative Resolution Instruments

SL(5)102 – The Environmental Impact Assessment (Land Drainage Improvement Works) (Amendment) Regulations 2017

(Pages 48 – 74)

CLA(5)–13–17 – Paper 5 – Regulations

CLA(5)–13–17 – Paper 6 – Transposition Note

CLA(5)–13–17 – Paper 7 – Explanatory Memorandum

CLA(5)–13–17 – Paper 8 – Report

5 Paper to note

15.40 – 15.45

Landfill Disposals Tax (Wales) Bill: Correspondence from the Cabinet Secretary for Finance and Local Government

(Pages 75 – 82)

CLA(5)-13-17 – Paper 9 – Correspondence from the Cabinet Secretary for Finance and Local Government to the Finance Committee, 5 May 2017

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

15.45

7 Stronger voice for Wales Inquiry: Consideration of evidence

8 Forward Work Programme

(Pages 83 – 85)

CLA(5) – 13-17 – Paper 10 – Revised forward work programme

Date of the next meeting

22 May 2017

Document is Restricted

Agenda Item 3

Statutory Instruments with Clear Reports

15 May 2017

SL(5)100 – The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017

Procedure: Negative

The Regulations revoke and restate with amendments the provisions of the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2016. (“the 2016 Regulations”). The 2016 Regulations consolidated and updated earlier instruments which implemented Council Directive 85/337/EEC (“the 1985 Directive”) on the assessment of the effects of certain public and private projects on the environment in relation to town and country planning in Wales.

The 1985 Directive has been replaced by Directive 2011/92/EU (“the Directive”) of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment. The Directive has been amended by EU Directive 2014/52/EU.

The Regulations impose procedural requirements in relation to the granting of planning permission under the Town and Country Planning Act 1990.

Parent Acts: European Communities Act 1972; Town and Country Planning Act 1990

Date Made: 20 April 2017

Date Laid: 20 April 2017

Coming into force date: 16 May 2017



Agenda Item 4.1

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2017 No. 523 (W. 109)

EDUCATION, WALES

The Education (Postgraduate Master's Degree Loans) (Wales) Regulations 2017

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the making of loans to students who are ordinarily resident in Wales for postgraduate master's degree courses which begin on or after 1 August 2017.

To qualify for a loan a student must be an "eligible student". Broadly, a person is an eligible student if that person falls within one of the categories listed in Part 2 of Schedule 1 and also satisfies the eligibility provisions in Part 2 of the Regulations.

These Regulations apply to students ordinarily resident in Wales wherever they study on a designated course in the United Kingdom. For the purposes of these Regulations a person who is ordinarily resident in Wales, England, Scotland, Northern Ireland, the Channel Islands or the Isle of Man as a result of having moved from one of those areas for the purpose of undertaking a designated course is considered ordinarily resident in the place from which that person has moved (Schedule 1, paragraph 1(3)). An eligible student must also satisfy any requirements elsewhere in the Regulations. A loan is only available under these Regulations in respect of "designated" courses.

Part 2 deals with eligibility. Regulation 3 sets out who can be considered an eligible student for the purposes of a postgraduate master's degree loan. Regulation 4 sets out which courses are deemed designated courses for which an eligible student can receive a loan. Regulation 5 sets out when a student ceases to be considered an eligible student. Regulation 6 recognises that an eligible student may transfer to another course in certain circumstances. Regulations 7 and 8 set out the circumstances in which a student may qualify for a postgraduate master's degree loan after the designated course has started.

Part 3 deals with the formalities of how an eligible student applies for a loan, including the application deadlines.

Part 4 deals with the loan itself. Regulations 12 and 13 provide that the maximum loan amount an eligible student can receive is £10,280, other than in the case of an eligible prisoner, where the maximum amount is the value of the fees of the designated course. Regulation 13 gives the Welsh Ministers the power to pay any loan in instalments and provides that payments are made directly to the student's bank account, other than in the case of an eligible prisoner where the payment is made to the institution to which the prisoner is liable to make payment for the fees or to a third party. Regulation 14 gives the Welsh Ministers the power to make payment of the loan conditional upon the student providing them with a national insurance number. Regulation 15 enables the Welsh Ministers to cease further loan payments if they receive notice of a student's lack of attendance on the course, other than where they consider it appropriate to make such payments during the student's absence.

Regulation 16 sets out how loan entitlement amounts change when an eligible student becomes an eligible prisoner and vice versa. Regulation 17 sets out how the Welsh Ministers can recover any overpayments of a postgraduate master's degree loan. Regulation 18 gives the Welsh Ministers the power to require a student to enter into a repayment agreement.

Part 5 deals with information requirements.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Higher Education Division, Welsh Government, Cathays Park, Cardiff CF10 3NQ.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2017 No. 523 (W. 109)

EDUCATION, WALES

**The Education (Postgraduate
Master's Degree Loans) (Wales)
Regulations 2017**

Made 4 April 2017

Laid before the National Assembly for Wales

6 April 2017

Coming into force 28 April 2017

The Welsh Ministers, in exercise of the powers conferred upon the Secretary of State by sections 22 and 42(6) of the Teaching and Higher Education Act 1998⁽¹⁾, and now exercisable by them⁽²⁾ make the following Regulations:

-
- (1) 1998 c. 30; section 22 was amended by the Learning and Skills Act 2000 (c. 21), section 146 and Schedule 11, the Income Tax (Earnings and Pensions) Act 2003 (c. 1), Schedule 6, the Finance Act 2003 (c. 14), section 147, the Higher Education Act 2004 (c. 8), sections 42 and 43 and Schedule 7, the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), section 257, the Education Act 2011 (c. 21), section 76 and S.I. 2013/1881. *See* section 43(1) of the Teaching and Higher Education Act 1998 for the definition of “prescribed” and “regulations”.
- (2) The functions of the Secretary of State under section 22 of the Teaching and Higher Education Act 1998 (except so far as they relate to the making of any provision authorised by subsection (2)(a), (c), (j) or (k), (3)(e) or (f) or (5) of section 22) were transferred to the National Assembly for Wales by section 44 of the Higher Education Act 2004 and the Higher Education Act 2004 (Commencement No. 2 and Transitional Provision) (Wales) Order 2005 (S.I. 2005/1833 (W. 149) (C. 79)) as amended by the Higher Education Act 2004 (Commencement No. 2 and Transitional Provision) (Wales) (Amendment) Order 2006 (S.I. 2006/1660 (W. 159) (C. 56)). The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of paragraphs 30(1) and 30(2)(c) of Schedule 11 to the Government of Wales Act 2006 (c. 32).

PART 1 GENERAL

Title, commencement and application

1.—(1) The title of these Regulations is the Education (Postgraduate Master's Degree Loans) (Wales) Regulations 2017.

(2) These Regulations come into force on 28 April 2017 and apply in relation to Wales.

(3) These Regulations apply in relation to the provision of postgraduate master's degree loans to students in relation to courses which begins on or after 1 August 2017 whether anything done under these Regulations is done before, on or after 1 August 2017.

Interpretation

2.—(1) In these Regulations, except where the context otherwise requires—

“the 1998 Act” (“*Deddf 1998*”) means the Teaching and Higher Education Act 1998;

“academic authority” (“*awdurdod academaidd*”) means, in relation to an institution, the governing body or other body having the functions of a governing body and includes a person acting with the authority of that body;

“academic year” (“*blwyddyn academaidd*”) means the period of twelve months beginning on 1 January, 1 April, 1 July or 1 September of the calendar year in which the academic year of the course in question begins according to whether that academic year begins on or after 1 January and before 1 April, on or after 1 April and before 1 July, on or after 1 July and before 1 August or on or after 1 August and on or before 31 December, respectively;

“course” (“*cwrs*”) means, unless the context otherwise requires, a taught programme of study, a programme of research, or a combination of both, and which may include one or more periods of work experience, and which leads, on successful completion, to the award of a postgraduate master's degree;

“designated course” (“*cwrs dynodedig*”), means a course designated by regulation 4(1) or by the Welsh Ministers under regulation 4(6);

“Directive 2004/38” (“*Cyfarwyddeb 2004/38*”) means Directive 2004/38/EC of the European Parliament and of the Council⁽¹⁾ on the right of citizens of the Union and their family members to

(1) OJ No L158, 30.04.2004, p. 77-123.

move and reside freely in the territory of the Member States;

“distance learning course” (*“cwrs dysgu o bell”*) means a course in relation to which a student undertaking the course is not required to be in attendance by the institution providing the course, other than to satisfy any requirement imposed by the institution to attend any institution—

(a) for the purpose of registration, enrolment or any examination; or

(b) on a weekend or during any vacation;

“electronic signature” (*“llofnod electronig”*) is so much of anything in electronic form as—

(a) is incorporated into or otherwise logically associated with any electronic communication or electronic data; and

(b) purports to be so incorporated or associated for the purpose of being used in establishing the authenticity of the communication or data, the integrity of the communication or data, or both;

“eligible prisoner” (*“carcharor cymwys”*) means a prisoner—

(a) who begins a designated course or on after 1 August 2017;

(b) who has been authorised by the prison Governor or Director or other appropriate authority to study the designated course; and

(c) whose earliest release date is within 4 years of the first day of the first academic year of the designated course;

“eligible student” (*“myfyriwr cymwys”*) has the meaning given in regulation 3;

“equivalent or higher qualification” (*“cymhwyster cyfatebol neu uwch”*) means a qualification determined in accordance with paragraph (2) to be an equivalent or higher qualification;

“EU national” (*“gwladolyn UE”*) means a national of a Member State of the EU;

“fees” (*“ffioedd”*) has the meaning given in section 41(1) of the Higher Education Act 2004(1);

“full-time equivalent” (*“cwrs llawnamser cyfatebol”*) means a full-time course leading to a postgraduate master’s degree in the same subject as the part-time course in question;

“healthcare bursary” (*“bwrsari gofal iechyd”*) means a bursary or award of similar description

(1) 2004 c. 8. Section 41(1) has been amended but those amendments are not relevant to these Regulations.

under section 63 of the Health Services and Public Health Act 1968⁽¹⁾ or Article 44 of the Health and Personal Social Services (Northern Ireland) Order 1972⁽²⁾;

“information” (“*gwybodaeth*”) includes documents;

“Islands” (“*Ynysoedd*”) means the Channel Islands and the Isle of Man;

“period of eligibility” (“*cyfnod cymwysra*”) has the meaning given in regulation 5 in relation to an eligible student;

“periods of work experience” (“*cyfnodau o brofiad gwaith*”) means—

- (a) periods of industrial, professional or commercial experience associated with the designated course at an institution, but at a place outside that institution;
- (b) periods during which a student is employed and residing in a country whose language is one that the student is studying for that student’s designated course (provided that the period of residence in that country is a requirement of that student’s course and the study of one or more modern languages accounts for not less than one half of the total time spent studying on the course);

(1) 1968 c. 46; section 63 was amended by the National Health Service (Scotland) Act 1972 (c. 58), Schedule 7, the National Health Service Reorganisation Act 1973 (c. 32), Schedules 4 and 5, the National Health Service Act 1977 (c. 49), Schedules 15 and 16, the National Health Service (Scotland) Act 1978 (c. 29), Schedules 16 and 17, the Local Government Act 1985 (c. 51), Schedule 17, the Health and Medicines Act 1988 (c. 49), section 20, section 25(2) and Schedule 3, the Local Government (Scotland) Act 1994 (c. 39), Schedule 13, the Health Authorities Act 1995 (c. 17), Schedule 1, the Local Government Reorganisation (Wales) (Consequential Amendments No. 2) Order 1996 (S.I. 1996/1008), the National Health Service (Primary Care) Act 1997 (c. 46), Schedule 2, the Health Act 1999 (c. 8), Schedule 4, the Health and Social Care Act 2001 (c. 15), Schedule 5, the National Health Service Reform and Health Care Professions Act 2002 (c. 17), Schedules 2, 5 and 9, S.I. 2002/2202, article 4(a) and (b), the National Health Service Reform and Health Care Professions Act 2002 (Supplementary, Consequential etc. Provisions) Regulations 2002 (S.I. 2002/2469), Schedule 1, the Health and Social Care (Community Health and Standards) Act 2003 (c. 43), Schedules 4, 11 and 14, the Health and Social Care (Community Health and Standards) Act 2003 Commencement (No. 2) Order 2004 (S.I. 2004/288), article 7, the Health and Social Care (Community Health and Standards) Act 2003 (Commencement No. 1) (Wales) Order 2004 (S.I. 2004/480); the Children Act 2004 (c. 31), section 55; S.I. 2004/957, the Schedule; the National Health Service (Consequential Provisions) Act 2006 (c. 43), Schedule 1, S.I. 2007/961, the Schedule, the Health Act 2009 (c. 21), Schedule 1 and the Health and Social Care Act 2012 (c. 7), Schedule 5 and the Social Services and Wellbeing (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413) (W. 131).

(2) S.I. 1972/1265 (N.I. 14).

“person with leave to enter or remain” (*“person sydd â chaniatâd i ddod i mewn neu i aros”*) means a person (“A” in this definition)—

- (a) who has—
- (i) applied for refugee status but has as a result of that application been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that, although A is considered not to qualify for recognition as a refugee it is thought right to allow A to enter or remain in the United Kingdom on the grounds of humanitarian protection or discretionary leave; or
 - (ii) not applied for refugee status but has been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that it is thought right to allow A to enter or remain in the United Kingdom on the grounds of discretionary leave;
- (b) who has been granted leave to enter or to remain accordingly;
- (c) whose period of leave to enter or remain has not expired or has been renewed and the period for which it was renewed has not expired or in respect of whose leave to enter or remain an appeal is pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002⁽¹⁾); and
- (d) who has been ordinarily resident in the United Kingdom and Islands throughout the period since A was granted leave to enter or remain;

“postgraduate master’s degree loan” (*“benthyciad at radd feistr ôl-raddedig”*) means a loan payable to an eligible student under Part 4 of these Regulations;

“prisoner” (*“carcharor”*) means a person who is serving a sentence of imprisonment in the United Kingdom including a person who is detained in a young offender institution;

“private institution” (*“sefydliad preifat”*) means an institution which is not publicly funded;

“public funds” (*“cronfeydd cyhoeddus”*) means moneys provided by Parliament including funds provided by the Welsh Ministers;

(1) 2002 c. 41. Section 104 was amended by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (c. 19), Schedules 2 and 4, the Immigration, Asylum and Nationality Act 2006 (c. 13), section 9, S.I. 2010/21, Immigration Act 2014 (c. 22), Schedule 9 Part 4, S.I. 2011/2581, S.I. 2014/2924 and S.I. 2016/360.

“publicly funded” (“*a gyllidir yn gyhoeddus*”, “*cael ei gyllido’n gyhoeddus*”) means maintained or assisted by recurrent grants out of public funds, and related expressions are to be interpreted accordingly;

“refugee” (“*ffoadur*”) means a person who is recognised by Her Majesty’s government as a refugee within the meaning of the United Nations Convention relating to the Status of Refugees done at Geneva on 28 July 1951(1) as extended by the Protocol thereto which entered into force on 4 October 1967(2);

“right of permanent residence” (“*hawl i breswyllo’n barhaol*”) means a right arising under Directive 2004/38 to reside in the United Kingdom permanently without restriction;

“student loans legislation” (“*y ddeddfwriaeth ar fenthyciadau i fyfyrwyr*”) means the Education (Student Loans) Act 1990(3), the Education (Student Loans) (Northern Ireland) Order 1990(4), the Education (Scotland) Act 1980(5) and regulations made under those Acts or that Order, the Education (Student Support) (Northern Ireland) Order 1998(6) and regulations made under that Order or the 1998 Act and regulations made under the 1998 Act;

“student support regulations” (“*rheoliadau cymorth i fyfyrwyr*”) means the Education (Student Support) (Wales) Regulations 2017(7);

“Turkish worker” (“*gweithiwr Twrcaidd*”) means a Turkish national who—

- (a) is ordinarily resident in the United Kingdom and Islands; and
- (b) is, or has been, lawfully employed in the United Kingdom.

