Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:
Committee Room 1 – Senedd
Meeting date: 11 December 2017
Meeting time: 14.30

For further information contact:
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1 Introduction, apologies, substitutions and declarations of interest

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

Affirmative Resolution Instruments

2.1 **SL(5)155 – The Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2018**

(Pages 1 – 36)

CLA(5)-30-17 – Paper 1 – Regulations
CLA(5)-30-17 – Paper 2 – Explanatory Memorandum
CLA(5)-30-17 – Paper 3 – Report

3 Subordinate legislation subject to no procedure

3.1 **SL(5)157 – The National Assembly for Wales (Returning Officers' Charges) (Amendment) Order 2017**

(Pages 37 – 50)

CLA(5)-30-17 – Paper 4 – Regulations
CLA(5)-30-17 – Paper 5 – Report

4 Paper(s) to note

4.1 **European Union (Withdrawal) Bill 2017: Letter from the Chair of the Public Administration and Constitutional Affairs Committee to the Chair - 21 September 2017**

(Page 51)

PTN 1 - Letter from the Chair of PACAC to the Chair - 21 September 2017

4.2 **Letter from Llywydd to the Chair of the House of Commons Public Administration and Constitutional Affairs Committee - 28 November 2017**

(Pages 52 - 54)

PTN 2 - Letter from Llywydd to the Chair of PACAC - 28 November 2017

4.3 **European Union (Withdrawal) Bill: Letter from Robin Walker MP, Parliamentary Under-Secretary of State for Exiting the European Union to the Chair of the External Affairs and Additional Legislation Committee - 4 December 2017**

(Pages 55 - 70)

PTN 3 - Letter from Robin Walker MP, Parliamentary Under-Secretary of State for Exiting the European Union to the Chair of the External Affairs and Additional Legislation Committee - 4 December 2017

4.4 **The Wales Act 2017 (Commencement No. 4) Regulations 2017**

(Pages 71 - 74)

PTN 4 - Regulations

4.5 **Responses to consultation on proposals to develop an Act on the interpretation of Welsh legislation**

(Pages 75 - 97)

PTN 5 - Written Statement by the Welsh Government - 6 December 2017

PTN 6 - Summary of Responses

5 Inquiry into the powers in the EU (Withdrawal) Bill to make subordinate legislation: Consultation responses

(Pages 98 - 104)

CLA(5)-30-17 - Paper 6 - RSPB Cymru

CLA(5)-30-17 - Paper 7 - Cytûn

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

Items 7, 8, 9, 10 and 11.

7 Inquiry into the powers in the EU (Withdrawal) Bill to make subordinate legislation: Analysis of the views of all UK parliamentary committees on the scrutiny of delegated powers in the EU (Withdrawal) Bill

(Pages 105 - 115)

CLA(5)-30-17 - Paper 8 - Research brief

8 EU (Withdrawal) Bill: Progress of European Union (Withdrawal) Bill

(Pages 116 - 120)

CLA(5)-30-17 - Paper 9 - Research brief

9 EU (Withdrawal) Bill: Legislative Consent Memorandum: Consideration of draft report

(Pages 121 - 170)

CLA(5)-30-17 - Paper 10- Legislative Consent Memorandum

CLA(5)-30-17 - Paper 11 - Research brief

CLA(5)-30-17 - Paper 12 - Legal brief

CLA(5)-30-17 - Paper 13 - Draft report

10 Correspondence from the Llywydd: Assembly Reform: Consideration of draft letter

(Page 171)

CLA(5)-30-17 - Paper 14 - Draft letter

11 Forward work programme

(Pages 172 - 181)

CLA(5)-30-17 - Paper 15 - Forward work programme

CLA(5)-30-17 - Paper 16- Possible future inquiries

Date of the next meeting

8 January 2018

Draft Regulations laid before the National Assembly for Wales under section 13A(8) of the Local Government Finance Act 1992, for approval by resolution of the National Assembly for Wales.

D R A F T 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

2018 No. (W.)

COUNCIL TAX, WALES

The Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2018

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013 ("the Prescribed Requirements Regulations") and the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2013 ("the Default Scheme Regulations") made under section 13A(4) and (5) of, and Schedule 1B to, the Local Government Finance Act 1992.

The Prescribed Requirements Regulations require each billing authority in Wales to make a scheme specifying the reductions which are to apply to amounts of council tax payable by persons, or classes of persons, whom the authority considers are in financial need. The Prescribed Requirements Regulations also set out the matters that must be included within such a scheme.

The Default Scheme Regulations set out a scheme that will take effect, in respect of dwellings situated in the area of a billing authority, if the authority fails to make its own scheme.

These Regulations amend both the Prescribed Requirements Regulations and the Default Scheme Regulations.

The amendments to the Prescribed Requirements Regulations made by regulations 4(a)(i) to (v), 5, 9(a)(i) to (v) and 10(a), (c) and (e) increase certain figures that are used in calculating whether a person is

entitled to a reduction and the amount of that reduction. The uprated figures relate to non-dependant deductions (adjustments made to the maximum amount of reduction a person can receive to take account of adults living in the dwelling who are not dependants of the applicant); and the applicable amount in relation to an application for a reduction (the amount against which an applicant's income is compared in order to determine the amount of reduction to which the applicant is entitled). The same amendments are made in relation to the Default Scheme Regulations by regulations 17(a) to (e), 24 and 25(a), (c) and (e).

The amendments to the Prescribed Requirements Regulations made by regulations 3(a)(iii) and (c), 4(d)(ii), 6, 9(d)(ii) and (iii), 10(b) and (d) and 11 are made in consequence of provision in sections 15 and 16 of the Welfare Reform Act 2016. From 3 April 2017, generally entitlement to Employment and Support Allowance is based on whether or not a person has limited capability for work rather than receipt of the Employment and Support Allowance work-related activity component. Regulation 3(a)(iii) inserts a new definition into regulation 2 of the Prescribed Requirements Regulations namely, "member of a work-related activity group". The subsequent amendments introduce references to an applicant or applicant's partner being a member of a work-related activity group or having limited capability for work. The same amendments are made to the Default Scheme Regulations by regulations 16(a)(iii) and (c), 17(f), 22(b) and (c), 25(b) and (d), 26 and 28.

The amendments to the Prescribed Requirements Regulations made by regulations 3(b), 4(d)(i) and 9(d)(i) are made in consequence of provision in the Regulation and Inspection of Social Care (Wales) Act 2016 ("the 2016 Act"). Regulation 3(b) amends the definition of "care home" to include reference to a care home service within the meaning of Part 1 of the 2016 Act. Regulations 4(d)(i) and 9(d)(i) substitute the reference to a domiciliary care worker with reference to a person who is employed, or engaged under a contract for services, to provide care and support by the provider of a domiciliary support service within the meaning of Part 1 of the 2016 Act. Regulation 16(b) makes the same amendment to the definition of "care home" in the Default Scheme Regulations, and the substituted reference to domiciliary care home worker is inserted by regulation 22(a).

The amendment to the Prescribed Requirements Regulations made by regulation 4(b)(i) is made in consequence of the Pensions Act 2014 which replaces the bereavement allowance and payment with a bereavement support allowance. The reference to "bereavement payment" in the provision dealing with

the meaning of income in respect of pensioners has been replaced with "bereavement support payment". The same amendment is made to the Default Scheme Regulations by regulation 18(a).

The amendments made to the Prescribed Requirements Regulations by regulations 3(a)(i), (ii), (iv), (v) and (d), 8(a), 9(a)(vii), (c), (e) and (f), 12(b), 13(a) and (b) and 14 define and add an approved blood scheme, the Scottish Infected Blood Support Scheme, the London Emergencies Trust and the We Love Manchester Emergency Fund to the list of schemes or trusts payments from which are to be disregarded in the calculation of income or capital for the purposes of assessing a person's entitlement to a council tax reduction. The same amendments are made to the Default Scheme Regulations by regulations 16(a)(i), (ii), (iv), (v) and (d), 17(g), 21, 23, 29(b), 30(a) and 31(a) to (c).

The amendments made to the Prescribed Requirements Regulations by regulations 4(c) and 9(b) clarify the date on which an applicant's earnings are taken into account where an applicant commences employment or an applicant's earnings change in order to provide consistency with corresponding provision in the Regulations regarding a change of circumstances. The same amendments are made to the Default Scheme Regulations by regulations 19 and 20.

The amendments made to the Prescribed Requirements Regulations by regulations 4(a)(vii), 8(b), 9(a)(viii) and (ix) and 13(c) provide that payments made under or by certain trusts established for the purpose of giving relief and assistance to disabled people whose disabilities were caused by the fact that during their pregnancy their mother had taken the drug known as Thalidomide, are to be disregarded in the calculation of capital for the purposes of assessing a person's entitlement to a council tax reduction, and when determining the income of non-dependents. The same amendments are made to the Default Scheme Regulations by regulations 17(i), 30(b) and 31(d).

The amendments made to the Prescribed Requirement Regulations by regulations 4(b)(ii), 7 and 12(a) amend the lists of income other than earnings when determining a persons eligibility for a reduction so that any payment made by a government to victims of National Socialist persecution is disregarded. The same amendments are made to the Default Scheme Regulations by regulations 18(b), 27 and 29(a).

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 Local Government Finance and Public Services Performance Division, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

Draft Regulations laid before the National Assembly for Wales under section 13A(8) of the Local Government Finance Act 1992, for approval by resolution of the National Assembly for Wales.

D R A F T 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

2018 No. (W.)

COUNCIL TAX, WALES

The Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2018

Made ***

Coming into force in accordance with regulation 1(2)

The Welsh Ministers make the following Regulations in exercise of the powers conferred upon them by section 13A(4) and (5) of, and paragraphs 2 to 7 of Schedule 1B to, the Local Government Finance Act 1992(**1**).

In accordance with section 13A(8) of that Act, a draft of this instrument has been laid before and approved by resolution of the National Assembly for Wales.

Title, commencement and interpretation

1.—(1) The title of these Regulations is the Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2018.

(2) These Regulations come into force the day after the day on which they are made.

(3) These Regulations apply in relation to a council tax reduction scheme made for a financial year beginning on or after 1 April 2018.

(**1**) 1992 c. 14. Section 13A was substituted by section 10(1) of the Local Government Finance Act 2012 (c. 17) and Schedule 1B was inserted by section 10(2) of, and Schedule 4 to, that Act.

(4) In these Regulations "council tax reduction scheme" ("*cynllun gostyngiadau'r dreth gyngor*") means a scheme made by a billing authority in accordance with the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013(**1**), or the scheme that applies in default by virtue of paragraph 6(1)(e) of Schedule 1B to the Local Government Finance Act 1992.

Amendments to the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013

2. The Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013 are amended in accordance with regulations 3 to 14.

3. In regulation 2 (interpretation) in paragraph (1)—

(a) in the appropriate place insert—

(i) ""approved blood scheme" ("*cynllun gwaed cymeradwy*") means—

(a) a scheme established or approved by the Secretary of State, or a trust established with funds provided by the Secretary of State, for the purpose of providing compensation in respect of a person having been infected from contaminated blood products; or

(b) a scheme established under sections 1 to 3 of the National Health Service (Wales) Act 2006(**2**) and administered by the Velindre Trust(**3**) for the purpose of making payments and providing support to, or in respect of, individuals infected with Hepatitis C, HIV or both, through contaminated blood or blood products used by the NHS;";

(ii) ""the London Emergencies Trust" ("*Ymddiriedolaeth Argyfyngau Llundain*") means the company of that name (number 09928465) incorporated on 23 December 2015 and the registered charity of that name (number 1172307) established on 28 March 2017;";

(iii) ""member of the work-related activity group" ("*aelod o'r grŵp gweithgaredd perthynol i waith*") means a person who

(**1**) S.I. 2013/3029 (W. 301), as amended by S.I. 2014/66 (W. 6), S.I. 2014/825 (W. 83), S.I. 2015/44 (W. 3), S.I. 2015/971, S.I. 2016/50 (W. 21) and S.I. 2017/46 (W. 20).

(**2**) 2006 c. 42.

(**3**) The Velindre NHS Trust was established under article 2 of the Velindre National Health Service Trust (Establishment) Order 1993 (S.I. 1993/2838, amended by S.I. 1999/826).

has or is treated as having limited capability for work under either—

(a) Part 5 of the Employment and Support Allowance Regulations 2008(**1**) other than by virtue of regulation 30 of those Regulations; or

(b) Part 4 of the Employment and Support Allowance Regulations 2013(**2**) other than by virtue of regulation 26 of those Regulations;";

(iv) ""the Scottish Infected Blood Support Scheme" ("*Cynllun Cymorth Gwaed Heintiedig yr Alban*") means the scheme of that name administered by the Common Services Agency (constituted by section 10 of the National Health Service (Scotland) Act 1978(**3**);";

(v) ""the We Love Manchester Emergency Fund" ("*Cronfa Argyfwng We Love Manchester*") means the registered charity of that name (number 1173260) established on 30 May 2017;";

(b) for the definition of "care home" ("*cartref gofal*") substitute—

""care home" ("*cartref gofal*")—

(a) in England has the meaning given by section 3 of the Care Standards Act 2000(**4**);

(b) in Wales means a place at which a care home service, within the meaning of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016(**5**), is provided wholly or mainly to adults;

(c) in Scotland means a care home service within the meaning given by paragraph 2 of Schedule 12 to the Public Services Reform (Scotland) Act 2010(**6**); and

(d) in Northern Ireland means a nursing home within the meaning of article 11 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003(**7**) or a residential care home within the meaning of article 10 of that Order;";

(**1**) S.I. 2008/794.
(**2**) S.I. 2013/379.
(**3**) 1978 c. 29.
(**4**) 2000 c. 14.
(**5**) 2016 anaw 2.
(**6**) 2010 asp 8.
(**7**) 2003 No. 431 (N.I. 9).

(c) for the definition of "main phase employment and support allowance" ("*lwfans cyflogaeth a chymorth prif wedd*") substitute—

""main phase employment and support allowance" ("*lwfans cyflogaeth a chymorth prif wedd*"), except in Part 1 of Schedule 7, means an employment and support allowance where—

(a) the calculation of the amount payable in respect of the applicant includes a component under section 2(1)(b) or 4(2)(b) of the Welfare Reform Act 2007; or

(b) the applicant is a member of the work-related activity group;";

(d) in the definition of "qualifying person" ("*person cymwys*"), after "the Caxton Foundation" insert, ", an approved blood scheme, the Scottish Infected Blood Support Scheme, the London Emergencies Trust, the We Love Manchester Emergency Fund".

4. In Schedule 1 (determining eligibility for a reduction: pensioners)—

(a) in paragraph 3 (non-dependant deductions: pensioners)—

(i) in sub-paragraph (1)(a) for "£12.70" substitute " £13.10";

(ii) in sub-paragraph (1)(b) for "£4.20" substitute "£4.35";

(iii) in sub-paragraph (2)(a) for "£200.00" substitute "£205.00";

(iv) in sub-paragraph (2)(b) for "£200.00", "£346.00" and "£8.40" substitute "£205.00", "£355.00" and "£8.70" respectively;

(v) in sub-paragraph (2)(c) for "£346.00", "£430.00" and "£10.60" substitute "£355.00", "£440.00" and "£10.95" respectively;

(vi) in sub-paragraph (8)(a) after "income related employment and support allowance" insert "and where the non-dependent is not a member of the work-related activity group";

(vii) for sub-paragraph (9) substitute—

"(9) In the application of sub-paragraph (2) there is to be disregarded from the non-dependant's weekly gross income—

(a) any attendance allowance, disability living allowance, personal independence payment or AFIP received by the non-dependant;

(b) any payment made under or by a trust, established for the purpose of giving relief and assistance to disabled persons whose disabilities were caused by the fact that during their mother's pregnancy she had taken a preparation containing the drug known as Thalidomide, and which is approved by the Secretary of State.";

(b) in paragraph 10(1) (meaning of "income": pensioners)—

(i) for paragraph (j)(xiii) substitute—

"(xiii) bereavement support payment under section 30 of the Pensions Act 2014(**1**);";

(ii) for paragraph (m) substitute—

"(m) a pension paid by a government to victims of National Socialist persecution;";

(c) in paragraph 11 (calculation of weekly income: pensioners)—

(i) in sub-paragraph (3A)—

(aa) in paragraph (a) for "regardless of whether those earnings were actually received in that reduction week" substitute "regardless of when those earnings were actually received";

(bb) for paragraphs (b) and (c) substitute—

"(b) in the case of an application or a reduction under a scheme where the applicant commences employment, the day on which the applicant commences that employment, and the first day of each reduction week thereafter, regardless of when those earnings were actually received; or

(c) in the case of an application or a reduction under a scheme where the applicant's average weekly earnings from employment change, the day on which the applicant's earnings change, so as to require recalculation under this paragraph, and the first day of each reduction week thereafter, regardless of when

(**1**) 2014 c. 19.

those earnings were actually received.";

(ii) in sub-paragraph (4A)—

(aa) in paragraph (a) for "regardless of whether those earnings were actually received in that reduction week" substitute "regardless of when those earnings were actually received";";

(bb) for paragraphs (b) and (c) substitute—

"(b) in the case of an application or a reduction under a scheme where the applicant commences employment, the day on which the applicant commences that employment, and the first day of each reduction week thereafter, regardless of when those earnings were actually received; or

(c) in the case of an application or a reduction under a scheme where the applicant's average weekly earnings from employment change, the day on which the applicant's earnings from employment change and the first day of each reduction week thereafter, regardless of when those earnings were actually received.";

(d) in paragraph 19 (treatment of child care charges: pensioners)—

(i) for sub-paragraph (8)(l) substitute—

"(1) by a person who is employed, or engaged under a contract for services, to provide care and support by the provider of a domiciliary support service, within the meaning of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016;";

(ii) in sub-paragraph (11)(c) after "having limited capability for work" the first time it appears, insert "or the other member of the couple would be a member of the work-related activity group".

5. In Schedule 2 (applicable amounts: pensioners)—

(a) in column (2) of the Table in paragraph 1 (personal allowances)—

(i) in sub-paragraph (1) for "£159.35" and "£172.55" substitute "£163.00" and "£176.40" respectively;

(ii) in sub-paragraph (2) for "£243.25" and "£258.15" substitute "£248.80" and "£263.80" respectively;

(iii) in sub-paragraph (3) for "£243.25" and "£83.90" substitute "£248.80" and "£85.80" respectively;

(iv) in sub-paragraph (4) for "£258.15" and "£85.60" substitute "£263.80" and "£87.40" respectively;

(b) in the Table in Part 4 (amounts of premium specified in Part 3), in the second column—

(i) in sub-paragraph (1) for "£62.45" in each place where it occurs substitute "£64.30" and for "£124.90" substitute "£128.60";

(ii) in sub-paragraph (2) for "£24.78" substitute "£25.48";

(iii) in sub-paragraph (3) for "£60.90" substitute "£62.86";

(iv) in sub-paragraph (4) for "£34.95" substitute "£36.00".

6. In Schedule 3 (sums disregarded from applicant's earnings: pensioners), in paragraph 5(1)(d)(ii) for "or the work-related activity component arising" substitute "arises".

7. In Schedule 4 (amounts to be disregarded in the calculation of income other than earnings: pensioners), for paragraph 1(g), substitute—

"(g) a pension paid by a government to victims of National Socialist persecution."

8. In Schedule 5 (capital disregards: pensioners)—

(a) in paragraph 16(1)(a), after "the Caxton Foundation," insert "an approved blood scheme, the Scottish Infected Blood Support Scheme, the London Emergencies Trust, the We Love Manchester Emergency Fund";

(b) after paragraph 28A insert—

"**28B.** Any payment made under or by a trust, established for the purpose of giving relief and assistance to disabled persons whose disabilities were caused by the fact that during their mother's pregnancy she had taken a preparation containing the drug known as Thalidomide, and which is approved by the Secretary of State."

