

# Agenda – Constitutional and Legislative Affairs Committee

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Meeting Venue:	For further information contact:
Committee Room 1 – Senedd	Gareth Williams
Meeting date: 19 March 2018	Committee Clerk
Meeting time: 14.30	0300 200 6362
	<a href="mailto:SeneddCLA@assembly.wales">SeneddCLA@assembly.wales</a>

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## 1 Introduction, apologies, substitutions and declarations of interest

## 2 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3

(Pages 1 – 2)

CLA(5)–10–18 – Paper 1 – Statutory instruments with clear reports

Negative Resolution Instruments

### 2.1 SL(5)199 – The Education (Postgraduate Master’s Degree Loans) (Wales) (Amendment) Regulations 2018

### 2.2 SL(5)201 –The Tax Collection and Management (Landfill Disposals Tax Records) (Wales) Regulations 2018

### 2.3 SL(5)202 – The Home Energy Efficiency Schemes (Wales) (Amendment) Regulations 2018

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

Composite Negative Resolution Instruments



**3.1 SL(5)198 – The Education (Student Loans) (Repayment) (Amendment) Regulations 2018**

(Pages 3 – 32)

CLA(5)–10–18 – Paper 2 – Regulations

CLA(5)–10–18 – Paper 3 – Explanatory Memorandum

CLA(5)–10–18 – Paper 4 – Report

**4 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3 but have implications as a result of the UK exiting the EU**

**4.1 SL(5)194 – The Condensed Milk and Dried Milk (Wales) Regulations 2018**

(Page 33)

CLA(5)–10–18 – Paper 5 – Report

**4.2 SL(5)195 – The Tax Collection and Management (Wales) Act 2016 (Consequential and Supplemental Provisions) Regulations 2018**

(Pages 34 – 35)

CLA(5)–10–18 – Paper 6 – Report

**5 Papers to note**

**5.1 Letter from the Secretary of State for Wales: Amendment to Clause 11 of the EU (Withdrawal) Bill**

(Pages 36 – 64)

CLA(5)–10–18 – Paper 7 – Letter from the Secretary of State for Wales, 13 March 2018

CLA(5)–10–18 – Paper 8 – Analysis of common frameworks

**5.2 Welsh Government Written Statement: UK Government's analysis of where they consider EU law to intersect with devolved competence**

(Pages 65 – 66)

CLA(5)–10–18 – Paper 9 – Written statement

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

**7 Forward work programme**

(Pages 67 – 81)

CLA(5)-10-18 – Paper 10 – Forward work programme

CLA(5)-10-18 – Paper 11 – Future inquiries

**8 Assembly procedure for Section 116C Orders in Council**

(Pages 82 – 115)

CLA(5)-10-18 – Paper 12 – Background paper

CLA(5)-10-18 – Paper 13 – Letter from the Llywydd, 1 March 2018

**Date of the next meeting**

16 April 2018

# Statutory Instruments with Clear Reports **Agenda Item 2**

19 March 2018

## SL(5)199 – The Education (Postgraduate Master’s Degree Loans) (Wales) (Amendment) Regulations 2018

### **Procedure: Negative**

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These Regulations amend the Education (Postgraduate Master’s Degree Loans) (Wales) Regulations 2017 (‘2017 Regulations’). The 2017 Regulations provide for the making of loans to students who are ordinarily resident in Wales and who are undertaking postgraduate master’s degree courses beginning on or after 1 August 2017.

Regulation 3 amends the maximum duration of a part-time course if it is to be capable of being designated for the purposes of the 2017 Regulations.

Regulation 4 increases the amount of loan available (from £10,280 to £13,000).

The amendments apply to the provision of loans in respect of a course which begins on or after 1 August 2018.

**Parent Act:** Teaching and Higher Education Act 1998

**Date Made:** 27 February 2018

**Date Laid:** 7 March 2018

**Coming into force date:** 19 April 2018

## SL(5)201 – The Tax Collection and Management (Landfill Disposals Tax Records (Wales) Regulations 2018

### **Procedure: Negative**

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These Regulations make provision about the records which must be preserved by a person who carries out taxable operations in relation to landfill disposals tax under section 38 of the Tax Collection and Management (Wales) Act 2016.

**Parent Act:** Tax Collection and Management (Wales) Act 2016



**Date Made:** 27 February 2018

**Date Laid:** 7 March 2018

**Coming into force date:** 1 April 2018

## SL(5)202 – The Home Energy Efficiency Schemes (Wales) (Amendment) Regulations 2018

### **Procedure: Negative**

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The existing Welsh Government Warm Homes Nest scheme ends on 31 March 2018 and will be replaced by a new Warm Homes Nest scheme which commences on 1 April 2018. Welsh Government consulted on the design of the new scheme which has resulted in a number of changes. These Regulations:

- make changes to enable the maximum amount of grant (spending cap) per household in on-gas and off-gas properties to be based on the starting Energy Performance Certificate (EPC) rating of the property;
- include low energy light bulbs as a measure for which a grant may be approved;
- remove the provision of partial grants;
- exclude from grant eligibility those properties that have previously received assistance under the scheme.

**Parent Act:** Social Security Act 1990

**Date Made:** 6 March 2018

**Date Laid:** 9 March 2018

**Coming into force date:** 1 April 2018



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 STATUTORY INSTRUMENTS
 

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**2018 No. 284****EDUCATION**
**The Education (Student Loans) (Repayment) (Amendment)  
Regulations 2018**

<i>Made</i>	- - - -	<i>27th February 2018</i>
<i>Laid before Parliament</i>		<i>5th March 2018</i>
<i>Laid before the National Assembly for Wales</i>		<i>5th March 2018</i>
<i>Coming into force</i>	- -	<i>6th April 2018</i>

The Secretary of State for Education makes the following Regulations in exercise of the powers conferred by sections 22 and 42 of the Teaching and Higher Education Act 1998(a).

The Welsh Ministers make the following Regulations in exercise of the powers conferred on the Secretary of State by sections 22 and 42 of the Teaching and Higher Education Act 1998, now exercisable by them(b).

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Education (Student Loans) (Repayment) (Amendment) Regulations 2018 and come into force on 6th April 2018.

(2) Subject to paragraph (3), these Regulations extend to England and Wales only.

(3) These Regulations extend to all of the United Kingdom in so far as they impose or amend any obligation or confer or amend any power conferred on Her Majesty's Revenue and Customs, an employer or a borrower in relation to repayments under Part 3 or 4 of the Education (Student

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(a) 1998 c. 30; Section 22 was amended by section 146 of the Learning and Skills Act 2000 (c. 21), Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1), section 147 of the Finance Act 2003 (c. 14), sections 42 and 43 of and Schedule 7 to the Higher Education Act 2004 (c. 8), section 257 of the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), section 76 of the Education Act 2011 (c. 21) and S.I. 2013/1881. Section 22 is also amended by section 86(2) to (7) of the Higher Education and Research Act 2017 (c. 29) but those amendments are not yet in force. Section 43(1) of the Teaching and Higher Education Act 1998 defines "prescribed" and "regulations".

(b) The functions of the Secretary of State under section 22 of the Teaching and Higher Education Act 1998 as regards Wales were transferred to the National Assembly for Wales by section 44 of the Higher Education Act 2004, except for those functions under section 22(2)(a), (c), (j) and (k), (3)(e) and (f) and (5). Functions under subsections (2)(a), (c) and (k) are exercisable by the Secretary of State concurrently with the National Assembly for Wales. The section 22 functions which were transferred to, or became exercisable by, the National Assembly for Wales were subsequently transferred to the Welsh Ministers by section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32). The functions of the Secretary of State under section 42 of the Teaching and Higher Education Act 1998 as regards Wales were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). The section 42 functions which were transferred to the National Assembly for Wales were subsequently transferred to the Welsh Ministers by section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

Loans) (Repayment) Regulations 2009(a) or on any other person in relation to the retention or production of information or records.

**Amendment of the Education (Student Loans) (Repayment) Regulations 2009**

2. The Education (Student Loans) (Repayment) Regulations 2009 are amended as follows.

3. In regulation 3(1)—

(a) before the definition of “repayment”, insert—

““relevant percentage difference in average earnings” means the percentage difference between the average earnings in periods 1 and 2, as published on the website of the Office for National Statistics(b) on the last day of June that follows period 2, where—

(a) period 1 is the three month period consisting of January to March in the calendar year prior to period 2; and

(b) period 2 is the three month period consisting of January to March ending a calendar year and six days before the beginning of the repayment threshold year;”;

(b) in the definition of “repayment threshold”, in (c), for “29(8)” substitute “29(8A)”.

4. In regulation 21A—

(a) omit paragraphs (12) and (13);

(b) after paragraph (11) insert—

“(12) For a borrower to whom Part 3 or 4 applies, the lower interest threshold is—

(a) for the repayment threshold year ending on 5 April 2019, an amount of £25,000;

(b) for each subsequent repayment threshold year, an amount equal to  $A + (A \times B)$  and rounded up to the nearest £5 where—

A is the lower interest threshold in the previous repayment threshold year, and

B is the relevant percentage difference in average earnings.

(12A) For a borrower to whom Part 5 applies, the lower interest threshold is—

(a) for the repayment threshold year ending on 5 April 2019, an amount to be determined by reference to the most recent price level index for the borrower’s country of residence and in accordance with the following table—

<i>Band</i>	<i>Price level index</i>	<i>Lower interest threshold</i>
A	0<30	£5,000
B	30<50	£10,000
C	50<70	£15,000
D	70<90	£20,000
E	90<110	£25,000
F	110<130	£30,000
G	130+	£35,000

(b) for each subsequent repayment threshold year, an amount equal to  $A + (A \times B)$  and rounded up to the nearest £5 where—

(a) S.I. 2009/470, amended by S.I. 2010/661, 2010/1010, 2011/784, 2012/836, 2012/1309, 2013/388, 2013/591, 2013/607, 2013/1881, 2014/651, and 2017/831.

(b) The Office for National Statistics EARN01 dataset, Average Weekly Earnings (Regular Pay, Great Britain, seasonally adjusted) table can be viewed on the website of the Office for National Statistics – [www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/averageweeklyearningsearn01](http://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/averageweeklyearningsearn01). The figure in question is that for the whole economy (as opposed to those figures given for specific sectors of the economy) indicating percentage change year on year, comparing the three-month period January to March in a given year with the same period a year earlier. It is expressed as a percentage figure to one decimal place.

A is the lower interest threshold in the previous repayment threshold year for the band now applicable to the borrower's country of residence, and

B is the relevant percentage difference in average earnings.

(13) For a borrower to whom Part 3 or 4 applies, the higher interest threshold is—

- (a) for the repayment threshold year ending on 5 April 2019, an amount of £45,000;
- (b) for each subsequent repayment threshold year, an amount equal to  $A + (A \times B)$  and rounded up to the nearest £5 where—

A is the higher interest threshold in the previous repayment threshold year, and

B is the relevant percentage difference in average earnings.

(13A) For a borrower to whom Part 5 applies, the higher interest threshold is—

- (a) for the repayment threshold year ending on 5 April 2019, an amount to be determined by reference to the most recent price level index for the borrower's country of residence and in accordance with the following table—

<i>Band</i>	<i>Price level index</i>	<i>Higher interest threshold</i>
A	0<30	£9,000
B	30<50	£18,000
C	50<70	£27,000
D	70<90	£36,000
E	90<110	£45,000
F	110<130	£54,000
G	130+	£63,000

- (b) for each subsequent repayment threshold year, an amount equal to  $A + (A \times B)$  and rounded up to the nearest £5 where—

A is the higher interest threshold in the previous repayment threshold year for the band now applicable to the borrower's country of residence, and

B is the relevant percentage difference in average earnings.”

5. In regulation 21A(14)—

- (a) for “the tables in paragraphs (12)(b) and (13)(b)” substitute “paragraphs (12A) and (13A)”;
- (b) for (c) substitute “(c) the band applicable to a country is determined by reference to the price level indices calculated under sub-paragraph (b);”;
- (c) in (d) before “the Authority” insert “where a price level index cannot be calculated under sub-paragraph (b)”.

6. In regulation 29—

- (a) omit paragraph (8);
- (b) after paragraph (7) insert—

“(8) The repayment threshold in relation to a post-2012 student loan is—

- (a) for the repayment threshold year ending on 5 April 2019, an amount of £25,000, and
- (b) for each subsequent repayment threshold year, an amount equal to  $A + (A \times B)$  and rounded up to the nearest £5 where—

A is the repayment threshold for the previous repayment threshold year, and

B is the relevant percentage difference in average earnings.

(8A) The repayment threshold in relation to a postgraduate master's degree loan is an amount of £21,000.”.



7. In regulation 76(1), before the final table, insert the following table—

<i>“Band</i>	<i>Price level index</i>	<i>Applicable threshold for post-2012 student loans</i>
A	0<30	£5,000
B	30<50	£10,000
C	50<70	£15,000
D	70<90	£20,000
E	90<110	£25,000
F	110<130	£30,000
G	130+	£35,000”

8. In regulation 76(1), in the title of the third column of the final table, omit “post-2012 student loans and”.

9. After regulation 76(1A) insert—

“(1AA) On 6 April 2019, and on 6 April of each subsequent year, each amount in the column entitled “Applicable threshold for post-2012 student loans” in the table in paragraph (1), shall vary to an amount equal to  $X + (X \times Y\%)$  and rounded up to the nearest £5 where—

X is the amount in the column entitled “Applicable threshold for post-2012 student loans” immediately before 6 April, and

Y is the relevant percentage difference in average earnings.”

27th February 2018

*Sam Gyimah*  
Minister of State  
Department for Education

27th February 2018

*Kirsty Williams*  
Cabinet Secretary for Education, one of the Welsh Ministers

### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Education (Student Loan) (Repayment) Regulations 2009 (S.I. 2009/470) (“the Principal Regulations”), which were made under section 22 of the Teaching and Higher Education Act 1998 (c. 30) and make provision for the repayment of income-contingent student loans in England and Wales.

Regulations 3 to 9 amend the Principal Regulations.

Regulation 3 inserts new definitions, including the “relevant percentage difference in average earnings”, and makes an amendment to the definition of “repayment threshold” in relation to a postgraduate master’s degree loan.

Regulation 4 increases the lower interest threshold for borrowers who are resident in the UK for income tax purposes (“UK borrowers”) with a post-2012 student loan to £25,000, and provides for annual adjustments in line with changes in average earnings. It also makes corresponding changes to the lower interest threshold for borrowers who are not resident in the UK for income tax purposes (“overseas borrowers”) with a post-2012 student loan. Regulation 4 also increases the higher interest threshold for UK borrowers with a post-2012 student loan to £45,000, and provides for annual adjustments in line with changes in average earnings and makes corresponding changes to the higher interest threshold for overseas borrowers with a post-2012 student loan.

Regulation 5 provides that paragraph (14) of regulation 21A of the Principal Regulations applies to new paragraphs (12A) and (13A) of that regulation. It also makes changes to sub-paragraphs (14)(c) and (d) of regulation 21A to explain how ‘bands’ are calculated and to ensure consistency with regulation 76(6) of the Principal Regulations. Regulation 6 increases the repayment threshold for UK borrowers with a post-2012 student loan to £25,000 and provides for annual adjustments in line with changes in average earnings. It also specifies that the repayment threshold for postgraduate master’s degree loans is £21,000.

Regulations 7, 8 and 9 increase the ‘applicable threshold’ for overseas borrowers with a post-2012 student loan in line with the increase in the repayment threshold for UK borrowers with a post-2012 student loan. They also provide for annual adjustments to the ‘applicable threshold’ in line with changes in average earnings.

The measure used for average earnings is taken from the Office for National Statistics (“ONS”) EARN01 dataset. From the table showing Average Weekly Earnings Great Britain Regular Pay (seasonally adjusted), it is the figure indicating the percentage change year on year, comparing the three-month period January to March in a given year with the same period a year earlier. The dataset is available from the ONS website [www.ons.gov.uk](http://www.ons.gov.uk) or by contacting the relevant ONS team at [labour.market@ons.gsi.gov.uk](mailto:labour.market@ons.gsi.gov.uk) or on 01633 455 400. ONS publish the dataset in digital format only. An informally printed copy of the dataset (taken from the ONS website) can be obtained upon request from the Student Loans Repayments Policy Team at the Department for Education on 0370 000 2288.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

The Explanatory Memorandum laid before Parliament is published alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).

## **Explanatory Memorandum to the Education (Student Loans) (Repayment) (Amendment) Regulations 2018**

This Explanatory Memorandum has been prepared by the Higher Education 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.

### **Cabinet Secretary's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Education (Student Loans) (Repayment) (Amendment) Regulations 2018. I am satisfied that the benefits justify the likely costs.

Kirsty Williams AM  
Cabinet Secretary for Education  
5 March 2018

## **1. Description**

The Education (Student Loans) (Repayment) (Amendment) Regulations 2018 further amend the Education (Student Loans) (Repayment) Regulations 2009 (SI 2009/470). The amendments increase the repayment threshold and interest rate thresholds for Welsh borrowers with undergraduate loans relating to courses started in or after academic year 2012/13.

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

The Education (Student Loans) (Repayment) (Amendment) Regulations 2018 (“the 2018 Regulations”) amend the Education (Student Loans) (Repayment) Regulations 2009 (SI 2009/470) (“the 2009 Regulations”). The 2009 Regulations were made as composite regulations by the Welsh Ministers (in relation to Wales) and the Secretary of State and they govern repayments of student loans by borrowers who have taken out income-contingent loans for courses which began on or after September 1998. The 2009 Regulations contain provisions (not devolved to the Welsh Ministers) which are made by the Secretary of State in relation to England and Wales which concern the tax system operated by Her Majesty’s Revenue and Customs (HMRC). Some other provisions are made by the Welsh Ministers in relation to Wales and the Secretary of State in relation to England.

This composite statutory instrument is subject to the negative resolution procedure in the National Assembly for Wales and in the UK Parliament. Given the composite nature of the 2009 Regulations and that no routine Parliamentary processes exist by which to lay bilingual regulations before Parliament, these Regulations will be made in English only.