(2) The Welsh Ministers may determine that a qualification is an equivalent or higher qualification if—

- (a) an eligible student holds a higher education qualification from any institution whether or not in the United Kingdom; and

(1) Cmnd. 9171.
 (2) Cmnd. 3906 (out of print).
 (3) 1990 c. 6; repealed by the Teaching and Higher Education Act 1998 (c. 30), Schedule 4, with savings *see* the Teaching and Higher Education Act 1998 (Commencement No. 2 and Transitional Provisions) Order 1998 (S.I. 1998/2004) (C. 46).
 (4) S.I. 1990/1506 (N.I. 11), amended by S.I. 1996/274 (N.I. 1), Article 43 and Schedule 5 Part II, S.I. 1996/1918 (N.I. 15), Article 3 and the Schedule and S.I. 1998/258 (N.I. 1), Articles 3 to 6 and revoked, with savings, by SR (N.I.) 1998 No. 306.
 (5) 1980 c. 44.
 (6) S.I.1998/1760 (N.I. 14) to which there have been amendments not relevant to these Regulations.
 (7) S.I. 2017/47 (W. 21).

- (b) the qualification referred to in sub-paragraph (a) is a postgraduate master's degree from an institution in the United Kingdom or is of an academic level which, in the opinion of the Welsh Ministers, is equivalent to or higher than a qualification to which the designated course leads.

PART 2

ELIGIBILITY

Eligible students

3.—(1) An eligible student qualifies for a postgraduate master's degree loan in connection with a designated course subject to and in accordance with these Regulations.

(2) Subject to paragraphs (3) to (8), a person is an eligible student in connection with a designated course if in assessing the person's application for a postgraduate master's degree loan under regulation 9 the Welsh Ministers determine that the person falls within one of categories set out in Part 2 of Schedule 1.

(3) A person ("A") is not an eligible student if—

- (a) A has reached the age of 60 on the first day of the academic year in which the designated course starts;
- (b) A is in breach of any obligation to repay any loan;
- (c) A has reached the age of 18 and has not ratified any agreement for a loan made with A when A was under the age of 18;
- (d) A has, in the opinion of the Welsh Ministers, shown by A's conduct that A is unfitted to receive a postgraduate master's degree loan;
- (e) A is a prisoner, unless A is an eligible prisoner;
- (f) A is enrolled on a course which is a designated course under regulation 5 (designated courses), 66 (designated distance learning courses) or 83 (designated part-time courses) of the student support regulations and is receiving support under the student support regulations for that course;
- (g) A has already obtained an equivalent or higher qualification;
- (h) A is already enrolled on a designated course and is in receipt of a postgraduate master's degree loan under these Regulations for that course;

- (i) subject to paragraph (8), A has previously received a postgraduate master's degree loan under these Regulations;
- (j) there has been bestowed on or paid to A in relation to A undertaking the course—
 - (i) a healthcare bursary;
 - (ii) any allowance under the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007⁽¹⁾;
 - (iii) any allowance, bursary or award of similar description made under section 67(4)(a) of the Care Standards Act 2000⁽²⁾ save to the extent that A is eligible for such a payment in respect of travel expenses; or
 - (iv) any allowance, bursary or award of similar description made under section 116(2)(a) of the Regulation and Inspection of Social Care (Wales) Act 2016⁽³⁾ save to the extent that A is eligible for such a payment in respect of travel expenses; or
- (k) A has previously received a loan in respect of a course other than under these Regulations, where that loan was provided out of funds provided by a government authority within the United Kingdom.

(4) Where the eligible student is undertaking a designated course which is a distance learning course, the student does not qualify for support in respect of that course unless the Welsh Ministers consider that the student is undertaking the course in Wales on the first day of the course, whether the course is a designated course at that date or is designated on a later date during the academic year.

(5) An eligible student ceases to be eligible for a postgraduate master's degree loan in respect of a distance learning course if the Welsh Ministers consider that the student is undertaking the course outside the United Kingdom notwithstanding whether that student has previously been considered by the Welsh Ministers to be undertaking their course within the United Kingdom.

(6) Paragraphs (4) and (5) do not apply to a person who is treated as being ordinarily resident in the United Kingdom by virtue of paragraph 1(4) of

(1) S.S.I. 2007/151, as amended by S.S.I. 2007/503, S.S.I. 2008/206, S.S.I. 2009/188, S.S.I. 2009/309, S.S.I. 2012/72, S.S.I. 2013/80 and S.S.I. 2016/82.

(2) 2000 c. 14. There are amendments not yet in force (*see* the Regulation and Inspection of Social Care (Wales) Act 2016, section 185, Schedule 3, Part 2, paragraphs 40 and 43(d)).

(3) 2016 anaw 2. This provision is not yet in force.

Schedule 1 on the basis of temporary employment falling within paragraph 1(5)(a) of Schedule 1.

(7) For the purposes of paragraph (3)(b) and (c), “loan” means a loan made under any provision of the student loans legislation.

(8) The Welsh Ministers may deem a person who has previously received a postgraduate master’s degree loan under these Regulations in relation to a designated course to be an eligible student where the Welsh Ministers are of the view that the person had not been able to complete the designated course to which the previous postgraduate master’s degree loan related due to compelling personal reasons.

(9) The Welsh Ministers may only exercise their discretion under paragraph (8) once in respect of a particular student.

Designated courses

4.—(1) Subject to paragraphs (5) and (6), a course is a designated course for the purposes of section 22(1) of the 1998 Act and regulation 3 if it is—

- (a) a course which falls within paragraph (2);
- (b) one of the following—
 - (i) wholly provided by a publicly funded institution;
 - (ii) provided by a publicly funded institution situated in the United Kingdom on behalf of a publicly funded institution; or
 - (iii) provided by a publicly funded institution in conjunction with an institution which is situated outside the United Kingdom;
- (c) substantially provided in the United Kingdom; and
- (d) a course which—
 - (i) leads to an award granted or to be granted by a body falling within section 214(2)(a) or (b) of the Education Reform Act 1988⁽¹⁾; and
 - (ii) the teaching and supervision which comprise the course has been approved by that body.

(2) For the purpose of paragraph (1)(a) the course must be one of the following—

- (a) a full-time course of one or two academic years’ duration;
- (b) a part-time course which is ordinarily possible to complete in no more than twice the period

(1) 1988 c. 40; section 214(2) was amended by the Further and Higher Education Act 1992 (c.13), section 93 and Schedule 8.

ordinarily required to complete its one or two academic year full-time equivalent; or

- (c) a part-time course that does not have a full-time equivalent and which it is ordinarily possible to complete in up to three academic years.

(3) For the purposes of paragraph (1)(b) and (c)—

- (a) a course is provided by an institution if it provides the teaching and supervision which comprise the course, whether or not the institution has entered into an agreement with the student to provide the course;
- (b) a course is substantially provided in the United Kingdom where at least half of the teaching and supervision which comprise the course is provided in the United Kingdom;
- (c) a university and any constituent college or institution in the nature of a college of a university is to be regarded as publicly funded if either the university or the constituent college or institution is publicly funded;
- (d) an institution is not to be regarded as publicly funded by reason only that it receives public funds from the governing body of a higher education institution in accordance with section 65(3A) of the Further and Higher Education Act 1992⁽¹⁾; and
- (e) a course is not to be regarded as provided on behalf of a publicly funded educational institution where a part of the course is provided by a private institution.

(4) The designated course may, but need not, be a distance learning course.

(5) A course is not a designated course for the purposes of regulation 3 if it is recognised as a designated course for the purposes of regulations 5 or 83 of the student support regulations.

(1) 1992 c. 13; section 65(3A) was inserted by the Teaching and Higher Education Act 1998 (c. 30), section 27.

(6) For the purposes of section 22 of the 1998 Act⁽¹⁾ and regulation 3, the Welsh Ministers may designate courses of higher education which are not designated under paragraph (1).

(7) The Welsh Ministers may revoke or suspend the designation of a course which is designated under paragraph (6).

Period of eligibility

5.—(1) A student's status as an eligible student is retained in connection with a designated course until the status terminates in accordance with this regulation or regulation 3.

(2) The period for which an eligible student retains the status referred to in paragraph (1) is the "period of eligibility".

(3) Subject to the following paragraphs and regulation 3, the period of eligibility terminates at the end of the academic year in which the student completes the designated course.

(4) The period of eligibility terminates when—

- (a) the eligible student ("A") withdraws from A's designated course in circumstances where the Welsh Ministers are not obliged under regulation 6 to transfer A's status as an eligible student to another course; or
- (b) A abandons or is expelled from A's designated course.

(5) The Welsh Ministers may terminate the period of eligibility where A has shown by A's conduct that A is unfitted to receive a postgraduate master's degree loan.

(6) If the Welsh Ministers are satisfied that an eligible student has failed to comply with any requirement to provide information under these Regulations or has provided information which is inaccurate in a material particular, the Welsh Ministers may take such of the following actions as they consider appropriate in the circumstances—

- (a) terminate the period of eligibility;
- (b) determine that the student no longer qualifies for a postgraduate master's degree loan;
- (c) treat any postgraduate master's degree loan paid to the student as an overpayment which may be recovered under regulation 17.

(7) Where the period of eligibility terminates before the end of the academic year in which the student completes the designated course, the Welsh Ministers may, at any time, renew the period of eligibility for such period as they determine.

(1) 1998 c. 30.

Transfer of status

6.—(1) Where an eligible student (“A”) transfers to another course, the Welsh Ministers must transfer A’s status as an eligible student to that course where—

- (a) the Welsh Ministers receive a request from the eligible student to do so;
- (b) the Welsh Ministers are satisfied that one or more of the grounds for transfer in paragraph (2) applies; and
- (c) the period of eligibility has not terminated.

(2) The grounds for transfer are—

- (a) on the recommendation of the academic authority A ceases one designated course and starts to undertake another designated course at the same institution; or
- (b) A starts to undertake a designated course at another institution.

(3) Where A transfers under paragraph (1), A is entitled to receive in connection with the course to which A transfers, the remainder of the postgraduate master’s degree loan, if any, in accordance with regulation 13 and, where relevant, regulation 16, in respect of the course from which A transfers.

Students becoming eligible during a course

7. Where one of the events listed in regulation 8 occurs during the currency of a student’s course, a student may qualify for a postgraduate master’s degree loan, provided the student complies with the application provisions set out in Part 3.

Events

8. The events are—

- (a) the student’s course becomes a designated course;
- (b) the student or the student’s spouse, civil partner or parent is recognised as a refugee or becomes a person with leave to enter or remain;
- (c) a state accedes to the EU where the student is a national of that state or a family member (as defined in Part 1 of Schedule 1) of a national of that state;
- (d) the student becomes a family member (as defined in Part 1 of Schedule 1) of an EU national;
- (e) the student acquires the right of permanent residence;
- (f) the student becomes the child of a Turkish worker;

- (g) the student becomes a person described in paragraph 6(1)(a) of Schedule 1;
- (h) the student becomes the child of a Swiss national; or
- (i) the student commences a designated course after the start date of the designated course as the relevant academic authority has permitted the student to commence the course at this later start date.

PART 3

APPLYING FOR SUPPORT

Applications for a postgraduate master's degree loan

9.—(1) A person (“the applicant”) must apply for a postgraduate master's degree loan in connection with a designated course by completing and submitting to the Welsh Ministers an application in such form and accompanied by such documentation as the Welsh Ministers may require.

(2) The Welsh Ministers may take such steps and make such inquiries as they consider necessary to determine whether the applicant is an eligible student.

(3) The Welsh Ministers must notify the applicant of whether or not the applicant qualifies for a postgraduate master's degree loan.

Time limits

10.—(1) Subject to paragraph (3), the application must reach the Welsh Ministers no later than the end of the ninth month of the academic year during which it is submitted.

(2) Subject to paragraph (3), where the applicant is applying to amend the amount of the postgraduate master's degree loan under regulation 12(3), the application must reach the Welsh Ministers no later than the end of the ninth month of the academic year during which it is submitted.

(3) Paragraphs (1) or (2) do not apply where the Welsh Ministers consider that having regard to the circumstances of the particular case the time limit should not apply, in which case the application to amend the amount must reach the Welsh Ministers not later than such date as they specify in writing.

Requirement to enter into a contract for a loan

11.—(1) To receive a postgraduate master's degree loan a student must enter into a contract with the

Welsh Ministers on terms to be decided by the Welsh Ministers.

(2) Where the Welsh Ministers require a contract to be signed by a student, an electronic signature in such form as the Welsh Ministers may specify satisfies such a requirement.

PART 4

THE LOAN

Amount of postgraduate master's degree loan

12.—(1) Subject to paragraph (2), a person may apply for a postgraduate master's degree loan of up to £10,280 towards the costs of undertaking a designated course.

(2) Subject to regulation 16(5), where an eligible prisoner applies for a postgraduate master's degree loan the amount of the loan must not exceed the lesser of—

- (a) the fees payable in respect of the course, and
- (b) £10,280.

(3) Except where regulation 16(5) to (6) applies an eligible student may apply to the Welsh Ministers to amend the amount of postgraduate master's degree loan for which the student has applied, provided that—

- (a) in aggregate, the amounts of postgraduate master's degree loan applied for do not exceed the applicable amounts set out in paragraphs (1) and (2);
- (b) such application is made in accordance with regulation 10(2).

(4) If the Welsh Ministers have determined under regulation 9(2) that the applicant is an eligible student, the Welsh Ministers must pay the amount the eligible student has applied for and for which the eligible student qualifies in accordance with regulation 13, provided that the amount applied for is in accordance with paragraphs (1) or (2), as applicable.

Payment of postgraduate master's degree loan

13.—(1) The Welsh Ministers may pay the postgraduate master's degree loan for which a student qualifies under these Regulations—

- (a) either as a lump sum or by instalments; and
- (b) at such times, and in such manner, as the Welsh Ministers consider appropriate.

(2) The Welsh Ministers may make it a condition of entitlement to payment that the eligible student must provide the Welsh Ministers with particulars of a bank or building society account in the United Kingdom

into which payments may be made by electronic transfer.

(3) In the case of an eligible prisoner, the Welsh Ministers must pay the postgraduate master's degree loan for which an eligible prisoner qualifies to the institution to which the eligible prisoner is liable to make payment for the fees payable in connection with the designated course or to such third party that the Welsh Ministers consider appropriate for the purpose of ensuring the payment of such fees to the relevant institution.

(4) The Welsh Ministers must not pay the postgraduate master's degree loan or any instalment of the loan for which an eligible student qualifies unless they have received from the relevant academic authority confirmation (in such form as may be required by the Welsh Ministers) of the student's attendance on the designated course.

(5) The academic authority must forthwith inform the Welsh Ministers and provide the Welsh Ministers with particulars if the student withdraws, is suspended or is expelled from the designated course, or is otherwise absent.

(6) An eligible student is not to be considered absent from the eligible student's course if the eligible student is unable to attend due to illness and the eligible student's absence has not exceeded 60 days.

Provision of United Kingdom national insurance number

14.—(1) The Welsh Ministers may make it a condition of entitlement to payment of the postgraduate master's degree loan or any instalment of the loan that an eligible student must provide the Welsh Ministers with the student's United Kingdom national insurance number.

(2) Subject to paragraph (3), where the Welsh Ministers have imposed a condition under paragraph (1), they must not make payment of the postgraduate master's degree loan or any instalment of the loan to the eligible student, or in the case of an eligible prisoner to the institution or relevant third party, before they are satisfied that the eligible student has complied with that condition.

(3) Despite paragraph (2), the Welsh Ministers may make payment of the the postgraduate master's degree loan or any instalment of the loan to an eligible student if they are satisfied that owing to exceptional circumstances it would be appropriate to make such a payment without the eligible student having complied with the condition imposed under paragraph (1).

Absence from course

15.—(1) Subject to paragraphs (2) to (4), if the Welsh Ministers receive notice under regulation 13(5) or paragraph 2(a) to (d) of Schedule 2 to these Regulations, the Welsh Ministers may not make any further payment of the postgraduate master's loan in respect of the eligible student to which the notice relates.