9. In Schedule 6 (determining eligibility for a reduction under an authority's scheme, amount of reduction and calculation of income and capital: persons who are not pensioners)—

(a) in paragraph 5 (non-dependant deductions: persons who are not pensioners)—

(i) in sub-paragraph (1)(a) for "£12.70" substitute "£13.10";

(ii) in sub-paragraph (1)(b) for "£4.20" substitute "£4.35";

(iii) in sub-paragraph (2)(a) for "£200.00" substitute "£205.00";

(iv) in sub-paragraph (2)(b) for "£200.00", "£346.00" and "£8.40" substitute "£205.00", "£355.00" and "£8.70" respectively;

(v) in sub-paragraph (2)(c) for "£346.00", "£430.00" and "£10.60" substitute "£355.00", "£440.00" and "£10.95" respectively;

(vi) in sub-paragraph (8)(a), after "income related employment and support allowance" insert "or where the non-dependent is not a member of the work-related activity group";

(vii) in sub-paragraph (9)(b) after "the Caxton Foundation" insert ", an approved blood scheme, the Scottish Infected Blood Support Scheme, the London Emergencies Trust, the We Love Manchester Emergency Fund";

(viii) at the end of sub-paragraph (9)(c) for "." substitute ";";

(ix) after sub-paragraph (9)(c) insert—

"(d) any payment made under or by a trust, established for the purpose of giving relief and assistance to disabled persons whose disabilities were caused by the fact that during their mother's pregnancy she had taken a preparation containing the drug known as Thalidomide, and which is approved by the Secretary of State.";

(b) in paragraph 10A (date on which income consisting of earnings from employment as an employed earner are taken into account: persons who are not pensioners)—

(i) in sub-paragraph (a) for "regardless of whether those earnings were actually received in that reduction week" substitute "regardless of when those earnings were actually received";

(ii) for sub-paragraphs (b) and (c) substitute—

"(b) in the case of an application or a reduction under a scheme where the applicant commences employment, the day on which the applicant commences that employment, and the first day of

each reduction week thereafter, regardless of when those earnings were actually received; or

(c) in the case of an application or reduction under a scheme where the applicant's average weekly earnings from employment change, the day on which the applicant's earnings from employment change, and the first day of each reduction week thereafter, regardless of when those earnings were actually received.";

(c) in paragraph 19(4)(a) (notional income: persons who are not pensioners), after "the Caxton Foundation" insert ", an approved blood scheme, the Scottish Infected Blood Support Scheme, the London Emergencies Trust, the We Love Manchester Emergency Fund";

(d) in paragraph 21 (treatment of child care charges)—

(i) for sub-paragraph (8)(l) substitute—

"(1) by a person who is employed, or engaged under a contract for services, to provide care and support by the provider of a domiciliary support service, within the meaning of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016; or ";

(ii) in sub-paragraph (11)(a) after "the work-related activity component" insert "or the other member would be a member of the work-related activity group";

(iii) in sub-paragraph (11)(c) after "the work-related activity component" insert "or the other member would be a member of the work-related activity group";

(e) in paragraph 27(7) (income treated as capital: persons who are not pensioners), after "the Caxton Foundation," insert "an approved blood scheme, the Scottish Infected Blood Support Scheme, the London Emergencies Trust, the We Love Manchester Emergency Fund,";

(f) in paragraph 30 (notional capital: persons who are not pensioners), in sub-paragraph (4)(a), after "the Caxton Foundation," insert "an approved blood scheme, the Scottish Infected Blood Support Scheme, the London Emergencies Trust, the We Love Manchester Emergency Fund".

10. In Schedule 7 (applicable amounts: persons who are not pensioners)—

(a) in column (2) of the Table in paragraph 1 (personal allowances)—

(i) in sub-paragraph (1) for "£73.85" in each place in which it occurs substitute "£76.10" and for "£58.50" substitute "£60.25";

(ii) in sub-paragraph (2) for "£73.85" substitute "£76.10";

(iii) in sub-paragraph (3) for "£116.00" substitute "£119.50";

(b) in paragraph 2(a) after "the applicant" insert "or the applicant is a member of the work-related activity group";

(c) in the Table in Part 4 (amounts of premiums specified in Part 3), in the second column—

(i) in sub-paragraph (1) for "£32.55" and "£46.40" substitute "£33.55" and "£47.80" respectively;

(ii) in sub-paragraph (2) for "£62.45" in each place in which it occurs substitute "£64.30" and for "£124.90" substitute "£128.60";

(iii) in sub-paragraph (3) for "£60.90" substitute "£62.86";

(iv) in sub-paragraph (4) for "£34.95" substitute "£36.00";

(v) in sub-paragraph (5) for "£24.78", "£15.90" and "£22.85" substitute "£25.48", "£16.40" and "£23.55" respectively;

(d) in Part 5 (the components), in paragraph 18(c)(ii) omit "or the work-related activity component";

(e) in Part 6 (amount of components), in paragraph 24 (amount of support component), for "£36.55" substitute "£37.65".

11. In Schedule 8 (sums disregarded in the calculation of earnings: persons who are not pensioners)—

(a) in paragraph 4(2), after "Schedule 7 (applicable amounts: persons who are not pensioners)" insert "or where the applicant or the applicant's partner is a member of the work-related activity group";

(b) in paragraph 18, in sub-paragraph (2)(b)(iv)—

(i) in paragraph (aa), for "respectively" substitute ", or the applicant or the applicant's partner is a member of the work-related activity group";

(ii) in paragraph (bb), for "and is engaged in remunerative work for on average not

less than 16 hours per week" substitute ", or at least one of the couple is a member of the work-related activity group".

12. In Schedule 9 (sums disregarded in the calculation of income other than earnings: persons who are not pensioners)—

(a) for paragraph 20(g) substitute—

"(g) a pension paid by a government to victims of National Socialist persecution.";

(b) in paragraph 41, in sub-paragraphs (1) and (7), after "the Caxton Foundation" insert ", an approved blood scheme, the Scottish Infected Blood Support Scheme, the London Emergencies Trust, the We Love Manchester Emergency Fund".

13. In Schedule 10 (capital disregards: persons who are not pensioners)—

(a) in paragraph 29—

(i) in sub-paragraph (1), after "the Caxton Foundation" insert ", an approved blood scheme, the Scottish Infected Blood Support Scheme, the London Emergencies Trust, the We Love Manchester Emergency Fund";

(ii) in sub-paragraph (7), after "the Caxton Foundation," insert "an approved blood scheme, the Scottish Infected Blood Support Scheme, the London Emergencies Trust, the We Love Manchester Emergency Fund";

(b) in paragraph 38, after "the Caxton Foundation" insert ", an approved blood scheme, the Scottish Infected Blood Support Scheme, the London Emergencies Trust, the We Love Manchester Emergency Fund";

(c) after paragraph 63 insert—

"**64.** Any payment made under or by a trust, established for the purpose of giving relief and assistance to disabled persons whose disabilities were caused by the fact that during their mother's pregnancy she had taken a preparation containing the drug known as Thalidomide, and which is approved by the Secretary of State."

14. In Schedule 13 (all applicants: matters that must be included in an authority's scheme–other matters), in paragraph 5(7)(a)(ii) (evidence and information), after "the Caxton Foundation" insert ", an approved blood scheme, the Scottish Infected Blood Support Scheme, the London Emergencies Trust, the We Love Manchester Emergency Fund".

Amendments to the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2013

15. The scheme set out in the Schedule to the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2013(**1**) is amended in accordance with regulations 16 to 33.

16. In paragraph 2 (interpretation), in sub-paragraph (1)—

(a) in the appropriate place insert—

(i) ""approved blood scheme" ("*cynllun gwaed cymeradwy*") means—

(a) a scheme established or approved by the Secretary of State, or a trust established with funds provided by the Secretary of State, for the purpose of providing compensation in respect of a person having been infected from contaminated blood products; or

(b) a scheme established under sections 1 to 3 of the National Health Service (Wales) Act 2006(**2**) and administered by Velindre Trust(**3**) for the purpose of making payments and providing support to, or in respect of, individuals infected with Hepatitis C, HIV or both, through contaminated blood or blood products used by the NHS;";

(ii) ""the London Emergencies Trust" ("*Ymddiriedolaeth Argyfyngau Llundain*") means the company of that name (number 09928465) incorporated on 23 December 2015 and the registered charity of that name (number 1172307) established on 28 March 2017;";

(iii) ""member of the work-related activity group" ("*aelod o'r grŵp gweithgaredd perthynol i waith*") means a person who has or is treated as having limited capability for work under either—

(a) Part 5 of the Employment and Support Allowance Regulations 2008 other than by virtue of regulation 30 of those Regulations; or

(b) Part 4 of the Employment and Support Allowance Regulations 2013 other than

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(**1**) S.I. 2013/3035 (W. 303), as amended by S.I. 2014/66 (W. 6), S.I. 2014/825 (W. 83), S.I. 2015/44 (W. 3), S.I. 2015/971, S.I. 2016/50 (W. 21) and S.I. 2017/46 (W. 20).

(**2**) 2006 c. 42.

(**3**) The Velindre NHS Trust was established under article 2 of the Velindre National Health Service Trust (Establishment) Order 1993 (S.I. 1993/2838, amended by S.I. 1999/826).

by virtue of regulation 26 of those Regulations;";

(iv) ""the Scottish Infected Blood Support Scheme" ("*Cynllun Cymorth Gwaed Heintiedig yr Alban*") means the scheme of that name administered by the Common Services Agency (constituted by section 10 of the National Health Service (Scotland) Act 1978);";

(v) ""the We Love Manchester Emergency Fund" ("*Cronfa Argyfwng We Love Manchester*") means the registered charity of that name (number 1173260) established on 30 May 2017;";

(b) for the definition of "care home" ("*cartref gofal*") substitute—

""care home" ("*cartref gofal*")—

(a) in England has the meaning given by section 3 of the Care Standards Act 2000;

(b) in Wales means a place at which a care home service, within the meaning of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016, is provided wholly or mainly to adults;

(c) in Scotland means a care home service within the meaning given by paragraph 2 of Schedule 12 to the Public Services Reform (Scotland) Act 2010; and

(d) in Northern Ireland means a nursing home within the meaning of article 11 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 or a residential care home within the meaning of article 10 of that Order; ";

(c) for the definition of "main phase employment and support allowance" ("*lwfans cyflogaeth a chymorth prif wedd*") substitute—

""main phase employment and support allowance ("*lwfans cyflogaeth a chymorth prif wedd*"), except in Part 1 of Schedule 3, means an employment and support allowance where—

(a) the calculation of the amount payable in respect of the applicant includes a component under section 2(1)(b) or 4(2)(b) of the Welfare Reform Act 2007; or

(b) the applicant is a member of the work-related activity group;";

(d) in the definition of "qualifying person" ("*person cymwys*"), after "the Caxton Foundation" insert ", an approved blood scheme, the Scottish Infected Blood Support Scheme, the London Emergencies Trust, the We Love Manchester Emergency Fund".

17. In paragraph 28 (non-dependant deductions: pensioners and persons who are not pensioners)—

(a) in sub-paragraph (1)(a) for "£12.70" substitute "£13.10";

(b) in sub-paragraph (1)(b) for "£4.20" substitute "£4.35";

(c) in sub-paragraph (2)(a) for "£200.00" substitute "£205.00";

(d) in sub-paragraph (2)(b) for "£200.00", "£346.00" and "£8.40" substitute "£205.00", "£355.00" and "£8.70" respectively;

(e) in sub-paragraph (2)(c) for "£346.00", "£430.00" and "£10.60" substitute "£355.00", "£440.00" and "£10.95" respectively;

(f) in sub-paragraph (8)(a) after "income-related employment and support allowance" insert "and where the non-dependant is not a member of the work- related activity group";

(g) in sub-paragraph (9)(b), after "the Caxton Foundation" insert ", an approved blood scheme, the Scottish Infected Blood Support Scheme, the London Emergencies Trust, the We Love Manchester Emergency Fund";

(h) in sub-paragraph (9)(c) for "." substitute "; and";

(i) after sub-paragraph (9)(c) insert—

"(d) any payment made under or by a trust, established for the purpose of giving relief and assistance to disabled persons whose disabilities were caused by the fact that during their mother's pregnancy she had taken a preparation containing the drug known as Thalidomide, and which is approved by the Secretary of State."

18. In paragraph 36(1) (meaning of "income": pensioners)—

(a) for paragraph (j)(xiii) substitute—

"(xiii) bereavement support payment under section 30 of the Pensions Act 2014;";

(b) for paragraph (m) substitute—

"(m) a pension paid by a government to victims of National Socialist persecution;".

19. In paragraph 37 (calculation of weekly income: pensioners)—

(a) in sub-paragraph (3A)—

(i) in paragraph (a) for "regardless of whether those earnings were actually received in that reduction week" substitute "regardless of when those earnings were actually received";

(ii) for paragraphs (b) and (c) substitute—

"(b) in the case of an application or a reduction under a scheme where the applicant commences employment, the day on which the applicant commences that employment, and the first day of each reduction week thereafter, regardless of when those earnings were actually received; or

(c) in the case of an application or a reduction under a scheme where the applicant's average weekly earnings from employment change, the day on which the applicant's earnings from employment change, so as to require recalculation under this paragraph, and the first day of each reduction week thereafter, regardless of when those earnings were actually received.";

(b) in sub-paragraph (4A)—

(i) in paragraph (a) for "regardless of whether those earnings were actually received in that reduction week" substitute "regardless of when those earnings were actually received";

(ii) for paragraphs (b) and (c) substitute—

"(b) in the case of an application or a reduction under a scheme where the applicant commences employment, the day on which the applicant commences that employment, and the first day of each reduction week thereafter, regardless of when those earnings were actually received; or

(c) in the case of an application or a reduction under a scheme where the applicant's average weekly earnings from employment change, the day on which the applicant's earnings from employment change and the first day of each reduction week thereafter, regardless of when those earnings were actually received."

20. For paragraph 44A (date on which income consisting of earnings from employment as an

employed earner are taken into account: persons who are not pensioners) substitute—

"Date on which income consisting of earnings from employment as an employed earner are taken into account: persons who are not pensioners

44A. An applicant's average weekly earnings from employment estimated pursuant to paragraph 44 (average weekly earnings of employed earners: persons who are not pensioners) must be taken into account—

(a) in the case of an application, on the date on which the application was made or treated as made, and the first day of each reduction week thereafter, regardless of when those earnings were actually received;

(b) in the case of an application or a reduction under a scheme where the applicant commences employment, the day on which the applicant commences that employment and the first day of the reduction week thereafter, regardless of when those earnings were actually received; or

(c) in the case of an application or reduction under a scheme where the applicant's average weekly earnings from employment change, the day on which the applicant's earnings from employment change and the first day of each reduction week thereafter, regardless of when those earnings were actually received."

21. In paragraph 53 (notional income: persons who are not pensioners), in sub-paragraph (4)(a), after "the Caxton Foundation" insert ", an approved blood scheme, the Scottish Infected Blood Support Scheme, the London Emergencies Trust, the We Love Manchester Emergency Fund ".

22. In paragraph 55 (treatment of child care charges)—

(a) for sub-paragraph (8)(l) substitute—

"(1) by a person who is employed, or engaged under a contract for services, to provide care and support by the provider of a domiciliary support service, within the meaning of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016; or";

(b) in sub-paragraph (11)(c), after "the work-related activity component" insert "or the

other member would be a member of the work-related activity group";

(c) in sub-paragraph (11)(e), after "work related activity component" insert "or the other member of the couple would be a member of the work-related activity group".

23. In each of the following provisions, after "the Caxton Foundation" insert, ", an approved blood scheme, the Scottish Infected Blood Support Scheme, the London Emergencies Trust, the We Love Manchester Emergency Fund"—

(a) paragraph 61(7) (income treated as capital: persons who are not pensioners);

(b) paragraph 64(6)(a) (notional capital);

(c) paragraph 111(7)(a)(ii) (evidence and information).

24. In Schedule 2 (applicable amounts: pensioners)—

(a) in column (2) of the Table in paragraph 1 (personal allowances)—

(i) in sub-paragraph (1) for "£159.35" and "£172.55" substitute "£163.00" and "£176.40" respectively;

(ii) in sub-paragraph (2) for "£243.25" and "£258.15" substitute "£248.80" and "£263.80" respectively;

(iii) in sub-paragraph (3) for "£243.25" and "£83.90" substitute "£248.80" and "£85.80" respectively;

(iv) in sub-paragraph (4) for "£258.15" and "£85.60" substitute "£263.80" and "£87.40" respectively;

(b) in the Table in Part 4 (amounts of premiums specified in Part 3), in the second column—

(i) in sub-paragraph (1) for "£62.45" in each place in which it occurs substitute "£64.30" and for "£124.90" substitute "£128.60";

(ii) in sub-paragraph (2) for "£24.78" substitute "£25.48";

(iii) in sub-paragraph (3) for "£60.90" substitute "£62.86";

(iv) in sub-paragraph (4) for "£34.95" substitute "£36.00".

25. In Schedule 3 (applicable amounts: persons who are not pensioners)—

(a) In column (2) of the Table in paragraph 1 (personal allowances)—

(i) in sub-paragraph (1) for "£73.85" in each place in which it occurs substitute

"£76.10" and for "£58.50" substitute "£60.25";

(ii) in sub-paragraph (2) for "£73.85" substitute "£76.10";

(iii) in sub-paragraph (3) for "£116.00" substitute "£119.50";

(b) in paragraph 2(a) after "the applicant" insert "or the applicant is a member of the work-related activity group";

(c) in the Table in Part 4 (amount of premiums specified in Part 3), in the second column—

(i) in sub-paragraph (1) for "£32.55" and "£46.40" substitute "£33.55" and "£47.80" respectively;

(ii) in sub-paragraph (2) for "£62.45" in each place in which it occurs substitute "£64.30" and for "£124.90" substitute "£128.60";

(iii) in sub-paragraph (3) for "£60.90" substitute "£62.86";

(iv) in sub-paragraph (4) for "£34.95" substitute "£36.00";

(v) in sub-paragraph (5) for "£24.78", "£15.90" and "£22.85" substitute "£25.48", "£16.40" and "£23.55" respectively;

(d) in Part 5 (the components), in paragraph 18(c)(ii), omit "or the work related activity component";

(e) in Part 6 (amount of components), in paragraph 24 (amount of support component), for "£36.55" substitute "£37.65".

26. In Schedule 4 (sums disregarded from applicant's earnings: pensioners), in paragraph 5(1)(d)(ii) for "or the work-related activity component arising" substitute "arises".

27. In Schedule 5 (amounts to be disregarded in the calculation of income other than earnings: pensioners), for paragraph 1(g) substitute—

"(g) a pension paid by a government to victims of National Socialist persecution."

28. In Schedule 6 (sums disregarded in the calculation of earnings: persons who are not pensioners)—

(a) in paragraph 4(2), after "Schedule 3 (applicable amounts: persons who are not pensioners)" insert "or where the applicant or the applicant's partner is a member of the work-related activity group";

(b) in paragraph 18, in sub-paragraph (2)(b)(iv)—

(i) in paragraph (aa), for "respectively" substitute ", or the applicant or the applicant's partner is a member of the work-related activity group";

(ii) in paragraph (bb), for "and is engaged in remunerative work for on average not less than 16 hours per week" substitute "or at least one of the couple is a member of the work-related activity group".