## **3. Legislative background**

The relevant legal powers to make these Regulations are set out in sections 22 and 42 of the Teaching and Higher Education Act 1998.

The functions of the Secretary of State under section 22 of the Teaching and Higher Education Act 1998 as regards to Wales were transferred to the National Assembly for Wales by section 44 of the Higher Education Act 2004, except for those functions under section 22(2)(a), (c), (j) and (k), 3(e) and (f) and (5). Functions under sub-sections 22(2)(a), (c) and (k) are exercisable by Welsh Ministers concurrently with the Secretary of State in relation to Wales. The functions in sections 22(2)(j), 22(3)(e) and (f) and section 22(5) remain Secretary of State functions in relation to Wales. The functions so transferred and which became exercisable concurrently subsequently became functions of the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

This instrument will follow the negative resolution procedure.

#### **4. Purpose & intended effect of the legislation**

Loans are made available to support eligible students ordinarily resident in Wales undertaking designated courses of higher education. The 2009 Regulations provide for the repayment of those loans to Her Majesty's Treasury. The terms of the repayment are set in order to balance the need for adequate returns to the taxpayer while ensuring loans are not a disincentive to undertaking higher education. From time-to-time, the terms of repayment are assessed to ensure this balance is appropriate. The changes described below will ensure that loan repayments are affordable for those repaying them, while providing a reasonable return to the taxpayer.

A summary of the changes is set out below.

Income contingent student loans were introduced in 1998. Currently, the 2009 Regulations set an income threshold for repayment, below which borrowers are not required to make repayments of their loans. Borrowers earning above that repayment threshold are required to make repayments of a set percentage of the portion of their income that falls above that threshold. For undergraduate borrowers who started their courses in or after the 2012/13 academic year, the repayment threshold is currently £21,000.

The interest rates which apply to these undergraduate student loans differs according to whether the borrower is studying for their course, whether the borrower has finished studying on the course, and how much the borrower is earning. Currently, whilst a borrower is studying their loan accrues interest at a rate equal to the Retail Price Index ('RPI') plus three percent. When a borrower has finished their studies and their income is £21,000 or less, the loan accrues interest at RPI. Where the borrower's income is between £21,001 and £41,000 the loan accrues interest at between RPI and RPI+3% (rising as income rises). Where a borrower has finished their studies and is earning more than £41,000, the loan accrues interest at RPI+3%. Similar provisions apply to overseas borrowers.

The 2018 Regulations will make changes to the repayment and interest rate thresholds for borrowers with undergraduate loans taken out after 2012 ('post-2012 loans'). The changes will apply to those who have already taken and those who will take out such loans:

- (a) Interest rate on post-2012 loans – changes to both the lower and higher interest thresholds. The lower interest rate threshold will increase from £21,000 to £25,000 and the higher interest rate threshold will increase from £41,000 to £45,000. The 2018 Regulations will also provide for these

thresholds to be adjusted annually in line with average earnings for the year ending 5 April 2020 and years thereafter. The measure of average earnings will be taken from the Office for National Statistics Average Weekly Earnings EARN01 dataset. Provision will also be made to update both the lower and higher interest threshold bands for borrowers overseas accordingly. Student loan borrowers who are resident overseas are unable to repay their student loans through HMRC and instead make repayments directly to the student loans company through a repayment plan based on their income. The applicable interest thresholds for these borrowers vary according to where in the world the borrower resides. The 2009 Regulations prescribe seven applicable threshold bands into which borrowers are assigned based on their country of residence (countries are assigned to bands annually using World Bank data which takes into account the cost of living in different countries). The 2018 Regulations amend and include provision to update those interest thresholds in line with borrowers who are resident in the UK. The interest rate on postgraduate Master's degree loans will remain at RPI + 3%.

- (b) Repayment thresholds: The repayment threshold will increase from £21,000 to £25,000. The 2018 Regulations will also provide for this threshold to be adjusted annually in line with average earnings for the year ending 5 April 2020 and years thereafter. As for interest rate thresholds described above, the measure of average earnings will be taken from the ONS dataset. The 2018 Regulations will make similar changes for overseas borrowers making income-related payments. The applicable repayment threshold for borrowers who are resident overseas varies according to where in the world the borrower resides. There are seven applicable threshold bands into which borrowers are assigned based on their country of residence. The 2018 Regulations amend and include provision to update those thresholds in line with borrowers who are resident in the UK. The repayment threshold for postgraduate Master's degree loans will remain £21,000.

## **5. Consultation**

There is no statutory requirement to consult on these regulations. The number of changes are small and all benefit the borrower. Further, the window of opportunity to make the 2018 Regulations was limited. The UK Government, which is also introducing this change via these composite regulations, did not consult. It was decided, on balance, that making these Regulations was of clear benefit to the borrower and consultation was likely to only delay and complicate introduction as the opportunity to make composite regulations would risk being missed.

## 6. Regulatory Impact Assessment

### Background

To offset the increase in tuition fees implemented in Wales in 2012 and a similar rise in England, the Welsh Government introduced new support arrangements from academic year 2012/13. From that academic year, new full-time undergraduate students ordinarily resident in Wales became eligible to receive a tuition fee grant to cover any increase in fees (up to a £9,000 maximum) beyond the level set in 2011/12, regardless of where in the UK they wished to study. EU students studying in Wales also became eligible for the grant if studying at Welsh higher education institutions. Maintenance support for living costs, in the form of grants and loans, continued to be made available. Tuition fee and living costs loans are repaid by the student once they leave their studies and begin earning over a certain income threshold level. Other changes made at that time included raising the income threshold for student loan repayments from £15,000 to £21,000.

### A Revised Repayment Policy

On 9 October 2017, the UK Government's Department for Education announced changes to the student loan repayment system. The changes would apply to those who have taken out undergraduate loans for courses starting since 2012 and to those who will take out such loans. The policy rationale for applying the changes to all post-2012 borrowers (rather than, say, all new borrowers after the 2018 Regulations are made) is to ensure all borrowers who were subject to the fee increases in 2012 and face repayment over the coming years are treated equally. The Welsh Government is conscious of the burden of debt faced by students (as evidenced by its provision of grants for students, in comparison to England where grants are no longer available) and intends that all those with post-2012 debt are treated equally during the period of repayment, which can be up to 30 years. In addition, applying the changes differently to England would see Welsh borrowers disadvantaged compared to their English counterparts.

The changes are outlined below:

- an increase to the student loan repayment threshold (i.e. the earnings threshold above which student loan borrowers are required to make repayments on their student loans) from £21,000 to £25,000 for the 2018-19 financial year, to be adjusted annually in line with average earnings thereafter; and
- changes to how interest rates are applied to student loans – the table below provides explanation.

## Interest rates applied to outstanding loan balances

<i>While studying</i>		
Retail Price Index (RPI) plus 3%.		
<i>After leaving, earning</i>		
<b>Currently</b>	<b>From April 2018</b>	<b>Interest rate</b>
£21,000 or less	£25,000 or less	RPI
Between £21,000 and £41,000	Between £25,000 and £45,000	RPI plus up to 3%, depending on income
£41,000 and over	£45,000 and over	RPI plus 3%

### Options Appraisal

#### *Option 1*

Do nothing.

To do nothing in response to the changes announced in England for post-2012 student loan borrowers would have negative consequences for borrowers ordinarily resident in Wales. They would not benefit from the higher income threshold at which repayment begins and would not benefit from the adjustment to interest rates. They would be materially disadvantaged in comparison.

#### *Option 2*

Make the regulations.

To introduce the policy would see the continuation of a progressive and affordable repayment system and directly benefit borrowers.

The Welsh Government must consider the financial constraints imposed upon it by Her Majesty's Treasury in determining repayment policy. There is no scope to negotiate a different repayment policy in the timescales in which these regulations are to be made. In addition, repayments are operated as a single unified system for England and Wales by Her Majesty's Customs and Revenue, further constraining the ability to change repayment policy in the short and medium term. Therefore, the two options above are the only viable options.



## **Costs & benefits**

### *Option 1*

There is no change to the cost incurred by Welsh Government under this option. The cost to students is also unchanged. However, the obvious benefits to students of a more advantageous interest rate structure would not be realised, nor would the rise in the income threshold at which students must start to repay.

### *Option 2*

There is an increased cost to the Welsh Government via the Resource Accounting and Budgeting charge (“the RAB charge”, see below) – a potential reduction in the return via the interest paid on debt and a potentially lower overall repayment rate (as the threshold rises) means an increased cost to Government. These costs are passed on to the Welsh Government via the RAB charge. The RAB charge represents the Government subsidy on the provision of loans, and is a measure of the estimated cost to Government of borrowing to support the student finance system. It is the amount of loan outlay each year that is expected to never be paid back to Government. The RAB charge is calculated by converting forecasted future loan write-offs and interest subsidies to net present value terms.

## **Benefits, distributional impact and student debt**

If these regulations are not made, Welsh borrowers will be worse-off than their English counterparts. Borrowers will benefit directly by the amounts presented in the analysis below.

All else equal, these changes reduce the total debt owed by many students by reducing the interest rates charged on their outstanding balance. An increased number of students may never enter repayment as the threshold rises.

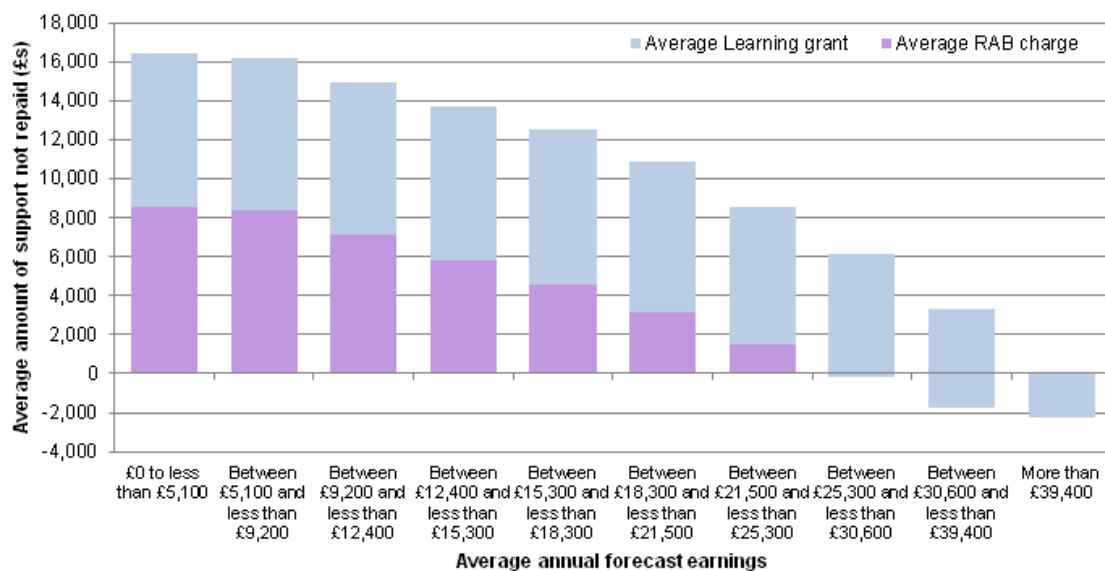
Whether this support policy changes the distribution of participation across lower income bands is uncertain. The more recent changes to student support, both here and across the UK, indicates there is limited affect. It is assumed the changes in part time support will increase participation, but the detail and distributional impact of this is not currently know and analysis is not available to use as a baseline. The uncertainty is where the any new part time students may come from e.g. from what would be the ‘current’ full time demographic, or new students out with the current student demographic.

The amount of outstanding debt a student has is, like all debt, a function of the amount borrowed and the applicable rate of interest (in the case of student loans, and as explained above, various interest rates apply). The thresholds at

which the rates of interest apply have been increased, which is equivalent to reducing the overall interest rate, reducing the overall burden of debt, and which, all else equal, will shorten the length of time a borrower is in repayment. The actual effect depends on a borrower's income over time. This is influenced by a number of things, including the general economic health of the UK (both in terms of wage inflation and interest rates) which is something we have little control over. The net gain to borrowers as a group is summarised by the change in the RAB charge (see below) which will rise as a result of these changes. This indicates that borrowers will, on average, repay less and thus the Welsh Government subsidy, captured by the RAB, will rise.

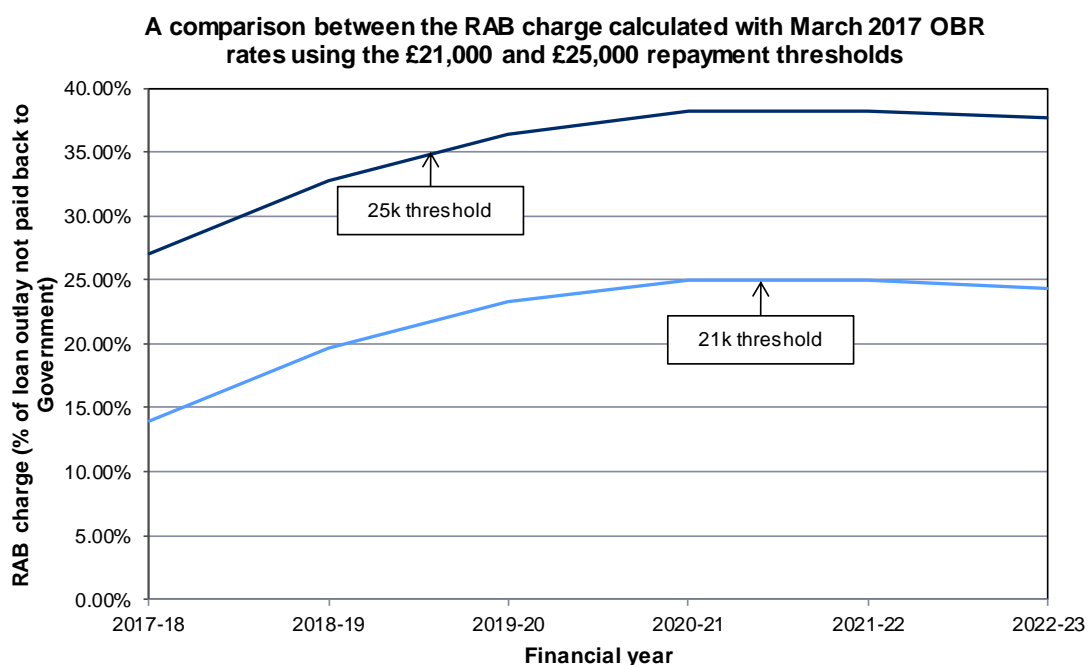
This is a cost to the Welsh Government. There is also a small distributional impact amongst borrowers. Those who earn between £21,000 and £25,000 will no longer be required to repay their debt, improving their position. Similarly, as the interest rate thresholds have been adjusted, some students (those who no longer pass the new upper thresholds) will see their relative position improve. For example, a borrower whose earnings peak at, say, £42,000 will not see the highest rate of interest apply to their debt as they would have under the 2009 Regulations, improving their position. The chart below illustrates the amount of support that will not be paid back under the new repayment policy by income level.

**Student support not paid back by income level**



The chart below shows the impact that the change in repayment and interest thresholds is expected to have on the RAB charge of post-2012 borrowers (the percentage of loan outlay each year that is expected to not be paid back to Government). Each income band has a similar number of borrowers in each. The total number of borrowers with outstanding loan amounts at the end of 2016-17 was around 305,000. The number of new borrowers each year is

around 25,000. The calculations were carried out using the March 2017 economic determinants from the Office for Budget Responsibility (OBR). The RAB charge is expected to rise by a little over 13 percentage points. This means that an additional 13 per cent of the loan outlay each year is expected to be written off as a result of the change in repayment and interest thresholds.



The analysis above is part of detailed modelling of these changes, which is included as an annex to this Assessment. Despite this extensive modelling there remain some uncertainties around the distributional and other impacts of these changes, due to the overwhelming complexity of modelling these aspects, including:

- there may be wider benefits if students at the margins are encouraged to participate when they otherwise wouldn't. Evidence from elsewhere suggests this effect is likely to be relatively small;
- an overall reduced debt level may have a positive economic impact via increased expenditure;
- there are likely to be consequences from how the aggregate changes affect people from different backgrounds across the distribution of earnings and over time;
- there may be some deadweight loss where the changes do not affect student decisions and where students do not need assistance with repayments; and
- there are potential distributional and efficiency impacts of transferring taxpayer funds to borrowers, either where the graduates are higher than average earners or where they are unable to benefit from their degree.

## Costs

The table below shows the effect that the rise in the repayment threshold to £25,000 and interest thresholds to £25,000 and £45,000 will have on the cost to Government. The cost to Welsh Government of loans given out to post-2012 borrowers in 2017-18 is expected to rise by £57.0million to £117.5million. The cost to Government is predicted to increase over the following few years.

### **A comparison between the cost to government of post-2012 (undergraduate) borrowers with the 21k and 25k thresholds, using March 2017 OBR rates**

	<i>£000,000s</i>			
	2017-18	2018-19	2019-20	2020-21
Cost to government				
with the £21,000 threshold	60.5	109.8	154.8	187.9
with the £25,000 threshold	117.5	183.2	241.5	286.4
Difference	57.0	73.4	86.7	98.5

Predictions for student loan repayments, and in turn the RAB charge and cost to Government of student loans, are dependant on various economic determinants. When the Office for Budget Responsibility (OBR) publish forecasts for these economic determinants in November and March each year the RAB charges and cost to Government can change.

For example, if earnings growth, the discount rate or the base rate were to increase, the RAB charge would decrease. On the other hand, if RPI were to increase, the RAB charge would increase.

The table and chart above were created using the March 2017 OBR forecasts. The values they show could either rise or fall depending on how the OBR forecasts change.

## **Competition assessment**

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

## **Post implementation assessment**

The repayment regulations are revised from time-to-time and are subject to review, both by policy officials and delivery partners in their practical implementation.

## **Summary**

The making of these Regulations is necessary to establish the basis for, and update aspects of, the repayment of loans for student support in higher education for borrowers ordinarily resident in Wales.