(2) Further payments may be made despite the student's lack of attendance if, in the opinion of the Welsh Ministers, those payments would be appropriate in all the circumstances during the student's absence.

(3) If the eligible student recommences the designated course the student must notify the Welsh Ministers and give full details of the length and cause of the preceding absence.

(4) After considering the student's notification under paragraph (3), the Welsh Ministers may recommence any remaining payments of the postgraduate master's loan under regulation 13, if, in the opinion of the Welsh Ministers, it would be appropriate in all the circumstances for such payment to be made.

Effect of becoming, or ceasing to be, an eligible prisoner

16.—(1) Paragraph (2) applies where an eligible student who is in receipt of a postgraduate master's degree loan becomes an eligible prisoner and continues to undertake a designated course.

(2) The Welsh Ministers must—

- (a) adjust future payment of the postgraduate master's degree loan or future instalments of the postgraduate master's degree loan, so that the total of the postgraduate master's degree loan awarded does not exceed the amount to which the student, as an eligible prisoner, is entitled to under regulation 12(2); and
- (b) pay any remaining sum of the postgraduate master's degree loan, or any future instalments of the postgraduate master's degree loan, in accordance with regulation 13(3).

(3) Paragraphs (4) to (6) apply where an eligible prisoner who is in receipt of a postgraduate master's degree loan ceases to be an eligible prisoner and remains an eligible student, and continues to undertake a designated course.

(4) The Welsh Ministers must pay the remaining sum of the postgraduate master's degree loan, or future instalments of the postgraduate master's degree loan, if any, in accordance with regulation 13(1).

(5) Where an eligible student ("A") ceases to be an eligible prisoner and would have qualified for a higher

amount of postgraduate master's degree loan had A not been an eligible prisoner when A's loan application was originally determined in accordance with these Regulations, A may, subject to paragraph (6), apply for the amount of loan to be increased.

(6) The maximum amount of the increase in A's postgraduate master's degree loan for which A may apply under paragraph (5) is the amount which is calculated by reference to the following formula—

$$\frac{(F-R) \times T}{M}$$

where—

F equals the amount which A would have qualified for if A had not been an eligible prisoner;

R equals the amount which A qualifies for as an eligible prisoner;

T is the number of days of the course which remain when A ceases to be an eligible prisoner beginning with the day after the day on which A ceases to be an eligible prisoner; and

M is the total number of the days of the duration of the course.

Overpayments of a postgraduate master's degree loan

17.—(1) Any overpayment of a postgraduate master's degree loan is recoverable by the Welsh Ministers from—

- (a) the institution or third party which received the monies of the postgraduate master's degree loan where payment was made to such institution or third party; or
- (b) the student who received the postgraduate master's degree loan.

(2) A student must, if so required by the Welsh Ministers, repay any amount of the postgraduate master's degree loan paid to the student or paid in respect of the student, which for whatever reason exceeds the amount of loan to which the student is entitled.

(3) An overpayment of a postgraduate master's degree loan may be recovered from a student under paragraph (1)(b) in whichever one or more of the following ways the Welsh Ministers consider appropriate in all the circumstances—

- (a) by subtracting the overpayment from any amount of the postgraduate master's degree loan which remains to be paid;
- (b) by subtracting the overpayment from any kind of grant or loan payable to the student from time to time pursuant to regulations made by

the Welsh Ministers under section 22 of the 1998 Act;

- (c) by requiring the student to repay the postgraduate master's loan in accordance with regulations made under section 22 of the 1998 Act;
- (d) by taking such other action for the recovery of an overpayment as is available to them.

Repayment

18.—(1) The Welsh Ministers may at any time require an applicant or eligible student to enter into an agreement to repay a postgraduate master's degree loan by a particular method.

(2) Where the Welsh Ministers have required an agreement as to the method of repayment under this regulation, the Welsh Ministers may withhold any payment of a postgraduate master's degree loan until the applicant or eligible student provides what has been required.

PART 5

INFORMATION REQUIREMENTS

Information requirements

19.—(1) Schedule 2 applies in respect of the provision of information by an applicant and an eligible student.

(2) The Welsh Ministers may at any time request from an applicant or eligible student information that the Welsh Ministers consider is required to recover a postgraduate master's degree loan.

(3) The Welsh Ministers may at any time request from an applicant or eligible student sight of their valid national identity card, valid passport issued by the state of which they are a national or their birth certificate.

(4) Where the Welsh Ministers have requested information under this regulation, the Welsh Ministers may withhold any payment of a postgraduate master's degree loan until the applicant or eligible student provides what has been requested or provides a satisfactory explanation for not complying with the request.

Kirsty Williams

Cabinet Secretary for Education, one of the Welsh Ministers

4 April 2017

SCHEDULE 1 Regulations 3 and 8

ELIGIBLE STUDENTS

PART 1

Interpretation

1.—(1) For the purposes of this Schedule—

“EEA frontier self-employed person” (*“person hunangyflogedig trawsffiniol AEE”*) means an EEA national who—

- (a) is a self-employed person in Wales; and
- (b) resides in Switzerland or the territory of an EEA State other than the United Kingdom and returns to the national’s residence in Switzerland or that EEA State, as the case may be, daily or at least once a week;

“EEA frontier worker” (*“gweithiwr trawsffiniol AEE”*) means an EEA national who—

- (a) is a worker in Wales; and
- (b) resides in Switzerland or the territory of an EEA State other than the United Kingdom and returns to the national’s residence in Switzerland or that EEA State, as the case may be, daily or at least once a week;

“EEA migrant worker” (*“gweithiwr mudol AEE”*) means an EEA national who is a worker, other than an EEA frontier worker, in the United Kingdom;

“EEA national” (*“gwladolyn AEE”*) means a national of an EEA State other than the United Kingdom;

“EEA self-employed person” (*“person hunangyflogedig AEE”*) means an EEA national who is a self-employed person, other than an EEA frontier self-employed person, in the United Kingdom;

“employed person” (*“person cyflogedig”*) means an employed person within the meaning of Annex 1 to the Swiss Agreement;

“European Economic Area” (*“Ardal Economaidd Ewropeaidd”*) means the area comprised by the EEA States;

“family member” (*“aelod o deulu”*) means (unless otherwise indicated)—

- (a) in relation to an EEA frontier worker, an EEA migrant worker, an EEA frontier self-

- employed person or an EEA self-employed person—
- (i) the person's spouse or civil partner;
 - (ii) direct descendants of the person or of the person's spouse or civil partner who are—
 - (aa) under the age of 21; or
 - (bb) dependants of the person or the person's spouse or civil partner; or
 - (iii) dependent direct relatives in the ascending line of the person or that of the person's spouse or civil partner;
- (b) in relation to a Swiss employed person, a Swiss frontier employed person, a Swiss frontier self-employed person or a Swiss self-employed person—
- (i) the person's spouse or civil partner; or
 - (ii) the person's child or the child of the person's spouse or civil partner;
- (c) in relation to an EU national who falls within Article 7(1)(c) of Directive 2004/38—
- (i) the national's spouse or civil partner; or
 - (ii) direct descendants of the national or of the national's spouse or civil partner who are—
 - (aa) under the age of 21; or
 - (bb) dependants of the national or of the national's spouse or civil partner;
- (d) in relation to an EU national who falls within Article 7(1)(b) of Directive 2004/38—
- (i) the national's spouse or civil partner;
 - (ii) direct descendants of the national or of the national's spouse or civil partner who are—
 - (aa) under the age of 21; or
 - (bb) dependants of the national or of the national's spouse or civil partner; or
 - (iii) dependent direct relatives in the national's ascending line or that of the national's spouse or civil partner;
- (e) in relation to a United Kingdom national, for the purposes of paragraph 9—
- (i) the national's spouse or civil partner; or
 - (ii) direct descendants of the national or of the national's spouse or civil partner who are—
 - (aa) under the age of 21; or

- (bb) dependants of the national or of the national's spouse or civil partner;

“self-employed person” (*“person hunangyflogedig”*) means—

- (a) in relation to an EEA national, a person who is self-employed within the meaning of Article 7 of Directive 2004/38 or the EEA Agreement, as the case may be; or
- (b) in relation to a Swiss national, a person who is a self-employed person within the meaning of Annex 1 to the Swiss Agreement;

“settled” (*“wedi setlo”*) has the meaning given by section 33(2A) of the Immigration Act 1971⁽¹⁾;

“Swiss Agreement” (*“Cytundeb y Swistir”*) means the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation of the other, on the Free Movement of Persons signed at Luxembourg on 21 June 1999⁽²⁾ and which came into force on 1 June 2002;

“Swiss employed person” (*“person cyflogedig Swisaidd”*) means a Swiss national who is an employed person, other than a Swiss frontier employed person, in the United Kingdom;

“Swiss frontier employed person” (*“person cyflogedig trawsffiniol Swisaidd”*) means a Swiss national who—

- (a) is an employed person in Wales; and
- (b) resides in Switzerland or in the territory of an EEA State other than the United Kingdom and returns to the national's residence in Switzerland or that EEA State, as the case may be, daily or at least once a week;

“Swiss frontier self-employed person” (*“person hunangyflogedig trawsffiniol Swisaidd”*) means a Swiss national who—

- (a) is a self-employed person in Wales; and
- (b) resides in Switzerland or in the territory of an EEA State, other than the United Kingdom, and returns to the national's residence in Switzerland or that EEA State, as the case may be, daily or at least once a week;

“Swiss self-employed person” (*“person hunangyflogedig Swisaidd”*) means a Swiss national who is a self-employed person, other than a Swiss frontier self-employed person, in the United Kingdom;

⁽¹⁾ 1971 c. 77; section 33(2A) was inserted by paragraph 7 of Schedule 4 to the British Nationality Act 1981 (c. 61).

⁽²⁾ Cm. 4904 and OJ No L114, 30.04.02, p. 6.

“worker” (“*gweithiwr*”) means a worker within the meaning of Article 7 of Directive 2004/38 or the EEA Agreement, as the case may be;

(2) For the purposes of this Schedule, “parent” (“*rhiant*”) includes a guardian, any other person having parental responsibility for a child and any person having care of a child and “child” (“*plentyn*”) is to be construed accordingly.

(3) For the purposes of this Schedule, a person who is ordinarily resident in Wales, England, Scotland, Northern Ireland or the Islands, as a result of having moved from another of those areas for the purpose of undertaking—

- (a) the designated course; or
- (b) a course which, disregarding any intervening vacation, the student undertook immediately before undertaking the designated course,

is to be considered to be ordinarily resident in the place from which the person moved.

(4) For the purposes of this Schedule, a person (“A” in this sub-paragraph) is to be treated as ordinarily resident in Wales, the United Kingdom and Islands or in the territory comprising the European Economic Area, Switzerland and Turkey if A would have been so resident but for the fact that—

- (a) A;
- (b) A’s spouse or civil partner; or
- (c) in the case of a dependent direct relative in the ascending line, A’s child or child’s spouse or civil partner,

is or was temporarily employed outside Wales, the United Kingdom and Islands or the territory comprising the European Economic Area, Switzerland and Turkey.

(5) For the purposes of sub-paragraph (4), temporary employment outside Wales, the United Kingdom and Islands or the territory comprising the European Economic Area, Switzerland and Turkey includes—

- (a) in the case of members of the regular naval, military or air forces of the Crown, any period which they serve outside the United Kingdom as members of such forces; and
- (b) in the case of members of the regular armed forces of an EEA State or Switzerland, any period which they serve outside the territory comprising the European Economic Area and Switzerland as members of such forces; and
- (c) in the case of members of the regular armed forces of Turkey, any period which they serve outside of the territory comprising the European Economic Area, Switzerland and Turkey as members of such forces.

(6) For the purposes of this Schedule an area which—

- (a) was previously not part of the EU or the European Economic Area; but
- (b) at any time before or after these Regulations come into force has become part of one or other or both of these areas,

is to be considered to have always been a part of the European Economic Area.

(7) For the purposes of this Schedule an eligible prisoner is to be considered ordinarily resident in the part of the United Kingdom where the prisoner resided prior to sentencing.

PART 2

Categories

Persons who are settled in the United Kingdom

2.—(1) A person who on the first day of the first academic year of the course—

- (a) is settled in the United Kingdom other than by reason of having acquired the right of permanent residence;
- (b) is ordinarily resident in Wales;
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) subject to sub-paragraph (2), whose residence in the United Kingdom and Islands has not during any part of the period referred to in paragraph (c) been wholly or mainly for the purpose of receiving full-time education.

(2) Paragraph (d) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the United Kingdom and Islands in accordance with paragraph 1(4).

3. A person who—

- (a) is settled in the United Kingdom by virtue of having acquired the right of permanent residence;
- (b) is ordinarily resident in Wales on the first day of the first academic year of the course;
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) in a case where the person's ordinary residence referred to in sub-paragraph (c) was

wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in sub-paragraph (c).

Refugees and their family members

4.—(1) A person who—

- (a) is a refugee;
- (b) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since the person was recognised as a refugee; and
- (c) is ordinarily resident in Wales on the first day of the first academic year of the course.

(2) A person who—

- (a) is the spouse or civil partner of a refugee;
- (b) was the spouse or civil partner of the refugee on the date on which the refugee made the application for asylum;
- (c) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being given leave to remain in the United Kingdom; and
- (d) is ordinarily resident in Wales on the first day of the first academic year of the course.

(3) A person who—

- (a) is the child of a refugee or the child of the spouse or civil partner of a refugee;
- (b) on the date on which the refugee made the application for asylum, was the child of the refugee or the child of a person who was the spouse or civil partner of the refugee on that date;
- (c) was under 18 on the date on which the refugee made the application for asylum;
- (d) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being given leave to remain in the United Kingdom; and
- (e) is ordinarily resident in Wales on the first day of the first academic year of the course.

Persons with leave to enter or remain and their family members

5.—(1) A person—

- (a) with leave to enter or remain;

- (b) who is ordinarily resident in Wales on the first day of the first academic year of the course; and
- (c) who has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course.

(2) A person—

- (a) who is the spouse or civil partner of a person with leave to enter or remain;
- (b) who was the spouse or civil partner of the person with leave to enter or remain on the date on which that person made—
 - (i) the application for asylum; or
 - (ii) the application for discretionary leave, where no application for asylum was made;
- (c) who is ordinarily resident in Wales on the first day of the first academic year of the course; and
- (d) who has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course.

(3) A person—

- (a) who is the child of a person with leave to enter or remain or the child of the spouse or civil partner of a person with leave to enter or remain;
- (b) who, on the date on which the person with leave to enter or remain made—
 - (i) the application for asylum; or
 - (ii) the application for discretionary leave, where no application for asylum was made,was the child of that person or the child of a person who was the spouse or civil partner of the person with leave to enter or remain on that date;
- (c) who was under 18 on the date on which the person with leave to enter or remain made—
 - (i) the application for asylum; or
 - (ii) the application for discretionary leave, where no application for asylum was made;
- (d) who is ordinarily resident in Wales on the first day of the first academic year of the course; and
- (e) who has been ordinarily resident in the United Kingdom and Islands throughout the three-

year period preceding the first day of the first academic year of the course.

Workers, employed persons, self-employed persons and their family members

6.—(1) A person who—

- (a) is—
 - (i) an EEA migrant worker or an EEA self-employed person;
 - (ii) a Swiss employed person or a Swiss self-employed person;
 - (iii) a family member of a person mentioned in sub-paragraph (i) or (ii);
 - (iv) an EEA frontier worker or an EEA frontier self-employed person;
 - (v) a Swiss frontier employed person or a Swiss frontier self-employed person; or
 - (vi) a family member of a person mentioned in sub-paragraph (iv) or (v);
- (b) subject to sub-paragraph (2), is ordinarily resident in Wales on the first day of the first academic year of the course; and
- (c) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course.

(2) Paragraph (b) of sub-paragraph (1) does not apply where the person applying for support under these Regulations falls within paragraph (a)(iv), (v) or (vi) of sub-paragraph (1).