29. In Schedule 7 (sums disregarded in the calculation of income other than earnings: persons who are not pensioners)—

(a) for paragraph 20(g) substitute—

"(g) a pension paid by a government to victims of National Socialist persecution.";

(b) in paragraph 41(1) and (7), after "the Caxton Foundation" insert ", an approved blood scheme, the Scottish Infected Blood Support Scheme, the London Emergencies Trust, the We Love Manchester Emergency Fund".

30. In Schedule 8 (capital disregards: pensioners)—

(a) in paragraph 16(1)(a), after "the Caxton Foundation," insert "an approved blood scheme, the Scottish Infected Blood Support Scheme, the London Emergencies Trust, the We Love Manchester Emergency Fund";

(b) after paragraph 28A insert—

"**28B.** Any payment made under or by a trust, established for the purpose of giving relief and assistance to disabled persons whose disabilities were caused by the fact that during their mother's pregnancy she had taken a preparation containing the drug known as Thalidomide, and which is approved by the Secretary of State."

31. In Schedule 9 (capital disregards: persons who are not pensioners)—

(a) in paragraph 29(1) after "the Caxton Foundation" insert ", an approved blood scheme, the Scottish Infected Blood Support Scheme, the London Emergencies Trust, the We Love Manchester Emergency Fund";

(b) in paragraph 29(8) after "the Caxton Foundation," insert "an approved blood scheme, the Scottish Infected Blood Support Scheme, the London Emergencies Trust, the We Love Manchester Emergency Fund";

(c) in paragraph 38 after "the Caxton Foundation" insert ", an approved blood scheme, the Scottish Infected Blood Support Scheme, the London Emergencies Trust, the We Love Manchester Emergency Fund";

(d) after paragraph 63 insert—

"**64.** Any payment made under or by a trust, established for the purpose of giving relief and assistance to disabled persons whose disabilities were caused by the fact that during their mother's pregnancy she had taken a preparation containing the drug known as Thalidomide, and which is approved by the Secretary of State."

Cabinet Secretary for Finance, one of the Welsh Ministers
Date

Explanatory Memorandum to the Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2018.

This Explanatory Memorandum has been prepared by Local Government Strategic Finance Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2018. I am satisfied that the benefits outweigh any costs.

Mark Drakeford
Cabinet Secretary for Finance
27 November 2017

Description

1. Council Tax Reduction Schemes (CTRS) are the mechanism through which local authorities provide support to low income households in meeting their council tax liability.

2. This statutory instrument makes amendments to both the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013 and the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2013 (referred to collectively in this Explanatory Memorandum as "the 2013 CTRS Regulations"). It uprates certain figures used to calculate an applicant's entitlement to a reduction under a Council Tax Reduction Scheme, and the subsequent level of reduction.

3. This instrument also makes consequential amendments as a result of changes to the wider welfare and tax system.

Matters of special interest to the Constitutional and Legislative Affairs Committee

4. None.

Legislative background

5. Section 10 of, and Schedule 4 to, the Local Government Finance Act 2012 inserted a new Section 13A and new Schedule 1B into the Local Government Finance Act 1992 ("the 1992 Act"). These provisions enabled the Welsh Ministers to introduce Council Tax Reduction Schemes ("CTRS") in Wales via regulations.

6. The relevant provisions in the Local Government Finance Act 2012 were subject to a Legislative Consent Motion which was approved by the National Assembly for Wales on 26 June 2012. The Local Government Finance Act 2012 received Royal Assent on 1 November 2012.

7. This statutory instrument is laid and made under the new section 13A of, and the new Schedule 1B to, the Local Government Finance Act 1992. The instrument is subject to approval of the Assembly (the affirmative procedure).

Purpose and intended effect of the legislation

8. This statutory instrument amends the 2013 CTRS Regulations to uprate certain figures used within those Regulations to calculate entitlement to a council tax reduction, and the amount of any reduction awarded to applicants in the 2018-19 financial year. It also makes a number of consequential and technical amendments to the 2013 CTRS Regulations to take account of related welfare benefits and ensure they remain fit for purpose.

Background

9. The Welfare Reform Act 2012 contained provisions to abolish Council Tax Benefit from 31 March 2013. From 1 April 2013, responsibility for providing support for council tax devolved to local authorities in England. Fixed funding, reduced by 10% compared to 2012-13 costs, was passed to the Welsh Government and to the Scottish Government to allow the Devolved Administrations to develop replacement schemes.

10. Following the UK Government's decision, the Welsh Government sought provisions in the Local Government Finance Act 2012 which amended the Local Government Finance Act 1992 ("the 1992 Act"), to provide the Welsh Ministers with executive powers to introduce Council Tax Reduction Schemes in Wales via regulations.

11. The 2013 CTRS Regulations were approved by the National Assembly for Wales on 26 November 2013.

12. The Welsh Government provided £244m in the Local Government Settlement for CTRS for 2013-14. This was partly funded through the fixed budget of £222m which was transferred from the UK Government. The Welsh Government provided an additional £22m to enable local authorities to continue to provide all eligible applicants with their full entitlement to support. The Welsh Government has continued to provide £244m within the local government settlement each year since.

2013 CTRS Regulations

13. Aligned with the provisions in the 1992 Act, the 2013 CTRS Regulations govern the operation of CTRS in Wales. These regulations were closely based on the previous Council Tax Benefit rules and all eligible applicants were automatically transferred from Council Tax Benefit onto Council Tax Reduction Schemes from 1 April 2013.

14. If an applicant receives Income Support, Income Based JSA, Income Based ESA, Pension Credit, or Pension Credit Guarantee, they are entitled to the maximum reduction in their council tax liability. Approximately 70% of CTRS applicants in Wales receive the passported benefits.

15. If an applicant does not receive any of the passported benefits, the weekly amount of money which they are judged to need to live on is calculated. This is known as the 'applicable amount' and consists of two components:

    - The first is the personal allowance – the basic amount a person needs to live, which varies according to the household's circumstances. For example, the allowance for a couple with children is higher than for a single person without children. These allowances are also set at higher rates for those who have reached State Pension Age.

- The second component is the premium – additional amounts added to reflect any personal circumstances which increase the cost of living, such as a disability or carer's responsibilities. Once the applicable amount has been determined, the applicant's level of income is calculated.

16. Universal Credit (UC) recipients are treated in a similar way as non-passported applicants. However, instead of an 'applicable amount' being calculated, the 'maximum amount' (calculated within their UC application) is used instead.

17. If the applicable amount (or maximum amount) is higher than an applicant's calculated income, they are entitled to the maximum reduction in their council tax liability. If income exceeds the applicable amount, the weekly entitlement is reduced by 20p for each £1 of excess weekly income, until entitlement is withdrawn – this is known as the taper.

18. Adjustments can be made to the maximum amount of reduction a person can receive to take account of adults living in the dwelling who are not dependants of the applicant and who are therefore assumed to make a financial contribution to the household (non-dependant deductions).

19. Adjustments can also be made to take into account of savings. If an applicant has capital of £6,000 (or £10,000 for pension age claimants) or less, this will be ignored when working out whether they are entitled to CTR.

20. If a working age applicant has capital of between £6,000 and £10,000, the local authority will treat it as income. This is known as tariff income. The local authority will assume an applicant has an income of £1 a week for each £500 of capital between £6,000 and £10,000. This will be added to other income to work out whether an applicant is entitled to CTR and how much they are entitled to.

<u>Uprating figures for 2018-19</u>

21. This statutory instrument amends the 2013 CTRS Regulations to uprate financial figures used to calculate entitlement to a reduction in line with Welsh Government policy.

22. The statutory instrument seeks to uprate a number of other figures included in the 2013 CTRS Regulations. These include:

- <u>Personal allowances in relation to working age, and carer and disabled premiums</u>
  The financial figures in respect of these allowances have been amended and have increased in line with the cost of living rises. The convention is to uprate in line with the Consumer Price Index September figure from the previous year (2017), which is 3.0%.

- <u>Personal allowances in relation to pensioners</u>
  The financial figures in respect of pensioner rates have been amended and are aligned with Housing Benefit. These have been calculated with

assistance from the Department of Work and Pensions following the Chancellor's Autumn Budget 2017 and have been uprated by different mechanisms. For example, the Pension Credit standard minimum guarantee is uprated by earnings, whereas the Additional Pension and increments are uprated by prices.

- Non-dependant deductions
  The financial figures in relation to both the income bands and deductions made in relation to 'non-dependants' will be uprated. If amendments are not made, appropriate deductions would not be made from CTRS awards as the income thresholds would no longer reflect average earnings and the deduction would no longer reflect the overall cost of council tax.

Additional Consequential Amendments

23. In addition to the uprating of financial figures, this statutory instrument makes a number of consequential amendments to the 2013 CTRS Regulations. These will ensure the 2013 Regulations remain up-to-date and fit for purpose.

Changes to Employment Support Allowance (ESA)

24. ESA is an income-replacement benefit for people of working age and is currently the main income-replacement benefit for those who cannot work because of a health condition or disability. Universal Credit provides a new single system of means-tested support for people of working age who are either in or out of work. UC is gradually replacing income-related ESA as it is rolled out and becoming available in an increasing number of areas across Great Britain.

25. In the Summer Budget 2015, it was announced that the Work-Related Activity Component paid to those in the ESA (Work Related Activity Group) (WRAG) would be abolished for new claims from 3 April 2017. The equivalent element in Universal Credit will also be abolished. However, there will be some ESA cases after April which will continue to have access to the Work-Related Activity Component.

26. This statutory instrument will make consequential textual amendments to largely mirror changes made to the benefit system to the 2013 CTRS Regulations whilst maintaining reference to the Work-Related Activity Component which will continue to be payable to some applicants . This will ensure the 2013 CTRS Regulations remain up-to-date.

The Regulation and Inspection of Social Care (Wales) Act 2016

27. In April 2018, Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 will be commenced for certain purposes. Part 1 of the Act will replace the regime for the regulation and inspection of social care settings in Wales. When fully implemented, these provisions will replace the regulation of social care establishments and agencies under the Care Standards Act 2000.

28. Part 1 of the 2016 Act will be commenced in respect of the following settings from April 2018:
    - A care home service;
    - A secure accommodation service;
    - A residential family service; and
    - A domiciliary support service.

29. This statutory instrument makes consequential changes to the 2013 CTRS Regulations to reflect the new services provision.

Change of Circumstances

30. Last year, consequential changes were made to the 2013 CTRS Regulations via the Council Tax Reduction Scheme (Prescribed Requirements and Default) Regulations 2017 to reflect an Upper Tribunal decision. The Tribunal found that, unless legislation provided otherwise, a person's earnings should only be attributed to them over the period following their receipt, rather than over the period for which they were earned. Amendments were made to the 2013 CTRS Regulations to address this and to enable earnings to be attributed to applicants over the period for which they were earned.

31. An anomaly has been identified in the wording of the amending provisions and their interaction with the change of circumstances provisions in the 2013 CTRS Regulations and this statutory instrument amends that anomaly.

Changes to income and capital disregards

32. A number of payments are disregarded for the purposes of calculating 'income' and/or 'capital'. This statutory instrument will ensure these references in the 2013 Regulations remain up-to-date for 2018-19.

Bereavement Support Payments

33. If a persons' husband, wife or civil partner died before 6 April 2017, they would have been entitled to a Bereavement Payment or bereavement allowance. These payments are disregarded when calculating 'income' and 'capital' within the CTRS means test.

34. A new social security benefit called Bereavement Support Payment has been introduced for surviving spouses and civil partners who are widowed after April 2017. This statutory instrument will ensure changes are made to the 2013 CTRS Regulations to ensure these payments are not included in the list of capital and income disregards in respect of CTRS entitlement.

Manchester attack and compensation disregard and London Emergencies Trust

35. In 2017, two charitable funds were created to help victims of terrorist attacks:
    - We Love Manchester Emergency Fund; and
    - London Emergencies Trust.

36. This statutory instrument will ensure changes are made to the 2013 CTRS Regulations to ensure these payments are included in the list of income and capital disregards in calculating a person's entitlement to a council tax reduction.

Approved blood scheme (England), Scottish Infected Blood Support Scheme (Scotland) and Welsh Infected Blood Scheme (Wales).

37. Until recently, a UK-wide scheme provided financial support to people infected with HIV and/or hepatitis C following NHS treatment with contaminated blood in the 1970's and 80's. That scheme was administered by five individual bodies contracted by the Department of Health (the Skipton Fund, the Caxton Foundation, the Macfarlane Trust, the Eileen Trust and MFET Ltd). The scheme has been replaced in England by an approved blood scheme (schemes approved by the Secretary of State); in Scotland, by the Scottish Infected Blood Support Scheme; and in Wales, by the Welsh Infected Blood Scheme. Payments made from those schemes are exempt from tax and are not included in HMRC or DWP calculations for tax liability or benefits purposes.

38. This statutory instrument makes the changes to the 2013 CTRS Regulations so as to ensure that payments made from each of the above schemes are disregarded in the calculation of income or capital for the purpose of assessing a person's entitlement to a council tax reduction.

National Socialist Persecution payments

39. Currently, payments made to victims of National Socialist persecution by the Governments of Germany and Austria have a weekly £10 disregard applied from a number of UK welfare benefits, including CTRS in Wales. However, similar payments made by other governments are taken into account in full.

40. Following a Housing Benefit appeal, an Upper Tribunal held that payments made to victims of National Socialist persecution by the Netherlands Government should be treated in the same way as payments made by the Austrian and German Governments.

41. This statutory instrument makes necessary changes to the 2013 CTRS Regulations to ensure these payments are included in the list of income and capital disregards in respect of CTRS entitlement.

Thalidomide Health Grant

42. The Thalidomide Trust administers the Thalidomide Health Grant on behalf of the Department of Health. Payments from the Trust are intended to assist with meeting health-related costs of people whose disabilities were caused by Thalidomide use.

43. This statutory instrument amends the 2013 Regulations to make provision that such payments are to be disregarded in the calculation of capital for the

purposes of assessing a person's entitlement to a council tax reduction and when determining the income of non-dependants.

Regulatory Impact Assessment (RIA)

Options

Option 1 – Do nothing

44. If the financial figures used to assess the eligibility of households' allowances within the Council Tax Reduction means test remained static, the criteria used will be slightly less generous for non-passported applicants and lead to a small decrease in support in real terms.

45. The financial figures used to assess the eligibility of households with non-dependants would be out-of-date. The income thresholds would no longer reflect average earnings and the adjustment made to the final council tax reduction would no longer reflect overall cost of council tax.

46. It would also mean that consequential amendments would not be made to the 2013 CTRS Regulations to take account of changes to related welfare benefits and other legislation. This could disadvantage some applicants by reducing or stopping their entitlement to support and could also create confusion for applicants and increase the administrative burden for local authorities and advice providers.

Option 2 – Make amending Regulations

47. This option would mean that amendments would be made to uprate the financial figures in the 2013 CTRS Regulations according to Welsh Government policy.

48. The financial figures in relation to working age, disability or carer rates will continue to increase with the cost of living (3.0%, as measured by CPI) for 2018-19. The personal allowances for pensioners will be uprated to align with those for Housing Benefit and the benefit system. The increase would be aligned to the UK Government's Standard Minimum Guarantee and Savings Credit.

49. The financial figures used to calculate the adjustment for non-dependant deductions would be uprated. The income thresholds in relation to non-dependants would be uprated to reflect average earnings and the non-dependant deduction from CTRS would reflect the average increase in council tax.

50. In addition, consequential and technical amendments will be made to reflect wider welfare changes made by the UK Government. This ensures Council Tax Reduction Schemes reflect changes to interrelated social security benefits which often determine entitlement to a reduction.

Costs and Benefits

Costs

Option 1 – Do nothing

51. If the financial figures for working age and pensioner allowances do not increase with the cost of living (as measured by CPI) the CTRS recipients affected would be slightly worse off in real terms.

52. The financial figures used to assess the eligibility of households with non-dependants would also be out-of-date. The calculation would no longer make a fair assessment of the income of non-dependants or the overall cost of council tax. There is a risk that this aspect of the scheme would be viewed as unfair or inequitable.

53. If the technical and consequential amendments to the 2013 CTRS Regulations are not made, they would no longer align with Housing Benefit provisions or other related benefits. It would lead to references being out of sync with the overall benefits system and could disadvantage certain applicants by reducing their entitlement to support. This could potentially lead to additional administrative burden on local authorities and advice providers. It may also lead to confusion for some applicants who, as a result, could be treated significantly differently under benefit schemes.

Benefits

54. Not uprating pensioner and working age figures would help to limit any increases in total reductions under Council Tax Reduction Schemes. However not uprating figures in relation to non-dependant deductions, would result in council tax reductions for relevant households being higher than they otherwise would be.

Option 2 – Make amending Regulations

Costs

55. Uprating the financial figures in respect of pensioners and working age allowances would slightly increase total reductions under Council Tax Reduction Schemes. However, if the financial figures in relation to Non-Dependant Deductions were also uprated, this would mitigate some of the increase in total reductions. Consequently, total council tax reductions are not expected to rise significantly as a result of the uprating.

Benefits

56. Uprating the financial figures in the 2013 CTRS Regulations will ensure that the personal allowance for working age applicants continues to increase in line

with the CPI (which is set at 3.0%). For example in 2018-19, the single person allowance would increase from £73.85 to £76.10 (an increase of £2.25).

57. Uprating the financial figures in respect of the personal allowance for pensioners continues to increase in line with the standard minimum guarantee and savings credit. For example in 2018-19, the single person allowance would increase from £172.55 to £176.45 (an increase of £3.90).

58. If the financial figures in relation to non-dependant deduction rates are uprated, this will ensure the calculation used to assess the eligibility of non-dependant households remains up-to-date. The calculation would continue to make a fair assessment of the income of non-dependants and the cost of council tax. This will ensure the system remains fair and equitable.

59. As part of these Regulations, consequential and technical amendments are made that are associated with wider welfare changes made by the UK government. This will ensure Council Tax Reduction Schemes reflect changes made to interrelated social security benefits which often determine entitlement to a reduction. It will also avoid any additional administrative burden for local authorities or advice providers.

Sectors

60. Local government and the voluntary sector were consulted during the development of proposals to introduce Council Tax Reduction Schemes in Wales.

61. This legislation will not affect the business sector.

Duties

62. In drafting these Regulations consideration has been given to the duty on Welsh Ministers to promote equality and eliminate discrimination.

63. An Equality Impact Assessment was completed for the introduction of the 2013 CTRS Regulations.

64. This statutory instrument is provided bilingually. Council Tax Reduction Schemes are implemented and operated by local authorities who are under general duties to comply with Welsh language and sustainable development duties.

65. Further consideration has been given as to whether CTRS could be used to improve the opportunities of persons to use the Welsh language treating the Welsh language no less favourably than the English language. As the sole purpose of CTRS is to provide support to low-income households in meeting their council tax liability, it is considered there are no such opportunities.

66. The policy supports the principles within the Well-being of Future Generations (Wales) Act 2015. Maintaining full entitlement to CTRS will continue to help

low income households in meeting their council tax liability and as such will help to contribute to the wellbeing objectives of: a prosperous Wales; and a more equal Wales.

Competition Assessment

67. This has been scored against the competition filter test which indicated that there will be no detrimental effect on competition.

Consultation

68. No consultation has been undertaken in respect of this statutory instrument. The 2013 CTRS Regulations were consulted upon and details are provided in the Regulatory Impact Assessments accompanying those Regulations.

Post implementation review

69. Amendments are required on an annual basis to uprate the financial figures used to calculate entitlement to a reduction. This provides an opportunity to review the legislation.

SL(5)155 - The Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2018

Background and Purpose

Council Tax Reduction Schemes (CTRS) are the mechanism through which local authorities provide support to low income households in meeting their council tax liability.