## Appendix

### Detailed cost modelling

#### 1. A comparison between the results of Plan 2 and Plan 2 Diamond

This paper provides an overview of the forecast impact of recent policy changes on the cost of providing student loans. The focus is on the forecast impact of Diamond. Recent changes to the lower and upper earnings and interest thresholds (changing from £21,000 to £25,000 and £41,000 to £45,000 respectively) and revised maximum tuition fee levels are considered. Once finalised and agreed the methods and assumptions for modelling Diamond will be used for HE finance returns.

#### *Introduction*

This document provides an overview of the impact of the Diamond reforms; comparing Diamond assumptions to status-quo (do nothing). Future borrowers are identified in the Plan 2 borrower data (received from DfE, Nov 2016).

#### *Assumptions*

- A summary of the loan outlay for individual borrowers in AY2015/16 is used to estimate the grant allocated and likely loan amounts under Plan 2 Diamond.
- The proportion of borrowers living at Parental Home, Elsewhere or Elsewhere (London) in 2018/19 onwards (for Plan 2 Diamond) remain the same as observed in 2015/6 borrower data. The likelihood of borrowers taking out a tuition fee or living costs loan (by residence category) in 2018/19 onwards remains the same as observed in 2015/6 borrower data
- To compare Plan 2 Diamond to the status quo (Plan 2), the average grant per borrower given out for Plan 2 is the same in 2018/19 as in the 2015/16 data. The average grant per borrower given out for Plan 2 Diamond is calculated using the 2015/16 data.

#### *Results*

The allocation of student support to borrowers for Plan 2 Diamond forecast is based on a generated cohort of borrowers from 2015/16 SLC data, where household income is known. This cohort is entered into the StEP Plan 2 model to forecast borrower earnings and repayments for Plan 2 and Plan 2 Diamond respectively. For summarising the analysis, the average lifetime earnings of the cohort are split into 10 equally sized categories. These 10 categories are then used to report the average grant and loan amounts issued by reported household earnings (note that the categories are not equal sized for charts 2 a and 2b), and repayment expected of loans by borrower earnings (charts 3a,b, 4a,b, and 5 contain 10 equal sized categories of borrower earnings).

### Change in RAB charge

The impact on the RAB charge of Diamond is substantial. Moving from all future borrowers receiving pre-Diamond support levels (P2) to all future borrowers receiving Diamond support levels incurs a ~14 percentage point increase in RAB. Because the Diamond support levels also increase the average loan amount per borrower, this translates into an even larger amount of financial cover being required.

Recent policy changes require additional modelling of P2 phased out and Diamond implemented in 2018/19, which is illustrated in Table 1 (see annex for charts explaining the effect of the threshold change).

**Table 1: RAB over time by Plan Type**

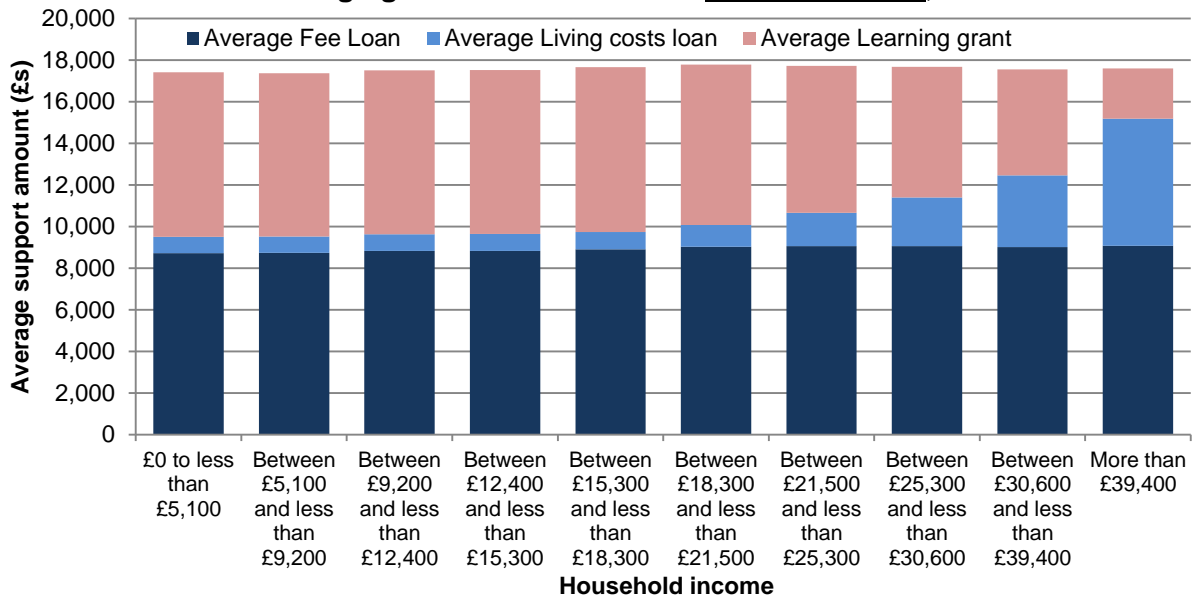
Scenario	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
Plan 2 (as was, pre Diamond)			<b>13.7%</b>				
Diamond only (£21,000 threshold, £9,550 fee)			<b>27.4%</b>				
Phase out P2, phase in Diamond (£21,000 threshold, £9,000 fee)	15.6%	18.7%	<b>22.6%</b>	25.3%	25.1%	24.5%	23.9%
Phase out P2, phase in Diamond (£25,000 threshold, £9,000 fee)	28.6%	27.2%	<b>32.5%</b>	35.9%	37.6%	37.4%	36.9%
<i>Additional partial cancellation</i>	4.41%	4.41%	<b>4.41%</b>	4.41%	4.41%	4.41%	4.41%

### Total support

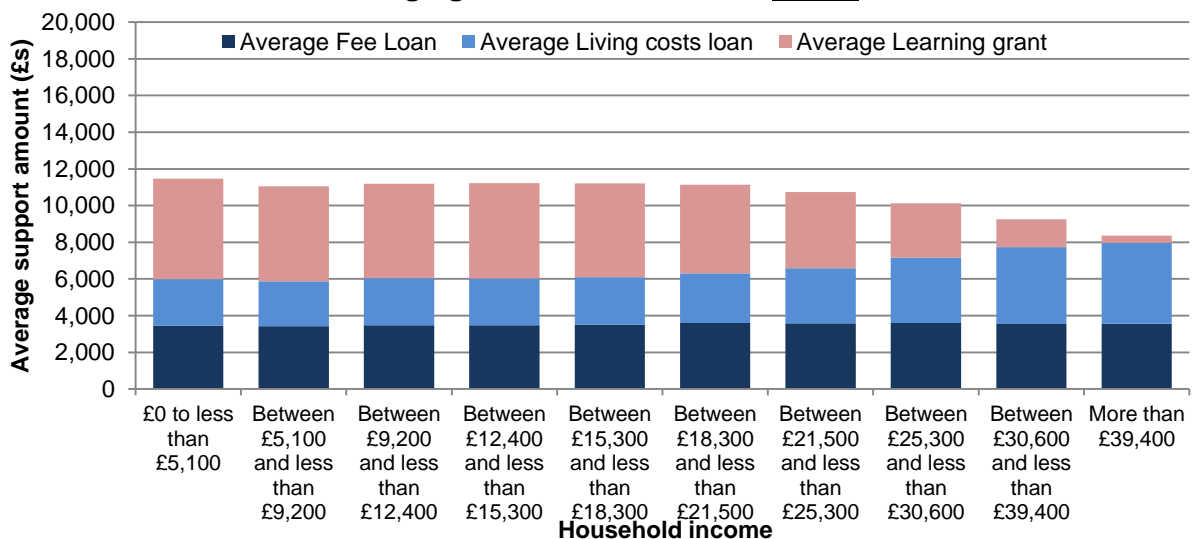
- In Plan 2 Diamond the total support package available is equal for all borrowers. It is assumed that not all borrowers took out the full amounts of the living costs and/or tuition fee loans, which accounts for the variation in the average support taken (Chart 1a).
- In line with expectations of the Diamond package, the fee loan is stable across all borrowers and the learning grant decreases as household income increases. The average living costs loan taken increases due to social mobility effect<sup>1</sup> implicit in the borrowing data.
- In Plan 2 the total support received decreases as household income increases due to the expectation of parental/guardian support for high household income students (Chart 1b).

<sup>1</sup> Students from high earning households are more likely to live away from home or study in London, and are therefore eligible to access a larger loan amount.

**Chart 1a: Average grant and loan amount Plan 2 Diamond, 15/16 data**



**Chart 1b: Average grant and loan amount Plan 2, 15/16 data**

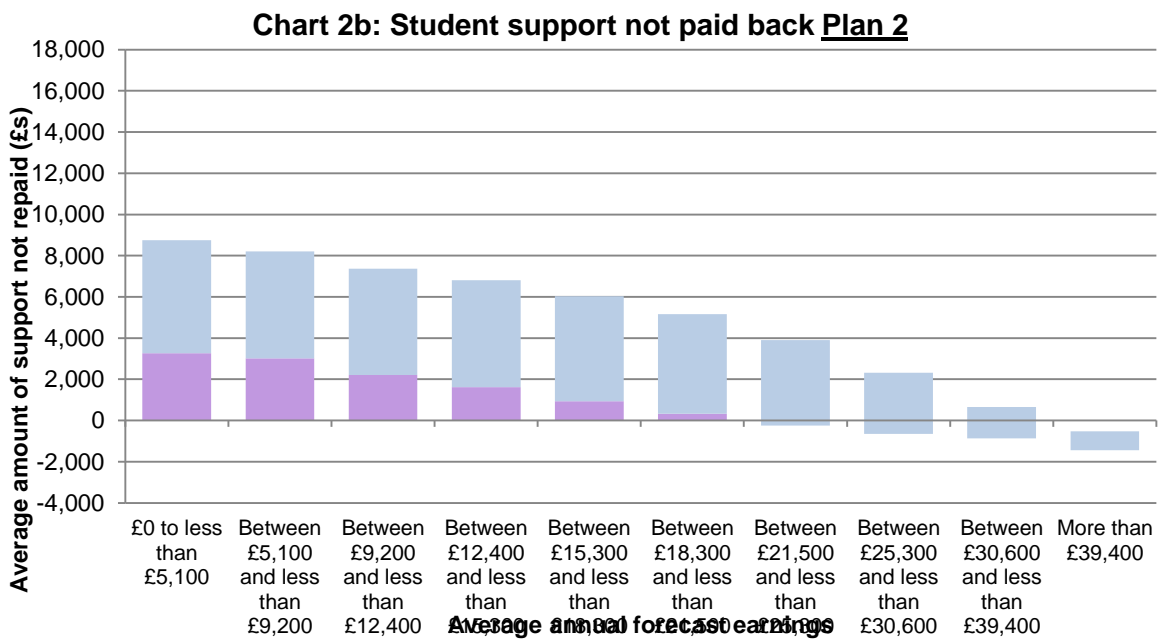
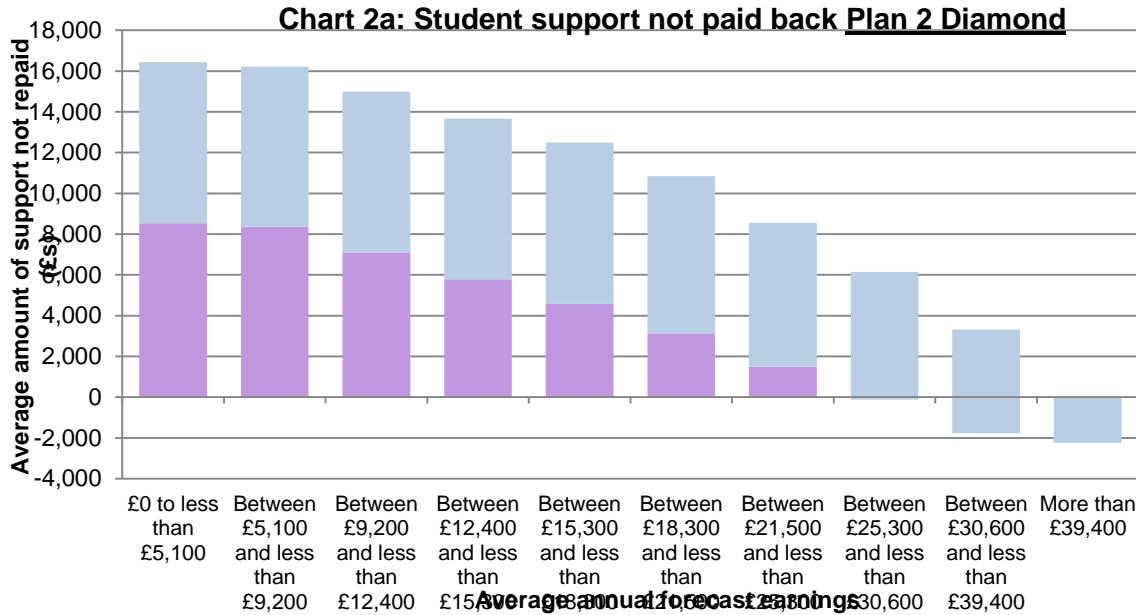


**Support expected to be repaid**

- Charts 2 show the average cost to the government of borrowers split by average annual forecast earnings over their lifetime.
- Borrowers with an average annual forecast earnings of £0 to less than £5,100 have the highest RAB charge and present the highest cost to government.
- Borrowers with average annual forecast earnings over £25,300 have a negative RAB, meaning that they repay more than originally borrowed due to interest. Many of these borrowers received a learning grant, but their overall support cost is reduced because of the negative RAB charge.

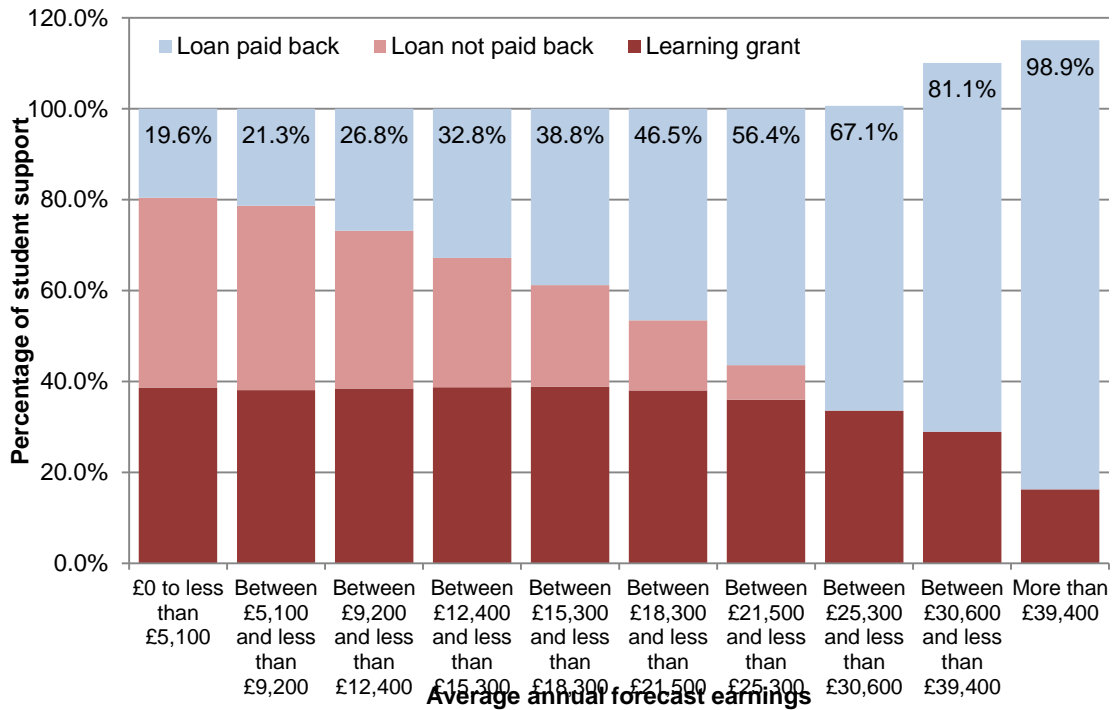


- Those with average annual earnings over £39,400 are the only cost-neutral category when accounting for total support (grant and loans). That is, these borrowers fully repay their loan and the incurred interest, which amounts to more than their average learning grant.

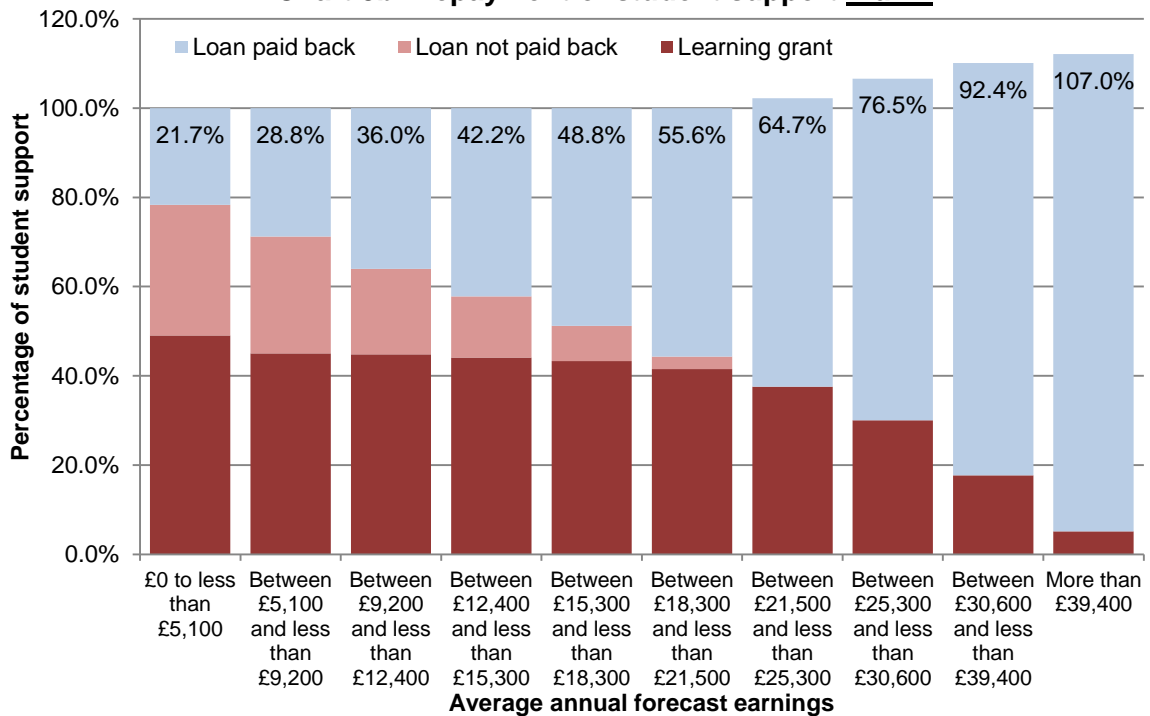


- The cost to the government per borrower is higher for Plan 2 Diamond than Plan 2. This is because Plan 2 Diamond increases the amount of both the loan and grant given versus Plan 2. The larger loan balance results in a larger RAB charge which also reduces the offset grant outlay.