7. A person who—

- (a) is ordinarily resident in Wales on the first day of the first academic year of the course;
- (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and
- (c) is entitled to support by virtue of Article 12 of Council Regulation (EEC) No. 1612/68 on the freedom of movement of workers⁽¹⁾, as extended by the EEA Agreement.

Persons who are settled in the United Kingdom and have exercised a right of residence elsewhere

8.—(1) A person who—

(1) OJ No L257, 19.10.1968, p. 2 (OJ/SE 1968 (II) p. 475).

- (a) is settled in the United Kingdom;
- (b) was ordinarily resident in Wales and settled in the United Kingdom immediately before leaving the United Kingdom and who has exercised a right of residence;
- (c) is ordinarily resident in the United Kingdom on the day on which the first term of the first academic year actually begins;
- (d) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and
- (e) in a case where the person's ordinary residence referred to in paragraph (d) was wholly or mainly for the purposes of receiving full time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (d).

(2) For the purposes of this paragraph, a person has exercised a right of residence if that person is a United Kingdom national, a family member of a United Kingdom national for the purposes of Article 7 of Directive 2004/38 (or corresponding purposes under the EEA Agreement or Swiss Agreement) or a person who has a right of permanent residence who in each case has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or Swiss Agreement in a state other than the United Kingdom or, in the case of a person who is settled in the United Kingdom and has a right of permanent residence, if that person goes to the state within the territory comprising the European Economic Area and Switzerland of which that person is a national or of which the person in relation to whom that person is a family member is a national.

EU nationals

9.—(1) A person who—

- (a) is either—
 - (i) an EU national on the first day of the first academic year of the course, other than a person who is a United Kingdom national who has not exercised a right of residence; or
 - (ii) a family member of such a person;
- (b) is attending or undertaking a designated course in Wales; or
- (c) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period

preceding the first day of the first academic year of the course; and

- (d) subject to sub-paragraph (2), whose ordinary residence in the territory comprising the European Economic Area and Switzerland has not during any part of the period referred to in paragraph (c) been wholly or mainly for the purpose of receiving full-time education.

(2) Paragraph (d) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the territory comprising the European Economic Area and Switzerland in accordance with paragraph 1(4).

(3) Where a state accedes to the EU after the first day of the first academic year of the course and a person is a national of that state or the family member of a national of that state, the requirement in paragraph (a) of sub-paragraph (1) to be an EU national on the first day of the first academic year of the course is treated as being satisfied.

(4) For the purposes of this paragraph, a United Kingdom national has exercised a right of residence if that person has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or Swiss Agreement in a state other than the United Kingdom.

10.—(1) A person who—

- (a) is an EU national other than a United Kingdom national on the first day of the first academic year of the course;
- (b) is ordinarily resident in Wales on the first day of the first academic year of the course;
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period immediately preceding the first day of the first academic year of the course; and
- (d) in a case where the person's ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).

(2) Where a state accedes to the EU after the first day of the first academic year of the course and a person is a national of that state, the requirement in paragraph (a) of sub-paragraph (1) to be an EU national other than a United Kingdom national on the first day of the first academic year of the course is treated as being satisfied.

Children of Swiss nationals

11. A person who—

- (a) is the child of a Swiss national who is entitled to support in the United Kingdom by virtue of Article 3(6) of Annex 1 to the Swiss Agreement;
- (b) is ordinarily resident in Wales on the first day of the first academic year of the course;
- (c) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) in a case where the person's ordinary residence referred to in sub-paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately prior to the period of ordinary residence referred to in sub-paragraph (c).

Children of Turkish workers

12. A person who—

- (a) is the child of a Turkish worker;
- (b) is ordinarily resident in Wales on the first day of the first academic year of the course; and
- (c) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and Turkey throughout the three-year period preceding the first day of the first academic year of the course.

SCHEDULE 2 Regulations 15 and 19

INFORMATION

1. Every applicant and eligible student must, as soon as reasonably practicable after being requested to do so, provide the Welsh Ministers with such information as the Welsh Ministers consider the Welsh Ministers require for the purposes of these Regulations.

2. Every applicant and eligible student must forthwith inform the Welsh Ministers and provide the Welsh Ministers with particulars if any of the following occurs—

- (a) the applicant or student withdraws from, is suspended, abandons or is expelled from their course;
- (b) the applicant or student transfers to any other course at the same or at a different institution;
- (c) the applicant or student ceases to undertake their course and does not intend to or is not permitted to continue it for the remainder of the academic year;
- (d) the applicant or student is absent from the course for more than 60 days due to illness or for any period for any other reason;
- (e) the month for the start or completion of the course changes;
- (f) the applicant or student's home or term-time address or telephone number changes;
- (g) the applicant or student becomes, or ceases to be, a prisoner or eligible prisoner.

3. Information provided to the Welsh Ministers under these Regulations must be in the format that the Welsh Ministers require and, if they require the information to be signed by the person providing it, an electronic signature in such form as the Welsh Ministers may specify satisfies such a requirement.

EXPLANATORY MEMORANDUM TO THE EDUCATION (POSTGRADUATE MASTER'S DEGREE LOANS) (WALES) REGULATIONS 2017

The Explanatory Memorandum has been prepared by the Higher Education Division and is laid before the National Assembly for Wales under Standing Order 27.1.

Cabinet Secretary's declaration

In my view this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Education (Postgraduate Master's Degree Loans) (Wales) Regulations 2017. I am satisfied that the benefits justify the likely costs.

Kirsty Williams AM
Cabinet Secretary for Education

6 April 2017

Description

The Education (Postgraduate Master's Degree Loans) (Wales) Regulations 2017 ('the Regulations') provide the basis for the provision of financial support for students who are ordinarily resident in Wales and taking designated higher education courses which lead to a postgraduate Master's degree in respect of academic years beginning on or after 1 August 2017. Support is made available by way of a loan to the student.

Matters of special interest to the Constitutional and Legislative Affairs Committee

None.

Legislative background

Section 22 of the Teaching and Higher Education Act 1998 ('the 1998 Act') provides the Welsh Ministers with the power to make regulations authorising or requiring payment of financial support to students studying courses of higher or further education designated by or under those regulations. In particular, this power enables the Welsh Ministers to prescribe the amount of financial support (grant or loan) and categories of attendance on higher education courses. This provision, together with sections 42(6) and 43(1) of the 1998 Act, provide the Welsh Ministers with the power to make the Education (Postgraduate Master's Degree Loans) (Wales) Regulations 2017.

Section 44 of the Higher Education Act 2004 ('the 2004 Act') provided for the transfer to the National Assembly for Wales of the functions of the Secretary of State under section 22 of the 1998 Act (except insofar as they relate to the making of any provision authorised by subsections (2)(a), (c), (j) or (k), (3)(e) or (f) or (5) of section 22). Section 44 of the 2004 Act also provided for the functions of the Secretary of State in section 22(2)(a), (c) and (k) to be exercisable concurrently with the National Assembly for Wales.

The functions of the Secretary of State under sections 42(6) and 43(1) of the 1998 Act were transferred, so far as exercisable in relation to Wales, to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672).

The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c.32).

Each year, a number of functions of the Welsh Ministers provided for in regulations made under section 22 of the 1998 Act are delegated to the Student Loans Company under section 23 of the 1998 Act.

This instrument is made by the negative resolution procedure.

Purpose and intended effect of the legislation

The Welsh Ministers intend to support students undertaking a postgraduate Master's degree. The increasing economic importance of postgraduate qualifications, and the link between wealth, existing postgraduate study and social mobility, provides a rationale for the provision of financial support. An expansion in the number of students undertaking postgraduate study is anticipated.

The Regulations provide for the making of loans to students who are ordinarily resident in Wales for postgraduate master's degree courses which begin on or after 1 August 2017. To qualify for a loan a student must be an 'eligible student'. A loan is available to students studying 'designated' courses. The maximum loan amount an eligible student can receive is £10,280, other than in the case of an eligible prisoner, where the maximum amount is the value of the fees of the designated course.

Other key aspects are set out below.

- Available to students settled in the UK and ordinarily resident in Wales; to an EU national or family member of an EU national; to those with residency status as a refugee or with leave to enter or remain; to an EEA migrant worker or a Swiss worker; to a child of a Swiss national; and to a child of a Turkish worker.
- Available to students up to 60 years of age.
- Students must not have an equivalent level postgraduate qualification.
- Students must not have had a postgraduate Master's loan from the Welsh Ministers or another UK administration previously.
- Students must not be in receipt of certain other sources of funding.
- Available for study of postgraduate courses offered by providers based in the UK which meet certain designation criteria.
- Courses must be Masters degrees, including distance learning taught Masters degrees and research degrees leading to a Masters award.

- Available for study of full time courses of up to two years duration, part time courses at 50% intensity (of the full time equivalent) or greater, and part time courses which have no full time equivalent but may be completed in up to three academic years.

A very similar support policy has been available to students ordinarily resident in England since 2016.

IMPLEMENTATION

The Regulations provide the basis for the implementation of the Welsh Ministers policy for support of postgraduate Master's study for the 2017/18 academic year, enable the Welsh Government's delivery partner (the Student Loans Company) to implement system changes, and allows applications for support to commence during 2017.

CONSULTATION

There is no statutory requirement to consult on the Regulations. However, a public consultation was undertaken in connection with the Regulations in 2016 (*Support for postgraduate study and part-time engineering, technology or computer science degrees (WG27990)*).

Stakeholders were generally positive and supportive of the proposals. The policy for providing support for postgraduate study is largely unchanged from the proposal consulted upon.

A summary list of stakeholders invited to respond to the consultations is at annex A.

REGULATORY IMPACT ASSESSMENT

Options

Option 1: Do nothing

In the event of the Regulations not being made the principal implications are:

- postgraduate study would remain difficult to finance, constraining the number of students participating;

- studies demonstrate that those undertaking postgraduate study are likely to be from financially better off backgrounds, reinforcing a link between postgraduate study, the benefits it confers, and existing wealth;
- students ordinarily resident in Wales would not have access to the same support that their counterparts ordinarily resident in England enjoy; and
- Welsh higher education institutions may have fewer postgraduate students than otherwise would be the case, leading to lower income and investment.

Option 2: Do minimum – make the Regulations

Making the Regulations ensures the problems noted above are avoided, the legislative framework reflects the Welsh Ministers' policy for student support, and students are able to apply for appropriate support.

Costs and benefits

Option 1: Do nothing

Doing nothing would mean no additional costs are incurred via the student support system. However, the benefits of expanded postgraduate study to the individual, to Welsh higher education institutions, to the economy and to society would not be realised.

Option 2: Do minimum – make the Regulations

By making the Regulations, the benefits to postgraduate study outlined above will be realised. Postgraduate students earn more on average than their counterparts with a first degree, a benefit to the individual. The proportion of the workforce qualified at postgraduate level is expected to increase in the coming years as employers demand higher skills. Higher skilled employment leads to the potential for greater economic growth in Wales. Welsh higher education institutions may invest in additional facilities for study, improving the facilities available to all students.

The Regulations restrict support to those under 60 years of age (regulation 3(3)(a)). An age limit is discriminatory under the Equality Act 2010 and the European Convention on Human Rights (article 14 – prohibition on discrimination). Age discrimination can be justified if it meets a legitimate aim and is proportionate. Officials have considered options and have concluded that restricting support to those aged under 60 years is the appropriate policy, and can be objectively justified, for two reasons. First, those aged 60 years

and over will not, on average, repay the loan. Analysis by the Welsh Government shows that a person aged 60 years at repayment can be expected to repay 87% of the loan, falling to just 50% for a person aged 65 years. Second, while those aged 60 years and over increasingly remain in work, thereby making an economic contribution, it is nevertheless true that employment falls off sharply after aged 60, from 78% of those aged 50–59, to 50% for those aged 60–64, to 10% for those aged over 65. This relatively modest economic contribution together with the fact that, on average, loans will not be repaid leads the Welsh Government to conclude that an age restriction is legitimate and proportionate in this case.

The Regulations also make ineligible for support an individual who is receiving support under the Care Standards Act 2000 or the Regulation and Inspection of Social Care (Wales) Act 2016 (regulation 3(3)(j)). These Acts make provision for the postgraduate training of social workers. Analysis and review shows that funding under these Acts is adequate for postgraduate training and to enable individuals to be also eligible for a postgraduate loan would constitute double funding.

The loan for postgraduate study requires the provision of loans from Her Majesty's Treasury. The expected value of loans in the 2017/18 financial year is £21m.

An Equality Impact Assessment has been carried out and is available on request from hepolicy@wales.gsi.gov.uk.

COMPETITION ASSESSMENT

The making of these Regulations has no wider impact on the competitiveness of businesses, charities or the voluntary sector.

POST IMPLEMENTATION ASSESSMENT

The regulations governing the student support system are revised annually and are subject to detailed review, by both the Welsh Government and delivery partners. This will be the case with the Regulations.

SUMMARY

The making of these Regulations is necessary to establish the basis for the higher education student support system for students ordinarily resident in

Wales and EU students studying postgraduate Master's degrees in the 2017/18 academic year.

Annex A – List of Consultees

Higher education institutions

Universities Wales

Further education colleges in Wales

Colegau Cymru/College Wales

NUS Wales

Student Loans Company

Higher Education Funding Council for Wales (HEFCW)

UCAS

NIACE

NASMA

Charities with an interest in higher education

Other representative organisations with an interest in higher education

The general public

SL(5)90 – The Education (Postgraduate Master’s Degree Loans) (Wales) Regulations 2017

Background and Purpose

These Regulations provide for the making of loans to students who are ordinarily resident in Wales for postgraduate master’s degree courses which begin on or after 1 August 2017.

To qualify for a loan a student must be an “eligible student”. Broadly, a person is an eligible student if that person falls within one of the categories listed in Part 2 of Schedule 1 and also satisfies the eligibility provisions in Part 2 of the Regulations.

These Regulations apply to students ordinarily resident in Wales wherever they study on a designated course in the United Kingdom.

Procedure

Negative.

Technical Scrutiny

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

1. Human rights and equality

Regulation 3(3)(a) says that a person is not an eligible student if the person has reached the age of 60 on the first day of the academic year in which the course starts. The Committee raises the following human rights concern in respect of this age limit.

Article 2 of Protocol 1 to the European Convention on Human Rights (ECHR) contains a free-standing right to education.

Article 14 of the ECHR provides that the enjoyment of the rights and freedoms set out in the ECHR shall be secured without discrimination on various protected grounds, including age.¹

¹ The European Court of Human Rights ECtHR has found that ‘age’ is included among ‘other status’ in Article 14, *Schwizgebel v Switzerland* (No. 25762/07).



The Committee believes that the issues raised by regulation 3(3)(a) relate to the right to education. Therefore, by setting an upper age limit of 60, the Committee asks whether regulation 3(3)(a) discriminates against people over 60 in relation to their enjoyment of the right to education? Put another way, once the Welsh Ministers have decided to offer postgraduate master's degree loans, can they deny that benefit to a distinct group of people, i.e. the over 60s?

The answer to those questions will depend on whether the bright line rule in regulation 3(3)(a) can be **justified**. If it can be justified, there is no discrimination and no breach of the ECHR.

The Committee notes that the margin of appreciation increases with the level of education, and that a master's degree is at a very high level on the education scale.

The Explanatory Memorandum

The Explanatory Memorandum to the Regulations states:

The Regulations restrict support to those under 60 years of age (regulation 3(3)(a)). An age limit is discriminatory under the Equality Act 2010 and the European Convention on Human Rights (article 14 – prohibition on discrimination). Age discrimination can be justified if it meets a legitimate aim and is proportionate. Officials have considered options and have concluded that restricting support to those aged under 60 years is the appropriate policy, and can be objectively justified, for two reasons. First, those aged 60 years and over will not, on average, repay the loan. Analysis by the Welsh Government shows that a person aged 60 years at repayment can be expected to repay 87% of the loan, falling to just 50% for a person aged 65 years. Second, while those aged 60 years and over increasingly remain in work, thereby making an economic contribution, it is nevertheless true that employment falls off sharply after aged 60, from 78% of those aged 50–59, to 50% for those aged 60–64, to 10% for those aged over 65. This relatively modest economic contribution together with the fact that, on average, loans will not be repaid leads the Welsh Government to conclude that an age restriction is legitimate and proportionate in this case.