These Regulations make amendments to both the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013 and the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2013. These Regulations uprate certain figures used to calculate an applicant's entitlement to a reduction under a CTRS, and the subsequent level of reduction.

These Regulations also makes consequential amendments as a result of changes to the wider welfare and tax system.

Procedure

Affirmative.

Technical Scrutiny

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

Merits Scrutiny

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

These Regulations make very technical and detailed changes to CTRS subordinate legislation. The Committee notes and appreciates that the Explanatory Memorandum and Explanatory Note accompanying these Regulations provide a very clear and very helpful summary of the technical and detailed changes being made.

Implications arising from exiting the European Union

None.

Government Response

No government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
29 November 2017

OFFERYNNAU STATUDOL CYMRU

WELSH STATUTORY INSTRUMENTS

2017 Rhif 1106 (Cy. 280)

CYNRYCHIOLAETH Y BOBL, CYMRU

Gorchymyn Cynulliad Cenedlaethol Cymru (Taliadau Swyddogion Canlyniadau) (Diwygio) 2017

NODYN ESBONIADOL

(Nid yw'r nodyn hwn yn rhan o'r Gorchymyn)

Mae'r Gorchymyn hwn yn darparu ar gyfer taliadau am wasanaethau a threuliau swyddogion canlyniadau mewn cysylltiad â chynnal etholiadau Cynulliad Cenedlaethol Cymru.

Mae'r Gorchymyn hwn yn diwygio Gorchymyn Cynulliad Cenedlaethol Cymru (Taliadau Swyddogion Canlyniadau) 2016 (O.S. 2016/417 (Cy. 133)) ("Gorchymyn 2016"). Fe'i gwneir o dan erthygl 23 o Orchymyn Cynulliad Cenedlaethol Cymru (Cynrychiolaeth y Bobl) 2007 (O.S. 2007/236). Mae erthygl 23 yn darparu bod hawl gan swyddog canlyniadau etholaeth neu swyddog canlyniadau rhanbarthol i adennill taliadau mewn perthynas â gwasanaethau a ddarparwyd neu dreuliau yr aed iddynt mewn cysylltiad ag etholiad Cynulliad.

Mae erthygl 3(2) yn diwygio erthygl 2 o Orchymyn 2016 drwy ddileu'r diffiniad o "etholiad comisiynydd heddlu a throseddu".

Mae erthygl 3(3) yn diwygio erthyglau 4, 5(1), 6(1), 7, 8(1) a 9(1) o Orchymyn 2016 drwy ddileu cyfeiriadau at etholiadau Comisiynwyr Heddlu a Throseddu (cyfeirir atynt yng Ngorchymyn 2016 fel etholiad comisiynydd heddlu a throseddu).

Fel y'i diwygiwyd, mae erthygl 4 o Orchymyn 2016 yn pennu mai'r cyfanswm cyffredinol mwyaf sy'n adenilladwy am etholiad etholaeth Cynulliad a ymleddir yw'r hyn a ddangosir yng ngholofn 4 y tabl yn Atodlen 1 i'r Gorchymyn hwnnw.

2017 No. 1106 (W. 280)

REPRESENTATION OF THE PEOPLE, WALES

The National Assembly for Wales (Returning Officers' Charges) (Amendment) Order 2017

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for payments for services and expenses of returning officers in connection with the conduct of National Assembly for Wales elections.

This Order amends the National Assembly for Wales (Returning Officers' Charges) Order 2016 (S.I. 2016/417 (W. 133)) ("the 2016 Order"). It is made under article 23 of the National Assembly for Wales (Representation of the People) Order 2007 (S.I. 2007/236). Article 23 provides that a constituency or a regional returning officer is entitled to recover charges in respect of services rendered or expenses incurred in connection with an Assembly election.

Article 3(2) amends article 2 of the 2016 Order by removing the definition of "PCC election".

Article 3(3) amends articles 4, 5(1), 6(1), 7, 8(1) and 9(1) of the 2016 Order by removing references to Police and Crime Commissioner elections (referred to in the 2016 Order as a PCC election).

As amended, article 4 of the 2016 Order specifies that the overall maximum recoverable amount for a contested Assembly constituency election is as shown in column 4 of the table in Schedule 1 to that Order.

Fel y'i diwygiwyd, mae erthygl 5 o Orchymyn 2016 yn pennu mai'r cyfanswm mwyaf sy'n adenilladwy am wasanaethau mewn etholiad etholaeth Cynulliad a ymleddir yw'r hyn a ddangosir yng ngholofn 2 y tabl yn Atodlen 1 i'r Gorchymyn hwnnw.

As amended, article 5 of the 2016 Order specifies that the maximum recoverable amount for services at a contested Assembly constituency election is as shown in column 2 of the table in Schedule 1 to that Order.

Fel y'i diwygiwyd, mae erthygl 6 o Orchymyn 2016 yn pennu mai'r cyfanswm mwyaf sy'n adenilladwy am dreuliau mewn etholiad etholaeth Cynulliad a ymleddir yw'r hyn a ddangosir yng ngholofn 3 y tabl yn Atodlen 1 i'r Gorchymyn hwnnw.

As amended, article 6 of the 2016 Order specifies that the maximum recoverable amount for expenses at a contested Assembly constituency election is as shown in column 3 of the table in Schedule 1 to that Order.

Fel y'i diwygiwyd, mae erthygl 7 o Orchymyn 2016 yn pennu mai'r cyfanswm cyffredinol mwyaf sy'n adenilladwy am etholiad rhanbarthol y Cynulliad a ymleddir yw'r hyn a ddangosir yng ngholofn 4 y tabl yn Atodlen 2 i'r Gorchymyn hwnnw.

As amended, article 7 of the 2016 Order specifies that the overall maximum recoverable amount for a contested Assembly regional election is as shown in column 4 of the table in Schedule 2 to that Order.

Fel y'i diwygiwyd, mae erthygl 8 o Orchymyn 2016 yn pennu mai'r cyfanswm mwyaf sy'n adenilladwy am wasanaethau mewn etholiad rhanbarthol y Cynulliad a ymleddir yw'r hyn a ddangosir yng ngholofn 2 y tabl yn Atodlen 2 i'r Gorchymyn hwnnw.

As amended, article 8 of the 2016 Order specifies that the maximum recoverable amount for services at a contested Assembly regional election is as shown in column 2 of the table in Schedule 2 to that Order.

Fel y'i diwygiwyd, mae erthygl 9 o Orchymyn 2016 yn pennu mai'r cyfanswm mwyaf sy'n adenilladwy am dreuliau mewn etholiad rhanbarthol y Cynulliad a ymleddir yw'r hyn a ddangosir yng ngholofn 3 y tabl yn Atodlen 2 i'r Gorchymyn hwnnw.

As amended, article 9 of the 2016 Order specifies that the maximum recoverable amount for expenses at a contested Assembly regional election is as shown in column 3 of the table in Schedule 2 to that Order.

Mae erthygl 3(3) o'r Gorchymyn hwn hefyd yn dileu'r cyfeiriadau at etholiadau Comisiynwyr Heddlu a Throseddu ym mhenawdau erthyglau 4, 5, 6, 7, 8 a 9 o Orchymyn 2016 ac Atodlen 2 iddo.

Article 3(3) of this Order also removes the references to Police and Crime Commissioner elections from the headings to articles 4, 5, 6, 7, 8 and 9 of, and Schedule 2 to, the 2016 Order.

Mae erthygl 3(4) yn amnewid Atodlen 1 i Orchymyn 2016. Mae'r tabl yn Atodlen 1 sydd wedi ei hamnewid yn rhestru'r cyfanswm cyffredinol mwyaf (colofn 4), a'r cyfansymiau mwyaf am wasanaethau (colofn 2) ac am dreuliau (colofn 3), sy'n adenilladwy gan swyddog canlyniadau etholaethol am etholiad a ymleddir i Gynulliad Cenedlaethol Cymru, neu mewn cysylltiad ag etholiad o'r fath.

Article 3(4) substitutes Schedule 1 to the 2016 Order. The table contained at substituted Schedule 1 lists the overall maximum recoverable amount (column 4), and the maximum recoverable amounts for services (column 2) and expenses (column 3), by a constituency returning officer for, or in connection with, a contested election to the National Assembly for Wales.

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar gynnal Asesiadau Effaith Rheoleiddiol mewn perthynas â'r Gorchymyn hwn. O ganlyniad, ystyriwyd nad oedd yn angenrheidiol cynnal asesiad effaith rheoleiddiol o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Gorchymyn hwn.

The Welsh Ministers' Code of Practice in the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with this Order.

2017 Rhif 1106 (Cy. 280)

CYNRYCHIOLAETH Y BOBL, CYMRU

Gorchymyn Cynulliad Cenedlaethol Cymru (Taliadau Swyddogion Canlyniadau) (Diwygio) 2017

Gwnaed *15 Tachwedd 2017*

Yn dod i rym yn unol ag erthygl 1(2)

Mae Gweinidogion Cymru, drwy arfer y pwerau a roddir i Gynulliad Cenedlaethol Cymru gan erthygl 23 o Orchymyn Cynulliad Cenedlaethol Cymru (Cynrychiolaeth y Bobl) 2007(**1**) ac a freiniwyd bellach ynddynt hwy(**2**), yn gwneud y Gorchymyn a ganlyn—

Enwi, cychwyn a chymhwyso

1.—(1) Enw'r Gorchymyn hwn yw Gorchymyn Cynulliad Cenedlaethol Cymru (Taliadau Swyddogion Canlyniadau) (Diwygio) 2017.

(2) Daw'r Gorchymyn hwn i rym drannoeth y diwrnod y'i gwneir.

(3) Mae'r Gorchymyn hwn yn gymwys o ran Cymru.

Dehongli

2. Yn y Gorchymyn hwn mae "etholaeth Cynulliad" ("*Assembly constituency*") i'w ddehongli yn unol ag adran 2 o Ddeddf Llywodraeth Cymru 2006(**3**).

(**1**) O.S. 2007/236.
(**2**) Yn rhinwedd adran 162 o Ddeddf Llywodraeth Cymru 2006 (p. 32), a pharagraff 30 o Atodlen 11 iddi, trosglwyddwyd pwerau Cynulliad Cenedlaethol Cymru i Weinidogion Cymru.
(**3**) 2006 p. 32. Diwygiwyd adran 2 gan Ddeddf Pleidleisio Seneddol ac Etholaethau 2011 (p. 1); adrannau 13(1), 13(2)(a) ac 16 o'r Ddeddf honno, a Rhan 2 o Atodlen 12 iddi.

2017 No. 1106 (W. 280)

REPRESENTATION OF THE PEOPLE, WALES

The National Assembly for Wales (Returning Officers' Charges) (Amendment) Order 2017

Made *15 November 2017*

Coming into force in accordance with article 1(2)

The Welsh Ministers, in exercise of the powers conferred on the National Assembly for Wales by article 23 of the National Assembly for Wales (Representation of the People) Order 2007(**1**) and now vested in them(**2**), make the following Order—

Title, commencement and application

1.—(1) The title of this Order is the National Assembly for Wales (Returning Officers' Charges) (Amendment) Order 2017.

(2) This Order comes into force the day after the day on which it is made.

(3) The Order applies in relation to Wales.

Interpretation

2. In this Order "Assembly constituency" ("*etholaeth Cynulliad*") is to be construed in accordance with section 2 of the Government of Wales Act 2006(**3**).

(**1**) S.I. 2007/236.
(**2**) By virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32) the powers of the National Assembly for Wales were transferred to the Welsh Ministers.
(**3**) 2006 c. 32. Section 2 was amended by the Parliamentary Voting and Constituencies Act 2011 (c. 1); sections 13(1), 13(2)(a) and 16 of, and Part 2 of Schedule 12 to, that Act.

Diwygio Gorchymyn Cynulliad Cenedlaethol Cymru (Taliadau Swyddogion Canlyniadau) 2016

3.—(1) Mae Gorchymyn Cynulliad Cenedlaethol Cymru (Taliadau Swyddogion Canlyniadau) 2016(**1**) wedi ei ddiwygio fel a ganlyn.

(2) Yn erthygl 2 (dehongli) hepgorer y diffiniad o "etholiad comisiynydd heddlu a throseddu".

(3) Yn erthyglau 4, 5(1), 6(1), 7, 8(1) a 9(1), ac ym mhenawdau'r erthyglau hynny ac Atodlen 2, hepgorer y geiriau "ac a gynhelir ar yr un diwrnod ag etholiad comisiynydd heddlu a throseddu".

(4) Yn lle Atodlen 1 rhodder yr Atodlen a ganlyn—

Amendment to the National Assembly for Wales (Returning Officers' Charges) Order 2016

3.—(1) The National Assembly for Wales (Returning Officers' Charges) Order 2016(**1**) is amended as follows.

(2) In article 2 (interpretation) omit the definition of "PCC election".

(3) In articles 4, 5(1), 6(1), 7, 8(1) and 9(1), and in the headings to those articles and to Schedule 2, omit the words "held on the same day as a PCC election".

(4) For Schedule 1, substitute the following Schedule—

(**1**) O.S. 2016/417 (Cy. 133).

(**1**) S.I. 2016/417 (W. 133).

“ATODLEN 1 Erthyglau 4, 5(1) a 6(1)

Y cyfanswm cyffredinol mwyaf sy’n adenilladwy a’r cyfansymiau mwyaf sy’n adenilladwy am wasanaethau penodedig ac am dreuliau penodedig mewn etholiad etholaeth Cynulliad a ymleddir

1. Etholaeth Cynulliad	2. Cyfanswm mwyaf sy’n adenilladwy am y gwasanaethau penodedig	3. Cyfanswm mwyaf sy’n adenilladwy am y treuliau penodedig	4. Cyfanswm cyffredinol mwyaf sy’n adenilladwy
Aberafan	£4,730.00	£162,732.00	£167,462.00
Aberconwy	£4,730.00	£113,416.00	£118,146.00
Alun a Glannau Dyfrdwy	£4,730.00	£133,869.00	£138,599.00
Arfon	£4,730.00	£115,258.00	£119,988.00
Blaenau Gwent	£4,730.00	£174,354.00	£179,084.00
Bro Morgannwg	£4,730.00	£207,142.00	£211,872.00
Brycheiniog a Sir Faesyfed	£4,730.00	£191,014.00	£195,744.00
Caerffili	£4,730.00	£172,693.00	£177,423.00
Canol Caerdydd	£4,730.00	£142,420.00	£147,150.00
Castell-nedd	£4,730.00	£182,765.00	£187,495.00
Ceredigion	£4,730.00	£165,255.00	£169,985.00
Cwm Cynon	£4,730.00	£130,993.00	£135,723.00
De Caerdydd a Phenarth	£4,730.00	£197,707.00	£202,437.00
De Clwyd	£4,730.00	£157,430.00	£162,160.00
Delyn	£4,730.00	£139,936.00	£144,666.00
Dwyfor Meirionnydd	£4,730.00	£163,850.00	£168,580.00
Dwyrain Abertawe	£4,730.00	£153,310.00	£158,040.00
Dwyrain Caerfyrddin a Dinefwr	£4,730.00	£190,822.00	£195,552.00
Dwyrain Casnewydd	£4,730.00	£139,993.00	£144,723.00
Dyffryn Clwyd	£4,730.00	£126,788.00	£131,518.00
Gogledd Caerdydd	£4,730.00	£177,763.00	£182,493.00
Gorllewin Abertawe	£4,730.00	£146,769.00	£151,499.00
Gorllewin Caerdydd	£4,730.00	£162,764.00	£167,494.00
Gorllewin Caerfyrddin a De Sir Benfro	£4,730.00	£173,850.00	£178,580.00
Gorllewin Casnewydd	£4,730.00	£160,721.00	£165,451.00
Gorllewin Clwyd	£4,730.00	£149,982.00	£154,712.00
Gŵyr	£4,730.00	£159,982.00	£164,712.00
Islwyn	£4,730.00	£150,767.00	£155,497.00
Llanelli	£4,730.00	£174,786.00	£179,516.00
Merthyr Tudful a Rhymni	£4,730.00	£168,128.00	£172,858.00
Mynwy	£4,730.00	£198,258.00	£202,988.00
Ogwr	£4,730.00	£136,181.00	£140,911.00

Pen-y-bont ar Ogwr	£4,730.00	£141,228.00	£145,958.00
Pontypridd	£4,730.00	£158,580.00	£163,310.00
Preseli Sir Benfro	£4,730.00	£173,779.00	£178,509.00
Rhondda	£4,730.00	£148,564.00	£153,294.00
Sir Drefaldwyn	£4,730.00	£141,920.00	£146,650.00
Torfaen	£4,730.00	£175,871.00	£180,601.00
Wrecsam	£4,730.00	£118,331.00	£123,061.00
Ynys Môn	£4,730.00	£150,220.00	£154,950.00”.

"SCHEDULE 1 Articles 4, 5(1) and 6(1)

Overall maximum recoverable amount and maximum recoverable amounts for specified services and specified expenses at a contested Assembly constituency election

1. Assembly Constituency	2. Maximum recoverable amount for the specified services	3. Maximum recoverable amount for the specified expenses	4. Overall maximum recoverable amount
Aberavon	£4,730.00	£162,732.00	£167,462.00
Aberconwy	£4,730.00	£113,416.00	£118,146.00
Alyn and Deeside	£4,730.00	£133,869.00	£138,599.00
Arfon	£4,730.00	£115,258.00	£119,988.00
Blaenau Gwent	£4,730.00	£174,354.00	£179,084.00
Brecon and Radnorshire	£4,730.00	£191,014.00	£195,744.00
Bridgend	£4,730.00	£141,228.00	£145,958.00
Caerphilly	£4,730.00	£172,693.00	£177,423.00
Cardiff Central	£4,730.00	£142,420.00	£147,150.00
Cardiff North	£4,730.00	£177,763.00	£182,493.00
Cardiff South and Penarth	£4,730.00	£197,707.00	£202,437.00
Cardiff West	£4,730.00	£162,764.00	£167,494.00
Carmarthen East and Dinefwr	£4,730.00	£190,822.00	£195,552.00
Carmarthen West and South Pembrokeshire	£4,730.00	£173,850.00	£178,580.00
Ceredigion	£4,730.00	£165,255.00	£169,985.00
Clwyd South	£4,730.00	£157,430.00	£162,160.00
Clwyd West	£4,730.00	£149,982.00	£154,712.00
Cynon Valley	£4,730.00	£130,993.00	£135,723.00
Delyn	£4,730.00	£139,936.00	£144,666.00
Dwyfor Meirionnydd	£4,730.00	£163,850.00	£168,580.00
Gower	£4,730.00	£159,982.00	£164,712.00
Islwyn	£4,730.00	£150,767.00	£155,497.00
Llanelli	£4,730.00	£174,786.00	£179,516.00
Merthyr Tydfil and Rhymney	£4,730.00	£168,128.00	£172,858.00
Monmouth	£4,730.00	£198,258.00	£202,988.00
Montgomeryshire	£4,730.00	£141,920.00	£146,650.00
Neath	£4,730.00	£182,765.00	£187,495.00
Newport East	£4,730.00	£139,993.00	£144,723.00
Newport West	£4,730.00	£160,721.00	£165,451.00
Ogmore	£4,730.00	£136,181.00	£140,911.00
Pontypridd	£4,730.00	£158,580.00	£163,310.00
Preseli Pembrokeshire	£4,730.00	£173,779.00	£178,509.00
Rhondda	£4,730.00	£148,564.00	£153,294.00

Swansea East	£4,730.00	£153,310.00	£158,040.00
Swansea West	£4,730.00	£146,769.00	£151,499.00
Torfaen	£4,730.00	£175,871.00	£180,601.00
Vale of Clwyd	£4,730.00	£126,788.00	£131,518.00
Vale of Glamorgan	£4,730.00	£207,142.00	£211,872.00
Wrexham	£4,730.00	£118,331.00	£123,061.00
Ynys Môn	£4,730.00	£150,220.00	£154,950.00".