**Chart 3a: Repayment of student support Plan 2 Diamond**



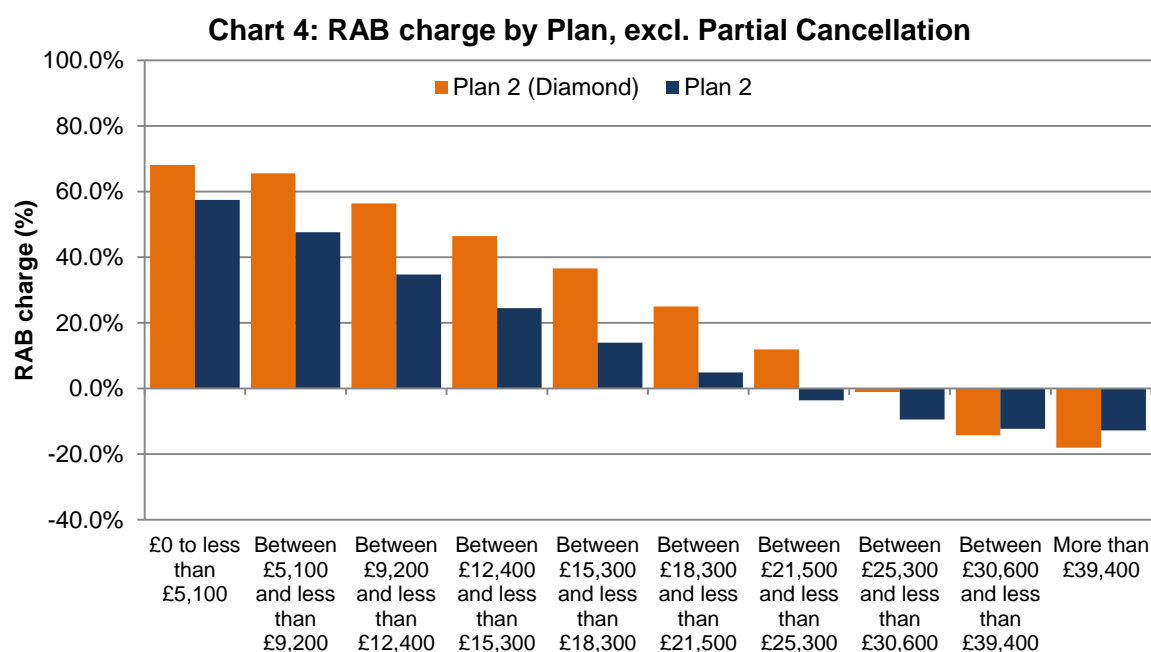
**Chart 3b: Repayment of student support Plan 2**



- Learning grant makes up a similar proportion of student support for borrowers in earnings categories up to £18,300 in Plan 2 Diamond. After which the proportion starts to decrease. This illustrates that support is forecast to be allocated to those who are likely to require it at the time, and in the future.

### Direct comparison of RAB charge

- Charts 3 and 4 illustrate that, overall, RAB charge makes up a larger proportion of the student support not paid back in Plan 2 Diamond than in Plan 2.
- Borrowers with an average income of between £0 and £5,100 will repay a smaller proportion of their student support in Plan 2 Diamond than Plan 2.
- The number of borrowers repaying their loan in full falls between Plan 2 and Plan 2 Diamond. Specifically, those in the category £21,500 to £25,300 now incur a RAB charge of 11.9%, instead of -3.6% under Plan 2. This is because the size of loans given out is larger in Plan 2 Diamond, resulting in one additional earnings category of borrowers to become unable to repay within the write-off window.



- The effect of Diamond on the RAB charge is that higher earners contribute more interest subsidy and repay their loans, and lower earners require the most write-off. Diamond has increased the difference in RAB between the lowest and highest earners such that those most able to repay contribute to the system.

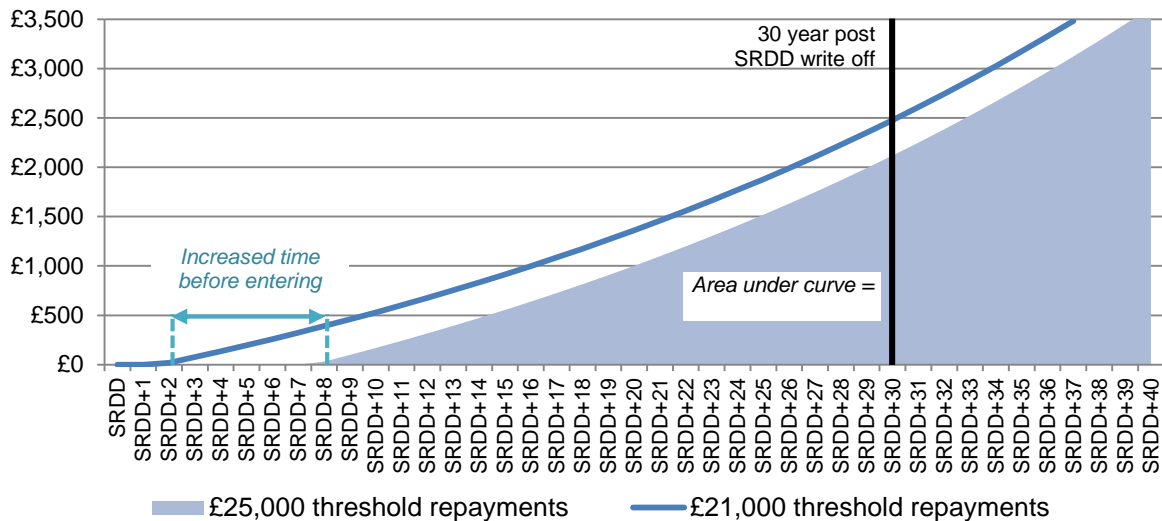
## Annex

### Effect of the change from £21,000 to £25,000 lower threshold

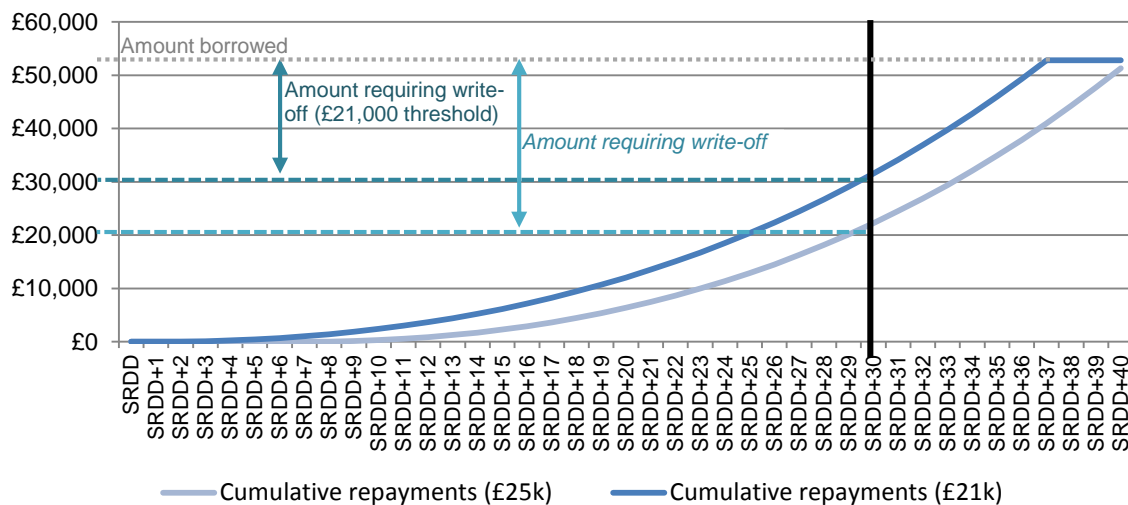
Chart 5 represents repayments that would be made subject to the two thresholds for an example (hypothetical) graduate earnings pathway. The example salary start at £20,000 one year post SRDD, with 3% earnings progression of the borrower and 1.4% earnings growth applied to the threshold. The chart illustrates the increase in time before a borrower enters mandatory repayment, and how the repayments made are shifted to the right for all subsequent repayments.

Chart 6 illustrates the cumulative repayments made for the same example. Given a fixed amount borrowed, the amount requiring write off in this example increases by 50%.

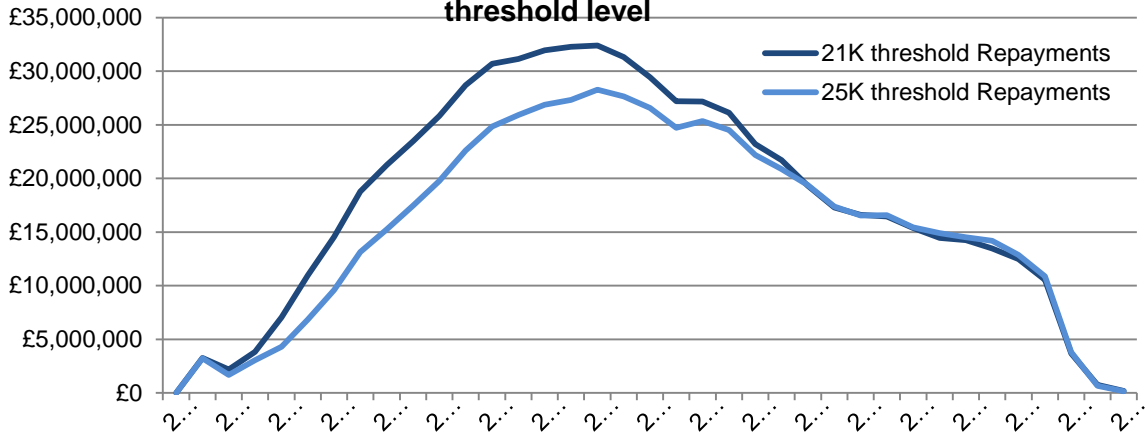
**Chart 5: Repayments made on an example graduate earnings pathway, £21,000 versus £25,000 threshold**



**Chart 6: Cumulative repayments made on an example graduate earnings pathway, £21,000 versus £25,000 threshold**

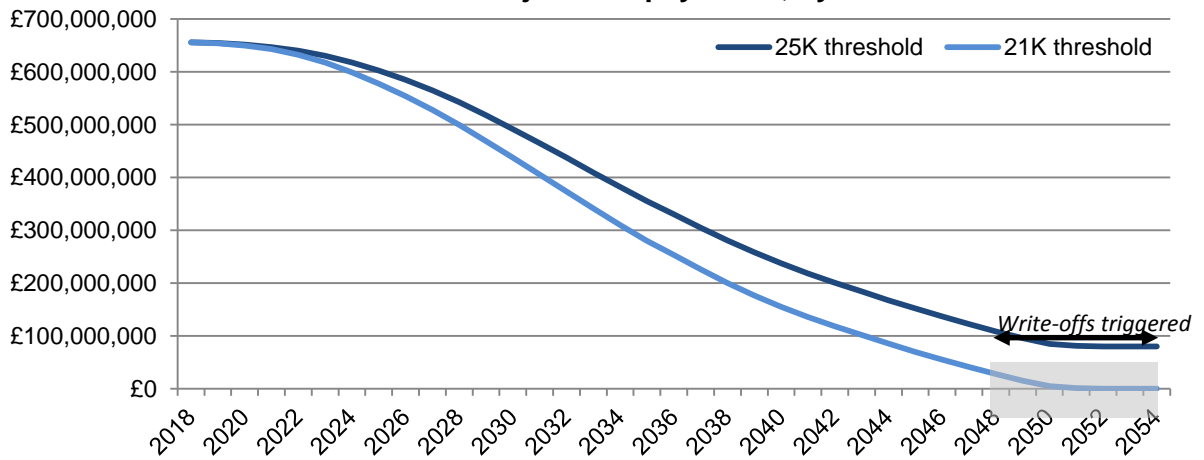


**Chart 7: Total forecast repayments for all borrowers by lower threshold level**



Charts 7 and 8 investigate the effect using actual borrower data. The effect of implementing a £25,000 lower threshold for interest and repayment (to replace the £21,000 threshold) reduces and offsets repayments made in the first 15 years post SRDD. Write off is triggered 30 years post SRDD. Courses are of variable length and so there is no single fixed write-drop for the overall cohort starting in 2018.

**Chart 8: Total loanbook balance of borrowers commencing study in 2018 over time subject to repayments, by threshold**



## 2. StEP3.7 model update

Moving from the November 2016 to the March 2017 OBR rates resulted in a decrease in stock and RAB charges for both pre- and post-2012 student loans.

It was announced on 18<sup>th</sup> October 2017 that the repayment thresholds for post-2012 student loans would increase from £21,000 and £41,000 to £25,000 and £45,000. As can be seen in Table 1 and Chart 1, this increased the stock and RAB charge.

On 22<sup>nd</sup> November 2017 updated OBR rates were published. The November 2017 OBR rates increased the stock for both pre- and post-2012 student loans. They increased the RAB for post-2012 student loans from 2017-18 to 2019-20, but decreased the RAB for the next three years. The increase due to the change in OBR rates was small compared to the increase due to the change in repayment thresholds. Post-2012 data includes the phase out of Plan 2 as was and the phase in of Plan 2 (Diamond). For reference, Annex 1 details the changes in OBR rates between November 2016 and March 2017.

The table below shows the stock and RAB calculated using StEP3.7, and the calculated difference between the outputs using the March 2017 and November 2017 OBR rates.

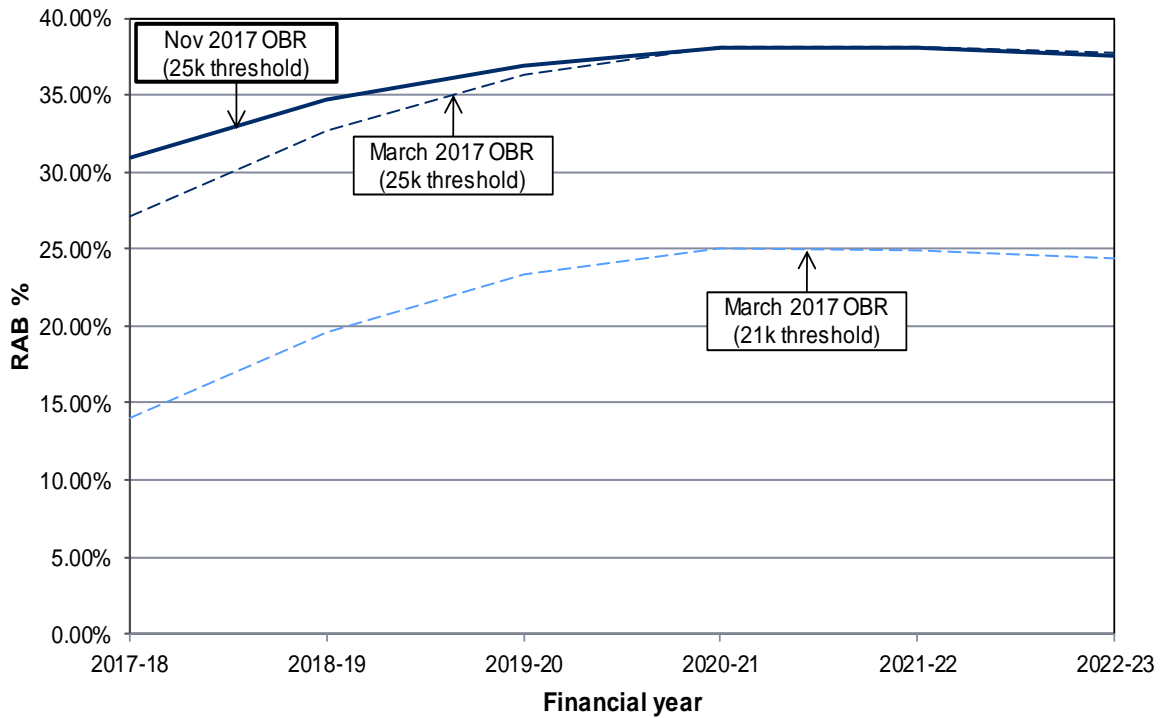
**Table 1: Difference between the results from the StEP3.7 model using March 2017 and November 2017 OBR rates**

	Stock	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
<b>Pre-2012 (Plan 1)</b>							
March 2017 OBR rates	28.59%	37.04%	33.18%				
November 2017 OBR rates	29.52%	37.19%	25.64%	30.56%			
<b>Difference</b>	<b>0.93%</b>	<b>0.15%</b>	<b>-7.54%</b>				
<b>Post-2012 (Plan 2 with Diamond phase in)</b>							
March 2017 OBR rates (21k threshold)	17.75%	13.96%	19.62%	23.30%	25.04%	24.95%	24.34%
March 2017 OBR rates (25k threshold)	30.38%	27.10%	32.72%	36.34%	38.17%	38.20%	37.75%
November 2017 OBR rates (25k threshold)	32.50%	30.89%	34.64%	36.96%	38.05%	38.08%	37.57%
<b>Difference</b>	<b>2.11%</b>	<b>3.79%</b>	<b>1.92%</b>	<b>0.62%</b>	<b>-0.12%</b>	<b>-0.12%</b>	<b>-0.18%</b>

Source: Higher Education Division, The Welsh Government

Chart 1 shows a comparison of the RAB charges using the March 2017 and November 2017 OBR rates.