The Committee would welcome further information from the Welsh Government around the statement in the Explanatory Memorandum that a person aged 60 years at repayment can be expected to repay **87%** of the loan. At first glance, 87% seems to be a relatively high repayment rate, and appears to conflict with the statement in the Explanatory Memorandum that those “aged 60 years and over will not, on average,



repay the loan”. Meanwhile, the Equality Impact Assessment to these Regulations states that “people over 60 are unlikely to repay the loan”.

The Committee also notes that the Equality Impact Assessment for these Regulation states “legal advice is that there are arguments to justify the policy”.

Without further information about the repayment rate of those who are aged 30, 40, 50, 55 etc. at repayment, the Committee finds it difficult to come to a conclusion as to whether the bright line rule in regulation 3(3)(a) can be justified.

The Committee asks the Welsh Government to provide further information around the justification of regulation 3(3)(a).

Justification and the *Tigere* case

The Committee notes that the UK Supreme Court judgment in *R (on the application of Tigere) v Secretary of State for Business, Innovation and Skills*² is highly relevant to the human rights issues raised by regulation 3(3)(a).

In asking the Welsh Government to provide further information around justification, the Committee expects the Welsh Government to explain how it approached justification in accordance with the fourfold test set out by Lady Hale, and how it answered each of the four questions set out in that test.

Equality Act 2010

The Committee also raises the above issues in relation to age discrimination under the Equality Act 2010. The Committee would welcome a similar explanation of how the protected characteristic of age was considered in relation to regulation 3(3)(a).

The Committee accepts there is considerable overlap between this request for explanation and the request in relation to human rights.

Report under Standing Order 21.2(i)

The Committee therefore reports the Regulations under Standing Order 21.2(i): that there appears to be doubt as to whether the Regulations are intra vires, on the basis that it is unclear whether there is a breach of the ECHR.

² [2015] UKSC 57

2. Maximum amount of loan for eligible prisoners

Regulation 12(2) says that where an eligible prisoner applies for a postgraduate master's degree loan, the amount of the loan must not exceed the lesser of: (a) the fees payable in respect of the course, and (b) £10,280. This means that, if the fees payable in respect of such a course are £11,000, the maximum amount of loan the eligible prisoner can apply for is £10,280.

However, the Explanatory Memorandum and the Explanatory Note say that in the case of an eligible prisoner, the maximum loan amount is the value of the fees of the designated course. This means that, if the fees payable in respect of such a course are £11,000, the maximum amount of loan the eligible prisoner can apply for is £11,000.

Therefore, there is a significant inconsistency between what the Regulations say and what the Explanatory Memorandum and Explanatory Note say. The Committee asks the Welsh Government to provide an explanation for this inconsistency.

Report under Standing Order 21.2(v)

The Committee therefore reports the Regulations under Standing Order 21.2(v): that for any particular reason the form or meaning of the Regulations (when read with the Explanatory Memorandum and Explanatory Note) needs further explanation.

Merits Scrutiny

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

1. Human rights and equality

The Committee refers to the same human rights and equality issues outlined under its report under Standing Order 21.2(i).

Report under Standing Order 21.3(ii)

The Committee therefore reports the Regulations under Standing Order 21.3(ii): that the Regulations are of political or legal importance or give rise to issues of public policy likely to be of interest to the Assembly.



2. Maximum amount of loan for eligible prisoners

The Committee refers to the same issues around maximum loans for eligible prisoners outlined under its report under Standing Order 21.2(v).

Report under Standing Order 21.3(ii)

The Committee therefore reports the Regulations under Standing Order 21.3(ii): that the Regulations are of political or legal importance or give rise to issues of public policy likely to be of interest to the Assembly.

Legal Advisers

Constitutional and Legislative Affairs Committee

9 May 2017



Agenda Item 4.2

STATUTORY INSTRUMENTS

2017 No. 585

LAND DRAINAGE, ENGLAND AND WALES

The Environmental Impact Assessment (Land Drainage Improvement Works) (Amendment) Regulations 2017

<i>Made</i>	- - - -	<i>24th April 2017</i>
<i>Laid before Parliament</i>		<i>24th April 2017</i>
<i>Laid before the National Assembly for Wales</i>		<i>24th April 2017</i>
<i>Coming into force</i>	- -	<i>16th May 2017</i>

For the purposes of section 2(2) of the European Communities Act 1972(a) (“the ECA 1972”)—

- (a) the Secretary of State has been designated(b) in relation to the environment; and
- (b) the Welsh Ministers have been designated(c) in relation to measures relating to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment, in so far as they concern improvement works within the meaning in regulation 2(1) of the Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999(d).

The Secretary of State and the Welsh Ministers make these Regulations in exercise of the powers conferred by section 2(2) of the ECA 1972—

- (a) the Welsh Ministers in relation to Wales, to the extent that they are designated to do so; and
- (b) the Secretary of State, in every other respect.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Environmental Impact Assessment (Land Drainage Improvement Works) (Amendment) Regulations 2017 and come into force on 16th May 2017.

(2) In these Regulations, “the 1999 Regulations” means the Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999.

(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) S.I. 2008/301.

(c) S.I. 2000/2812. The functions conferred on the National Assembly for Wales by means of that Order are now exercisable by the Welsh Ministers by virtue of section 162 of, and paragraph 28(1) of Schedule 11 to, the Government of Wales Act 2006 (c. 32).

(d) S.I. 1999/1783, amended by S.I. 2005/1399, S.I. 2006/618, S.I. 2013/755 (W. 90).

Amendments to the 1999 Regulations

2. The 1999 Regulations are amended in accordance with regulations 3 to 21.

Amendments to regulation 2

- 3.—(1) Regulation 2 (interpretation) is amended as follows.

- (2) In paragraph (1)—

- (a) at the appropriate place in the alphabetical order insert—

““environmental impact assessment”, in respect of improvement works, means—

- (a) the preparation of an environmental statement by the drainage body;
- (b) the carrying out of consultations under regulations 10 and 12B(6);
- (c) the drainage body’s or the appropriate Authority’s consideration of the environmental statement and other information under regulation 12(1) or 12B(3);
- (d) the drainage body or the appropriate Authority reaching a conclusion about the likely significant environmental effects of the project under regulation 12(2) or 12B(4); and
- (e) the drainage body’s or the appropriate Authority’s consideration of that conclusion under regulation 12A(3) or 12C(2) in the determination of whether or not the improvement works should proceed;”;

““EU environmental assessment” means an assessment carried out—

- (a) under an obligation to which section 2(1) of the European Communities Act 1972 applies (other than under the EIA Directive); or
- (b) under the law of any part of the United Kingdom implementing an EU obligation other than an obligation arising under the EIA Directive,

of the effect of anything on the environment;”;

““the Habitats Directive” means Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora(a) as last amended by Council Directive 2013/17/EU(b);”;

““UK environmental assessment” means an assessment carried out in accordance with an obligation under the law of any part of the United Kingdom of the effect of anything on the environment;”;

““the Wild Birds Directive” means Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds(c) as amended by Council Directive 2013/17/EU;”;

- (b) for the definition of “the appropriate Authority” substitute—

““the appropriate Authority” means—

- (a) in relation to England, the Secretary of State;
- (b) in relation to Wales, the Welsh Ministers;”;

- (c) in the definition of “consultation bodies”—

- (i) in paragraph (a)(d) for “English Nature, English Heritage and the Countryside Agency” substitute “Natural England”;
- (ii) in paragraph (b) for “National Assembly” substitute “Welsh Ministers”;

(a) OJ No L 206, 22.7.1992, p. 7.

(b) OJ No L 158, 10.6.2013, p. 193.

(c) OJ No L 20, 26.1.2010, p. 7.

(d) The words “English Nature” were substituted by section 73(2) of the Countryside and Rights of Way Act 2000 (c. 37). The words “English Heritage” were inserted by regulation 5(2)(a)(i) of S.I. 2005/1399.

- (iii) in paragraph (c), after “works”, in the second place it occurs, insert “by virtue of its environmental responsibilities or local or regional competences”;
- (d) for the definition of “the Directive” substitute—
 - “the EIA Directive” means Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment(a), as amended by Directive 2014/52/EU of the European Parliament and of the Council(b);”;
- (e) omit the definition of “EEA State”;
- (f) for the definition of “environmental statement” substitute—
 - “environmental statement” has the meaning given by regulation 7(1);”;
- (g) for the definition of “improvement works” substitute—
 - “improvement works” means—
 - (a) in relation to England, works which are—
 - (i) the subject of a project to deepen, widen, straighten, or otherwise improve or alter, any existing watercourse or remove or alter mill dams, weirs, or other obstructions to watercourses, or raise, widen, or otherwise improve or alter, any existing drainage work; and
 - (ii) permitted development by virtue of Class C or Class D of Part 13 (water and sewerage) of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015(c);
 - (b) in relation to Wales, works which are—
 - (i) the subject of a project to deepen, widen, straighten, or otherwise improve or alter, any existing watercourse or remove or alter mill dams, weirs, or other obstructions to watercourses, or raise, widen, or otherwise improve or alter, any existing drainage work; and
 - (ii) permitted development by virtue of Part 14 or Part 15 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995(d);”.
- (3) In paragraph (2) for “the Directive” in both places substitute “the EIA Directive”.
- (4) After paragraph (3) insert—
 - “(4) In these Regulations, any reference to the likely significant effects, or the likely significant adverse effects, of improvement works on the environment includes a reference to the effects of the improvement works on the environment once the improvement works are finished and in operation.
 - (5) In paragraph (4) each reference to the environment includes a reference to the matters referred to in regulation 12(2)(a) to (e).”.

Amendments to regulation 3

- 4.—(1) Regulation 3 (restriction on improvement works) is amended as follows.
- (2) In paragraph (1)—
 - (a) for “paragraph (2) below” substitute “regulations 3A and 3B”;
 - (b) in sub-paragraph (b) for “12(4)” substitute “12B(2)”.
- (3) Omit paragraphs (2) to (4)(e).

(a) OJ No L 26, 28.1.2012, p. 1.

(b) OJ No L 124, 25.4.2014, p. 1.

(c) S.I. 2015/596, to which there are amendments not relevant to these Regulations.

(d) S.I. 1995/418. Parts 14 and 15 of Schedule 2 were amended by S.I. 2013/755.

(e) Paragraphs (2) and (2A) were substituted by regulation 5(3) of S.I. 2005/1399.

New regulations 3A to 3C

5. After regulation 3 insert—

“Defence and civil emergencies

3A.—(1) The Secretary of State may direct that improvement works or a part of any improvement works are exempt where—

- (a) the improvement works have national defence as their sole purpose; and
- (b) the Secretary of State considers that an environmental impact assessment in respect of the improvement works or the part of the improvement works would have an adverse effect on the fulfilment of that purpose.

(2) The appropriate Authority may direct that improvement works are exempt where—

- (a) the improvement works have the response to a civil emergency as their sole purpose; and
- (b) the appropriate Authority considers that an environmental impact assessment in respect of the improvement works would have an adverse effect on the fulfilment of that purpose.

(3) The effect of a direction under paragraph (1) or (2) that improvement works are exempt is that these Regulations, except for paragraphs (5) and (6), do not apply to the improvement works.

(4) The effect of a direction under paragraph (1) that a part of any improvement works are exempt is that the improvement works are treated under these Regulations as not including the part of the improvement works the subject of the direction.

(5) Following a direction under paragraph (1) or (2), the person who made the direction must send notice of the direction to the drainage body concerned.

(6) Following a direction under paragraph (1) in respect of improvement works in Wales, the Secretary of State must send notice of the direction to the Welsh Ministers.

Exceptional circumstances

3B.—(1) The appropriate Authority may direct that improvement works are exempt where the circumstances are exceptional and it considers that—

- (a) the application of these Regulations to the improvement works would have an adverse effect on the fulfilment of the improvement works’ purpose; and
- (b) the objectives of the EIA Directive will be met even though such an assessment is not carried out.

(2) The effect of a direction that improvement works are exempt under paragraph (1) is that these Regulations, except for paragraphs (3) and (4) do not apply to the improvement works.

(3) Where the appropriate Authority makes a direction that improvement works are exempt under paragraph (1) it must—

- (a) consider whether another form of assessment of the likely significant effects on the environment of the improvement works is appropriate;
- (b) send a copy of the direction to the drainage body concerned; and
- (c) publish in at least two newspapers local to the site of the improvement works a notice which briefly describes—
 - (i) the improvement works; and
 - (ii) the effect of the direction and the reasons for it.

(4) Where the appropriate Authority considers that another form of assessment is appropriate in accordance with paragraph (3)(a), it must make available to the public concerned the information obtained under that other assessment.

Coordination

3C. Where, in respect of improvement works, there is a requirement to carry out an environmental impact assessment and a requirement to carry out an assessment under regulation 21 or 61 of the Conservation of Habitats and Species Regulations 2010(a), the appropriate Authority must, where appropriate, ensure that the environmental impact assessment and the other assessment, or assessments, are coordinated.”.

Substitution of regulation 4

6. For regulation 4 (determination of whether improvement works have significant effects on the environment) substitute—

“Determination of whether improvement works have significant effects on the environment

4.—(1) A drainage body proposing to carry out improvement works must determine whether the improvement works are likely to have significant effects on the environment, and in making that determination the drainage body must take into account—

- (a) the selection criteria in Schedule 2; and
- (b) the results of any relevant EU environmental assessment which are reasonably available to the drainage body.

(2) The determination in paragraph (1) must be made as soon as possible but, subject to paragraph (3), within the period of 45 days beginning with the date on which the proposal to carry out improvement works was made.

(3) In exceptional cases (including relating to the nature, complexity, location or size of the improvement works), the drainage body may extend the 45-day period referred to in paragraph (2).”.

Amendments to regulation 5

7.—(1) Regulation 5 (requirements where a drainage body consider improvement works are not likely to have significant effects on the environment) is amended as follows.

(2) After paragraph (1)(c) insert—

- “(ca) state the main reasons for not intending to prepare an environmental statement by reference to the selection criteria listed in Schedule 2;
- (cb) state any features of the improvement works or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment;”.

(3) In paragraph (1)(d) for “28” substitute “30”.

(4) In paragraph (5)(b) for the words from “all” to the end substitute “the information referred to in paragraph (5A).

(5) After paragraph (5) insert—

“(5A) The information is—

(a) S.I. 2010/490, to which there are amendments not relevant to these Regulations.

(b) Paragraph (5) was amended by regulation 4(3) of S.I. 2005/1399 and regulation 2(2) of S.I. 2006/618.

- (a) the information referred to in Schedule 2A, taking into account the results of any relevant UK environmental assessment which are reasonably available to the applicant; and
- (b) if the drainage body elects to provide it, a description of any measure proposed to be taken to avoid or prevent any likely significant adverse effects on the environment.”.

(6) For paragraph (7) substitute—

“(7) Where an application is made to the appropriate Authority under paragraph (5), the appropriate Authority shall determine whether the improvement works are likely to have significant effects on the environment, taking into account—

- (a) the information provided under paragraph (5);
- (b) the selection criteria in Schedule 2; and
- (c) the results of any relevant UK environmental assessment which are reasonably available to the applicant.

(8) Following the determination under paragraph (7), the appropriate Authority shall inform the drainage body in writing of the determination.

(9) The determination under paragraph (7) shall be made as soon as possible but, subject to paragraph (10), within the period of 45 days beginning with the date on which the drainage body has submitted all the information required under paragraph (5).

(10) In exceptional cases (including relating to the nature, complexity, location or size of the improvement works), the appropriate Authority may extend the 45-day period referred to in paragraph (9).

(11) Where the appropriate Authority extends the 45-day period under paragraph (10), it shall inform the drainage body in writing of the reasons justifying the extension and of the date on which its determination is expected.”.