Alun Davies

Ysgrifennydd y Cabinet dros Lywodraeth Leol a Gwasanaethau Cyhoeddus, un o Weinidogion Cymru
15 Tachwedd 2017

Cabinet Secretary for Local Government and Public Services, one of the Welsh Ministers
15 November 2017

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WELSH STATUTORY INSTRUMENTS

2017 Rhif 1106 (Cy. 280)

2017 No. 1106 (W. 280)

CYNRYCHIOLAETH Y BOBL, CYMRU

REPRESENTATION OF THE PEOPLE, WALES

Gorchymyn Cynulliad Cenedlaethol Cymru (Taliadau Swyddogion Canlyniadau) (Diwygio) 2017

The National Assembly for Wales (Returning Officers' Charges) (Amendment) Order 2017

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SL(5)157 – The National Assembly for Wales (Returning Officers' Charges) (Amendment) Order 2017

Background and Purpose

This Order is made by the Welsh Ministers and provides for payments for services and expenses of returning officers in connection with the conduct of National Assembly for Wales elections.

Procedure

No procedure, and the Order does not have to be laid before the Assembly.

Scrutiny under Standing Order 21.7

The Order is a statutory instrument but because it does not have to be laid before the Assembly the Committee is not reporting under Standing Order 21.2 or 21.3.

The Committee has considered and reported on the Order under Standing Order 21.7(v) (as a legislative matter of a general nature within or relating to the competence of the Assembly or the Welsh Ministers).

Reporting points

The Committee notes the importance of this Order and the need to draw attention, in particular, to the amounts for "specified services" and "specified expenses" that may be recovered by a constituency returning officer at a contested Assembly constituency election.

The amounts are set out in article 4 of the Order (which inserts a new Schedule 1 into the National Assembly for Wales (Returning Officers' Charges) Order 2016).

The "specified services" are:

(a) making arrangements for the election;

(b) conducting the election;

(c) discharging all of the constituency returning officer's duties in respect of the election.

The “specified expenses” are:

(a) the appointment and payment of persons to assist the constituency returning officer;

(b) travel and overnight subsistence for the constituency returning officer and any person appointed to assist the constituency returning officer;

(c) the costs of the nomination process;

(d) printing or otherwise producing the ballot papers;

(e) printing or otherwise producing or purchasing postal vote stationery;

(f) printing or otherwise producing, and arranging for the delivery of, poll cards;

(g) printing or otherwise producing and publishing all election notices and documents;

(h) renting, heating, lighting, cleaning, adapting or restoring any building or room;

(i) providing and transporting equipment;

(j) providing information and communications technology equipment and software and associated costs;

(k) providing security, including secure storage of ballot boxes, ballot papers and verification documents;

(l) conducting the verification and the count;

(m) providing and receiving training;

(n) providing stationery and meeting postage, telephone, printing, translation and banking costs and the costs of other miscellaneous items.

Legal Advisers
Constitutional and Legislative Affairs Committee
28 November 2017

Public Administration and Constitutional Affairs Committee (PACAC)
House of Commons, London SW1A 0AA
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Huw Irranca-Davis AM
Chair
Constitutional and Legal Affairs Committee
National Assembly for Wales

European Union (Withdrawal) Bill

I am writing in response to your letter to David Davis of 31 July setting out your Committee's initial response to the European Union (Withdrawal) Bill. Thank you for copying me your letter, and I apologise for the delay in responding.

As you are no doubt aware the Public Administration and Constitutional Affairs Committee (PACAC) considered the implications of the result of the EU referendum for inter-governmental relations in its report *The Future of the Union, part two: Inter-institutional relations in the UK* during the last Parliament. It launched a specific inquiry into 'Brexit and Devolution' in March this year, however this was closed owing to the General Election. The terms of reference are available on the Committee's website and reflected many of the issues identified in your letter.

I would therefore welcome the opportunity to discuss the questions raised by the European Union (Withdrawal) Bill for devolution and inter-governmental relations, and how our two committees may co-operate on this and other issues with you in the near future. If that would be of interest to you please ask your office to liaise with my mine to fix a discussion.

Bernard Jenkin

Chair

Public Administration and Constitutional Affairs Committee

Elin Jones AC / Llywydd
Cynulliad Cenedlaethol Cymru
Elin Jones AM, Presiding Officer
National Assembly for Wales

Bernard Jenkin MP
Chair, Public Administration and Constitutional Affairs Committee
House of Commons
London SW1A 0AA

28 November 2017

Dear Mr. Jenkin,

Inquiry into devolution and exiting the EU

I noted with interest your Inquiry into Devolution and Exiting the European Union. This is a key area for the parliaments of the United Kingdom as we consider how to put in place new arrangements following our withdrawal from the European Union.

The National Assembly for Wales' External Affairs Committee has produced a number of relevant reports into the implications for Wales of leaving the European Union and legislation relating to this process. I am sure they will be of interest to your Committee.

I would like, in particular, to address your fourth area of inquiry: **How can the four UK Governments and Parliaments promote wider and deeper trust and understanding in their relationships?**

Our Constitutional and Legislative Affairs (CLA) Committee has been conducting its own inquiry into interinstitutional relations, entitled A Stronger Voice for Wales. I expect that this report when published will prove of use to your Committee's inquiry. I gave my evidence to this inquiry on 3 July 2017. The transcript for this meeting is publicly available on the National Assembly's website.

The key points that I made were as follows:

Inter-parliamentary relations

1. Collaboration between the Assembly and other institutions has increased and continues to do so. Where joint scrutiny has been carried out it has been well received.
2. The need for more formalised inter-parliamentary arrangements will depend on how inter-governmental arrangements evolve.

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Inter-governmental relations

3. Any new inter-governmental decision-making arrangements (such as the Council of Ministers proposed by the First Minister of Wales) must be based on clear principles of subsidiarity, parity of esteem and transparency.
4. Such arrangements would require new inter-parliamentary oversight and collaborative arrangements to ensure effective scrutiny by the UK's legislatures.
5. Effective scrutiny by the respective parliaments of their governments will require increased transparency and equal access to information.

Legislative Consent

6. Legislative consent procedures must be fit for purpose, legally enforceable and afforded equal status by Westminster in respect of all the nations of the UK.
7. Currently, the UK Government could disregard the process, for example in respect of Brexit legislation. Strong arguments were presented during scrutiny of the Wales Bill on the case for making it a robust process.
8. The scope of legislative consent arrangements in respect to each of the devolved nations is currently different; it should apply consistently.
9. The UK Parliament's procedures need to provide greater transparency on whether the Assembly has consented or not, and respect the Assembly's decisions across all legislation, including subordinate legislation. In my oral evidence to the Assembly's CLA Committee, I raised the question of whether there should be a vote in the Commons if consent has not been given by the National Assembly on any particular issue.
10. Any proposal to share powers in areas of devolved competency post-Brexit should be agreed by the legislatures of the UK, not just the devolved governments.

Joint Working at Committee Level

11. There is significant collaboration and joint-working between committees of the Assembly and other parliaments. Most of it is relatively informal.
12. There has been some joint scrutiny and it has worked well.
13. Discussions are taking place between committee officials and their counterparts in other legislatures as to how to enhance joint-working in key areas e.g. Brexit.

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14. Committees on specific matters should come together e.g. environmental committees, especially if common UK policy frameworks emerge from Brexit.
15. Potential obstacles to greater inter-parliamentary relations include the practicalities of additional meetings, the divergent constitutional ambitions of the constituent nations of the UK and House of Commons Standing Orders. I would support a change to House of Commons Standing Orders to facilitate formal joint committee working. It is positive to note that since I gave evidence to the inquiry, the first Inter-parliamentary Forum on Brexit took place on 12 October 2017 and was attended by the Chairs of the Assembly's CLA and EAAL Committees. A statement was issued after the meeting.
16. I also note that the "statement of principles" published following the Joint Ministerial Committee (European Negotiations) on 16 October to guide negotiations around any potential UK or GB wide common frameworks after Brexit includes a commitment that "frameworks will respect the devolution settlements and the democratic accountability of the devolved legislatures."

It is clear that the constitutional position in the UK is changing and the purpose and nature of our inter-institutional arrangements need to reflect that, particularly in the context of the UK's withdrawal from the European Union. I trust that this is of assistance and I look forward to reading your report in due course.

Yours sincerely,

Elin Jones AM
Llywydd

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Mr David Rees AM
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Our Ref: DEXEU029/1

4 December 2017

Dear David

EUROPEAN UNION (WITHDRAWAL) BILL

I hope you found useful the evidence that the Secretary of State for Wales and I provided at the joint evidence session on Monday 6 November. I was glad to be able to support both committees' important work on this essential piece of legislation, and to continue making the positive case for legislative consent.

As promised at that session, I am attaching a response to your committee's report on the Bill. I hope it responds to the principal concerns you raise and explains the Government's position.

In parallel I also attach responses to your written follow-up questions, which I hope both committees find a helpful addition to our oral evidence.

I am copying this letter to the First Secretary of State, the Secretary of State for Wales, and the Chair of the Welsh Assembly's Constitution and Legislative Affairs Committee.

ROBIN WALKER MP
PARLIAMENTARY UNDER-SECRETARY OF STATE FOR EXITING THE EUROPEAN UNION

Annex A: Response to the Welsh Assembly's External Affairs and Additional Legislation Committee June 2017 report *The Great Repeal Bill White Paper: Implications for Wales*

1. The Government is grateful for the National Assembly for Wales' External Affairs and Additional Legislation Committee report *The Great Repeal Bill White Paper: Implications for Wales*. This document provides the Government's response to that report.

2. The committee's conclusions on the European Union (Withdrawal) Bill (the Bill) can be grouped into a number of themes, which this response addresses in turn.

Engagement with the Welsh Government and National Assembly on exiting the European Union and the Bill.

3. We have been clear from the start that the devolved administrations should be fully engaged in the process of the UK's withdrawal from the European Union. There has been technical engagement with each of the devolved administrations on the Bill. Each devolved administration also received advance copies of the Bill itself.

4. There is broad agreement between the UK Government and the Welsh Government on the major objectives for the negotiation. The views put forward by the Welsh Government have been heard and have informed the UK Government's approach to the negotiations. The Secretary of State for Exiting the European Union has held numerous discussions with the Welsh Government – including a number of bilateral discussions with the Cabinet Secretary for Finance and Local Government – and we are committed to continued positive and productive engagement.

5. The First Secretary of State is leading the engagement with the devolved administrations on the Bill's devolution policy and the approach on common frameworks. Working with the Territorial Secretaries of State, he has spoken to and met the First Minister of Wales and Deputy First Minister of Scotland bilaterally three times since the summer to discuss the Bill, principles and ways of working. At the recent JMC(EN) on 16 October, the principles that underpin where frameworks will be needed and where they will not be were agreed with the Welsh and Scottish Governments. We are now moving into the next phase of this work with detailed analysis of the policy areas with the Scottish and Welsh Governments.

6. Given the need for in-depth policy discussions, that more detailed engagement on the precise nature and form of specific frameworks will be led by UK Government Departments. Frameworks will not be needed for all

powers that return to the UK when we leave the EU; far from it. The Government wants to work closely with the devolved administrations to identify - quickly - areas that do not need a common framework or approach. The First Secretary will continue to oversee this work with Departments and the devolved administrations to ensure consistency and clear progress.

7. The Government agrees that continued engagement and collaborative working with the Welsh Government and Assembly will be critical to ensuring the Bill works for all parts of the UK. UK Government officials began discussions with officials from the National Assembly for Wales over the summer, alongside continued discussions with Welsh Government officials. We look forward to continued close working over the coming months to progress technical discussions, including the on tabled amendments, at working level.

Delegated powers in the Bill

8. The Government's guiding principle is to deliver an exit from the EU that works for the whole of the UK, providing as much legal and administrative certainty as possible and creating no new barriers to living or doing business within our own Union. The Bill takes no decision-making power away from the devolved administrations or legislatures, so anything they could do before we leave the EU, they will continue to be able to do after we leave.

9. In order to deliver a functioning statute book for the whole of the UK, the Bill provides a power to correct problems that arise in retained EU law as a result of our withdrawal. It is right that devolved administrations also have the power that they need to correct such problems in their domestic legislation, but creating such a power is not within devolved competence. For that reason, the Bill confers a correcting power on the devolved ministers.

10. Making sure the statute book in each part of the UK works for exit day will be a joint endeavour, and the UK Government wants to work closely with the devolved administrations throughout the exit process to deliver laws that function correctly across the UK in time for exit. The provisions in the Bill enable the UK Government and devolved administrations to coordinate the corrections to the statute book where there would otherwise be a risk of creating barriers to living and doing business within the UK.

11. As with other areas of retained EU law, parts of retained direct EU law (such as EU regulations) will need to be amended so that they function correctly on exit day. Currently this legislation applies uniformly across the UK, even in areas that are otherwise devolved in some parts of the UK. As such, we believe that the right approach is for this to be corrected by the UK Government. This maximises certainty for individuals and businesses as to

how this uniform body of law will operate on exit day, whilst ensuring that no decisions that can currently be made by devolved institutions are removed from them. However, the UK Government has committed to consult the relevant devolved administrations before making any corrections to this body of law where it relates to an area that is otherwise devolved.

12. In addition to the power to correct deficiencies provided by clause 10 and schedule 2, the devolved administrations will also be able to exercise the powers to implement the Withdrawal Agreement, to prescribe fees and charges for currently EU functions taken on by domestic bodies as a result of EU exit, to alter pre-existing domestic fees and charges that were charged for EU-related functions (so that these can continue to be updated in line with changes in the underlying costs), and to make sure the UK and its constituent parts, continue to comply with international obligations. These powers are essential to prepare the statute book for exit day and it is right that they can also be exercised by the devolved administrations within their existing competence.

Assembly scrutiny of delegated powers in the Bill

13. We want to work closely with the devolved legislatures to ensure that they are satisfied that they are able to undertake the appropriate level of scrutiny over the use of the powers in the Bill. It is important that we can strike the right balance between the need for robust legislative oversight and ensuring our law works correctly when we leave the EU, all within the timetable set out by the Article 50 process.

14. The Bill proposes scrutiny arrangements for instruments brought forward by UK Ministers, in line with normal practice. The Bill then proposes equivalent scrutiny procedures for powers granted to ministers in the devolved nations (except that no urgent procedure is provided for devolved ministers as it is a non-standard procedure the Government wanted to first seek the devolved administrations' and legislatures' views on the procedure).

15. Scrutiny procedures are an integral part of creating a delegated power. If a scrutiny procedure is not specified when a power is created, the legal position is that the power can be exercised by the relevant authority simply "making" the instrument without any oversight role for a legislature. We therefore strongly believe that the right thing to do is to provide scrutiny provision to ensure that the National Assembly for Wales can provide scrutiny for the use of the powers by the Welsh Ministers.

16. This is standard practice for Acts of Parliament that confer powers on devolved authorities. For example, the Digital Economy Act 2017 conferred a

number of new powers on the Welsh Ministers and set out the procedures for the National Assembly's scrutiny of those powers.

17. The UK Government respects the responsibility the devolved legislatures have for their scrutiny of subordinate legislation made by the relevant devolved authority. That is why we have sought an LCM from the National Assembly for the scrutiny arrangements in the Bill, and it is why the Bill preserves the Assembly's competence (under the Government of Wales Act) to change those arrangements, just as it can change the arrangements for any other powers conferred on the Welsh Ministers by an Act of Parliament.

18. We are happy to take representations on scrutiny procedures during the passage of the Bill from the Assembly and discuss further with both the Welsh Government and the Assembly which scrutiny arrangements they consider most appropriate for legislation brought forward by the Welsh Ministers under powers in the Bill.

19. We are already engaging with the devolved legislatures on how the Bill's provisions work. We will continue that engagement as the Assembly scrutinises the Bill further, including through any consideration by the Assembly of a legislative consent motion for the Bill.

Scope of the delegated powers

20. The Government agrees that it is important that the powers provided in the Bill are only used to ensure we have a functioning statute book. That is why the power to enact the required changes is time-limited. It can only be used for up to two years after exit day.

21. The Bill and its powers are not the vehicle for the introduction of substantive new policy. The power in the Bill to correct legislation is limited to correcting problems that arise in retained EU law as a result of our withdrawal. Many of these changes are technical, such as amending references to EU law or another member state. Other changes relate to transferring functions from the Commission to another body. The Bill provides criteria that ensures such corrections of a more substantial nature are subject to the affirmative procedure.

22. We recognise the Committee's points on the need to be mindful of broader pressures on legislative timetables. We are keen to work alongside the Welsh Government to build on existing practices around joint working on secondary legislation, to ensure that the UK Government and Welsh Government work effectively together on secondary legislation made using powers in this Bill.

Common frameworks and the temporary competence arrangement

23. Leaving the EU means that decision-making powers currently exercised in Brussels will come back to the UK, and that we have an opportunity to determine the level of government best-placed to take decisions on these issues, ensuring power sits closer to the people of the United Kingdom than ever before. Our guiding principle is that we create no new barriers for people living and doing business within the UK as we leave the EU.

24. The current devolution settlements were designed on an assumption of ongoing UK membership of the EU, which provided the necessary overarching frameworks to permit the free-functioning of the UK internal market. The EU law that creates such frameworks acts as a limit on devolved competence.

25. The UK Government has a responsibility to make sure that EU exit works for the UK as a whole and takes account of the individual interests of Scotland, Wales, Northern Ireland, and England. This includes ensuring that the UK internal market operates freely and fairly. EU law has set rules that apply across the UK and guarantee consistent approaches in a number of policy areas, including some that are otherwise devolved. The Government wants to work closely with the devolved administrations to review the powers that will return from the EU and determine where consistency will continue to be needed. Common frameworks or approaches might be needed to allow businesses to operate across the UK and ensure that consumers get the best deal - this was something explicitly acknowledged in the Welsh Government's White Paper. They might also be necessary to help the UK to fulfil its international obligations and strike ambitious trade agreements, to provide security and justice to all of UK citizens, no matter where they live, or to protect common resources.

26. The Bill provides the space for detailed discussions to take place on where frameworks may to be needed, by replicating the current rules set by the EU through UK legislation. As a transitional arrangement, devolved institutions will continue to be bound by these rules. This provides the certainty that people and businesses across the UK need on where and how laws apply as we exit the EU and helps prevent problematic divergence. The UK Government expects that the outcome of this process of discussion on powers returning from the EU will lead to a significant increase in the decision making powers for the devolved administrations. In creating this transitional arrangement, the Bill ensures that no decision-making power is taken away from the devolved administrations as we leave the EU.

27. The Bill then provides a power to release areas of policy to the devolved administrations by Order in Council once agreement has been reached that a particular area does not require a common approach. The Government's firm

view is that common frameworks should only be established where they are needed. Where an area of policy is released from the transitional arrangement, the relevant devolved legislature will be able to modify, or confer on the relevant administration a power to modify, retained direct EU law in that area.

28. Furthermore, the Bill ensures that, the discretion currently available to the devolved administrations in, for example, implementing EU Directives is preserved. For example, where an EU Directive sets out a minimum environmental standard, the devolved administrations have the discretion to set a more stringent standard and that discretion will be maintained.

29. The principle at the heart of the development of future frameworks is honouring and protecting both the letter and spirit of each of the devolution settlements. We have a long history of devolution in the UK and we remain committed to this going forward.