**Chart 1: RAB charge from the StEP3.7 model using March 2017 and November 2017 OBR rates (Plan 2 with Diamond phase in)**



On 13<sup>th</sup> December 2017 it was discovered that the StEP3.7 model provided by DfE had an error that meant that the stock charge for Plan 2 would be wrong when running the model for the 2017/18 academic year. StEP3.9 corrected the error. This error had no impact on the RAB charge and only affected results when running the model for the 2017/18 academic year, so previous StEP results presented to SSFUG were not affected.

The results from the StEP3.9 model, as well as the differences from the StEP3.7 model, can be seen in Table 2a. Although the error correction only impacted the stock charge from the StEP3.9 model, the stock charge for Plan 1 also changed because the actual interest rate for 2016/17 was used in the StEP3.9 model, which was different from the predicted interest rate used in the StEP3.7 model. As can be seen, there was no change to the RAB charge.

**Table 2a: Difference between the stock and RAB charges from the StEP3.7 and StEP3.9 models using November 2017 OBR rates**

	Stock	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
<b>Pre-2012 (Plan 1)</b>							
November 2017 OBR (StEP3.7)	29.52%	37.19%	25.64%	30.56%			
November 2017 OBR (StEP3.9)	28.72%	37.19%	25.64%	30.56%			
<b>Difference</b>	<b>-0.80%</b>	<b>0.00%</b>	<b>0.00%</b>	<b>0.00%</b>			
<b>Post-2012 (Plan 2 with Diamond phase in)</b>							
November 2017 OBR (StEP3.7) (25k Threshold)	32.50%	30.89%	34.64%	36.96%	38.05%	38.08%	37.57%
November 2017 OBR (StEP3.9) (25k Threshold)	32.29%	30.89%	34.64%	36.96%	38.05%	38.08%	37.57%
<b>Difference</b>	<b>-0.20%</b>	<b>0.00%</b>	<b>0.00%</b>	<b>0.00%</b>	<b>0.00%</b>	<b>0.00%</b>	<b>0.00%</b>

Source: Higher Education Division, The Welsh Government

Although the stock charge fell for both Plan 1 and Plan 2 when using the StEP3.9 model, the error correction increased the opening face value for Plan 2 in 2017/18 and the amount expected never to be paid off. This difference can be seen in Table 2b.

**Table 2b: Difference between the opening face value in 2017/18 expected to be written off from the StEP3.7 and StEP3.9 models using November 2017 OBR rates**

	Face value	Stock charge	Amount expected to be written off
<b>Pre-2012 (Plan 1)</b>			
November 2017 OBR (StEP3.7)	£ 2,146,713,413	29.52%	£ 633,737,356
November 2017 OBR (StEP3.9)	£ 2,146,541,346	28.72%	£ 616,518,476
<b>Difference</b>	<b>-£ 172,067</b>	<b>-0.80%</b>	<b>-£ 17,218,880</b>
<b>Post-2012 (Plan 2 with Diamond phase in)</b>			
November 2017 OBR (StEP3.7) (25k Threshold)	£ 1,378,414,779	32.50%	£ 447,952,864
November 2017 OBR (StEP3.9) (25k Threshold)	£ 1,642,695,187	32.29%	£ 530,483,270
<b>Difference</b>	<b>£ 264,280,408</b>	<b>-0.20%</b>	<b>£ 82,530,406</b>

Source: Higher Education Division, The Welsh Government



## Annex 1: Changes in OBR rates between March 2017 and November 2017

	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
<b>Retail Price Index (RPI)</b>							
November 2016 OBR rates	2.95%	3.44%	3.44%	3.13%	3.17%	3.27%	3.27%
March 2017 OBR rates	3.03%	3.97%	3.28%	3.10%	3.14%	3.20%	3.15%
November 2017 OBR rates	3.10%	3.82%	2.87%	2.81%	2.90%	2.95%	3.00%
<b>Difference</b>	<b>0.07%</b>	<b>-0.15%</b>	<b>-0.41%</b>	<b>-0.29%</b>	<b>-0.24%</b>	<b>-0.25%</b>	<b>-0.15%</b>
<b>RPI all items excluding mortgage interest (RPIX)</b>							
November 2016 OBR rates	2.33%	2.77%	3.50%	3.18%	3.16%	3.16%	2.80%
March 2017 OBR rates	2.33%	2.77%	3.20%	3.06%	3.07%	3.08%	3.01%
November 2017 OBR rates	2.30%	2.80%	3.20%	2.81%	2.89%	2.95%	2.96%
<b>Difference</b>	<b>-0.03%</b>	<b>0.03%</b>	<b>0.00%</b>	<b>-0.25%</b>	<b>-0.18%</b>	<b>-0.13%</b>	<b>-0.05%</b>
<b>Earnings forecast (March)</b>							
November 2016 OBR rates	2.77%	2.59%	3.27%	3.47%	3.78%	3.88%	4.14%
March 2017 OBR rates	2.95%	2.72%	2.96%	3.24%	3.57%	3.72%	3.86%
November 2017 OBR rates	2.57%	2.75%	2.12%	2.53%	2.89%	3.12%	3.06%
<b>Difference</b>	<b>-0.38%</b>	<b>0.03%</b>	<b>-0.84%</b>	<b>-0.71%</b>	<b>-0.68%</b>	<b>-0.60%</b>	<b>-0.80%</b>
<b>Earnings forecast (Full year average)</b>							
November 2016 OBR rates	2.50%	2.40%	3.02%	3.38%	3.68%	3.77%	4.14%
March 2017 OBR rates	2.57%	2.56%	2.81%	3.02%	3.50%	3.66%	3.79%
November 2017 OBR rates	2.45%	2.28%	2.17%	2.44%	2.69%	3.11%	3.07%
<b>Difference</b>	<b>-0.12%</b>	<b>-0.28%</b>	<b>-0.63%</b>	<b>-0.58%</b>	<b>-0.81%</b>	<b>-0.56%</b>	<b>-0.72%</b>
<b>Bank rate (Apr - Jun)</b>							
November 2016 OBR rates	0.50%	0.19%	0.27%	0.41%	0.57%	0.73%	0.98%
March 2017 OBR rates	0.50%	0.22%	0.34%	0.53%	0.72%	0.92%	1.17%
November 2017 OBR rates	0.50%	0.25%	0.60%	0.81%	0.94%	1.06%	1.17%
<b>Difference</b>	<b>0.00%</b>	<b>0.03%</b>	<b>0.26%</b>	<b>0.28%</b>	<b>0.21%</b>	<b>0.14%</b>	<b>-0.01%</b>
<b>Bank rate (Jul - Sep)</b>							
November 2016 OBR rates	0.34%	0.20%	0.30%	0.45%	0.61%	0.77%	1.05%
March 2017 OBR rates	0.34%	0.24%	0.39%	0.58%	0.77%	0.97%	1.24%
November 2017 OBR rates	0.34%	0.25%	0.68%	0.84%	0.97%	1.08%	1.20%
<b>Difference</b>	<b>0.00%</b>	<b>0.01%</b>	<b>0.29%</b>	<b>0.27%</b>	<b>0.19%</b>	<b>0.11%</b>	<b>-0.05%</b>
<b>Bank rate (Oct - Dec)</b>							
November 2016 OBR rates	0.19%	0.21%	0.34%	0.49%	0.65%	0.84%	1.12%
March 2017 OBR rates	0.25%	0.27%	0.43%	0.63%	0.82%	1.02%	1.31%
November 2017 OBR rates	0.25%	0.42%	0.73%	0.88%	1.00%	1.11%	1.22%
<b>Difference</b>	<b>0.00%</b>	<b>0.15%</b>	<b>0.30%</b>	<b>0.25%</b>	<b>0.18%</b>	<b>0.09%</b>	<b>-0.09%</b>
<b>Bank rate (Jan - Mar)</b>							
November 2016 OBR rates	0.18%	0.24%	0.37%	0.53%	0.69%	0.91%	1.19%
March 2017 OBR rates	0.21%	0.30%	0.48%	0.67%	0.87%	1.11%	1.38%
November 2017 OBR rates	0.25%	0.50%	0.77%	0.91%	1.03%	1.14%	1.24%
<b>Difference</b>	<b>0.04%</b>	<b>0.20%</b>	<b>0.29%</b>	<b>0.23%</b>	<b>0.15%</b>	<b>0.03%</b>	<b>-0.13%</b>

Source: Office for Budget Responsibility

# SL(5)198 – The Education (Student Loans) (Repayment) (Amendment) Regulations 2018

## Background and Purpose

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These composite Regulations are made under sections 22 and 42 of the Teaching and Higher Education Act 1998 (c. 30) and amend the Education (Student Loans) (Repayment) Regulations 2009 (S.I. 2009/470) (“the 2009 Regulations”).

The 2009 Regulations make provision for the repayment of income-contingent student loans in England and Wales. These Regulations will make changes to the repayment and interest rate thresholds for borrowers with undergraduate loans taken out after 2012 (‘post-2012 loans’). The changes will apply to those who have already taken and those who will take out such loans and are summarised as follows:

1. Interest rate on post-2012 loans
  - a. The lower interest rate threshold will increase from £21,000 to £25,000 and the higher interest rate threshold will increase from £41,000 to £45,000;
  - b. The Regulations will also provide for these thresholds to be adjusted annually in line with average earnings for the year ending 5 April 2020 and years thereafter. The measure of average earnings will be taken from the Office for National Statistics Average Weekly Earnings EARN01 dataset.
  - c. Provision will also be made to update both the lower and higher interest threshold bands for borrowers overseas in line with borrowers who are resident in the UK.
2. Repayment thresholds
  - a. The repayment threshold will increase from £21,000 to £25,000. The Regulations will also provide for this threshold to be adjusted annually in line with average earnings for the year ending 5 April 2020 and years thereafter. As for interest rate thresholds, the measure of average earnings will be taken from the ONS dataset.
  - b. The Regulations will make similar changes for overseas borrowers making income-related payments in line with borrowers who are resident in the UK.

## Procedure

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Negative.

## Technical Scrutiny

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The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

1. This is a composite statutory instrument. The Explanatory Memorandum notes the following:  
“Given the composite nature of the 2009 Regulations and that no routine Parliamentary processes exist by which to lay bilingual regulations before Parliament, these Regulations will be made in English only”.



**[Standing Order 21.2 (ix) – that it is not made or to be made in both English and Welsh.]**

## Merits Scrutiny

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The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Regulation 6 (inserting new Regulation 29(8A) in the 2009 Regulations) provides that the repayment threshold in relation to postgraduate master's degree loans will remain at £21,000, notwithstanding that the repayment threshold for post-2012 loans will be increasing from £21,000 to £25,000.

**[Standing Order 21.3 (ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.]**

## Implications arising from exiting the European Union

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

## Government Response

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A government response is required.

### Legal Advisers

**Constitutional and Legislative Affairs Committee**

**14 March 2018**



## SL(5)194 – The Condensed Milk and Dried Milk (Wales) Regulations 2018

### Background and Purpose

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These Regulations transpose Council Directive 2001/114/EC relating to certain partly or wholly dehydrated preserved milk for human consumption.

### Procedure

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Negative

### Technical Scrutiny

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

### Merits Scrutiny

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

### Implications arising from exiting the European Union

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These Regulations form part of “EU-derived domestic legislation” under clause 2 of the European Union (Withdrawal) Bill (the Bill), therefore these Regulations will be retained as domestic law and will continue to have effect in Wales on and after exit day. The Bill gives the Welsh Ministers power to modify these Regulations in order to deal with deficiencies arising from EU withdrawal, subject to certain limitations.

With regard to Council Directive 2001/114/EC, that Directive will not automatically form part of domestic law on and after exit day under the Bill. However, where a court or tribunal has recognised, before exit day, that an EU Directive confers a right on an individual that the individual can rely on and enforce in law, then that right will form part of domestic law on and after exit day (see clause 4 of the Bill).

### Government Response

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No government response is required.

### Legal Advisers

**Constitutional and Legislative Affairs Committee**

**8 March 2018**



# Agenda Item 4.2

## SL(5)195 – The Tax Collection and Management (Wales) Act 2016 (Consequential and Supplemental Provisions) Regulations 2018

### Background and Purpose

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These Regulations are made under section 188 of the Tax Collection and Management (Wales) Act 2016 (the Act).

Regulation 2 amends Schedule 1 to the Public Contracts Regulations 2015 to provide that the Welsh Revenue Authority (“WRA”) is to be treated as a “central government authority” for the purposes of those Regulations.

Regulation 3 amends Schedule 19 to the Equality Act 2010 to provide that WRA is to be treated as a “relevant Welsh authority” for the purposes of that Act.

Regulation 4 amends the National Assembly for Wales (Disqualification) Order 2015 to provide that the chairperson and non-executive members of WRA are disqualified from becoming members of the National Assembly for Wales.

Regulation 5 amends the Proceeds of Crime Act 2002 in order to make supplemental provision in connection with section 186 (proceeds of crime) of the Act.

### Procedure

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Negative.

### Technical Scrutiny

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

### Merits Scrutiny

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

### Implications arising from exiting the European Union

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Regulation 2 amends the Public Contract Regulations 2015 (the “2015 Regulations”), to provide that the WRA is to be treated as a central government body for the purposes of the 2015 Regulations. The 2015 Regulations implement the Public Sector Procurement Directive (2014/24/EU) which provides rules for the procurement of goods, services and works above certain thresholds by public authorities. The 2015 Regulations form part of “EU-derived domestic legislation” under clause 2 of the European Union (Withdrawal) Bill, therefore the 2015 Regulations will be retained as domestic law and will continue to have effect in Wales on and after exit day.

### Government Response

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No government response is required.





# Agenda Item 5.1



**Rt Hon Alun Cairns MP**  
Secretary of State for Wales  
Ysgrifennydd Gwladol Cymru

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Mick Antoniw AM  
Chair, Constitutional and Legislative Affairs Committee  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

13 March 2018

*Dear Mick,*

## **AMENDMENT TO CLAUSE 11 OF THE EU WITHDRAWAL BILL AND COMMON FRAMEWORKS ANALYSIS**

I am writing to update you on the further steps the UK Government has taken in relation to clause 11 of the EU (Withdrawal) Bill ("the Bill"), which deals with the devolution of powers returning from the EU, and our work on common frameworks to protect, amongst other things, the common market of the United Kingdom.

### **CLAUSE 11**

The Government yesterday tabled a substantial amendment to clause 11 for Lords Committee stage of the Bill to show how we now propose to deliver the twin objectives of increasing devolution and protecting the UK common market. Under the change, of those powers returning from the EU that intersect with the devolution settlements, all would go directly to the DAs, unless subject to the new, more targeted, clause 11.

The powers passing to the devolved administrations as a result of the amendment to clause 11 have never previously been held or exercised by the Welsh or Scottish Governments, since the devolution settlements were created in the context of our membership of the EU. This means that after we leave the EU, power will sit closer to the people of Wales, Scotland and Northern Ireland than ever before.

Our proposal builds on the constructive discussions between our governments over recent months. You have recognised that this is a significant offer, but we have not yet reached agreement. Our discussions will continue, and I am keen to maintain our engagement, and while this takes place we are keen to ensure MPs and Peers have the chance to consider our proposed amendment - as the Government committed to doing at Commons Report Stage - and that Parliamentarians, businesses, organisations and people in general can see what our approach will mean for them. I

have included an annex that sets out further detail on the proposed amendment to clause 11.

## FRAMEWORKS

We have also published the UK Government's working analysis of the powers that will be returning from Brussels and where we envisage that common frameworks across the UK may and may not be required, as well as what form they might take. The analysis has involved considerable joint work with the Welsh and Scottish governments to identify where the 150+ policy areas returning from the EU intersect with devolved competence. I am grateful to the devolved administrations and their officials for their support in this regard.

This analysis remains provisional and without prejudice to the ongoing negotiations with the EU, but it demonstrates that the vast majority of policy areas require no legislative framework at all. It identifies that many areas require no further action, that some only require non-legislative arrangements, such as Memoranda of Understanding between governments, and that in only a minority of areas, where consistency is essential to protect the common market and our ability to fulfil the United Kingdom's international treaty obligations in the future, do we envisage a legislative approach being required in whole or in part. In practice, this approach is designed to ensure that businesses do not face the risk of new barriers to trade with other parts of the UK by, for example, ensuring that a producer trading in Scotland and Northern Ireland would not have to comply with different labelling requirements, or different regulations on pesticides in Wales compared to England which could prevent or limit opportunities for farmers to sell their products in different places in the UK. Further detail on the analysis is also included in the annex.

Our change to clause 11 therefore puts forward a temporary mechanism to safeguard the UK common market and avoid the risk of potentially damaging divergence in different areas of the UK while we are developing and implementing new bespoke arrangements for the long term in the UK. Importantly, under this approach, anything the devolved administrations can do now, they will still be able to do after exit, even with the narrower form of the new clause 11.

To limit problematic divergence, the Bill provides a power to maintain existing EU law frameworks through an SI that has to be approved by the UK Parliament in specific, targeted areas. This will ensure that everything the devolved administrations could do before in these areas, they will still be able to do after exit, but it will pause new changes so we can discuss and implement new common arrangements that should replace the EU frameworks.

These arrangements are only intended to be temporary, and to ensure consistency on the day we leave the EU before new arrangements have been put in place. They are not designed to be long-term solutions. The basis for future frameworks, legislative and non-legislative, is subject to ongoing discussions with the DAs and is therefore not set out in this Bill.



## NORTHERN IRELAND

In the absence of a Northern Ireland Executive, the frameworks analysis is without prejudice to the views of incoming Ministers. We remain committed to restoring the power-sharing executive in Northern Ireland. In the meantime, we continue to keep the Northern Ireland Civil Service updated.