Amendment to regulation 6

8.—(1) Regulation 6 (notification of determination that improvement works are likely to have significant effects on the environment) is amended as follows.

(2) For paragraph (2)(b)(a) substitute—

“(b) state that—

- (i) the works are likely to have significant effects on the environment;
- (ii) the main reasons for that conclusion by reference to the selection criteria listed in Schedule 2; and
- (iii) the drainage body intend to prepare an environmental statement in respect of them;”.

Substitution of regulation 7

9. For regulation 7 (preparation of environmental statement) substitute—

“Preparation of an environmental statement

7.—(1) A drainage body must ensure that in any case to which regulation 6 applies a written statement (an “environmental statement”) in respect of the improvement works is prepared by a competent person which—

- (a) includes the information specified in paragraph (2);
- (b) is based on the opinion given under regulation 8;

(a) Sub-paragraph (b) was amended by S.I. 2005/1399.

- (c) takes into account the results of any relevant EU environmental assessment which are reasonably available to the drainage body; and
 - (d) states the relevant expertise and qualifications of the competent person.
- (2) The specified information is—
- (a) a description of the improvement works comprising information on the site, design, size and other relevant features of the improvement works;
 - (b) a description of the likely significant effects of the improvement works on the environment;
 - (c) a description of any features of the improvement works or measures to avoid, prevent, reduce or offset any likely significant adverse effects of the improvement works on the environment;
 - (d) a description of the reasonable alternatives studied by the drainage body, which are relevant to the improvement works and their specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the improvement works on the environment;
 - (e) a non-technical summary of the information referred to in sub-paragraphs (a) to (d); and
 - (f) any additional information specified in Schedule 1 relevant to the specific characteristics of particular improvement works or type of improvement works and to the environmental features likely to be affected.”.

Amendments to regulation 8

10.—(1) Regulation 8 (request as to the information to be included in an environmental statement) is amended as follows.

- (2) In paragraph (1) after “opinion as to the” insert “scope and level of detail of”.
- (3) After paragraph (3) insert—
 - “(3A) In reaching its opinion under paragraph (1), the appropriate Authority shall take into account the information provided by the drainage body including—
 - (a) the information about the specific characteristics of the improvement works (including their location and technical capacity); and
 - (b) the likely effects of the improvement works on the environment.”.
- (4) In paragraph (4)—
 - (a) for “requesting” substitute “requiring”;
 - (b) for “12(5)” insert “12B(5)”.

Amendment to regulation 10

11.—(1) Regulation 10 (publicity for environmental statements) is amended as follows.

- (2) For paragraph (1) substitute—
 - “(1) Where a drainage body has prepared an environmental statement in accordance with these Regulations, it shall—
 - (a) publish a notice in accordance with paragraphs (2) and (3); and
 - (b) place the notice and a copy of the environmental statement on a website maintained by the drainage body.”.
- (3) For paragraph (2)(a) substitute—
 - “(a) announce that the statement has been prepared and give details of—
 - (i) the website on which the copy of the environmental statement has been placed in accordance with paragraph (1)(b); and

- (ii) any other place at which a copy of the environmental statement can be seen and times when it may be inspected;”.
- (4) In paragraph (2)(b) for “28” substitute “30”.
- (5) In paragraph (2)(c) for “12(1) below” substitute “12(2)”.

Omission of regulation 11

- 12. Omit regulation 11 (information for another EEA State).

Substitution of regulation 12

- 13. For regulation 12(a) (determination of whether improvement works should proceed) substitute—

“Conclusion about environmental impact: drainage body

12.—(1) After the expiry of the period specified in the notice published under regulation 10(1), the drainage body must consider (ensuring that in doing so it has, or has access to, any expertise it considers necessary)—

- (a) the environmental statement and any representations made in accordance with regulation 10; and
- (b) any features of the improvement works or measures to avoid, prevent, reduce or offset any likely significant effects of the improvement works on the environment.

(2) Following that consideration, the drainage body must reach a conclusion about the likely significant effects (including the expected effects deriving from the vulnerability of the improvement works to risks of major accidents or disasters) of the improvement works on—

- (a) population and human health;
- (b) biodiversity, with particular attention to species and habitats protected under the Habitats Directive and the Wild Birds Directive;
- (c) land, soil, water, air and climate;
- (d) material assets, cultural heritage and the landscape;
- (e) the interaction between the factors referred to in sub-paragraphs (a) to (d).

Determination of whether improvement works should proceed: drainage body

12A.—(1) This regulation applies where—

- (a) no objection in relation to the likely significant environmental effects of the improvement works has been made; or
- (b) any such objection has been withdrawn.

(2) The drainage body must consider—

- (a) the conclusion reached under regulation 12(2) in respect of the improvement works and the reasons for that conclusion;
- (b) whether it is appropriate for the drainage body to monitor the significant adverse effects of the improvement works on the environment, and if so—
 - (i) whether a determination to proceed with the improvement works should be made subject to conditions to ensure that the drainage body is under such a duty; and

(a) Regulation 12 was amended by S.I. 2005/1399.

- (ii) whether a determination to proceed with the improvement works should be made subject to conditions to require remedial action to be taken in circumstances described in the conditions;
 - (c) whether, having regard to the likely significant environmental effects of the improvement works, a determination to proceed should be made subject to any other conditions.
- (3) Following that consideration, the drainage body must determine that the improvement works—
 - (a) should proceed; or
 - (b) should not proceed.
- (4) The drainage body may make a determination under paragraph (3)(a) only if satisfied that the conclusion reached under paragraph 12(2) in respect of the improvement works and the reasons for it address the likely significant environmental effects of the improvement works.
- (5) Where a drainage body has determined—
 - (a) in accordance with paragraph (3)(a), that the drainage body should proceed with the improvement works or that the drainage body should proceed subject to conditions; or
 - (b) that the drainage body should not so proceed,the drainage body must promptly, subject to regulation 13B, take the steps set out in paragraph (6).
- (6) The steps are to inform the following of the information referred to in paragraph (7)—
 - (a) the public, by notice in at least two local newspapers, or by such other means as are reasonable in the circumstances; and
 - (b) the consultation bodies, by notice.
- (7) The information is —
 - (a) the determination under paragraph (2) and any conditions attached to it;
 - (b) the main reasons and considerations on which the determination is based; and
 - (c) a summary of the result of any consultation under regulation 10 and how that information has been taken into account.
- (8) The drainage body must make its determination under paragraph (3) within a reasonable period of time, taking into account the nature and complexity of the application and improvement works.

Conclusion about environmental impact: appropriate Authority

- 12B.**—(1) This regulation and regulation 12C apply where—
- (a) an objection in relation to the likely significant environmental effects of the improvement works has been made;
 - (b) the objection has not been withdrawn; and
 - (c) the drainage body has determined that the improvement works should proceed.
- (2) The drainage body must refer the proposal for improvement works together with the environmental statement and any representations on it to the appropriate Authority.
- (3) The appropriate Authority must consider (ensuring that in doing so it has or has access to any expertise it considers necessary)—
- (a) the environmental statement and any representations made in accordance with regulation 10; and
 - (b) any features of the improvement works or measures to avoid, prevent, reduce or offset any likely significant effects of the improvement works on the environment.

(4) Following that consideration, the appropriate Authority must reach a conclusion about the likely significant effects (including the expected effects deriving from the vulnerability of the improvement works to risks of major accidents or disasters) of the improvement works on—

- (a) population and human health;
- (b) biodiversity, with particular attention to species and habitats protected under the Habitats Directive and the Wild Birds Directive;
- (c) land, soil, water, air and climate;
- (d) material assets, cultural heritage and the landscape;
- (e) the interaction between the factors referred to in sub-paragraphs (a) to (d).

(5) Where the appropriate Authority considers that—

- (a) the information supplied in accordance with paragraph (2) does not provide sufficient information to enable it to reach a conclusion under paragraph (4); and
- (b) the drainage body may reasonably be required to compile further information relevant to that conclusion,

the appropriate Authority must notify the drainage body of the further information required.

(6) After a notification under paragraph (5), the drainage body must promptly—

- (a) send the further information to the appropriate Authority;
- (b) publish a notice in at least two local newspapers—
 - (i) announcing that the further information is available and giving details of the place and times where a copy may be inspected; and
 - (ii) stating that any person who wishes to make representations on the likely environmental effects of the improvement works to which the further information relates must make them in writing to the appropriate Authority at the address specified in the notice within 30 days of the date of the publication of the notice;
- (c) place that notice and the further information on the website referred to in regulation 10(1)(b);
- (d) on or before the date of publication of that notice, supply a copy of the notice and further information and notice to each of the consultation bodies; and
- (e) provide a copy of the further information to any other person who requests one.

Determination of whether improvement works should proceed: appropriate Authority

12C.—(1) The appropriate Authority must consider—

- (a) the conclusion reached under regulation 12B(4) in respect of the improvement works and the reasons for that conclusion;
- (b) whether it is appropriate for the drainage body to monitor the significant adverse effects of the improvement works on the environment, and if so—
 - (i) whether consent should be given subject to conditions to ensure that the drainage body is under such a duty; and
 - (ii) whether consent should be given subject to conditions to require remedial action to be taken in circumstances described in the conditions;
- (c) whether, having regard to the likely significant environmental effects of the improvement works, consent should be given subject to any other conditions.

(2) Following that consideration, the appropriate Authority must—

- (a) consent to the carrying out of the improvement works; or
- (b) refuse consent to the improvement works.

(3) The appropriate Authority may make a determination under paragraph (2)(a) only if satisfied that the conclusion reached under regulation 12B(4) in respect of the improvement works and the reasons for it address the likely significant environmental effects of the improvement works.

(4) A determination under paragraph (2)(a) may be made subject to conditions under regulation 12D.

(5) The appropriate Authority must make its decision under paragraph (2) within a reasonable period of time starting with the date on which it is given all the information it is required to consider under regulation 12B(3), taking into account the nature and complexity of the application and improvement works.

(6) The appropriate Authority must send to the drainage body a statement in writing of—

- (a) the appropriate Authority's determination under paragraph (2) and any conditions attached to it;
- (b) the main reasons and considerations upon which the determination is based, including information about the public participation process; and
- (c) any features of the improvement works or measures to avoid, prevent, reduce or offset the significant adverse effects of the improvement works on the environment.

(7) The drainage body must promptly inform—

- (a) the public, by notice in at least two local newspapers, or by such other means as are reasonable in the circumstances; and
- (b) the consultation bodies, by notice,

of the information in paragraph (8).

(8) The information is—

- (a) the appropriate Authority's determination under paragraph (2) and any conditions attached to it;
- (b) the main reasons and considerations on which the determination is based; and
- (c) a summary of the result of any consultations under regulation 10 and 12B(6) and how that information has been taken into account.

Determination that improvement works may proceed: conditions

12D.—(1) The relevant authority may make a determination under regulation 12A(3)(a) or 12C(2)(a) authorising improvement works to proceed subject to conditions.

(2) The relevant authority may impose a condition under paragraph (1) in relation to monitoring only if satisfied that—

- (a) existing monitoring arrangements in accordance with an obligation under the law of any part of the United Kingdom cannot be relied on;
- (b) the type of parameters to be monitored and the duration of monitoring are proportionate to the nature, location and size of the improvement works and the significance of their effect on the environment.

(3) In this regulation, the “relevant authority” means—

- (a) in respect of a determination under regulation 12A(3)(a), the drainage body;
- (b) in respect of a determination under regulation 12C(2)(a), the appropriate Authority.

Duty to maintain a record of information

12E.—(1) The drainage body must maintain a record of, and make available to the public on request, the information referred to in paragraph (2) in respect of any determination under regulation 12A(3) or 12C(2)—

(2) The information is—

- (a) the content of the determination and any conditions attached to it;
- (b) the main reasons and considerations on which the determination is based, including information about representations received in the course of the public participation process; and
- (c) any features of the improvement works or measures to avoid, prevent, reduce or offset any likely significant effects of the improvement works on the environment.

Amendment to regulation 13

14.—(1) Regulation 13(1)(a) (charges) is amended as follows.

(2) In sub-paragraph (a) for “12(6)(b)” substitute “12B(6)(d)”.

(3) In sub-paragraph (b) for “12(6)(c)” substitute “12B(6)(e)”.

Amendments to regulation 13A

15.—(1) Paragraph (1)(b) of regulation 13A (public participation) is amended as follows.

(2) In sub-paragraph (b) for “12(7)” substitute “12C(2)”.

(3) In sub-paragraph (c) for “assessment under regulation 12(1)” substitute “conclusion reached under regulation 12(2)”.

Amendments to regulation 13B

16.—(1) Regulation 13B(c) (notices on the site of the proposed improvement works) is amended as follows.

(2) In paragraph (1) for “12(3), 12(6)(a) and 12(8)” substitute “12A(6), 12B(6) and 12C(7)”.

(3) In paragraph (2)(a)—

(a) for “12(6)(a)” substitute “12B(6)”;

(b) for “28” substitute “30”.

(4) In paragraph (3), in the words before sub-paragraph (a) for “12(3), 12(6)(a) or 12(8)” substitute “12A(6), 12B(6) or 12C(7)”.

Amendments to regulation 14

17. In paragraph (1)(b) of regulation 14 (enforcement)—

(a) for “12(7)” substitute “12C(2)”;

(b) for “12(4)” substitute “12B(2)”.

(a) Regulation 13(1) was amended by S.I. 2005/1399.

(b) Regulation 13A was inserted by regulation 3(6) of S.I. 2005/1399.

(c) Regulation 13B was inserted by regulation 4(6) of S.I. 2005/1399 and substituted by regulation 2(3) of S.I. 2006/618.

Substitution of Schedule 1

18. For Schedule 1 (information in environmental statement) substitute the Schedule at Schedule 1.

Substitution of Schedule 2

19. For Schedule 2(a) (improvement works having a significant effect on the environment: selection criteria) substitute the Schedule at Schedule 2.

New Schedule 2A

20. After Schedule 2 insert the Schedule at Schedule 3.

Omission of Schedules 3 and 4

21. Omit Schedule 3(b) (information for other EEA States) and Schedule 4 (environmental factors).

Transitional provisions

22. These Regulations do not apply in respect of—

- (a) proposed improvement works, where the drainage body concerned requested an opinion about the scope and level of detail of information to be included in an environmental statement under regulation 8(1) of the 1999 Regulations in respect of the improvement works before 16th May 2017; and
- (b) proposed improvement works, where the drainage body concerned published an environmental statement under regulation 10(1) of the 1999 Regulations in respect of the improvement works before 16th May 2017.

24th April 2017

Thérèse Coffey
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

20th April 2017

Jane Hutt
One of the Welsh Ministers

SCHEDULE 1

Regulation 18

“SCHEDULE 1

Regulation 7(2)(f)

Information in environmental statement

- 1.** A description of the improvement works, including in particular—
- (a) a description of the location of the improvement works;

(a) Schedule 2 was amended by article 6(2)(b) of S.I. 2011/1043.
(b) Schedule 3 was amended by regulation 5(4) of S.I. 2005/1399.

- (b) a description of the physical characteristics of the whole of the improvement works, including, where relevant, requisite demolition works, and the land-use requirements during the construction and operational phases;
- (c) a description of the main characteristics of the operational phase of the improvement works (in particular any production process), for instance, energy demand and energy used, nature and quantity of the materials and natural resources (including water, land, soil and biodiversity) used;
- (d) an estimate, by type and quantity, of expected residues and emissions (such as water, air, soil and subsoil pollution, noise, vibration, light, heat, radiation) and quantities and types of waste produced during the construction and operation phases.

2. A description of the reasonable alternatives (for example in terms of project design, technology, location, size and scale) studied by the drainage body, which are relevant to the proposed improvement works and their specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.

3. A description of the relevant aspects of the current state of the environment (baseline scenario) and an outline of the likely evolution thereof without implementation of the improvement works as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of environmental information and scientific knowledge.