30. We are mindful of the recent changes to the Welsh devolution settlement, through the Wales Act 2017, that are in the process of being implemented. The move to the reserved powers model will support better joint working through increased clarity on how and where we will need common frameworks in future to ensure a smooth exit from the EU. Going through this process will ensure all parts of the UK deliver on our aim that powers and policies ultimately sit closer to the people of the United Kingdom and are led by the best-placed government to deliver that.

31. The Government is committed to working closely with the devolved administrations on an approach to returning powers from the EU that works for the whole of the UK and reflects the devolution settlements of Scotland, Wales and Northern Ireland. This emphasises the need to work together to develop these. There is agreement between the Scottish, Welsh and UK Governments that common frameworks will be necessary in some areas and we have together agreed a set of principles that will underpin our work to consider where such frameworks will be needed and where they will not.

32. We are keen to progress these discussions at pace and agree, subject to the EU negotiations, areas where common frameworks are not needed and powers can be released to the devolved administrations as soon as possible. We have agreed a programme of intense discussions with the Welsh Government, led by the First Secretary of State, to take this forward. Where it is decided that a common approach isn’t needed, the Bill provides for the power to be released from the transitional arrangement through the Order in Council procedure, which requires the approval of both Houses of Parliament and the relevant devolved legislature.

Continuity Bill

33. We do not agree that a ‘Continuity Bill’ is needed. The European Union (Withdrawal) Bill will enable the whole of the UK to leave the European Union in a smooth and orderly way. It provides the maximum certainty to business, consumers and everybody in our country by ensuring we have a functioning statute book on day one.

34. The Bill makes clear the role of the devolved administrations in delivering an orderly exit from the EU. The Bill preserves existing decision-making powers and provides new powers, for example, the power to make corrections to domestic legislation in devolved areas.

35. We have already started detailed discussions on common frameworks that will allow us to accelerate the process of ensuring powers that previously sat with Brussels sit closer to people than ever before, whilst protecting the rights, interests and certainty of people across the UK.

36. Separately, we have announced our intention to bring forward further primary legislation to implement the agreement we hope to reach with the EU into UK law. This will be known as the Withdrawal Agreement and Implementation Bill, and means that the major elements set out in the Withdrawal Agreement will be directly implemented into UK law by primary legislation.

37. Of course, we do not yet know the exact details of this Bill and are unlikely to do so until the negotiations are nearer completion. However, we expect this Bill to cover the contents of the Withdrawal Agreement, that includes issues such as – an agreement on Citizens rights, any financial settlement and the details of an implementation period agreed between both sides. As with all legislation, once the bill is further developed the Government will consider whether the Sewel convention applies to it in the normal way.

Annex B: Response to written questions from the Constitution and Legislative Affairs Committee and the External Affairs and Additional Legislation Committee

Delegated powers to make corrections

Question 1: Why does the European Union (Withdrawal) Bill ('the Bill') only provide Devolved Ministers with a power to correct EU-derived domestic legislation, whilst providing a broader power for UK Ministers to correct the entire body of EU retained law?

The European Union (Withdrawal) Bill provides powers for devolved ministers so that they can correct domestic legislation and ensure we have a functioning statute book as we leave the EU. Parts of retained direct EU law will also need to be corrected as we leave. This is law that applies consistently across all EU Member States and therefore all parts of the UK, even in an area that is otherwise devolved.

As our priority is to provide maximum certainty and continuity to people and businesses as we leave the EU, the UK Government will correct direct EU law so that it continues to work appropriately for all parts of the UK. This will provide a stable base from which we can progress our discussions and more detailed analysis on where we need to retain common approaches and where we do not. The UK Government has also committed to consult the Welsh Government where corrections are made to direct EU law in an area that is otherwise devolved. The UK Government's power in clause 7 is limited in scope and time – it can only be used to correct deficiencies that arise as a result of leaving the EU, and expires two years after exit day.

Question 2: In its open letter to Members of Parliament, the External Affairs and Additional Legislation Committee concluded that:

> *"restricting the involvement of the Welsh Ministers and the Assembly to correcting only EU-derived domestic legislation in devolved areas makes for a less efficient exit process."*

The Committee's reasoning for this is:

> *"Welsh Government and Welsh public bodies are responsible for implementing EU law in devolved areas, and have been for 20 years. They hold the knowledge that is required to make sensible corrections to EU law in devolved areas. If UK Ministers were to seek to make corrections in devolved areas, they would need to seek the expert input of the Welsh Government and Welsh public bodies before drafting such corrections. Enabling the Welsh*

Ministers and the Assembly to correct all aspects of EU-derived law in devolved areas is a more efficient, and constitutionally appropriate, approach to correcting EU-derived law in devolved areas."

What is your response to this view?

There are a number of corrections that will need to be made to ensure we have a functioning statute book on exit. For the UK Government, we estimate between 800 - 1000 SIs, which includes corrections to retained direct EU law. Where corrections need to be made to retained direct EU law in an area that is otherwise devolved, the UK Government has recognised that the devolved administrations will have specific views and will consult the relevant devolved administration on the appropriate correction. It is right that there is a UK-wide correction for this type of law given that it currently applies consistently across the UK.

The Bill preserves everything that the devolved administrations could do before we leave the EU so that they may continue to act in the same way after we leave as they could before. Direct EU law has never previously been within the Welsh Government's competence as this law flows directly into our statute book through section 2(1) of the European Communities Act 1972. The Welsh Government and Welsh public bodies do not currently have discretion to amend, repeal or do anything to contravene this directly applicable EU law, such as EU Regulations.

However, making sure the statute book works for exit day will be a joint endeavour. The Government wants to work closely with the devolved administrations throughout the exit process to deliver laws that function correctly across the UK in time for exit. The UK Government recognises the importance of the input of the devolved institutions and for that reason we will, as stated above, consult the Welsh Government when using the powers in the Bill to amend direct retained EU law to make sure we deliver the right outcomes for Wales.

Concurrent powers

Question 3: Why do UK Ministers need concurrent powers to correct EU derived domestic legislation in Welsh devolved policy areas?

The use of concurrent powers is an established part of the devolution settlements and comes with clear benefits. This is a sensible mechanism for allowing us to work together with the devolved administrations to deliver a complete and functioning statute book. This will be most suitable where it is agreed that it more efficient for the UK Government to legislate or where it is agreed that a single set of rules would be easier for individuals and businesses.

This approach means that, where it makes practical sense for regulations to be made once for the whole UK, it is possible for this to happen, as is currently the case for implementing EU law under section 2(2) of the ECA 1972.

We have made a clear commitment that the UK Government will not normally use these powers to amend legislation in devolved areas without the agreement of the relevant devolved administration, and not without first consulting them.

Question 4: The External Affairs Committee concluded that such powers are not constitutionally appropriate and that the Assembly should be accountable "for scrutinising the legislation for which it is accountable to the electorate for delivering". What is your response to this view?

The UK Government agrees that it is for the National Assembly for Wales to scrutinise legislation which the Welsh Government lays before it. The Bill establishes scrutiny arrangements so that the Assembly can do that where the Welsh Government uses its powers.

Concurrent powers allow us to work with the devolved administrations to make one set of regulations where we are following the same approach. This follows the practice established in s2(2) of the European Communities Act 1972. For example, the UK, Scottish and Welsh Governments, and the Northern Ireland Executive jointly determined how to implement the elements of the Marine Strategy Framework Directive (Directive 2008/56/EC) that related to devolved matters, and agreed that this would be delivered through a single set of regulations made by UK Ministers (the Marine Strategy Regulations 2010).

Question 5: Do you intend to table amendments to remove the UK Ministers' concurrent powers from the Bill, as suggested by External Affairs and Additional Legislation Committee?

Question 6: If you do not intend to table amendments to remove these concurrent powers from the Bill, will you consider tabling amendments to provide duty to consult both the Assembly and Welsh Ministers on the face of the Bill?

The UK Government is aware that such an amendment, among others, has been tabled to the Bill in the House of Commons. We will have the opportunity to debate those fully during the Bill's Committee Stage and will not be able to pre-empt that debate.

While we remain open to suggestions on how to ensure the Bill works, our priority is to deliver a functioning statute book in all parts of the UK that will provide certainty and continuity for people and businesses. Providing for concurrent powers

complements the tools we and the devolved administrations have at our disposal to deliver the outcome of the referendum and a smooth exit from the EU.

Legislative consent

Question 7: Please explain why you do not believe that the Assembly's consent is required for Clauses 7 and 9 of the Bill.

There are two tests for whether a clause meets the test for legislative consent from the Assembly. The first is whether the clause would be within the legislative competence of the assembly, and the second is whether the clause would alter the legislative competence of the assembly. Our technical analysis indicates that clauses 7 and 9 do not meet either of those criteria and so they alone do not trigger the legislative consent process.

We sought legislative consent for the Bill when it was introduced. It is for the Welsh Assembly to decide whether it gives that consent.

Question 8: Will the UK Government proceed with the Bill if it does not obtain the consent of the devolved legislatures?
Question 9: Do you believe that you can obtain the consent of the Assembly without having accepted the Welsh Government's amendments?

We want to make the positive case for legislative consent and work closely with the devolved administrations and legislatures to achieve this. Crucial to understanding the Bill is the work on common frameworks – determining the areas where frameworks will and will not be required will reduce the scope and effect of clause 11.

Question 10: If EU 'continuity bills' are introduced in Scotland and Wales, would the UK Government seek to challenge these in the Supreme Court or to revoke them by an Act of Parliament?

We do not agree that a 'Continuity Bill' is needed. The European Union (Withdrawal) Bill will enable the whole of the UK to leave the European Union in a smooth and orderly way. It provides the maximum certainty to business, consumers and everybody in our country by ensuring we have a functioning statute book on day one.

The Bill makes clear the role of the devolved administrations in delivering an orderly exit from the EU. The Bill preserves existing decision-making powers and provides new powers, for example, the power to make corrections to domestic legislation in devolved areas.

We have already started detailed discussions on common frameworks that will allow

us to accelerate the process of ensuring powers that previously sat with Brussels sit closer to people than ever before, whilst protecting the rights, interests and certainty of people across the UK.

Question 11: Will you bring forward amendments to narrow the scope of the powers proposed for ministers?

The powers in the Bill are essential to delivering a smooth and orderly exit. For example, the power in clause 7 is designed to make changes, mostly of a technical nature, to redundant references within retained EU law.

This is essential to ensuring our legislation remains consistent and continues to function effectively once we leave the EU. It is also key to securing maximum certainty that the rights and protections currently enjoyed in the UK will continue after exit day.

But we have also been clear that we will give proper consideration to sincere suggestions for how this Bill can be improved to make sure that it does deliver that certainty. We have opened a dialogue with the Welsh and Scottish Governments on the amendments that they have proposed to understand their positions and, since these have been tabled by MPs, we will respond to these fully in the House of Commons at Committee Stage.

Question 12: Does the Bill allow for the term 'exit day' to be defined differently for different clauses in the Bill?

The Government has brought forward an amendment to clause 14 which will set 'exit day' as 11pm on 29 March 2019. This will make clear that 11pm on 29 March 2019 will be the only date and time of exit.

Question 13: Why does the UK Government consider it appropriate for Ministers to have the power to amend the Bill itself (using the powers provided to them by Clause 17)?
Question 14: Do you intend to table amendment to Clause 17 to restrict the power of UK Ministers to amend the Bill?

Clause 17 is a technical provision to smooth the introduction of change to the statute book in consequence of the provisions of the Bill. It **cannot** be used to amend the Bill itself. Only clause 9 can do this. This is necessary because – while we cannot pre-empt the negotiations – it is crucial that we have sufficient flexibility to make changes to the Bill to ensure that its provisions don't contradict the terms of our withdrawal, for example, in relation to in-flight CJEU cases. Without this flexibility, we put at risk our ability to deliver maximum legal certainty for UK businesses and

people, and could find ourselves in breach of the withdrawal agreement as a consequence of contradictory provisions in our domestic legislation.

Scrutiny procedures

Question 15: Why doesn't the Bill allow the Assembly to determine its own procedures for the scrutiny of subordinate legislation arising as a consequence of the Bill?

The Bill respects the rights of the Assembly to amend the scrutiny procedures. Under GoWA, as amended by the Wales Act 2017, it is within the competence of Assembly to set the procedures for subordinate legislation making powers, even if the enactment conferring the power is protected. The status of the Bill as a protected enactment is without prejudice to the Assembly's ability to make different provisions for scrutiny of the powers the Bill gives to Welsh Ministers.

The UK Government recognises the timing presents challenges in bringing forward new primary legislation to change the procedures while also dealing with the wider programme of EU exit legislation that the Assembly will need to make in preparation for exit day. For that reason, the UK Government has made an open offer to hear the Assembly's views on which procedures should apply in the Bill for the scrutiny of the Welsh Ministers' powers so as to further consider how to streamline any preferred changes.

Question 16: Why didn't you consult the Assembly, prior to the Bill's introduction, about the scrutiny procedures for delegated legislation to be made by the Welsh Ministers?

In conferring significant new powers on ministers in the devolved administration, it is right that the Bill sets out procedures for the scrutiny of those powers. Legislative scrutiny is a crucial part of our democratic process and it would not be right to introduce a Bill containing powers such as these without making any provision for how they will be scrutinised.

The approach taken was to apply procedures that are consistent with those for the UK ministers' powers, with the exception of the 'made affirmative' procedure as this is a less common procedure (where we have invited the devolved administrations to consider whether such a procedure is necessary or appropriate in the particular contexts of their legislatures). And then, as has already been stated, to make sure that it is within the Assembly's competence to change those procedures should you so wish.

The UK Government has been clear that it wants to hear the views of the Committee, and those of Assembly Members more widely, on the appropriate scrutiny arrangements. Any further detail that the Committee can provide on what procedures should apply to these powers would be welcome and consideration will be given to how best to account for those views.

Question 17: Do you agree that scrutiny procedures set for Westminster by the Bill may not be suitable or operable in the devolved legislatures?

The Government welcomes the views of the Committee on what procedures for scrutiny by the National Assembly for Wales should apply to the use of the powers in the Bill by Welsh Ministers. The approach taken in the Bill is that where it confers powers on devolved authorities it is right that it should also provide scrutiny requirements for the exercise of those powers. A logical starting point is for the requirements to be consistent with those attached to the UK ministers' powers.

However, the Government has also considered the appropriateness of procedures as they apply in the devolved legislatures. For that reason the Bill, as introduced, does not include the 'made affirmative' procedure for devolved authorities' powers because this is a less common procedure and the parallels in the devolved legislatures less well established. The Government has invited the devolved administrations, and invites the Committee as representatives of the National Assembly, to comment on the appropriateness of that procedure.

Common policy frameworks

Question 18: How will you ensure that discussions on common policy frameworks will be transparent and open to scrutiny by all UK legislatures?

The UK Government agrees that there should be transparency around the frameworks process so that it is open to scrutiny, and takes very seriously the views of the devolved legislatures on the issue of future common frameworks. We welcome and value their contributions as discussions on these develop.

We have already started discussing these issues with the Assembly through this exchange of correspondence and in the Committee appearances of Ministers last week. Ministers confirmed that they were happy to return to the committees to discuss progress on these matters in the future. Furthermore, officials have been engaging with Assembly officials since the summer on the content of the EU (Withdrawal) Bill and we hope to continue that dialogue on the Bill and related issues over the coming months. Meanwhile, we will continue to intensify our engagement on frameworks with a wide range of interested groups.

Question 19: What role will stakeholders have in the development and agreement of common policy frameworks and what consultation mechanisms will be put in place?

It is of course vital that stakeholders across the UK have the opportunity to feed into the discussions on common frameworks as these are developed. We have already begun to explore some of the key issues with existing stakeholder groups and will be increasing our engagement in parallel to the detailed discussions we are having with the devolved administrations. For example, Robin Walker MP, the Parliamentary Under-Secretary of State for Exiting the European Union, attended the Expert Implementation Panel for Wales on Monday 6 November, which is led by the Secretary of State for Wales, to discuss the concerns and interests of businesses in Wales.

UK Government departments will also continue their engagement with stakeholders on specific policy areas.

Question 20: The JMC (EN) Communiqué from 16 October states: "It will be the aim of all parties to agree [...]". Does this allow scope for a common policy framework to be imposed by the UK Government in the event of one of the parties not agreeing?

We will look to agree common frameworks wherever possible, which is why we are working closely with the devolved administrations on the detail of where frameworks need to be retained in the future, what these should be and importantly, also where they are not necessary. Those discussions are ongoing.

STATUTORY INSTRUMENTS

2017 No. 1179 (C. 111)

CONSTITUTIONAL LAW

DEVOLUTION, WALES

The Wales Act 2017 (Commencement No. 4) Regulations 2017

Made - - - - 29th November 2017

The Secretary of State, in exercise of the powers conferred by section 71(3), (4) (6) and (7) of the Wales Act 2017(**a**), and having consulted the Welsh Ministers and the Presiding Officer of the National Assembly for Wales, makes the following Regulations:

Citation

1. These Regulations may be cited as the Wales Act 2017 (Commencement No. 4) Regulations 2017.

Principal Appointed Day

2. For the purposes of section 71(3) and the coming into force of section 3 of, and Schedules 1 and 2 to, the Wales Act 2017, the principal appointed day is 1st April 2018.

Commencement of other provisions of the Wales Act 2017

3. The following provisions of the Wales Act 2017 come into force on 1st April 2018—

(a) section 4 (devolved Welsh Authorities);

(b) sections 5 to 8 (elections);

(c) sections 9 to 12 (other provision about legislation by the Assembly);

(d) section 13 (financial control, accounts and audit);

(e) sections 19, 20 and 22 (executive competence etc);

(f) sections 26 to 28 (road transport);

(g) sections 29 to 38 (harbours);

(h) section 39 (development consent for generating stations with 350MW capacity or less) for the purposes of Schedule 1 to the Wales Act 2017 (new Schedule 7A to the Government of Wales Act 2006(**b**));

(i) sections 44 and 45 (equal opportunities);

(j) sections 46 and 47 (marine licensing and conservation);

(k) section 52 (water);

(**a**) 2017 c. 4.
(**b**) 2006 c. 32.

(l) sections 53 to 58 (miscellaneous);

(m) sections 65 to 68 (miscellaneous);

(n) section 69(1) (consequential provision) in so far as it relates to the provisions in sub-paragraphs (q) and (r);

(o) Schedule 3 (new Schedule 9A to the Government of Wales Act 2006);

(p) Schedule 4 (new Schedule 3A to the Government of Wales Act 2006);

(q) Schedule 6, Part 1 (amendments of the Government of Wales Act 2006); and

(r) Schedule 6, Part 3 (other amendments) so far as not already in force, except for paragraphs 47 to 51, 61, 77, 78 and 81.

4. The following provisions of the Wales Act 2017 come into force on 1st October 2018—

(a) sections 23 and 25 (onshore petroleum); and

(b) Schedule 6, Part 2 (amendments relating to onshore petroleum).

5. The following provisions of the Wales Act 2017 come into force on 1st April 2019—

(a) sections 39 to 42 (planning for electricity generating stations) so far as not already in force; and

(b) Schedule 6, Part 3 (other amendments) so far as not already in force.

Alun Cairns
Secretary of State for Wales
29th November 2017 Office of the Secretary of State for Wales

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are the fourth commencement Regulations made under the Wales Act 2017 (c. 4) ("the Act").

Section 71 of the Act provides that section 3 and Schedules 1 and 2, which implement the new reserved powers model of devolution, come into force on the day appointed by the Secretary of State ("the Principal Appointed Day"). Regulation 2 provides that the Principal Appointed Day is 1st April 2018. In line with the requirements in section 71(3) of the Act, the Secretary of State has consulted with the Welsh Ministers and the Presiding Officer of the National Assembly for Wales before making these Regulations.