## NEXT STEPS

This is a sensible and pragmatic step to provide businesses and families with the legal certainty they have asked for, while also demonstrating our commitment to strengthen devolution. It would ensure people across the UK know which laws apply from day one in areas where consistency is most important, while the right longer-term approaches can be developed.

Our proposal balances our commitment not just to respect the devolution settlements, but to strengthen them, and the imperative of providing reassurance to businesses and families that the UK common market will not be weakened. It is right that while we continue to discuss our approach with the devolved governments, Peers are able to debate it at Committee Stage in the House of Lords and MPs are able to study the changes we have put forward.

I hope you find this material helpful. I would be happy to appear before your Committee to discuss our proposals in more detail.

I am writing in similar terms to all Assembly Members.



**Rt Hon Alun Cairns MP**  
Secretary of State for Wales  
Ysgrifennydd Gwladol Cymru

## Detail on Proposed Clause 11 Amendment

There are four main elements to the revised clause 11:

### 1. Powers returning to the DAs directly from Brussels

The new clause 11 will see the vast majority of powers automatically flow from Brussels to Edinburgh, Cardiff and Belfast whilst creating a mechanism to ensure the protection of our internal market, our common resources, and our reputation as a credible international trading partner.

The mechanism introduced in the new clause 11 would provide UK ministers with delegated powers to temporarily preserve existing EU frameworks in specific, targeted policy areas. This would be implemented through secondary legislation, subject to the affirmative scrutiny procedure.

If Parliament approves an SI, it will prevent problematic divergence across the UK after EU exit by maintaining the EU law framework in the immediate term; providing time to work with the devolved administrations on new more appropriate common arrangements for the UK and implementing them. Staggering implementation in this way is a sensible step to minimise the number of policy changes for businesses.

The amendment would ensure that anything that was within the competence of the devolved institutions before exit day, will continue to be in competence after exit day, even where UK Ministers have exercised the proposed clause 11 powers. That applies across areas such as agriculture, environment and fisheries.

### 2. UK Government Obligations

The UK Government would have to follow usual processes in making the regulations, but the proposed amendment recognises the interest in, and complexity of, what happens to EU law when it returns to the UK. We have therefore incorporated a number of additional obligations on the UK Government.

The following procedural safeguards will apply when exercising the new mechanism under clause 11:

- Before laying the regulation, a UK minister must consult the relevant devolved administration. For example, under proposed new subsection 11(3)(a) a UK Minister must consult Welsh Ministers before laying regulations that concern the ability of the National Assembly for Wales to modify retained EU law in a specific area. The amendments provide that consultation prior to Royal Assent counts towards fulfilling this obligation to enable us to continue working with the devolved administrations on which areas we think will need us to act as soon as possible after Royal Assent in order to prevent problematic divergence across the UK.
- There is also a duty on the UK Government to provide enhanced explanatory material to the UK Parliament before the draft regulations are laid before Parliament. In addition to the usual material, the explanatory statement must also explain what the regulations do and the response of the relevant devolved administration to the consultation on those regulations, enabling further scrutiny of the regulations.

The exercise of the powers will be subject to the affirmative procedure, meaning that before the instrument can be made it must be approved in draft by resolution of both the House of Commons and the House of Lords.

### **3. The temporary nature of the powers under clause 11**

We are clear that maintaining existing EU law frameworks is not a long-term solution. It instead ensures that any potential divergence that could impede our economy is minimised whilst we develop and implement new arrangements for the UK in these areas.

To demonstrate this, the proposed amendment to clause 11 also includes additional provisions that demonstrate the temporary nature of the powers whilst new arrangements are being discussed and implemented in specific areas. The amendments:

- Provide a power for UK ministers to repeal (by regulations) temporary limits on the devolved institutions, as well as the powers to create restrictions (new subsection (4B) of clause 11). This power too is subject to the affirmative procedure in Parliament to enable fuller scrutiny.
- Place a legal obligation on UK Ministers to have regard to the intended temporary nature of the restrictions when considering whether to exercise the repeal power (new subsection (4D) of clause 11).
- Place a further legal obligation on UK Ministers to consider periodically whether it is appropriate to repeal all of the restrictions (see new subsection (4C) of clause 11).
- Include an explicit legislative reference to the intended temporary nature of the provisions in the provision that introduces the reporting duty placed on UK Government (see below) (see new subsection (4A) of clause 11).

### **4. Increasing transparency - reporting obligations**

To date, much of the work and discussion on frameworks has been a discussion between the UK Government and the devolved administrations. Now that we have initial analysis, it is increasingly important that those affected by future changes are able to view and comment on the work.

In order to provide that greater transparency on the progress of future framework discussions, the amendments place a legal obligation on the UK Government to report to Parliament on a number of detailed areas. Every three months, starting three months after Royal Assent, the Government would be required to:

- Report on steps taken to implement frameworks in areas where Ministers have exercised the new clause 11 powers to maintain existing EU frameworks;
- Explain how the framework principles agreed between the UK Government and devolved administrations have been taken into account in the development of new arrangements;
- Specify the regulations that have been made to add or remove policy areas where EU law frameworks are temporarily being maintained across the UK and progress required in order to move outstanding policy areas from the existing EU law frameworks to new UK arrangements;

- Specify regulations that have been made to remove the UK Government's powers to maintain EU law frameworks in targeted areas and progress required in order to repeal any such powers that are still in place; and
- any other relevant information.

## Detail on Frameworks Analysis

At the moment, EU law creates consistent practices across the UK in a range of policy areas that are otherwise devolved. The frameworks analysis sets out the UK Government's provisional assessment of where we think we will need to maintain those common approaches after we leave the EU and where we will not.

The UK, Scottish and Welsh Governments have previously agreed a set of principles which set out that future common frameworks will be established where they are necessary in order to do the following things:

- enable the functioning of the UK internal market, while acknowledging policy divergence;
- ensure compliance with international obligations;
- ensure the UK can enter into and implement new trade agreements and international treaties;
- enable the management of common resources;
- administer and provide access to justice in cases with a cross-border element;
- safeguard the security of the UK.

A framework may take different forms and be implemented in different ways including by legislation, by executive action, by MoUs, or by other means depending on the context in which the framework is intended to operate.

The provisional analysis covers 153 individual policy areas<sup>[1]</sup> where EU law intersects with devolved competence and breaks these down into the following categories:

- no further action is required in 49 areas;
- non-legislative common frameworks, like memoranda of understanding, could be required in 82 areas; and
- legislative common framework arrangements could be required for some or all elements of 24 areas.<sup>1</sup>

The analysis also references 12 separate policy areas that the UK Government believes are reserved in all three settlements, but are subject to ongoing discussion with the devolved administrations.

Because the devolution settlements are asymmetrical, different powers are relevant to Scotland, Wales and Northern Ireland.

The analysis is provisional and will continue to develop over time as the UK Government and devolved administrations continue to discuss these policy areas. The positions set out are without prejudice to the outcome of our negotiations with the EU. They are also subject to the need to find practical solutions that recognise the unique economic, social and political context of the land border between Northern Ireland and Ireland.

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<sup>1</sup> In total, 153 policy areas sit within these categories. Two policy areas appear in the analysis twice, in different categories, depending on the devolution interest in question. These are 'High Efficiency Cogeneration/Combined Heat and Power (CHP)' and 'Rail Franchising Rules'.



## **FRAMEWORKS ANALYSIS: BREAKDOWN OF AREAS OF EU LAW THAT INTERSECT WITH DEVOLVED COMPETENCE IN SCOTLAND, WALES AND NORTHERN IRELAND**

This is a working document, designed to inform engagement between officials in the UK, Scottish and Welsh Governments and the civil service in Northern Ireland. It sets out the UK Government's provisional assessment of areas of EU law that intersect with devolved competence in each devolved administration. It is possible that the policy positions set out in this document will change following further analysis, including on the UK internal market, and as conversations between the UK and devolved governments continue. As the devolution settlements are asymmetrical, a different range of powers is relevant to Scotland, Wales and Northern Ireland. The policy areas in question are broken down as follows:

1. 49 policy areas where no further action is required;
2. 82 policy areas where non-legislative common frameworks may be required; and
3. 24 policy areas that are subject to more detailed discussion to explore whether legislative common framework arrangements might be needed, in whole or in part.<sup>1</sup>

In some instances, the devolution intersect will require more detailed discussion and may include a mixture of reserved and devolved competence, including where technical standards that derive from EU law are relevant. These policy areas are marked with an asterisk. The analysis also includes 12 policy areas that the UK Government believes are reserved (or excepted in the Northern Ireland Act 1998), but are subject to ongoing discussion with the devolved administrations.

All positions are set out without prejudice to the outcome of negotiations with the European Union. They are also subject to the need to find practical solutions that recognise the unique economic, social and political context of the land border between Northern Ireland and Ireland; frameworks will adhere to the Belfast Agreement.

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<sup>1</sup> In total, 153 individual policy areas sit within these categories. Two policy areas appear in the analysis twice, in different categories, depending on the devolution intersect in question. These are 'High efficiency cogeneration/Combined Heat and Power (CHP)' and 'Rail Franchising Rules'.

49 policy areas where no further action is required

Responsible UK Government Department	Area of EU Law	Devolution Intersect			Additional Information - what the EU law does
		NI	S	W	
DfT	Airport charges	x			Relating to Directive 2009/12/EC on airport charges.
DfT	Aviation - compensating PSO air routes		x	x	Relating to regulation (EC) 1008/2008 on the Operation of Air Services (Articles 16-18).
DfT	Aviation - groundhandling at airports	x			Relating to Directive 96/67/EC on access to the groundhandling market at Community airports.
DfT	Aviation noise management at airports	x*			Regulation 598/2014, establishing rules and procedures with regard to the introduction of noise-related operating restrictions at Union airports within a Balanced Approach.
BEIS	Carbon capture and storage	x	x	x	Directive 2009/31/EC on the geological storage of CO2 establishes a legal framework for the environmentally safe geological storage of CO2 to contribute to the fight against climate change.
BEIS	Consumer law including protection and enforcement	x			A body of law providing rights and protections for consumers consisting of principles based, enforcement and sector specific legislation, including Unfair Contract Terms (93/13/EC), Consumer Rights (2011/83/EC), Unfair Commercial Practices (2005/29/EC) and a cross-border Consumer Protection Cooperation Regulation (EC 2006/2004).
HSE	Control of major accident hazards	x*	x*	x*	Seveso III Directive on the control of major accident hazards involving dangerous substances (2012/18/EU). This place duties on businesses using dangerous substances to take measures to prevent major accidents to people and the environment. This mainly applies to the chemical manufacture sector but covers any business that uses, produces or stores dangerous substances at or above determined thresholds.
DfT	Driver hours and tachographs	x			Regulations around working hours and break requirements for commercial vehicle drivers and requirements for the installation and use of tachograph devices to record driver activities (EU regulations 561/2006 and 165/2014). Also mobile road transport working time rules (Directive 2002/15/EC).
DfT	Electronic road toll systems	x	x	x	Directive 2004/52/EC on interoperability of electronic road toll systems and EU Regulation 219/2009.
BEIS	Elements of employment law	x			Employment law is not an exclusive EU competence but there are a number directives concerning individual and collective rights implemented in UK law, including e.g. Working Time Directive 2003/88/EC, Pregnant Workers Directive 1992/85/EEC.



DWP	Elements of EU social security coordination	x*	x*		This is an area of shared EU competence for devolved benefits. The EU Social Security Coordination Regulations require Member States to ensure that citizens who exercise their right to free movement are not disadvantaged, e.g. by taking into account periods of residence and work and contributions paid in other Member States when considering the entitlement of claimants for UK benefits, including state pensions. The rules also require the UK to export benefits to persons living in another EU Member State in certain circumstances.
DfT	Elements of harbours (marine environment issues)	x	x*	x*	Directive 2011/92 amended by Directive 2014/52/EU on the assessment of the effects of certain public and private projects on the environment.
MHCLG	Energy Performance of Buildings Directive	x	x	x	The Energy Performance of Buildings Directive (2010/31/EU) aims to improve and make transparent the energy performance of buildings.
MHCLG	Environmental Impact Assessment (EIA) Directive	x	x	x	The Environmental Impact Assessment Directive (85/337/EEC) integrates environmental considerations into the preparation of proposals for development to reduce their impact on the environment. Those proposals that are likely to have a significant impact on the environment, e.g. due to their nature, size or location, are subject to a requirement for development consent and an assessment of those effects before the development is allowed to proceed.
BEIS	Environmental law concerning energy industries	x*	x*	x*	EU legislation contains environmental rules and standards relevant to offshore oil and gas exploration and production, offshore gas unloading and storage, offshore carbon dioxide storage activities.
DEFRA	Environmental quality - flood risk management	x	x	x	Policies and regulations (primarily the EU Floods Directive) that aim to reduce the risks to people, properties and infrastructure from flooding and coastal erosion.
DEFRA	Environmental quality - water quality	x	x	x	Policies and regulations (primarily the EU Water Framework Directive and the EU Drinking Water Directive) that aim to improve the ecological and chemical status of the UK's rivers, lakes, estuaries, coastal waters and groundwater, and provide safe, quality drinking water.
DEFRA	Environmental quality - water resources	x	x	x	Policies and regulations covering the provision of sustainable, safe and affordable water supplies for households, businesses, energy production and agriculture.
DEFRA	Forestry (domestic)	x*	x*	x*	Policies and regulations covering timber production and woodland management, including EU Environmental Impact Assessment.
HSE	Genetically modified micro-organisms contained use (i.e. rules on protection of human health and the environment during the development)	x*	x*	x*	Directive 2009/41/EC on the contained use of genetically modified microorganisms (GMMs) to protect humans and the environment. This relates to work with GMMs in contained facilities, e.g. a research laboratory or biotechnology production facility, to ensure barriers (containment measures) are in place.
BEIS	Heat metering and billing information	x	x*		Energy Efficiency Directive 2012/27/EU sets duties for heat suppliers in respect of installing and maintaining heat metering devices and billing, minimum requirements for billing information. requirements, and determination of cost effectiveness and technical feasibility.

BEIS	High efficiency cogeneration / Combined Heat and Power (CHP) [NB - this appears in category 2 for Scotland]	x*			Measures that promote the use of high-efficiency cogeneration (Combined Heat and Power) in order to increase the energy efficiency and improve the security of supply of energy (Energy Efficiency Directive 2012/27/EU).
DHSC	Implementation of cross-border healthcare rights to treatment and reimbursement	x*	x*	x*	Directive 2011/24/EU on the application of EEA patients' rights in cross-border healthcare sets out the criteria that entitles patients to seek healthcare in another Member State and receive reimbursement for the costs incurred.
BEIS	Internal energy market / Third Energy Package	x			Package of legislation on the development of the internal energy market, particularly cross-border trading.
DEFRA	Land use	x*	x*	x*	Elements of Environmental Impact Assessment Directive and Strategic Environmental Assessment Directive covering rural land use.
DfT	Maritime - public service contracts/obligations, and financial assistance for shipping services which both start and finish within Scotland/to, from and within Wales		x	x	Regulation 3577/92 that applies the principle of freedom to services to provide cabotage maritime transport.
DfT	Maritime – ports services	x	x	x	Regulation 2017/352 that establishes a framework for the provision of port services and common rules on the financial transparency of ports.
DfT	Maritime Employment and Social Rights	x			Directives and Regulations relating to employment, social rights and health and safety for seafarers on ships. These rules cover, inter alia, coordination of social security systems, and the minimum safety and health requirements for improved medical treatment on board vessels.
BEIS	Onshore hydrocarbons licensing	x	x	x	Directive 94/22/EEC sets the conditions for tendering and determining applications for hydrocarbon licenses and imposes restrictions on the terms which may be included in licences and their extension.
DfT	Operator licensing (roads)	x			Regulation (1071/2009) establishing common rules for the licensing of commercial goods and passenger transport operators.
DfT	Passenger rights (rail)	x			Regulation (EC) 1371/2007 setting out rail passengers' rights and obligations.
DWP	Private cross border pensions	x			EU legislation on the operation of the EEA internal market in financial services allows occupational pension schemes based in one country to operate (have members) in another.
DfT	Rail franchising rules [NB - this appears in category 2 for Scotland and Wales]	x			Regulation (EC) 1370/2007 as amended by 2016/2338 relating to the way in which competent authorities are able to award public passenger services contracts.

DfT	Rail markets and operator licensing (governance, structure, track access & charging)	x*			Directive 2012/34/EU, to be amended by Directive 2016/2370/EU (both part of the market pillar of the 4th railway package) which recasts a number of EU Directives and establishes a single European railway area with common rules on: the governance of railway undertakings and infrastructure managers, on infrastructure financing and charging, on conditions of access to railway infrastructure and services and on regulatory oversight of the rail market.
DfT	Rail markets - train driving licenses and other certificates	x			Directives 2007/59/EC and 2014/82/EU on train driver licensing rules, setting out the conditions and procedures for the licensing and certification of train drivers operating in the EU.
DfT	Rail safety	x			Directive 2004/49/EC on safety on the Community's railways and amending Council Directive 95/18/EC (which will be replaced by Directive 2016/798 in June 2019 or 2020 - technical pillar of 4th railway package) along with relevant Regulations and Decisions.
DfT	Rail Workers Rights Directive	x			Directive 2005/47/EC on the agreement between the social partners on working conditions of mobile workers engaged in cross-border rail services, supplementing the Working Time Directive (Directive 1993/104/EC).
BEIS	Renewable Energy Directive	x*	x*		The Renewable Energy Directive (2009/28/EC) establishes a 15% renewable energy target, and a 10% renewable transport energy sub target on the UK. The Directive sets out a number of other measures and frameworks to support the production and promotion of energy from renewable sources.
DfT	Retrofitting of HGV mirrors	x			Directive 2007/38/EC on the retrofitting of mirrors to heavy goods vehicles registered in the Community.
DfT	Roads - Road infrastructure safety management	x	x	x	Directive 2008/96/EC on that supports road infrastructure safety management.
DfT	Roads - use of goods vehicles hired without drivers	x			Directive 2006/1/EC on the use of vehicles hired without drivers for the carriage of goods by road.
DfT	Roads - charging of HGVs	x*	x*	x*	Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures.
DfT	Roads - coach and bus services	x			Regulation 181/2011 that set out the rights of passengers on bus and coach transport.
DfT	Roadworthiness Directive	x			Rules (directives 2014/45/EC and 2014/47/EC) relating to roadworthiness tests for motor vehicles and their trailers, plus associated inspections.
BEIS	Security of supply (emergency stocks of oil)	x			Directive 2009/119/EC obligates Member States to maintain emergency stocks of crude oil and petroleum products.
DfT	Speed limitation devices	x			Directive 1992/6/EEC on the installation and use of speed limitation devices for certain categories of motor vehicles in the Community (amended by Directive 2002/85/EEC)

DCMS	The Rental and Lending Directive (concerning library lending)	x			Directive that gives rightholders the right to allow or to prohibit the rental or lending of their work. The Directive also allows Member States to derogate from the lending right in respect of public lending, provided that the rightholder receives remuneration.
BEIS	Transport of dangerous goods and transportable pressure equipment - Class 7 only	x			Regulation establishes a common regime for all aspects of the transport of radiological (Class 7) dangerous goods, by road, rail, and inland waterway subject to some national derogations. Linked to Euratom legislation Directive 2008/68/EC on the inland transport of dangerous goods.
Cabinet Office	Voting rights and candidacy rules for EU citizens in local government elections		x	x	Article 8b of the Maastricht Treaty sets out the voting rights and candidacy rules for EU citizens in municipal (i.e. local government) elections. Directive 94/80/EC then sets out more detailed arrangements.