4. A description of the factors specified in regulation 12(2) likely to be significantly affected by the improvement works: population, human health, biodiversity (for example fauna and flora), land (for example land take), soil (for example organic matter, erosion, compaction, sealing), water (for example hydromorphological changes, quantity and quality), air, climate (for example greenhouse gas emissions, impacts relevant to adaptation), material assets, cultural heritage, including architectural and archaeological aspects, and landscape.

5. A description of the likely significant effects of the improvement works on the environment resulting from, among other things—

- (a) the construction and existence of the improvement works, including, where relevant, demolition works;
- (b) the use of natural resources, in particular land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources;
- (c) the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances, and the disposal and recovery of waste;
- (d) the risks to human health, cultural heritage or the environment (for example due to accidents or disasters);
- (e) the cumulation of effects with other existing or approved improvement works or projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;
- (f) the impact of the improvement works on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the improvement works to climate change;
- (g) the technologies and the substances used.

6. The description referred to in paragraph 4 of the likely significant effects on the factors specified in regulation 12(2) must cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the improvement works. That description must

take into account the environmental protection objectives established at EU or member State level which are relevant to the improvement works.

7. A description of the forecasting methods or evidence, used to identify and assess the significant effects on the environment, including details of difficulties (for example technical deficiencies or lack of knowledge) encountered in compiling the required information and the main uncertainties involved.

8. A description of the measures envisaged to avoid, prevent, reduce or offset any identified significant adverse effects on the environment and, where appropriate, of any proposed monitoring arrangements (for example the preparation of a post-works analysis). That description must explain the extent, to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and must cover both the construction and operational phases.

9. A description of the expected significant adverse effects of the improvement works on the environment deriving from the vulnerability of the improvement works to risks of major accidents or disasters which are relevant to the improvement works. Relevant information available and obtained through risk assessments pursuant to EU legislation such as Directive 2012/18/EU of the European Parliament and of the Council on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC^(a) or Council Directive 2009/71/Euratom establishing a Community framework for the nuclear safety of nuclear installations^(b) or UK environmental assessments may be used for this purpose provided that the requirements of the EIA Directive are met. Where appropriate, the description must include measures envisaged to prevent or mitigate the significant adverse effects of such events on the environment and details of the preparedness for and proposed response to such emergencies.

10. A non-technical summary of the information provided under paragraphs 1 to 9.

11. A reference list detailing the sources used for the descriptions and assessments included in the statement.”

SCHEDULE 2

Regulation 19

“SCHEDULE 2

Regulations 4 to 6

Improvement works having a significant effect on the environment: selection criteria

Characteristics of improvement works

1. The characteristics of improvement works must be considered, with particular regard to—

- (a) the size and design of the whole improvement works;
- (b) cumulation with other existing or approved projects;
- (c) the use of natural resources, in particular land, soil, water and biodiversity;
- (d) the production of waste;
- (e) pollution and nuisances;

(a) OJ No L 197, 24.7.2012, p. 1.

(b) OJ No L 219, 25.7.2014, p. 42.

- (f) the risk of major accidents or disasters which are relevant to the improvement works, including those caused by climate change, in accordance with scientific knowledge;
- (g) the risks to human health (for example due to water contamination or air pollution).

Location of improvement works

2. The environmental sensitivity of geographical areas likely to be affected by improvement works must be considered, with particular regard to—

- (a) the existing and approved land use;
- (b) the relative abundance, availability, quality and regenerative capacity of natural resources (including soil, land, water and biodiversity) in the area and its underground;
- (c) the absorption capacity of the natural environment, paying particular attention to the following areas—
 - (i) wetlands, riparian areas, river mouths;
 - (ii) coastal zones and the marine environment;
 - (iii) mountain and forest areas;
 - (iv) nature reserves and parks;
 - (v) areas classified or protected under national legislation and Natura 2000 areas designated by member States pursuant to the Habitats Directive and the Wild Birds Directive;
 - (vi) areas in which there has already been a failure to meet the environmental quality standards, laid down in EU legislation and relevant to the improvement works, or in which it is considered that there is such a failure;
 - (vii) densely populated areas;
 - (viii) landscapes and sites of historical, cultural or archaeological significance.

Type and characteristics of the potential impact

3. The likely significant effects of improvement works on the environment must be considered in relation to criteria set out in paragraphs 1 and 2 of this Schedule, with regard to the impact of the improvement works on the factors specified in regulation 12(2), taking into account—

- (a) the magnitude and spatial extent of the impact (for example geographical area and size of the population likely to be affected);
- (b) the nature of the impact;
- (c) the transboundary nature of the impact;
- (d) the intensity and complexity of the impact;
- (e) the probability of the impact;
- (f) the expected onset, duration, frequency and reversibility of the impact;
- (g) the cumulation of the impact with the impact of other existing or approved projects;
- (h) the possibility of effectively reducing the impact.”

SCHEDULE 3

Regulation 20

“SCHEDULE 2A

Regulation 5(5A)(a)

**Information to be taken into account in deciding whether
improvement works are likely to have significant effect on
environment**

1. A description of the improvement works, including in particular—
 - (a) a description of the physical characteristics of the whole improvement works and, where relevant, of demolition works;
 - (b) a description of the location of the improvement works, with particular regard to the environmental sensitivity of geographical areas likely to be affected.
2. A description of the aspects of the environment likely to be significantly affected by the improvement works.
3. A description of any likely significant effects, to the extent that the information is available on such effects, of the improvement works on the environment resulting from—
 - (a) the expected residues and emissions and the production of waste, where relevant;
 - (b) the use of natural resources, in particular soil, land, water and biodiversity.
4. The criteria in Schedule 2 must be taken into account, where relevant, when compiling the information in accordance with paragraphs 1 to 3.”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Directive 2014/52/EU (“Directive 2014/52”) of the European Parliament and of the Council amending Directive 2011/92/EU (“the EIA Directive”) on the assessment of the effects of certain public and private projects on the environment in respect of land drainage works in England and Wales.

Regulations 3 to 21 make amendments to the Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999 (“the 1999 Regulations”). In summary:

- (a) new regulations 3A and 3B (as inserted by regulation 5) make provision for a direction that the 1999 Regulations do not apply to specific improvement works;
- (b) new regulation 3C (as inserted by regulation 5) makes provision for the coordination of environmental assessments;
- (c) new regulation 7 (as substituted by regulation 9) makes provision with respect to the preparation of an environmental statement by a drainage body;
- (d) the amendments to regulation 10 (in regulation 11) make provision for any environmental statement and related information to be placed on a website;
- (e) the omission of regulation 11 and Schedule 3 (by regulations 12 and 21 respectively) relate to the fact that improvement works in England and Wales could not have any significant effects on the environment of another EEA State;
- (f) new regulations 12 and 12A (as substituted by regulation 13) restate, and make amendments to, provisions in the existing regulation 12 relating to the drainage body considering the environmental statement, reaching a conclusion about the likely significant effects on the environment of the improvement works and determining whether the improvement works should proceed;

- (g) new regulations 12B and 12C (as inserted by regulation 13) restate, and make amendments to provisions, in the existing regulation 12 relating to the appropriate Authority considering the environmental statement, reaching a conclusion about the likely significant effects on the environment of the improvement works and determining whether the improvement works should proceed;
- (h) new regulation 12D (as inserted by regulation 13) makes provision about attaching conditions to a determination that improvement works may proceed;
- (i) new Schedules 1 and 2 (as substituted by regulations 19 and 20 respectively) reflect amendments made by Directive 2014/52 to Annexes IV and III of the EIA Directive respectively;
- (j) new Schedule 2A (as inserted by regulation 20) reflects new Schedule II.A of Directive 2014/52;
- (k) the omission of Schedule 4 (by regulation 21) reflects the fact that the environmental factors referred to in Article 3(1) of the EIA Directive (which were amended by Directive 2014/52) are now stated in regulations 12(2) and 12A(3).

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen. An Explanatory Memorandum and a transposition note are available with these Regulations on www.legislation.gov.uk. Copies have also been placed in the Libraries of both Houses of Parliament.

The Environmental Impact Assessment (Land Drainage Improvement Works) (Amendment) Regulations 2017

Transposition note for Directive 2014/52/EU amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment

1. This transposition note sets out how Directive 2014/52/EU (“the 2014 Directive”) amending Directive 2011/92/EU on the assessment of certain public and private projects on the environment (“the EIA Directive”) is transposed in respect of works relating to land drainage in England and Wales.
2. The table shows how the main elements of the 2014 Directive are transposed in the Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999 (“the 1999 Regulations”) as amended by the Environmental Impact Assessment (Land Drainage Improvement Works) (Amendment) Regulations 2017 (“the 2017 Regulations”).
3. References in the table to Article numbers are to the EIA Directive as amended by the 2014 Directive.
4. References in the table to regulations are to the 1999 Regulations as amended by the 2017 Regulations.

Article	Objective	Implementation
Article 1(3)	Exemption for projects or parts of projects having defence as their sole purpose or response to civil emergencies.	Regulation 3A
Article 2(4)	Exemption in exceptional circumstances.	Regulation 3B
Article 2(3)	Joint or co-ordinated procedures to apply where projects are assessed under the EIA Directive and Directive 92/43 EEC on habitats or Directive 2009/147/EC on wild birds.	Regulation 3C
Article 3	Statement of factors which must be considered etc. during environmental impact assessment.	Regulation 12(2) and 12B(4)
Article 4(4) first and second sentence	Developer provides information specified in Annex IIA for an initial (“screening”) decision of whether project likely to have significant effects on environment.	Regulation 5(5A)(a)
Article 4(4) third sentence	Developer must take other assessments under Union legislation into account in preparing information for screening decision.	Regulation 4(1)(b) and 5(5A)(a)
Article 4(4) fourth	Developer may also provide a description of Description of features in information for screening decision.	Regulation 5(5A)(b)

sentence		
Article 4(5) first sentence	Screening decision of competent authority.	Regulations 4 and 5
Article 4(5) second sentence	Screening decision must be made public.	Regulations 5(1)(ca) and (cd) and 6(2)(b)
Article 4(6)	Screening decision must be made within 90 days.	Regulation 4(2) and (3)
Article 5(1) first sentence	Developer must prepare and submit an environmental impact assessment report.	Regulation 7(1)
Article 5(1) second sentence	Environmental impact assessment must include certain information.	Regulation 7(2)
Article 5(1) third sentence	Environmental impact assessment report must be based on opinion (“scoping opinion”) by authority about contents of report where requested.	Regulation 7(1)(b)
Article 5(2)	Facility for scoping opinions by authority.	Regulation 8
Article 5(3)(a)	Developer must ensure environmental impact assessment report prepared by competent experts.	Regulation 7(1): opening words and paragraph (1)(d)
Article 5(3)(b)	Authority must ensure it has sufficient expertise to consider environmental impact assessment report.	Regulations 12(1) and 12B(3)
Article 5(3)(c)	Facility for supplementary information to be provided which is relevant to authority’s conclusion about environmental impact.	Regulations 12B(5)
Article 6(1)	Authorities with specific environmental responsibilities or local or regional competences to be consulted.	Regulations 2 (amended definition of “consultation bodies”) and 10(4)
Article 6(2) and (5)	Informing the public electronically of request for consent and of availability of environmental impact assessment report etc.	Regulations 10(1) and (2)(a)(i) and 12B(6)(c)
Article 6(6)/(7)	Timeframe for consulting public on environmental impact assessment report must not be less than 30 days.	Regulation 10
Article 8a(1)	Decision to grant consent must incorporate at least the reasoned conclusion, and environmental conditions and, where appropriate, monitoring measures.	Regulations 12A(2), 12C(1) and 12D
Article 8a(2)	Decision to refuse consent must state reasons.	Regulations 12C(6)
Article 8a(4)	Member state must ensure environmental conditions are implemented by developer and determine procedures regarding monitoring significant adverse effects.	Regulations 12A(2)(b), 12C(1)(b) and 12D
Article 8a(5)	Decision whether to grant consent must be made within reasonable time.	Regulation 12C(5)
Article 8a(6)	Authority’s conclusion about environmental impact must be up to date when deciding whether to grant consent.	Regulations 12A(4) and 12C(3)
Article 9(1)	Informing the public – new reference to consultation bodies.	Regulations 12C(7)(b)
Article 10a	Member State must set out penalties for infringements.	Regulation 14

Annex II.A	Information to be provided by developer on projects listed in Annex II for screening decision	Schedule 2A
Annex III	Criteria to determine whether projects listed in Annex II should be subject to environmental impact assessment	Schedule 2
Annex IV	Information for the environmental impact assessment report	Schedule 1

EXPLANATORY MEMORANDUM TO
THE ENVIRONMENTAL IMPACT ASSESSMENT (LAND DRAINAGE
IMPROVEMENT WORKS) (AMENDMENT) REGULATIONS 2017

2017 No. 585

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument amends the UK's existing implementation of the Environmental Impact Assessment Directive 2011/92/EU (the EIA Directive) to bring into effect changes made to the Directive by EU Directive 2014/52/EU (the 2014 Directive).
- 2.2 The EIA Directive ensures that projects likely to have significant effects on the environment are subject to an environmental assessment, prior to their approval or authorisation. In respect of land drainage projects, the EIA Directive has been implemented into national legislation by The Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999, as amended (the Regulations). The EIA Directive was amended by the 2014 Directive and it is these amendments which need to be incorporated into national legislation.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 Due to the decision to call a general election and the consequent dissolution of Parliament on 3 May 2017 there are not 21 days available between the laying date and the date on which the Regulations need to come into force in order to meet the deadline of 16 May 2017 set in the EIA Directive. A failure to meet this deadline could result in infraction proceedings being taken and the UK being fined.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 This Regulation is made in order to transpose the amendments to Directive 2011/92 of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment. This instrument is one of a group of instruments which will implement changes to the EIA Directive across different consenting regimes: marine, land drainage, forestry, water abstraction and agriculture.

4.2 Insofar as was possible, the 2014 Directive has been transposed by copy-out with additional text inserted where necessary to give clarity. The European Scrutiny Committees were provided with an Explanatory Memorandum on the Commission's proposals in December 2012 and were updated following a vote in the European Parliament in October 2013 and following the agreement of a compromise text in February 2014. The House of Commons committee released the proposal from scrutiny on 19 March 2014 and the House of Lords scrutiny committee did so on 3 April 2014.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

7.2 Environmental impact assessment (EIA) is a procedure that ensures that the environmental implications of decisions are taken into account before the decisions are made. The EIA Directive ensures that projects likely to have significant effects on the environment are made subject to an environmental assessment, prior to their approval or authorisation. This process is part of European law under the EIA Directive and, in respect of land drainage projects, has been implemented into national legislation by the Regulations.

7.3 The broad intention of the 2014 amendments is deregulatory – to simplify and clarify the requirements of the current EIA Directive, by focusing on environmental factors that are significantly impacted, rather than on any potential impact. It also improves the level of environmental protection, with a view to making business decisions on public and private investments more sound, more predictable and sustainable in the longer term.

7.4 There are no alternatives to legislation to implement the 2014 Directive. However, in line with the Government's Better Regulation agenda the Government has sought to minimise additional regulatory burden by copying out the text of the 2014 Directive except where an alternative approach was considered beneficial.

7.5 There has been liaison with other government departments to ensure that as far as possible a consistent approach has been followed.