Section 71(4) of the Act provides that the Regulations made under section 71(3) may also appoint the date on which other provisions of the Act come into force. Regulation 3 commences the majority of the provisions of the Act on the same day as section 3 and Schedules 1 and 2, as they are directly linked to the reserved powers model of devolution provided for in section 3 of, and Schedules 1 and 2 to, the Act.

Regulation 4 provides that sections 23 and 25 of, and Part 2 of Schedule 6 are commenced on 1st October 2018.

Regulation 5 provides that sections 39 to 42 (so far as not already in force), and Part 3 of Schedule 6 (so far as not already in force) are commenced on 1st April 2019.

NOTE AS TO EARLIER COMMENCEMENT REGULATIONS

(This note is not part of the Regulations)

Provision	*Date of Commencement*	*S.I. No.*
Section 21	7th January 2018	2017/893

Section 24	6th March 2018	2017/1069
Section 49	7th January 2018	2017/893
Section 59	See regulation 2 of S.I 2017/351	2017/351
Section 60	See regulation 2 of S.I. 2017/351	2017/351
Section 61	See regulation 2 of S.I. 2017/351	2017/351
Section 62	See regulation 2 of S.I. 2017/351	2017/351
Section 63	See regulation 2 of S.I. 2017/351	2017/351
Section 64	See regulation 2 of S.I. 2017/351	2017/351
Section 69(1) (partially)	See regulation 2 of S.I. 2017/351	2017/351
Schedule 5	See regulation 2 of S.I. 2017/351	2017/351
Schedule 6 (partially)	See regulation 2 of S.I. 2017/351	2017/351

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Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE **Responses to consultation on proposals to develop an Act on the interpretation of Welsh legislation**

DATE **6 December 2017**

BY **Jeremy Miles AM, Counsel General for Wales**

Most legislatures across the Commonwealth have enacted rules on how their legislation operates and is to be interpreted. However, the National Assembly for Wales (unlike each of the other UK legislatures) has not yet done so. Instead the interpretation of Welsh legislation is governed by the Interpretation Act 1978, an Act of the UK Parliament. That Act is nearly 40 years old, is in English only (including definitions that apply across the statute book) and is not as clear and accessible as it could be.

The Constitutional and Legislative Affairs Committee of the Fourth National Assembly recommended that the Government should develop a bespoke Welsh interpretation Act as a means of improving understanding of Welsh legislation. As part of the Welsh Government's wider programme of improving accessibility to Welsh law, and in response to the Committee's recommendation, my predecessor published a consultation on such a proposal earlier this year. The consultation closed in September and I am pleased to issue a summary of responses to that consultation today.

We received 17 written responses from across the UK from legal professionals, the judiciary, academics, individuals and the third sector. I am grateful to everyone who responded to the consultation and generously shared their knowledge and experience of the current legislative framework. I am pleased that the respondents are supportive of the principle of creating bespoke, bilingual statutory interpretation provisions for Wales.

I have found the responses particularly helpful in identifying areas where it will be important to maintain some consistency with the existing arrangements; and where there are opportunities for innovation by making changes to better reflect Wales' constitution. In line with my programme for improving the accessibility of Welsh law, I am keen to provide clarity and certainty for users of Welsh legislation so that they can access and use it with confidence.

The consultation responses represent a valuable source of views, information and ideas

which will inform the development of statutory interpretation provisions for Wales. I will provide a further update on our work in this area in due course.

The summary of the consultation responses is available here:

https://consultations.gov.wales/consultations/interpreting-welsh-law-interpretation-act-wales

https://ymgyngoriadau.llyw.cymru/ymgyngoriadau/dehongli-cyfreithiau-cymru-deddf-dehongli-i-gymru

Number: WG33701

Welsh Government

Consultation – summary of responses

Interpreting Welsh Legislation

Considering an interpretation Act for Wales

December 2017

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

 Digital ISBN 978-1-78859-002-3

Overview
This document provides a summary of the responses received by the Welsh Government to the consultation on *Interpreting Welsh legislation – considering an interpretation Act for Wales*.

Audience
Legislators, legal professionals, the judiciary, representative bodies, public sector bodies, interest groups, the voluntary sector, and individuals with an interest in the accessibility and statutory interpretation of Welsh law.

Action Required
For information only

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Additional Copies
This document can be accessed from the Welsh Government website at:
https://consultations.gov.wales/consultations/interpreting-welsh-law-interpretation-act-wales

Contents

Chapter 1 – Introduction

1. Interpretation Acts are used to shorten and simplify legislation. They clarify the effect of statute law by establishing rules of construction, and shorten laws by adopting standardised provisions (for example definitions of commonly used words and terms) that do not then need to be repeated. At present all of the law applying in Wales is interpreted by reference to an Act of the UK Parliament, the Interpretation Act 1978 (the 1978 Act).

2. On 19 June 2017 *Interpreting Welsh legislation – considering an interpretation Act for Wales* was published[1] for public consultation on the Welsh Government website. The consultation period lasted 12 weeks and closed on 11 September 2017.

Proposals

3. The consultation considered whether the Welsh Government should develop a new interpretation Act for Wales or amend the 1978 Act by reproducing Schedule 1 to that Act in Welsh. If there were to be a new Act, the policy consultation also sought views on what should be included in it.

Consultation responses

4. As well as being published on the Welsh Government website, the consultation was emailed to stakeholders with direct interest in the accessibility and statutory interpretation of the law applying in Wales, with regular alert emails sent to stakeholders during the consultation period. The Welsh Government web pages received just over 1,100 views, including 106 to the Welsh language version.

5. A total of 17 written responses were received from stakeholders. The responses came from individuals and organisations representing different sectors from across Wales and the UK.

6. Respondents were able to submit their views and comments on paper or online, in either Welsh or English.

7. We are grateful to everyone who responded to our consultation proposals. The responses represent an invaluable source of views, information and ideas which will inform the development of legislative proposals and the wider programme of improvements to the accessibility of Welsh law.

[1] https://consultations.gov.wales/consultations/interpreting-welsh-law-interpretation-act-wales

8. A summary of the responses to each question is provided below. A list of respondents to the consultation is provided at Annex A. The individual consultation responses are available on the Welsh Government website: https://consultations.gov.wales/consultations/interpreting-welsh-law-interpretation-act-wales

9. The majority of respondents answered each question. Some also provided additional comments, which have been analysed and noted.

10. All respondents were invited to request anonymity, and one respondent decided to utilise this option and therefore their identity has been anonymised throughout this document.

Chapter 2 – Summary of key themes

11. The following key themes emerged from the consultation responses.

Support for the principle of adopting bespoke, bilingual, interpretation provisions for Wales

12. Respondents were, in general, supportive of the proposal set out in the consultation to make bespoke, bilingual provision about the interpretation of Welsh legislation.

Acknowledgment of "two-Act issue" and the need to minimise complexity created by this

13. Having a new Act making provision for statutory interpretation of Welsh law does not mean that the 1978 Act would no longer apply in relation to legislation affecting Wales. Some respondents were concerned about the confusion the existence of two interpretation Acts could create for users of legislation, and were of the view that any complexity should be minimised.

Knowing which interpretation Act applies

14. There were a range of views on how to make it clear to a reader of legislation whether the 1978 Act or the new Act would apply. However, there was no clear preference.

Risk of departing too far from the 1978 Act

15. Some respondents were keen to see innovation, and most expressed support for modernising the rules in the 1978 Act in a new Act for Wales. However, respondents also raised concern about deviating too far from the existing arrangements.

Preference for resolving the issue on a UK or England and Wales level

16. A number of respondents were very pleased that the Welsh Government is considering modernising the rules on statutory interpretation for Wales, but a few considered that the opportunity should be taken by the UK Government (or perhaps jointly between Governments) to either modernise the 1978 Act for England and Wales, or modernise all of the interpretation Acts operating in the UK.

Dealing with the absence of definitions of words and expressions in the Welsh language in the 1978 Act

17. Most, if not all, respondents recognised that there is a problem with Schedule 1 to the 1978 Act (the Schedule of defined words and expressions) being only in the English language and supported tackling this problem.

Standardisation of Welsh language terms

18. A number of respondents called for the Welsh Government to become responsible for the standardising Welsh language terminology.

Welsh language and gender

19. Respondents recognised that the current rule on gender in the 1978 Act does not reflect the existence of feminine and masculine nouns in the Welsh language and a number called for this to be dealt with in any new legislation. Some respondents also considered that other grammatical matters (for example mutations) could be dealt with by a new Act.

Electronic communication

20. Of the respondents who offered a view on how the rule in the 1978 Act on service of documents should be dealt with, most, if not, all supported the idea of including electronic communication.

Chapter 3 – Summary of responses by question

Proposals for reform

21. The consultation explored options for reforming the law relating to the interpretation of legislation applying in Wales. This part of the consultation summary sets out the responses to the questions concerning the two options for reform:

    a. amending the 1978 Act; and

    b. creating a new interpretation Act for Wales.

Question 1: Should we insert a reproduction of Schedule 1 to the Interpretation Act 1978 in the Welsh language into that Act, or should we aim to apply an interpretation Act for Wales to as much Welsh language legislation as possible?

22. Of the 15 responses to this question, the majority were of the view that the Act governing the interpretation of Welsh law should be available in both the English and Welsh language and should provide for the statutory interpretation of Welsh language terms.

23. Four of the respondents were in favour of reproducing Schedule 1 to the 1978 Act in the Welsh language and inserting it into the 1978 Act. Respondents noted that this solution would raise the profile of the Welsh language by placing it in a key piece of UK Parliament legislation.

24. However, there were differing views on what should be included in the Schedule. Huw Williams and Clare Hardy (of Geldards) suggested that terms not relevant to the Welsh context, such as *"London Borough",* should be left out, and some respondents suggested that the process of translating Schedule 1 to the 1978 Act could go further and include translation of additional words and definitions. The Welsh Language Commissioner commented, however, that all terms (even those which appear unnecessary in the Welsh context) should be included in the Schedule to assist Welsh speakers who wish to refer to English law.

25. Four respondents preferred having a new Act for Wales. The Learned Society of Wales was of the view that since the purpose of an interpretation Act is to assist in statutory interpretation, and so, in turn, assist the reader to understand the intention of the legislature *"it would be incongruous to insert into [the 1978*

Act, an Act of the UK Parliament] a schedule concerning the intentions of a different legislature".

26. Dr Catrin Fflur Huws was, however, of the view that the starting point was to amend the 1978 Act at a UK level. The Act would then provide for the statutory interpretation of all UK legislation but with separate chapters for Wales, Northern Ireland and Scotland.

27. In response to question 1, a number of respondents raised concerns about the two interpretation Acts applying to Welsh law leading to potential confusion and added complexity – this is dealt with in relation to questions 3 and 4 below.

Question 2: Do you agree with the potential benefits of a Welsh Interpretation Act identified in this consultation paper?

28. Of the 12 responses to this question all agreed that there were some benefits to having a specific new Act for Wales. Three respondents simply responded *"yes"* to the question without further comment.

29. Of those who provided substantive comments, they noted the following key benefits of having a separate Act for Wales:

    a. it would be available in the Welsh language which would assist in the accessibility of the law through the medium of Welsh;

    b. it would align with the Welsh Government's preferred approach of avoiding placing Assembly legislative provision in pre-existing UK Parliament Acts (where the provision would appear in English only);

    c. it would ensure equal status of both the English and Welsh language in line with the requirements of section 156(1) of the Government of Wales Act 2006 (whereas inserting a Welsh language version of Schedule 1 into the 1978 Act, originally enacted in English, could weaken the status of the Welsh language text);

    d. it would improve accessibility, for example by reducing the length of legislation governed by it, and allow for a more user friendly approach to supporting the principle of Plain English/Cymraeg Clir (improving accessibility was seen as important particularly at a time where legal aid funding has been reduced); and

e. it would provide an opportunity to innovate and create an accessible and modern Act which would go further than the 1978 Act to better serve the needs of Wales and the Welsh language.

30. Respondents noted the following concerns about having a separate Act for Wales which included provision for statutory interpretation:

a. one respondent was concerned about the potential complexity which could arise from the need to use two separate Acts, while the Association of HM District Judges were of the view that clarity about which Act applies to a piece of legislation would be essential;

b. whilst accepting the benefits outlined in the consultation paper, the Central Association of Agricultural Valuers were of the view that care ought to be taken to ensure that the new Act did not create unintended conflicts with, or changes of meaning from, the 1978 Act;

c. the Welsh Language Liaison Judges were concerned about the effect of changes from the 1978 Act on access to justice; and

d. the Presbyterian Church of Wales was of the view that a separate Act for Wales did not need to go beyond the standard provisions of the 1978 Act.

The 'two-Act' issue

31. The consultation proposed that a new Act for Wales would apply to Acts of the National Assembly and subordinate legislation made under those Acts, and potentially subordinate legislation made by the Welsh Ministers under Acts of the UK Parliament. But the 1978 Act would continue to apply to all Acts of the UK Parliament, including those applying Wales. There would therefore be two Acts operating on the legislation applying in Wales.

32. The consultation sought views on the practical issues arising from this and potential solutions to the impacts.

Question 3: Which of the potential solutions to the "two-Act issue" would you consider to be most helpful to users of the legislation?

Question 4: Do you consider there are any practical issues arising from any of the potential solutions to the two-Act issue?

33. Of those who responded to these questions the majority considered there would be risks in having two interpretation Acts applying to legislation in Wales.

34. A number of the respondents commented that since practitioners rarely referred to interpretation Acts, or already applied the law incorrectly, the existence of two Acts could increase complexity and create more issues. The Welsh Language Liaison Judges' response noted this might hinder the overarching objective of increasing accessibility to Welsh law.

35. The Welsh Lawyers in Local Government were of the view that the proposed solutions to address the issues arising from the existence of two Acts carried practical difficulties and inherent risks for the interpretation of legislation, particularly amended UK Parliament legislation and secondary legislation made by the Welsh Ministers under UK Parliament primary legislation. Another respondent agreed that the suggested solutions in the consultation carried practical issues, commenting that a comprehensive body of codified Welsh law was required.

36. Other concerns included that there could be a danger, particularly outside of Wales, of the assumption being made that that the two interpretation Acts are the same, and so the new Act could, and would, be ignored.

37. There was, however, also a view that the Government had *"an opportunity to try something bold, and should not shy away from it."* (Matthew Waddington)

38. There were a variety of views on the potential problems to the "two-Act" issues:

    a. a number of respondents commented that there was a need for clarity about which interpretation Act applied and that this could be achieved by including a provision in each piece of legislation stating which interpretation Act applies. The Learned Society of Wales considered that reversing the normal means of application of an interpretation Act (i.e. directly applying the Act in each subsequent piece of legislation) would not pose practical difficulties. However, some respondents were concerned about including provisions stating which interpretation Act applies as such provisions could be complicated and confusing for users;

    b. a number of respondents provided views on the usefulness of non-legislative material in resolving the "two-Act" issue. The Presbyterian Church of Wales thought that using the Cyfraith Cymru/Law Wales website could be an alternative to Explanatory Notes. The Central Association of Agricultural Valuers commented that using the Cyfraith Cymru/Law Wales website would complement explanatory notes and signposting provisions, but could not solely be relied upon. However, some respondents did not consider it satisfactory to require the reader to look to other materials outside the legislation to make it clear which Act applied (for example the Explanatory

Memorandum or Explanatory Notes to an Act, or to the Cyfraith Cymru/Law Wales website).

Changes to the 'core rules'

39. The consultation paper set out some of the potential changes that could be made to the 'core rules' of the 1978 Act if reproduced in a new Act for Wales.

Question 5: What are your views on the potential changes to the 'core rules', as set out in Chapter 7?

40. 12 respondents provided comments relevant to this question, many of which supported the proposed changes.

41. A significant number of respondents provided views on a rule about references to gender. Some respondents thought that the rule on gender should be retained to ensure gender neutral drafting continues. Other respondents considered it could be a useful rule as conveying obligations in a gender neutral way in the Welsh language is more difficult than it is in the English language. Respondents also noted that the rule would have to take account of grammatical gender in the Welsh language. Additionally, respondents noted that consideration should be given to other grammatical and syntactical matters in the Welsh language, not only gender.

42. Other views on possible changes to the core rules included:

    a. support for not repeating rules which are irrelevant to Welsh law or anachronistic;

    b. support for retaining and updating the rule on service of documents, particularly updating it to cover electronic communications and possibly to deal with when service is effected;

    c. the Presbyterian Church wished to see the rule on distance preserved, and considered section 13 of the 1978 Act (which deals with anticipatory exercise of powers) to be unclear;

43. A handful of respondents to this question expressed a wish to see the core rules of the 1978 Act itself modernised and updated.

Potential new provisions

44. The consultation paper proposed potential new provisions which could be included in a new Act governing statutory interpretation of Welsh law. Respondents were asked for their views on these and whether there were any additional provisions which could be included in the new Act.

Question 6: What are your views on the potential new provisions that could be included in an interpretation Act for Wales, set out in Chapter 8?

Question 7: Are the any extra new provisions, to those set out in Chapter 8, that you would wish to include in an interpretation Act?

45. In total, 11 respondents answered these questions. The majority of respondents responded in a general manner to the questions, rather than providing their views on each of the proposals.

46. Respondents were generally supportive of the proposals. Respondents agreed that there was a need to update the interpretation rules in the 1978 Act generally, as well as tailoring them to resolve issues of interpretation of Welsh law. One respondent commented that although the provisions were a *"genuine attempt at resolving the issues around the interpretation of Welsh legislation"*, the provisions did not go far enough.

47. Some respondents, although agreeing in principle with the proposals, noted that it would only be in the detail of any draft legislation that the proposals could be fully understood.

48. Where respondents expressed a view on individual proposals, the views were mixed:

    a. *powers to make legislation which are subject to different procedures may be combined in the same statutory instrument* – some respondents, including Huw Williams and Clare Hardy (Geldards), welcomed this proposal as it would enable the consolidation of subordinate legislation. However, the Learned Society of Wales was concerned that the proposal could reduce clarity for the legislature and could cause confusion for an end user who may wish to challenge an instrument;

    b. *power to correct obvious errors in legislation* – there were mixed views on this proposal. Some respondents were of the view that this was not an appropriate proposal for an interpretation Act as it confers a power to amend primary legislation. Another respondent considered that this should not be

dealt with in an interpretation Act but rather separately as part of the wider objective of improving accessibility. However, the Welsh Language Commissioner thought that this power is particularly necessary in a bilingual context to avoid anomalies and inconsistences between the English language and Welsh language versions of the text. The Central Association of Agricultural Valuers was wary of the proposal, commenting that the provision should be very tightly drafted;

c. *power to amend Acts to replace a reference to a date on which an event occurs with the actual date on which that event occurred* – respondents did not support this proposal, again noting that this was not appropriate for an interpretation Act as it confers a power to amend primary legislation.

d. *electronic communication* – respondents welcomed this proposal. The Welsh Language Commissioner *"strongly"* agreed with the proposal, commenting that, a new Act for Wales *"needs to reflect developments in technology and the way that people now correspond in practice"*;

e. *additional rules that could be included in the new Act* – Dr Catrin Fflur Huws suggested that it would also be possible to include interpretative rules about the discrepancies between the Welsh language and English language version of the texts. Another respondent suggested a general provision could be included such that where an enactment confers a function, that function includes a power to do anything which facilitates, or is conductive or incidental to, the discharge of the function. Matthew Waddington invited consideration of Jersey's Interpretation Act.