**82 policy areas where non-legislative common frameworks may be required**

Responsible UK Government Department	Area of EU Law	Devolution Intersect			Additional Information - what the EU law does
		NI	S	W	
DfT	Access for non-UK hauliers and passenger transport operations, plus combined transport	x			Regulations 1072/2009 (for goods vehicles), 1073/2009 (for road passenger transport), and Directive EC 1992/106/EC Directive for Combined Transport (including access). All these rules involve access arrangements for non-UK vehicles and may be affected (and need to be consistent with) international agreements.
DHSC	Blood safety and quality	x	x	x	Directives setting quality and safety standards for the collection, testing, processing, storage and distribution of human blood and blood components; traceability requirements and notification of serious adverse reactions and events; and Community standards and specifications relating to a quality system for Blood Establishments.
MoJ	Civil judicial co-operation - applicable law in contracts and non-contractual obligations	x	x		Rome I Regulation (593/2008) covers applicable law in contracts. Rome II Regulation (864/2007) covers applicable law in noncontractual obligations.
MoJ	Civil judicial co-operation - cross border mediation (Mediation Directive)	x	x		The Mediation Directive (2008/52) facilitates access to alternative dispute resolution and promotes amicable settlement of disputes through the use of mediation in cross-border disputes.
MoJ	Civil judicial co-operation - jurisdiction and recognition and enforcement of judgments in civil and commercial matters	x	x		The Brussels Ia Regulation (1215/2012) covers jurisdiction and recognition and enforcement of judgments and applies between EU Member States. Insolvency Regulation (1346/2000 and 2015/848) covers jurisdictional rules and applicable law and recognition of insolvency proceedings in cross-border insolvencies.
MoJ	Civil judicial co-operation - jurisdiction and recognition and enforcement of judgments: instruments in family law	x	x		The Brussels IIa Regulation (2201/2003) covers jurisdictional rules in matrimonial and parental responsibility matters and the recognition and enforcement of judgments. The Maintenance Regulation (4/2009) covers rules for determining which court has jurisdiction for, and the recognition and enforcement of, maintenance decisions. Regulation on protection measures in civil matters (606/2013) covers recognition and enforcement of protection measures, including for victims of domestic violence.
MoJ	Civil judicial co-operation - legal aid in cross border cases	x	x		The Legal Aid Directive (2002/8) establishes common minimum rules for the grant of legal aid in cross-border disputes.

MoJ	Civil judicial co-operation - service of documents and taking of evidence	x	x		EU Service Regulation (2007/1393) covers rules for serving documents in other EU countries.  Taking of Evidence Regulation (2001/1206) covers cross-border processing of requests to take evidence.  European Judicial Network in Civil and Commercial Matters (2001/470) facilitates cross-border cooperation for judges and practitioners and access to justice for those involved in disputes.
MoJ	Civil judicial co-operation - uniform fast track procedures for certain civil and commercial claims	x	x		The Small Claims (861/2007 revised by 2015/2421), Enforcement Order (805/2004) and Order for Payment (1896/2006) Regulations facilitate means for obtaining decisions on claims that can be enforced throughout the EU.
HSE	Civil use of explosives	x			Directives setting out the permissions required to transfer, track and trace civil explosives, and rules on the product safety and market surveillance of these.
DHSC	Clinical trials of medicinal products for human use	x			Regulations and Directives on clinical trials on medicinal products for human use.
BEIS	Company law	x			Directives and Regulations covering aspects of the life cycle of a company including company formation; capital & disclosure requirements; cross border mergers; shareholders rights; accounting and reporting; and audit. Regulations setting out the framework for certain EU specific legal entities. Also includes the establishment of branches, subsidiaries and agencies in other Member States, underpinned by Treaty Article 49.
MoJ	Criminal offences minimum standards measures	x	x		The Combating Child Sexual Exploitation Directive (2011/92) establishes common minimum rules concerning the definition of criminal offences and sanctions in the area of sexual abuse and sexual exploitation of children, child pornography and solicitation of children for sexual purposes. It contains provisions aimed at preventing these crimes and protecting victims.
DfT	Driver CPC (certificates of professional competence)	x			Directive 2003/56/EC.
DfT	Driver licensing	x			Driver Licensing Directive (roads) and Directives and regulations relating to driver certificates of professional competence.
BEIS	Efficiency in energy use	x	x	x	The Energy Efficiency Directive (2012/27/EU) sets energy efficiency targets and other requirements to encourage and improve energy efficiency.
DHSC	Elements of the regulation of tobacco and related products	x*	x*		Provision made for print and press advertising and promotion of electronic cigarettes in Directive 2014/40/EU on the approximation of the laws, regulations and administrative provisions of the member states concerning the manufacture, presentation and sale of tobacco and related products. Provision made for print and press advertising, display and promotions in Directive 2003/33/EC on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products.

BEIS	Environmental law concerning energy planning consents	x*		x*	Directives setting out provisions for Environmental Impact Assessments for generation stations and overhead lines (85/337/EEC, 97/11/EC, 2003/35/EC, 2009/31/EC, 2011/92/EU and 2014/52/EU).
DEFRA	Environmental quality - air quality	x	x	x	Policies and regulations that aim to reduce harmful emissions and concentrations of air pollutants that can damage human health and the environment, including in relation to national emission ceilings, ambient air quality, industrial emissions and relevant product standards. This includes regulations that implement international commitments under the UNECE Convention on Long-range Transboundary Air Pollution and Kiev Protocol to the UNECE Aarhus Convention.
DEFRA	Environmental quality - biodiversity - access and benefit sharing of genetic resources (ABS)	x	x	x	Rules set up under the Nagoya Protocol to help preserve biodiversity. The rules regulate access to the genetic resources of other countries and how the benefits from research and development using these resources are shared with the provider country.
DEFRA	Environmental quality - marine environment	x	x	x	Rules relating to management and protection of, but not limited to, marine pollution, litter, biodiversity, food webs and seafloor integrity.
DEFRA	Environmental quality - natural environment and biodiversity	x*	x*	x*	Policies and common standards covering the conservation of the UK's terrestrial, freshwater and marine species and habitats in compliance with international obligations, including the Birds and Habitats Directives, particularly the network of sites which currently form part of the EU's Natura 2000 (N2K) network.
DEFRA	Environmental quality - spatial data infrastructure standards	x	x	x	EU INSPIRE regulations that ensure a harmonised approach to spatial data publishing to improve environmental reporting.
DEFRA	Environmental quality - waste management	x	x	x	Policies and regulations covering waste and its recovery/recycling (Landfill Directive, Waste Framework Directive) including producer responsibility (reuse/recovery/recycling targets under Waste Electrical and Electronic Equipment Directive, Batteries Directive, End of Life Vehicles Directive and Packaging Directive). Also covering the shipment of waste.
GEO	Equal treatment legislation	x*	x*	x*	Directives that: implement the principle of equal treatment between persons irrespective of racial or ethnic origin (2000/43/EC); establish a general framework for equal treatment in employment and occupation, prohibiting discrimination because of age, disability and sexual orientation (2000/78/EC); implement the principle of equal treatment between men and women in the access to and supply of goods and services, and in matters of employment and occupation (2004/113/EC and 2006/54/EC). Also relevant in this context is Article 157 of the Treaty on the Functioning of the EU.
DHSC	Good laboratory practice	x*	x*	x*	Directives relating to the inspection and verification of good laboratory practice and harmonising laws, regulations and administrative provisions on good laboratory practice (Directives 2004/9/EC and 2004/10/EC)
HSE	Health and safety at work	x			Directives, including the Health and Safety At Work Framework Directive (89/391/EEC), that require employers to protect the health and safety of their employees. Requirements cover, inter alia, the general layout of workplaces, hazards at work, specific sectors (e.g. construction, mining and onshore and offshore drilling) and work equipment.

BEIS	High efficiency cogeneration / Combined Heat and Power (CHP) [NB - this appears in category 1 for Northern Ireland]		x*		Measures that promote the use of high-efficiency cogeneration (Combined Heat and Power) in order to increase the energy efficiency and improve the security of supply of energy (Energy Efficiency Directive 2012/27/EU).
HSE	Ionising radiation (occupational exposures)	x			Ionising radiations occurs as either electromagnetic rays (such as X-rays and gamma rays) or particles (such as alpha and beta particles). It occurs naturally (e.g. radon gas) and can also be produced artificially. Directive 2013/59/Euratom lays down basic safety standards for protection against exposure to ionising radiation and covers occupational, public and medical exposures.
BEIS	Late payment (commercial transactions)	x*	x		Late Payment Directive (2011/7/EU) designed to protect European businesses against late payment in commercial transactions.
DHSC	Medicinal products for human use	x			Directives and Regulations that relate to medicinal products for human use and, inter alia, lay down procedures for the marketing authorisation, supervision and pharmacovigilance of these products.
DHSC	Medicine prices	x			Directive 89/105/EEC relating to the transparency of measures regulating the pricing of medicinal products for human use and their inclusion in national health insurance systems.
MoJ	Mutual recognition of criminal court judgments measures and cross border cooperation	x	x		<p>Mutual Recognition of Financial Penalties (MRFP) (2005/214) provides for Member States to recognise and enforce financial penalties (of over 70 euros) issued by judicial or administrative authorities of another Member State, in which the person required to pay the fine is normally resident or has property or income. It covers criminal financial penalties including those imposed for road traffic offences.</p> <p>The Criminal European Protection Order (2011/99) allows individuals, including domestic violence victims, to have the terms of certain protection measures that are issued in one Member State recognised and, if necessary, enforced in any other EU Member State.</p> <p>Prisoner Transfer Framework Decision (PTFD) (2008/909) is the principal mechanism for transferring prisoners between EU Member States. It provides for transfer without the consent of the prisoner (where he or she is subject to a deportation order), and unlike other international transfer agreements, it places an obligation on a Member State to accept back its nationals.</p> <p>European Supervision Order (ESO) (2009/829) establishes a legal framework that enables the court in a Member State which is prosecuting a suspect for a crime committed there to allow the suspect to go to another (usually their 'home') Member State to await trial, and for the "home" country to assume responsibility for supervising compliance with conditions of that bail.</p> <p>Victims Compensation Directive (2004/80) requires Member States to set up a system of cooperation to facilitate access to compensation to victims of crimes in cross-border situations, which should operate on the basis of Member States' schemes on</p>



					compensation to victims of violent intentional crime, committed in their respective territories.
DHSC	Organs	x	x	x	Directives setting out standards on the quality and safety of human organs intended for transplantation and laying down the information procedures for exchange between Member States (Directives 2010/53/EU and 2012/25/EU).
HO	Police and criminal justice cooperation - accreditation of Forensic Service Providers (FSP) and mutual recognition of results of FSPs - Prüm Framework	x*	x*		Council Framework Decision 2009/905/JHA on accreditation of forensic service providers carrying out laboratory activities, requires Member States to ensure that FSPs undertaking laboratory activities in relation to DNA and fingerprints are accredited to international standard EN ISO/IEC 17025. Member States must also ensure that national authorities recognise the results of accredited FSPs in other MS as equally reliable as the results of domestic FSPs.
HO	Police and criminal justice cooperation - agencies - CEPOL	x*	x*		Council Decision 2005/681/JHA establishing the European Police College (CEPOL) - a European agency that brings together a network of training institutes for law enforcement officials and supports them in frontline training on security priorities, law enforcement cooperation and information exchange.
HO	Police and criminal justice cooperation - agencies - EU-LISA	x*	x*		Regulation 1077/2011/EU establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (EU-LISA) - the European Agency responsible for the operational management of large-scale IT systems in the area of freedom, security and justice, including EURODAC, SIS II and the Visa Information System.
HO	Police and criminal justice cooperation - agencies - Eurojust	x*	x*		Council Decision 2002/187/JHA (as amended) setting up Eurojust with a view to reinforcing the fight against serious crime - the EU's judicial cooperation agency, which supports Member States' investigation and prosecution agencies in tackling serious cross-border and organised crime. Eurojust helps prevent and resolve conflicts of jurisdiction and facilitates the execution of mutual legal assistance and mutual recognition instruments, such as the European Arrest Warrant (EAW). It also provides funding, technical support and legal expertise on the requirements of different legal systems.
HO	Police and criminal justice cooperation - agencies - Europol	x*	x*		Regulation 2016/794/EU on the European Union Agency for Law Enforcement Cooperation (Europol) - an EU agency that assists Member States' law enforcement agencies in tackling cross-border crime by supporting practical cooperation for cross-border investigations; holding central databases with information on suspected criminals and objects associated with crime; and providing analytical support to make links between crimes committed in different countries.
HO	Police and criminal justice Cooperation - data sharing - European Criminal Records Information System (ECRIS)	x*	x*		Council Framework Decision 2009/315/JHA on the organisation and content of the exchange of information extracted from the criminal record between Member States and Council Decision 2009/316/JHA on the establishment of the European Criminal Records Information System (ECRIS) - a secure electronic system providing for the exchange of information between Member States' authorities in relation to criminal records. It also places requirements on Member States to hold the criminal records of their nationals for offences committed across the EU.

HO	Police and criminal justice cooperation - data sharing - False and Authentic Documents Online (FADO)	x*	x*		Joint Action 98/700/JHA establishing the European Image Archiving System, also known as False and Authentic Documents Online (FADO) is an EU database that facilitates the exchange of information between document experts in Member States on genuine and false identity documents, visas and border officer stamps used across the EU.
HO	Police and criminal justice cooperation - data sharing - passenger name records	x*	x*		Directive 2016/681/EU creates a common legal basis for Member States to process passenger name record (PNR) data in order to prevent, detect, investigate and prosecute terrorist offences and serious criminal offences. PNR data is personal information provided by passengers and collected and held by airlines. It includes the name of the passenger, travel dates, itineraries, seats, baggage, contact details and means of payment. It can be used by law enforcement authorities in different countries to identify criminal and terrorist movements.
HO	Police and criminal justice cooperation - data sharing - Prüm framework	x*	x*		Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime and Council Decision 2008/616/JHA on implementation of 2008/615/JHA created 'Prüm', which is both a legal framework requiring Member States to allow the reciprocal searching of each other's databases for DNA profiles, vehicle registration data and fingerprint (or dactyloscopic) data, and a legal basis for joint operations relating to police cooperation. There is also a communications network enabling exchange of the forms of data set out above.
HO	Police and criminal justice cooperation - data sharing - Schengen Information System (SIS II)	x*	x*		Council Decision 2007/533/JHA on the establishment, operation and use of the second generation Schengen Information System ('SIS II') (and see also Council Implementing Decision 2015/215) - a system providing law enforcement 'alerts', including on wanted or suspected criminals, suspected terrorists, missing people, and stolen or missing property. SIS II is a 'Schengen' measure. Whilst the UK is not part of the Schengen border-free zone, we have agreed access to SIS II for law enforcement purposes.
HO	Police and criminal justice cooperation - minimum standards legislation - cybercrime	x*	x*		Directive 2013/40/EU establishes common minimum standards for the definition of criminal offences and sanctions in the area of attacks against information systems. This measure also aims to facilitate the prevention of cybercrime and to improve cooperation between judicial and other competent authorities.
HO	Police and criminal justice cooperation - minimum standards legislation - human trafficking	x*	x*		Directive 2011/36/EU establishes common minimum standards for the definition of criminal offences and sanctions in the area of trafficking in human beings. This measure also introduces common provisions on the prevention of human trafficking and the protection of victims of human trafficking.
HO	Police and criminal justice cooperation - practical cooperation - asset recovery offices	x*	x*		Council Decision 2007/845/JHA concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or property related to, crime. AROs are national central contact points that facilitate EU-wide identification and tracing of assets derived from crime. The UK's ARO is housed within the UK Financial Intelligence Unit, in the National Crime Agency.
HO	Police and criminal justice cooperation - practical cooperation	x*	x*		Council Decision 2000/375/JHA sets common rules requiring all Member States to set up 24 hour contact points to receive and act on intelligence related to child pornography or indecent images of children.