- 7.6 Under the Regulations, drainage bodies must follow the EIA procedure, and may be required to prepare an environmental statement, before carrying out any improvement works, if those works are likely to cause significant effects on the environment. Drainage bodies are defined as the Environment Agency (EA), Natural Resources Wales (NRW), Internal Drainage Boards (IDBs) and Local Authorities. The Regulations cover not only land drainage but also include other defence against water related risks i.e. flood defence. Improvement works include: projects to deepen, widen, straighten, improve or alter existing watercourses; projects to remove or alter mill dams, weirs or other obstructions; and various water related maintenance and development projects permitted under Part 13 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015.
- 7.7 The following paragraphs set out the main changes introduced by the 2014 Directive and the corresponding impact on the Regulations. Unless stated otherwise, the changes are transposed by copying out the text with necessary additional text inserted:
- The addition of a definition of the environmental impact assessment process - Article 1(2)g.
 - Changes to the circumstances in which a project may be exempt from the requirements of the EIA Directive – Articles 1(3). The EIA Directive has been amended to restrict the existing exemption for defence projects so that it can only apply where a project, or part of a project, has defence as its sole purpose. The exemption has also been extended to include projects which have the response to civil emergencies as their sole purpose.
 - Introduction of Joint and/or Coordinated procedures for projects which are subject to the Habitats or Wild Birds Directives as well as the EIA Directive – Article 2(3). We have maintained the current position that drainage bodies may adopt either the co-ordinated or joint assessment procedures.
 - Changes to the list of environmental factors to be considered as part of the EIA process – Article 3. The criteria have been amended, largely to provide more clarity about the issues to be considered.
 - Clarification of the options for screening and amendments to the information which is required and the criteria to be applied when screening projects to determine whether the EIA Directive applies – Article 4, Annex IIA and Annex III. The amendments seek to standardise the type of information to be provided when deciding whether an environmental statement should be prepared. It is hoped this will help focus the EIA process on those cases where there really is a likelihood of significant effects. The 2014 Directive also confirms that a drainage body may provide a description of any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment. The 2014 Directive has also introduced a requirement that the ‘screening’ decision as to whether a project requires an environmental statement and the main reasons why should be published. There is also a new requirement that this ‘screening’ decision is made soon as possible and within 90 days (extendable in exceptional circumstances) from the date all the information required is available. There was no previous time limit. The Regulations now provide for two 45 periods during which the drainage body, and then the relevant Minister (if required), will decide whether an environmental statement should be prepared.

- Amendments to the information to be included in the environmental statement - Article 5 and Annex IV.
- A requirement for environmental statements to be ‘based on’ a scoping opinion, where one is issued - Article 5(2). If a proposed project needs an environmental statement, a drainage body may request an opinion from a relevant Minister to list the scope and level of detail of the information to be included in the statement.
- The use of competent experts - Article 5(3). The 2014 Directive has introduced a requirement that the environmental statement is prepared by competent experts and that the decision maker must have sufficient expertise to assess the environmental statement. Most decision makers have people with sufficient expertise within their teams or can readily obtain access to people with expertise. Applicants will also have access to the comments of the statutory consultation bodies to assist them. We therefore do not expect this requirement to differ to current established practice.
- A requirement to inform the public of projects electronically - Article 6(2) and 6(5).
- A requirement to introduce a new minimum time for public consultations of at least 30 days – Article 6(7). This is an increase from 28 days. This increase should not present a significant impact on the overall process.
- A new article elaborating on information to be given in decision notices and the decision making procedures – Article 8a. Information to be included in a decision includes: the reasoned conclusion; environmental conditions; and a description of any parts or actions in the project to reduce the risk of significant adverse effects on the environment. Where the decision is to refuse consent, the main reasons for the refusal are given. A notice of a decision must also include any planned monitoring measures.
- Monitoring significant adverse effects - Article 8a(4). The Regulations will include the requirement that the drainage body or relevant Minister, as appropriate, will monitor significant adverse effects of improvement works.
- A new Article requiring drainage bodies must be objective and avoid conflicts of interest where they are both the applicant and the decision maker – Article 9a. As public authorities, drainage bodies must carry out their functions in a way which does not give rise to a conflict of interest. We consider that compliance with the requirements of Article 9a is best achieved through administrative arrangements.
- The introduction of penalties for infringements of national provisions – Article 10a. We consider that existing provisions in the Regulations allowing for the relevant Minister to apply to court where the requirements of the Regulations are not met are sufficient to meet the 2014 Directive’s requirements.

8. Consultation outcome

- 8.1 A consultation was published on 14 December 2016. The consultation was open for 7 weeks and closed on 31 January 2017. The majority of respondents supported the proposed changes. Numerous respondents sought guidance which will provide clarity. Further details are included in the Government response.

9. Guidance

- 9.1 Guidance will be made available, taking account of consultation responses where clarification was sought.

10. Impact

- 10.1 The 2014 Directive's changes aim to reduce the burden by cutting the number for cases that go through the EIA process, the benefits will mainly be seen in the bigger developments that usually need an environmental statement. Defra's economists have undertaken an assessment of cost to business of the proposed changes and this has shown that the cost level is considerably lower than the £1million limit required to trigger the need for an Impact Assessment. The impact of these changes will be on public bodies, as all drainage bodies are public sector bodies.
- 10.2 There is no impact on business, charities or voluntary bodies.
- 10.3 An Impact Assessment has not been produced with this memorandum as no impact on the private or voluntary sectors is foreseen. A transposition note is available and will be published alongside this memorandum on the legislation.gov.uk website.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 As the Regulations do not impact upon activities that are undertaken by small business, there are no current plans for scheduled monitoring and review of the legislation.

13. Contact

- 13.1 Nichola Whiteman at the Department for Environment, Food and Rural Affairs
Telephone: 0208 026 3777 or email: Nichola.Whiteman@defra.gsi.gov.uk can answer any queries regarding the instrument.

SL(5)102 – The Environmental Impact Assessment (Land Drainage Improvement Works) (Amendment) Regulations 2017

Background and Purpose

These **Regulations** implement Directive 2014/52/EU of the European Parliament and of the Council amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment in respect of land drainage works in England and Wales.

Procedure

Joint negative.

Technical Scrutiny

One points is identified for reporting under Standing Order 21.2 in respect of this instrument.

These Regulations have been laid, before the Assembly and the UK Parliament, in English only.

The Committee therefore reports under Standing Order 21.2(ix): the instrument has not been made in both English and Welsh.

Merits Scrutiny

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

Legal Advisers

Constitutional and Legislative Affairs Committee

9 May 2017



Mark Drakeford AM/AC
Ysgrifennydd y Cabinet dros Gyllid a Llywodraeth Leol
Cabinet Secretary for Finance and Local Government



Llywodraeth Cymru
Welsh Government

Simon Thomas AM
Chair
Finance Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

5 May 2017

Dear Simon

Landfill Disposals Tax (Wales) Bill

I am writing to provide you with further information about the government's intention to bring forward regulations under section 53 of the Bill to create a tax credit in relation to bad debts. This is an area where provision will be technical and intricate. I therefore believe it is better suited to secondary legislation.

The committee and external stakeholders have taken a great deal of interest in this area. We have worked closely with technical experts and external stakeholders to develop our approach and I am keen to support the committee in its understanding of our intentions. A statement of policy intent is attached.

I recognise the important role the committee has in scrutinising the new Welsh taxes and the need to have adequate opportunity to do so. For that reason, I committed during the general principles debate to share the draft regulations with the committee ahead of tabling them in the autumn.

I am also writing to make you aware of my intention to bring forward some technical amendments at stage 3. It is anticipated these will include three general areas, although it is possible further areas will be identified during the course of stage 2.

We are considering the need to bring forward amendments in relation to section 18 (calculation of taxable weight of material) to clarify the effect of any calculation of taxable weight made by the Welsh Revenue Authority (WRA).

The government will bring forward amendments in respect of section 38 (accounting for tax), which will ensure that where an unregistered operator of an authorised landfill site subsequently becomes registered, they will not have to account for any taxable disposals for which they have already accounted while they were unregistered.

Finally, during early preparatory work in relation to the regulations in section 17 (qualifying mixtures of materials: fines), we identified the need to bring forward amendments to ensure a robust and workable loss on ignition testing system can be put

in place and the WRA can take responsibility for setting out some of the detail about how the system will operate, as is the case for the equivalent regimes in the UK and Scotland.

I hope you find this information helpful. I am copying this letter to the chair of the Constitutional and Legislative Affairs Committee.

Yours sincerely

A handwritten signature in black ink that reads "Mark". The letters are cursive and slightly slanted to the right.

Mark Drakeford AM/AC

Ysgrifennydd y Cabinet dros Gyllid a Llywodraeth Leol
Cabinet Secretary for Finance and Local Government



Llywodraeth Cymru
Welsh Government

LANDFILL DISPOSALS TAX (WALES) BILL

Statement of Policy Intent

May 2017

Tax Credits

Power: Section 53 Landfill Disposals Tax (Wales) Bill (the LDT Bill)

Description: Power to make provision for tax credits

Regulations may make provision for the circumstances in which a person will be entitled to a tax credit in respect of landfill disposals tax (LDT). The regulations may among other things, specify the conditions that must be met for an entitlement to a credit to arise and the procedure for claiming a credit.

Policy Intention:

It is the policy intention of the Welsh Ministers to make regulations under section 53 of the LDT Bill.

The intention is to make regulations which create a tax credit that is linked to customer insolvency. It is intended that an entitlement to such a credit will only arise where a landfill site operator has accounted for and paid LDT in respect of a disposal but has not received payment from the customer behind that disposal due to an insolvency event having taken place.

UK approach

Section 51 and 52 of the Finance Act 1996 provide regulation making powers to create an entitlement to a credit for bad debt.

The substance of the bad debt provisions are found in secondary legislation: at Part VI of the Landfill Tax Regulations 1996 (SI 1996/1527).

The regulations set out the conditions that must be met in order for an entitlement to credit to arise and provide that the credit to which a claimant will be entitled will reflect the proportion of the consideration that has not been paid. There are evidential requirements if a claim to a credit is to be made and also record-keeping requirements. There is a provision setting out how to deal with a scenario in which a claimant is owed more than one debt by a customer, some of which may not relate to a landfill tax disposal, so that a fair calculation of how much of the debt is outstanding can be reached for the purpose of claiming the tax credit. A key concept among the conditions for claiming this credit is that the claimant has accounted to the tax authority for landfill tax in relation to a disposal but all or part of the consideration that was owing to the claimant in relation to that disposal has subsequently "been written off in his accounts as a bad debt." Whether and to what extent consideration is to be treated as having been written off as a bad debt is to be determined in accordance with the provisions in the regulations. In essence, this requires that the claimant has written off the debt as a bad debt in their accounts and recorded it in a record known as a "landfill tax bad debt account" as prescribed by the regulations.

Scottish approach

The Scottish Government has taken the same approach to bad debt credit in terms of the primary and secondary legislation split. Many of the conditions for claiming bad debt credit and the records that need to be kept are the same at Part 6 of the Scottish Landfill Tax (Administration) Regulations 2015 as those found in the equivalent UK provisions. However there is one significant divergence, in that the Scottish legislation has significantly narrowed the definition of “written off as a bad debt”. A claim for this credit will only be available where the claimant’s customer has become insolvent (as defined in the regulations) and the insolvency has meant that the claimant has been unable to recover some or all of the consideration.

Welsh Government policy approach:

The policy intention reflects the views of stakeholders in the consultation responses. The majority of those who responded did not want bad debt credit to be offered at all. Of those who did, many suggested the circumstances in which it should be offered be limited to an insolvency event.

Given the current economic climate it is felt fair and appropriate to offer a credit in relation to bad debt where the customer has become insolvent.

Detailed and extensive discussions with landfill site operators and technical experts have highlighted the careful balance that needs to be struck between a policy preference to ensure that landfill waste is deposited appropriately at a landfill site even if the financial situation of the waste producer is challenging, and encouraging landfill site operators to implement robust contract management and good business relationships with their customers. External stakeholder discussions suggested that an approach that retained a credit but narrowed the circumstances in which it is available under UK legislation to something more akin to the approach taken by the Scottish Government would be appropriate for Wales.

In achieving a fair and balanced approach, some of the challenges for the regulations are:

- Ensuring an appropriate definition of insolvency and appropriate evidential requirements for a bad debt claim to ensure that the insolvency is linked to the failure to pay;
- Ensuring the legislation clearly identifies the point in time at which requirements have been met and that these are appropriate – for example, this is an issue in setting out the point in time at which there needs to have been an insolvency event;
- Ensuring the provisions are considered and work within the wider LDT Bill and Tax Collection and Management (Wales) Act 2016 (TCMA) framework – for example, to consider if and how the credit should apply when a tax liability arises through a WRA assessment or determination and also to ensure that the consequences of failing to comply with record keeping requirements in relation to a claim for the credit are carefully considered and work alongside existing penalties;

- Ensuring the provisions adequately cater for more complicated scenarios, such as where part of a payment has been received or payment is received after a credit has been claimed;
- Ensuring there is sufficient flexibility to respond to the WRA's experience and evidence that it gathers once operating the tax and the credit system.

It is our intention to continue to work with external stakeholders as we further develop the regulations and we will be testing the draft regulations with the Technical Expert Group and Landfill Site Operators Group. Further, the government is committed to sharing the draft regulations with the National Assembly for Wales ahead of laying them.

Regulations - breakdown of provisions:

Provision/ Topic Area	Description
Landfill Disposals Tax: provision for a tax credit.	The regulations will introduce a tax credit.
Entitlement to credit.	<p>It is intended that the regulations will prescribe a set of requirements which will have to be met in connection with a disposal before an entitlement to a credit can arise.</p> <p>The following are examples of the sort of requirements that are intended to be prescribed:</p> <ul style="list-style-type: none"> • The disposal to which the claim relates must have taken place on an authorised landfill site; • The landfill site operator (“operator”) must have paid and accounted for LDT on that disposal; • A landfill invoice must have been issued to the customer by the operator; • The customer must be insolvent.
Definition of insolvency	<p>It is intended that the regulations will define “insolvency” for the purposes of the credit. It is proposed that any definition will cover both individual and corporate insolvency.</p> <p>It is envisaged that an inclusive approach to the definition of</p>

	<p>insolvency will be taken so that for example, in the context of a company, a company voluntary arrangement or an administration would be caught as well as a winding-up order.</p> <p>However, it is expected that a qualifying insolvency event will need to be sufficiently formal as to be capable of being identified by reference to a particular point in time and verified with supporting evidence.</p>
Timescales	<p>It is intended that the regulations will prescribe the timescales within which the various requirements will have to be met in order for a person to be entitled to and claim a credit.</p> <p>The timescales that are intended to be prescribed by the regulations include:</p> <ul style="list-style-type: none"> • The landfill invoice being issued within 14 days of the taxable disposal being made; and • The insolvency event occurring within a period of 12 months, beginning with the date on which the landfill invoice was issued.
Documentation	<p>It is intended that the regulations will prescribe the documentation that will be required to support the credit claim and the consequences of failing to comply with any record keeping requirements.</p> <p>It is the intention for the regulations to specify that where an operator makes a claim for a credit in respect of a taxable disposal the operator must keep a record of the credit claimed. The regulations will further set out the detail that record must contain.</p>
Calculation of amount of credit	<p>It is intended that the regulations will set out how the credit is to be</p>

	calculated. Further, the regulations will need to make provision for those cases where a customer may owe a debt to an operator in respect of more than one matter and/or has made some (but not all) repayments.
Claims by persons carrying out taxable operations	It is intended that the regulations will outline the process by which a landfill site operator can claim a credit. It is proposed that the credit should be claimed as part of the submission of a Landfill Disposals Tax return.
Claims by other persons	It is intended that the regulations will specify the circumstances in which an operator who no longer carries on taxable operations may claim a credit. Consideration will need to be given as to how such an application should be made and the documentation required to support it.
Repayment of credit on payment by customer.	It is intended that the regulations will make appropriate provision to deal with those cases where a person has received a credit but has thereafter received payment from the customer.
Appeals	It is intended that decisions taken by WRA in relation to credits should be open to a review or appeal.

The proposed regulations are intended to be supplemented by guidance.

Relationship with other provisions in the LDT Bill and TCMA:

During the preparation and drafting of these regulations careful consideration will be given to the relationship between the tax credit and the provisions in the LDT Bill and TCMA. Specifically, the following provisions:

- Accounting for tax provisions set out in sections 38 to 40 of the LDT Bill;
- Payment, recovery and repayment of tax provisions set out in sections 41 and 42 LDT Bill; and
- Tax Returns, Enquires and Assessments provisions set out in Part 3 TMCA 2016.

Agenda Item 8

Document is Restricted