Other matters which could be addressed in a new Act for Wales

49. The consultation raised three other matters which could be dealt with in a new Act for Wales:

a. Welsh language matters – the consultation paper considered whether it would be beneficial to include in the new Act provision for dealing with particular issues which arise only in relation to the Welsh language (for example variations in terminology arising as a result of mutations or gender);

b. provisions in the Government of Wales Act 2006 which could be brought into a separate Act for Wales with or without modification; and

c. 'standard form' provision – this proposal suggested including in a new Act for Wales 'sets' of provisions which occur with some regularity across legislation, for example, fixed penalty notices, or the establishment of a statutory body or office.

Question 8: What are your views on the other matters that could be dealt with in an interpretation Act for Wales, set out in Chapter 9?

50. Of the 14 respondents to this question there was varied support for the proposals.

51. The Welsh Language Commissioner commented that provision should be considered in relation to the grammatical rules and characteristics of the Welsh language. One respondent commented that a provision on grammatical variations would benefit both the Welsh language and the English language.

52. A number of respondents were of the view that the Welsh Government should be responsible for the standardisation of Welsh language terminology.

53. Some respondents commented more generally on the relationship between the English language text and the Welsh language text, and that consideration should be given to how to resolve discrepancies between the two.

54. The Welsh Language Commissioner suggested that a new Act for Wales offered an opportunity to reconsider section 156(2) of the Government of Wales Act 2006. The Presbyterian Church of Wales considered that section 156(2) should be repealed.

55. There was only very limited support amongst respondents for including *'standard form'* provision. Respondents, including The Learned Society of Wales, questioned the appropriateness of such provision in an interpretation Act rather than in separate stand alone Act. Respondents also questioned the implications for appropriate legislative scrutiny and queried whether the proposal went beyond the legislative competence of the Assembly. One respondent suggested that it would be more beneficial and provide greater clarity for the reader if the relevant provisions were set out in each piece of legislation. However, from the perspective of developing bilingual legislation the Welsh Language Commissioner considered that standard form provisions dealing with routine matters could be advantageous as it would reduce translation and proofreading costs.

Effect on the Welsh language

56. Questions 9 and 10 asked respondents' for their views on the effects a new Act governing the statutory interpretation of Welsh law could have on the Welsh language. In particular these questions asked for respondents' views on the effect a new Act could have on helping people to use the Welsh language and

ensuring the Welsh language is treated no less favourably than the English. Respondents were also asked for their views on how the new Act could be formulated so as to have a positive effect on the Welsh language.

Question 9: We would like to know your views on the effect developing an interpretation Act for Wales could have on the Welsh language, in particular in respect of:

i. helping people to use Welsh, and

ii. treating the Welsh language no less favourably than English.

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 10: Please also explain how you believe the proposed interpretation Act for Wales could be formulated or changed so as to have:

i. positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and

ii. no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

57. Overall, respondents considered that the effects of a separate Act for Wales would be wholly positive in helping people to use the Welsh language and ensuring that the Welsh language is treated no less favourably than the English language.

58. Respondents noted the following key positive effects of having a separate Act for Wales:

    a. it would address the problem that bilingual Welsh law is subject to an English language only interpretation Act (the 1978 Act);

    b. it would help people to use the Welsh language texts of Welsh law as they would not need to cross-refer to the English language text to be able to apply the 1978 Act;

c. it would assist Welsh speakers to pursue legal remedies in their chosen language and ensures people who wish to use the Welsh language are not at a disadvantage;

d. it would highlight the status of the Welsh language as a language of law; and

e. it would encourage the development of standardised Welsh language within the legal profession.

59. However, some respondents raised the following concerns:

a. the risk of possible misinterpretation or misuse of terms when they are translated, with one respondent commenting that the effect of the proposals may be a general increased need for translators and Welsh speaking lawyers; and

b. Cardiff Third Sector Council did not see that a new Act for Wales would help the general public to use Welsh, although it would likely strengthen the use of the language in the legal field.

60. Respondents also provided their views on how the positive effects of a separate Act for Wales on the Welsh language could be ensured or increased. One respondent commented that promotion of the existence of a specific interpretation Act for Wales was important as the new Act is not merely a tool for the legal profession but should be an aid to individual citizens in their understanding of the law governing their lives.

Other issues raised by respondents

61. Question 11 sought any additional comments from respondents which had not been specifically addressed/captured elsewhere in their written responses.

Question 11: We have asked a number of specific questions. If you have views on any related issues that we have not specifically addressed, please set them out here:

62. Eight respondents responded to this question and they provided a range of comments.

Accessibility of Welsh Law

63. A number of respondents offered views on the accessibility of Welsh law.

64. The Law Society and other respondents referred to the Law Commission's report on the *Form and Accessibility of the Law Applicable in Wales* and welcomed the positive steps being taken by the Welsh Government to set the framework for accessible, well drafted and workable Welsh law in both the English and Welsh languages. The Welsh Language Commissioner also supported a long term programme of consolidating and codifying the law in Wales.

65. Similarly, a number of respondents considered the development of a separate Act for Wales to be an integral part of the Welsh Government's wider programme on improving accessibility of Welsh law. Matthew Waddington commented that the programme and the development of such an Act are *"interdependent for their effectiveness"*.

66. The Learned Society of Wales noted that the creation of Codes of Welsh Law would serve as an opportunity to further test the concept of Welsh interpretation provisions, given that each Code is likely to have its own interpretation provisions.

67. The Learned Society of Wales also suggested there was an opportunity to change the way in which legislation is prepared and published and improve the accessibility of Welsh law. Others shared this view.

The Welsh language

68. Some respondents took the opportunity to raise issues regarding the Welsh language. A number of respondents mentioned standardisation of Welsh language legal terminology as something for the Welsh Government to consider, and respondents also called for the Welsh Government to prioritise reform to ensure provision for dealing with issues which arise only in relation Welsh language.

Additional comments

69. Other comments made by respondents included:

    a. *Cross border issues:* HM Land Registry raised concerns about the potential risk of unintended consequences or effects on existing or future legislation, particularly if new provisions were to apply retrospectively. Specifically, HM Land Registry highlighted the need to recognise the impact of any interpretation Act on cross border matters and the importance of providing legal certainty, particularly with regard to clarity and uniformity of provision applying in both England and Wales; and

b. *European Union:* William Robinson invited the Welsh Government to consider the approach to interpretation of European Union law, as its institutions operate in more than one language.

Annex A – List of respondents

Name of respondent	Name of organisation
Dr Catrin Fflur Huws	Ysgol y Gyfraith, Prifysgol Aberystwyth
Daniel Greenberg	-
Huw Williams, Partner, Geldards LLP Clare Hardy Senior Associate, Geldards LLP	-
-	Public Services Ombudsman for Wales
Gareth Owens	Lawyers in Local Government - Wales Branch
Anonymous	-
Matthew Waddington	-
-	The Law Society, Wales
William Robinson	Institute of Advanced Legal Studies, London
Meri Huws, The Welsh Language Commissioner	Welsh Language Commissioner
-	The Learned Society of Wales
-	HM Land Registry
His Honour Judge Mererid Edwards, District Judge Hywel James	Welsh Language Liaison Judges
Jeremy Moody, Secretary and Adviser	Central Association of Agricultural Valuers
-	Presbyterian Church of Wales
Sarah Capstick	Cardiff Third Sector Council
District Judge Hywel James	Association of HM District Judges

The European Union (Withdrawal) Bill and its implications for Wales

Introduction

1. RSPB Cymru welcomes the opportunity to participate in this consultation. The debate around Wales' future post-Brexit has huge implications for the wildlife and natural environment of Wales. As 80% of the UK's environmental protections originate from EU law, the European Union (Withdrawal) Bill is of vital importance to ensure some of our most important environmental protections are fully converted into domestic legislation. The RSPB is asking all UK Governments to commit to retaining important environmental protections post-Brexit, and to ensure that any future changes are subject to full scrutiny by the appropriate legislature. It is vital that the UK Government and the devolved administrations work constructively together to secure an approach which guarantees common environmental standards, governed in a way that respects the devolution settlements.

General thoughts on the Repeal Bill

2. We have several general concerns with the Bill in its current form and these are summarised in a joint environmental NGO briefing - the Greener UK Repeal Bill briefing which outlines our three main concerns:

3. The Bill is not at all clear whether important environmental principles embedded in the EU Treaties including the precautionary principle, the polluter pays principle, and the integration principle will be converted into domestic law. These principles set the aims, objectives and requirements for certain EU laws and have helped to shape the direction of travel for our environmental legislation. It is vital that they continue to do so upon exit from the EU, to provide a foundation for future legislation in all parts of the UK, including any jointly agreed frameworks between the UK Government and devolved administrations. This is particularly important because in some cases (including the Wellbeing of Future Generations (Wales) Act 2015), these principles were not included as it was considered unnecessary due to their overarching presence in EU treaties.

4. We have concerns about the scope and scrutiny of use of delegated powers which we outline in more detail in response to question 3.

5. The Bill does not clearly address the 'governance gap' that will emerge without the functions currently carried out by the EU institutions, including regulatory, monitoring, oversight, accountability and enforcement. Whilst the Bill includes a clause to enable the creation of new public bodies, this is not an express requirement. We are also concerned such creation would be through secondary legislation meaning that the creation of any new public bodies, taking on significant and important duties would receive limited parliamentary scrutiny. Furthermore, we have been concerned by continued assertions by the UK Government that there is

no need for additional environmental governance regimes, relying instead solely on judicial reviews and parliamentary processes (for example, within Repeal Bill Factsheet 8: environmental protections). Whilst the Welsh Government has recognised the governance gap that will be created from our exit from the EU, as outlined in the "Securing Wales' Future" White Paper and discussed further in the First Minister's "Brexit and Devolution" position paper, neither the UK nor any devolved government has yet made any firm commitments to introduce any new governance regimes once we have left the European Union.

6. European institutions including the European Commission and the European Court of Justice play a vital role in ensuring effective and robust implementation of our environmental legislation. We are concerned that post-Brexit, a reliance on existing domestic agencies, judicial review and parliamentary processes fails to recognise both the breadth of functions EU institutions perform and the limitations of judicial review. They are therefore insufficient to meet the requirements comparable to the current level of protection.

7. We remain concerned about the status of retained EU law post-Brexit. Without a guarantee that this legislation will be afforded a status equivalent to primary legislation, important environmental legislation could be amended or repealed without the higher standard of scrutiny afforded to primary legislation. This risks weakening, or leaving vulnerable, much of our environmental legislation and the Bill (as currently drafted) leaves these important environmental protections to the whim of the executive. Therefore, the entirety of our EU-derived environmental laws should be given a status equivalent to primary legislation, by only being amended or repealed by an Act of the relevant legislature.

The treatment of devolution

8. Powers relating to most environmental matters are currently devolved. To date, however, these powers have been exercised in the context of the UK's membership of the EU.[1]

9. Considering the need for a coordinated transboundary approach and the maintenance of a level playing field for the effective protection of the environment, these areas are currently strongly governed by EU policy and legislation.

10. The importance of a coordinated transboundary approach and the maintenance of a level playing field will not diminish post-Brexit. Indeed, the principles justifying EU-level cooperation and regulatory alignment on environmental matters apply equally if not more strongly to intra-UK cooperation and regulatory alignment. The loss of these common frameworks would risk a significant regulatory divergence between the four countries of the UK and a less

[1] i.e. its shared competence for environmental matters between the EU and the Member States and applies in relation to a range of areas that includes agriculture, fisheries (with the exception of marine biological resources under the common fisheries policy which is an exclusive competence of the EU), and the environment.

coordinated approach to tackling cross-border environmental challenges. In addition, it would risk resulting in an environmentally damaging process of competitive deregulation across the UK's different jurisdictions.

11. In the case of the Birds and Habitats Directives, for example, their recent comprehensive 'fitness check' clearly demonstrated the added value that they provide both in terms of a 'level playing field' for economic operators and a more effective, coordinated, and consistent approach to achieving nature conservation objectives. In both cases, this has been achieved thanks to the role they have played in establishing a common set of standards/processes for the designation and management of protected areas and the conservation of priority habitats and species across the UK's (and the EU's) multiple jurisdictions.

12. Maintaining a common UK-wide approach to environmental governance in future will therefore be vital if we are to effectively protect our shared natural heritage and common resources. The UK and devolved governments will need to work closely together to agree on how the current common EU environmental standards are retained in domestic law post-Brexit through the Bill process, and governed in a way that respects the devolution settlements. Each nation should be free to raise (but not lower) these standards post-Brexit, as is currently the case under existing arrangements (subject to avoiding any barriers to intra-UK trade etc).

The delegation of powers and their control

13. The Bill gives the UK and devolved governments delegated powers to change EU derived laws via statutory instruments under three clauses, allowing them to: deal with deficiencies arising from withdrawal (clause 7); make amendments to ensure that we can continue to comply with international obligations (clause 8); implement the withdrawal agreement (clause 9). The UK Government also gains consequential powers meaning Ministers can make changes that they '*considers appropriate in consequence of this Act*' (clause 17).

14. We recognise that there is a vast array of legislation that needs to be converted into domestic legislation and that modifications will be needed to ensure that it is functional when converted. We welcome the statement within the Bill that the law is '*not deficient merely because a minister considers that EU law was flawed prior to exit*' meaning that these powers can only be used to correct deficiencies that arise as a result of our withdrawal from the European Union (e.g. because they ascribe duties to EU institutions that will no longer have jurisdiction in the UK) as opposed to being used more widely. However, we are concerned about the scope of the delegated powers and the type of modifications that may be made to legislation to make it functional on exit day and beyond.

15. It is our view that the use of delegated powers should be limited to the faithful transposition and implementation of EU law into domestic law and should therefore only be used to make technical changes to our legislation to achieve

this (i.e. changes necessary to ensure the functionality of our legislation on exit day). Any non-technical changes should be made using primary legislation at a later date.

16. Furthermore, we are concerned by the sorts of actions that may be taken to correct deficiencies. The Bill's explanatory notes cite an example of the sort of modification which may be used to correct a deficiency: '*for example, the law requires the UK to obtain an opinion from the European Commission* [in certain circumstances] *…… the power to correct the law would allow the Government to amend UK domestic legislation to either replace the reference to the Commission with a UK body, or remove this requirement completely.'* Whilst we appreciate that it may no longer be appropriate to refer to the Commission for an opinion, the removal of this requirement entirely fails to recognise the reasons for and importance of seeking such opinions. Its removal would therefore be completely inappropriate and go far beyond what should be considered technical changes to ensure that the legislation continues to be functional on exit day. It is vital that these sorts of changes are not made through the use of delegated powers given within this Bill.

17. We also have concerns that the scope of the delegated powers is quite broad, giving Ministers the potential to make significant and wide-ranging changes with limited parliamentary oversight. Furthermore, whilst the use of the powers is restricted to, at most, two years after 'exit day', 'exit day' itself is undefined. Whilst this is for practical reasons to allow for any potential transitional arrangement, it does mean that ministers may have the use of these wide-ranging powers for potentially extensive periods of time.

18. We are also concerned that the Bill gives ministers delegated powers to make legislative changes that they consider appropriate to implement the withdrawal agreement. We would oppose the use of these powers with respect to non-technical changes to legislation which should only be made through the use of primary legislation. This is particularly important as any changes made to legislation to reflect the contents of the withdrawal agreement will set the future legislative framework.

The scrutiny processes and the role of the devolved legislatures

19. Clarity is needed on the role the Welsh Government and Assembly will play in processing Statutory Instruments to convert EU derived law into Welsh law. Consideration should be given to whether the Welsh Government currently has the capacity required to oversee this process. However, our current assumption is that the Welsh Government and Assembly will (and should) have an equivalent role to the UK Government and Parliament in this process.

20. Whilst we recognise that a vast amount of legislation is being converted through the Bill in a relatively brief time frame, it is important that the UK Government and devolved administrations do not act as the arbiter of justification for the use of

delegated powers. Independent oversight on the use of such powers should be put in place.

21. This should be in the form of a Parliamentary or Assembly Committee which has the powers to determine the form and duration of parliamentary and public scrutiny for statutory instruments (SIs) laid before the legislature as a result of this Bill. The Committee should have powers to:

    - Require a draft of proposed SIs to be laid before the appropriate legislature;
    - Require the relevant minister to provide further evidence or explanation as to the purpose and necessity of the proposed instrument;
    - Make recommendations to the relevant Minister in relation to the text of draft SIs;
    - Recommend that Parliament or the Assembly does not proceed with a draft SI.

22. Furthermore, the relevant minister should be required to have regard to any recommendations made by the Committee, or results of public consultation (where appropriate), before laying a revised draft SI before the relevant legislature.

Cynulliad Cenedlaethol Cymru | National Assembly for Wales
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol | Constitutional and Legislative Affairs Committee
Ymchwiliad: Pwerau ym Mil yr UE (Ymadael) i wneud is-ddeddfwriaeth | Inquiry: Powers in the EU (Withdrawal) Bill to make subordinate legislation
Ymateb gan: Cytûn
Response from: Cytûn

Powers in the EU (Withdrawal) Bill to make subordinate legislation

Submission from the Wales & Europe Working Party of Cytûn – Churches Together in Wales

Cytûn (Churches Together in Wales) brings together the main Christian denominations of Wales, and a number of other Christian organisations, to work together on matters of common concern. The 17 member denominations have around 165,000 adult members in every community across Wales, and regular contact with many more adults, children and young people. A full list of member churches and organisations can be found at: http://www.cytun.cymru/us.html
The Wales & Europe Working Party was founded in the aftermath of the June 2016 referendum to enable the churches to work together in responding to the result and the many resulting changes in the life of the nation. All member churches of Cytûn are involved. Resources published by the Working Party can be found at: www.cytun.cymru/waleseurope
We would welcome the opportunity to be involved further in the work of the Committee. Any queries should be directed to the Revd Gethin Rhys, National Assembly Policy Officer for Cytûn, at gethin@cytun.cymru. This response may be published in full.

Previous responses

We have responded to two previous consultations on the EU (Withdrawal) Bill, and our responses can be found at:
http://www.cytun.cymru/waleseurope/PDFs/Ewrop-CytunEAALC-consultation-05-17.pdf (May 2017)
http://www.cytun.cymru/waleseurope/PDFs/Cytun-EAALC-Consultation-08-17.pdf (Sept 2017)
The meeting of the Working Party held on 23rd November 2017 agreed that our previous responses still stand, and we note that the Committee will take them into account.

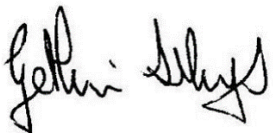
Additional concern

The meeting of the Working Party on 23rd November wished to convey an additional concern. We note that UK Government legislation related to withdrawal from the European Union, other than the EU (Withdrawal) Bill itself, contains many of the features about which we and the Committee have expressed concern. These include:

1. Powers to enable UK Government ministers to amend, by subordinate legislation, devolved legislation without consultation with the National Assembly (e.g. Section 2(6)(a) of the Trade Bill)
2. Restriction of the National Assembly's ability to modify by subordinate legislation "retained EU law" (e.g. Schedule 1 Section 2 of the Trade Bill) while retaining that power for Ministers of the Crown (e.g. Section 2(6)(a) of the Trade Bill)
3. Powers to enable UK Government ministers to amend or repeal any Act of Parliament by subordinate legislation (e.g. Section 54(2) of the Taxation (Cross-Border Trade) Bill).

The inclusion of such provisions in other legislation – especially in legislation with a wide remit, such as that relating to trade, or in legislation not requiring a Legislative Consent Motion in the National Assembly – would to a significant extent obviate the amendment of such provisions in the EU (Withdrawal) Bill itself.
We therefore wish to urge the Committee to scrutinise all this legislation and seek its amendment in line with its proposed amendments to the EU (Withdrawal) Bill.

30th November 2017.



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Agenda Item 7

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