	- basic cooperation legislation on child sexual exploitation				
HO	Police and criminal justice cooperation - practical cooperation - Convention Implementing the Schengen Agreement (law enforcement cooperation)	x*	x*		The law enforcement cooperation provisions of the Convention implementing the Schengen Agreement aim to tackle the threat of cross-border crime within the Schengen Area by facilitating police cooperation and cross-border surveillance. In particular, Article 40 provides that law enforcement in one Member State who have a suspect under surveillance can continue their surveillance of that suspect in the territory of another Member State as long as the latter has authorised it. Member States can also request for other Member States to undertake the surveillance of a suspect on their behalf.
HO	Police and criminal justice cooperation - practical cooperation - cooperation on football disorder	x*	x*		Council Decision 2002/348/JHA that sets up National Football Information Points in each Member State. These Information Points share information and intelligence for facilitating international police cooperation in connection with international football matches.
HO	Police and criminal justice cooperation - practical cooperation - European Investigation Order	x*	x*		The European Investigation Order Directive (2014/41/EU) aims to make judicial cooperation in assisting in the investigation and prosecution of criminal offences on investigations between EU Member States faster and more efficient. The new measure standardises requests made between EU Member States for information and evidence, allows for there to be mutual recognition of judicial decisions from other Member States and sets deadlines for recognising and executing requests.
HO	Police and criminal justice cooperation - practical cooperation - European Judicial Network	x*	x*		Council Decision 2008/976/JHA on the European Judicial Network aims to facilitate judicial cooperation by establishing a network of Contact Points in Member States who are experts in matters such as Mutual Legal Assistance. These Contact Points assist with establishing direct contacts between competent authorities and by providing legal and practical information necessary to prepare an effective request for judicial cooperation or to improve cooperation more generally.
HO	Police and criminal justice cooperation - practical cooperation - Joint Action on Organised Crime	x*	x*		Joint Action 97/827/JHA establishes a peer-evaluation mechanism that enables Member States to evaluate each other on the application and implementation of instruments designed to combat international organised crime.
HO	Police and criminal justice cooperation - practical cooperation - joint investigation teams	x*	x*		Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams. A JIT is an investigation team set up for a specific purpose and a fixed period, which can be extended, between two or more parties (at least two of which must be a competent authority of an EU Member State) to investigate a specific matter or type of crime.
HO	Police and criminal justice cooperation - practical cooperation - mutual legal assistance	x*	x*		The Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (EU MLAC) encourages and facilitates mutual assistance between the judicial, police and customs authorities of Member States on criminal matters.
HO	Police and criminal justice cooperation - practical cooperation - mutual recognition of asset freezing orders	x*	x*		Council Framework Decision 2003/577/JHA covers the mutual recognition and execution in one Member State of orders freezing property and evidence that were issued in another Member State.

HO	Police and criminal justice cooperation - practical cooperation - mutual recognition of confiscation orders	x*	x*		Council Framework Decision 2006/783/JHA facilitates the mutual recognition and execution in one Member State of confiscation orders issued in another Member State.
HO	Police and criminal justice cooperation - practical cooperation - Swedish initiative	x*	x*		Council Framework Decision 2006/960/JHA (the 'Swedish Initiative'), simplifies the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union. The Initiative sets out rules for the cross-border exchanges of criminal information and intelligence, ensuring time-bound procedures for cross-border data exchanges.
MoJ	Procedural rights (criminal cases) – minimum standards measures	x	x		The Right to Information in Criminal Proceedings Directive (2002/13) sets common minimum standards for information to be provided to people suspected or accused of having committed a criminal offence. The Interpretation and Translation Directive (2010/64) sets common minimum standards on interpretation and translation in criminal proceedings throughout the EU.
MoJ	Provision of legal services (temporary and permanent basis)	x	x		Lawyers Establishment Directive (98/5) provides the framework for permanent establishment of lawyers from one EU member state in another, under home or host state title.  Lawyers Services Directive (77/249) provides the framework for temporary provision of legal services under home state title (including fly-in/fly-out).  (Both Directives apply only to specified titles. In the UK, these are solicitor, barrister, advocate.)
DHSC	Public health (serious cross-border threats to health) (notification system for pandemic flu, Zika etc)	x*	x*	x*	Decision No 1082/2013/EU on serious cross-border threats to health. This sets rules on epidemiological surveillance, monitoring, early warning of, and combating serious cross-border threats to health, including preparedness and response planning related to those activities, in order to coordinate and complement national policies. It aims to support cooperation and coordination between Member States.
BEIS	Radioactive waste treatment and disposal	x*	x*	x*	Directive establishing a framework for responsible and safe management of spent fuel and radioactive waste, both for current workers and the general public, and to avoid imposing burdens on future generations.
DfT	Rail franchising rules [NB - this appears in category 1 for Northern Ireland]		x	x*	Regulation (EC) 1370/2007 as amended by 2016/2338 relating to the way in which competent authorities are able to award public passenger services contracts.
DfT	Rail technical standards (Interoperability)	x			Directive 2008/57/EC establishing interoperability requirements for rail systems (which will be replaced by Directive 2016/797 technical pillar of 4th railway package - soft transposition deadline June 2019, hard transposition deadline June 2020) insofar of the reservation at paragraph 38 of Schedule 3 to the Northern Ireland Act 1998 does not apply.

BEIS	Recognition of insolvency proceedings in EU Member States	x	x*		Regulation 2015/848 on Insolvency Proceedings focusses on resolving conflicts of jurisdiction and laws in cross-border insolvencies, providing rules to determine which EU states' courts have jurisdiction to open insolvency proceedings, ensuring that those proceedings and their effects are recognised throughout the EU, and coordinating between proceedings in different member states. This Regulation recasts and supersedes an earlier instrument, Regulation 1346/2000.
HO	Regulatory systems - Firearms - deactivation standards and techniques	x*			Regulation 2015/2403/EU establishing common guidelines on deactivation standards and techniques for ensuring that deactivated firearms are rendered irreversibly inoperable.
HO	Regulatory systems - firearms - illicit manufacturing and trafficking	x*			Council Decision 2014/164/EU approving Article 10 of the United Nations Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Counterparts and Ammunition; and Regulation 258/2012/EU implementing that protocol by laying down rules governing export authorisation, and import and transmit measures for firearms, their parts and essential components and ammunition.
HO	Regulatory systems - minimum standards legislation - the protection of animals used for scientific purposes	x			Directive 2010/63/EU implementing common minimum standards for the protection of animals used for experimental and scientific purposes. This is implemented through the use of risk-based inspections and increased transparency. Sets out a licencing regime covering establishments, people, and projects using animals in science and broader principles of animal welfare.
HO	Regulatory systems - firearms - control on acquisition and possession of weapons	x*			Directive 91/477/EEC, as amended by Directives 2008/51/EC and EU/2017/853, on the control of the acquisition and possession of weapons, setting out certain minimum standards for the circulation of firearms within the EU.
DfT	Roads - intelligent transport systems	x	x	x	Regulations made under Directive 2010/40. This includes Regulation 305/2013 on harmonised provision for eCall, Regulation 885/2013 on provision of information services for safe and secure parking places for trucks and commercial vehicles and Regulation 886/2013 on data and procedures.
DfT	Roads - motor insurance (minimum required levels of insurance and various compensation schemes, not insurance, financial and prudential regulation, which is reserved)	x			Directive relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability.
DfT	Roads – mutual recognition of qualifications (but not CPC)	x			Directive 2005/36/EC on the recognition of professional qualifications.
DfT	Roads – safety specifications	x			Directive 91/671/EEC on the compulsory use of safety belts in vehicles of less than 3.5 tonnes (amended by 2003/20/EC).
BEIS	Security of supply (gas)	x			Regulations concerning the security of gas supply, preventing potential supply disruptions and helping to respond to them if they happen, The regulations create common standards

					to measure serious threats and define how much gas is needed to be able to supply to households and other vulnerable consumers.
MoJ	Sentencing - taking convictions into account	x	x		Framework Decision on taking convictions into account (2008/675) requires the national criminal courts of all Member States to take account of a defendant's known previous convictions in other Member States to the extent previous national convictions are taken into account.
BEIS	Specified quantities and packaged goods legislation	x*			EU law that sets the rules for quantity control, quantity labelling and specified quantities for packaged goods.
Cabinet Office	Statistics	x*	x*	x*	A wide range of regulations are relevant here that require the devolved administrations to produce particular statistics to a common, harmonised standard.
MHCLG	Strategic Environmental Assessment (SEA) Directive	x	x	x	The Strategic Environmental Assessment (SEA) Directive on the assessment of the effects of certain plans and programmes on the environment.
DHSC	Tissues and cells (apart from embryos and gametes)	x	x	x	Directives setting out standards on the quality and safety of human tissues and cells intended for human application as part of medical treatment.
DfT	Transporting Dangerous Goods by Rail, Road and Inland Waterway Directive	x			Directive covering the carriage of dangerous goods and use of transportable pressure equipment by road, rail and inland waterway.
DfT	Vehicle registration (roads)	x			Directives and Regulations on the harmonisation of registration documents for vehicles (including 2014/46).
MoJ	Victims' rights measures in criminal cases – minimum standards (Victims' Rights Directive)	x	x		Victims' Rights Directive (2012/99) sets common minimum standards on the rights, support and protection afforded to the victims of crime across all Member States.

**24 policy areas that are subject to more detailed discussion to explore whether legislative common framework arrangements might be needed, in whole or in part**

Responsible UK Government Department	Area of EU Law (Policy Area)	Devolution Intersect			Additional Information - what the EU law does
		NI	S	W	
DEFRA	Agricultural support	x	x	x	Policies and Regulations under the EU Common Agricultural Policy covering Pillar 1 (income and market support); Pillar 2 (rural growth, agri-environment, agricultural productivity grants or services and organic conversion and maintenance grants); and cross-cutting issues, including cross compliance, finance & controls.
DEFRA	Agriculture - fertiliser regulations	x	x	x	Regulations providing common standards for compositional ingredients, labelling, packaging, sampling and analysis of fertilisers. The UK is also signed up to a number of international agreements (e.g. the Gothenburg Protocol) and EU agreements (the National Ceilings Directive) related to fertiliser regulation.
DEFRA	Agriculture - GMO marketing and cultivation	x	x	x	Standards for marketing and cultivation of genetically modified organisms.
DEFRA	Agriculture - organic farming	x	x	x	Regulations setting out standards for organic production certification.
DEFRA	Agriculture - zootech	x	x	x	EU legislation providing a common framework of rules on breeding and trade in pedigree animals and germinal products in the EU and the treatment of imports from 3rd countries. Each of the UK regions has competent authorities in their areas for recognition of breed societies under this legislation.
DEFRA	Animal health and traceability	x	x	x	EU rules and standards that aim to maintain animal health and allow their movement, including policies covering: prevention of disease (entering UK), control of disease (endemic and exotic), surveillance (for exotic disease) movement of livestock, pet passports and veterinary medicines.
DEFRA	Animal welfare	x	x	x	EU rules relating to aspects of animal welfare including on-farm issues, movement of livestock and slaughter.
HSE and DEFRA	Chemicals regulation (including pesticides)	x*	x*	x*	EU regulations on the classification, labelling and packaging of substances and mixtures (CLP); the placing on the market and use of biocidal products (e.g. rodenticides); the export and import of hazardous chemicals; the registration, evaluation, authorisation and restriction of chemicals (REACH); and plant protection products (e.g. pesticides).
DHSC	Elements of reciprocal healthcare	x*	x*	x*	Regulations 1408/71 and 883/2004 are the main pieces of EU legislation providing for reciprocal healthcare.
DEFRA	Environmental quality - chemicals	x*	x*	x*	Regulation of the manufacture, authorisation and sale and use of chemical products primarily through the REACH regulation but also including: Persistent Organic Pollutants (POPs),

					Polychlorinated Biphenyls (PCBs) and Minamata.
DEFRA	Environmental quality - ozone depleting substances and F-gases	x	x	x	The UK has international obligations under the Montreal Protocol to phase out the use of ODS, phase down hydrofluorocarbons by 85% by 2036, licence imports and exports and report on usage to the UN. EU Regulations and institutions currently deliver these obligations through quota restrictions, licencing and reporting requirements. The EU Regulations also go further with product bans, leakage controls measures and certification requirements for technicians.
DEFRA	Environmental quality - pesticides	x	x	x	Regulations governing the authorisation and use of pesticide products and the maximum residue levels in food, and a framework for action on sustainable use of pesticides.
DEFRA	Environmental quality - waste packaging and product regulations	x	x	x	Policies and Regulations that aim to meet certain essential product requirements and set product standards including for packaging (e.g. ROHS in Electrical and Electronic Equipment, Batteries and Vehicles) in order to manage waste.
DEFRA	Fisheries management & support	x	x	x	Policies and Regulations relating to rules relating to the sustainability of fisheries (quotas), access to waters, conservation measures, enforcement and financial support.
Food Standards Agency	Food and feed safety and hygiene law (food and feed safety and hygiene law, and the controls that verify compliance with food and feed law (official controls)	x	x	x	EU regulations laying down the general principles and requirements of food and feed safety and hygiene; food and feed law enforcement (official controls); food safety labelling; risk analysis; and incident handling. The regulations set out an overarching and coherent framework for the development of food and feed legislation and lay down general principles, requirements and procedures that underpin decision making in matters of food and feed safety, covering all stages of food and feed production and distribution.
DEFRA	Food compositional standards	x	x	x	Minimum standards for a range of specific food commodities such as sugars, coffee, honey, caseins, condensed milk, chocolate, jams, fruit juices and bottled water.
DEFRA	Food labelling	x	x	x	Regulations setting out requirements on provision of information to consumers on food labels.
MHCLG	Hazardous substances planning	x	x	x	Elements of the Seveso III Directive relate to land-use planning, including: planning controls relating to the storage of hazardous substances and handling development proposals for hazardous establishments.
BEIS	Implementation of EU Emissions Trading System	x	x	x	Directives 2003/87/EC establishes the European Union Emissions Trading Scheme for greenhouse gas. The Scheme sets a maximum amount of greenhouse gas that can be emitted by all participating installations and aircrafts; these operators then monitor, verify and report their emissions, and must surrender allowances equivalent to their emissions annually. Allowances are issued either by being sold at auction or allocated for free to some operators, and can be traded, with the price determined by the market.



BEIS (DHSC, MHCLG, DEFRA, DfE and MoJ also have interest)	Mutual recognition of professional qualifications (MRPQ)	x*	x*	x*	Directives that create systems for the recognition for professional qualifications and professional experience throughout the EU. Allowing EU professionals to work in regulated professions in other EU states on either a permanent or temporary basis.
DHSC	Nutrition health claims, composition and labelling	x	x	x	Including Regulations and Directives on the nutrition and health claims made on food; food for special medical purposes and weight control; food intended for infants; the addition of vitamins and other substances to food; and food supplements.
DEFRA	Plant health, seeds and propagating material	x	x	x	Requirements in relation to the import and internal EU movement of plants and plant products, risk assessment of new plant pests and outbreak management. Assurance and auditing of policies across the UK to protect plant biosecurity. Requirements for plant variety rights, registration of plant varieties and quality assurance of marketed seed and propagating material.
Cabinet Office	Public procurement	x*	x*	x*	The regime provided by the EU procurement Directives, covering public procurement contracts for supplies, services, works and concessions above certain financial thresholds awarded by the public sector and by utilities operating in the energy, water, transport and postal services sectors (Directives 2014/24/EU, 2014/25/EU and 2014/23/EU).
BEIS	Services Directive	x*	x*	x*	Directive that seeks to realise the full potential of services markets in Europe by removing legal and administrative barriers to trade by increasing transparency and making it easier for businesses and consumers to provide or use services in the EU Single Market.

**12 policy areas that the UK Government believes are reserved (or excepted in the Northern Ireland Act 1998), but are subject to ongoing discussion with the devolved administrations**

Responsible UK Government Department	Area of EU Law (Policy Area)	Devolution Intersect			Additional Information - what the EU law does
		NI	S	W	
BEIS	Ecodesign and energy labelling				The Ecodesign Directive and Energy Labelling Framework Regulation define conditions and criteria for setting performance and energy information requirements for environmentally relevant product characteristics (such as energy efficiency) through product-specific EU regulations, e.g. Regulation 1062/2010 Energy labelling of Televisions.
BEIS	Elements of product safety and standards relating to explosive atmospheres				ATEX covers equipment and protective systems intended for use in explosive atmospheres, safety devices and components for such equipment.
DCMS	Elements of the Network and Information Security (NIS) Directive				The Security of Network and Information Systems (NIS) Directive requires operators of essential services (energy, water, health, transport and digital infrastructure) and digital service providers to take certain steps in respect of their cyber security, including notification of certain incidents, with the aim to increase the cyber security of member states across the EU and help citizens and businesses stay safe online.
DEFRA	Environmental quality - international timber trade (EUTR and FLEGT)				Regulations (EUTR and FLEGT) prohibiting the placing of illegal timber and timber products on the EU market and allowing for licences to be issued by partner countries that have Voluntary Partnership Agreements under the FLEGT Regulations.
HO	Data sharing - Eurodac				Regulation 603/2013/EU established Eurodac - an EU database containing fingerprints of illegal entrants and asylum applicants. Its primary purpose is to support the effective application of the Dublin Convention by helping to determine which EU Member State is responsible for examining an asylum application
DEFRA	Food Geographical Indications (protected food names)				Geographical Indications (GIs) are a form of intellectual property protection. Under the EU schemes, producers can apply to protect regionally distinct or traditional agri-food products. Once registered, these products are protected throughout the EU against imitation or misuse of their names.
DHSC	Medical devices				Directives and Regulations create a regulatory framework for medical devices ensuring the smooth functioning of the internal market and setting safety and quality standards to protect patients and users.

DWP	Migrant access to benefits				The UK remains free in principle to determine what benefits are available to those living here, including entitlement conditions and the level at which benefits are paid. However, this is currently subject to EU law on free movement of workers (and others) and residence rights. Broadly speaking, EU law requires EU migrants and their family members to be treated equally with UK nationals.
DCMS	Provision in the 1995 Data Protection Directive (soon to be replaced by the General Data Protection Regulation) that allows for more than one supervisory authority in each member state				The Data Protection Directive 1995 specifies that a Member State must have one or more public authority responsible for monitoring the application within its territory of the provisions adopted in this Directive. This has been copied across in the General Data Protection Regulation stating that Member States shall provide for one or more independent public authorities to be responsible for monitoring the application of this Regulation.
BEIS	Radioactive source notifications and transfrontier shipments of radioactive waste				Regulation to ensure that shipments of radioactive sources between Member States are controlled and documented, using a prior declaration system for the safe storage, use and disposal of these radioactive sources (Commission Regulation (Euratom) No. 1493/93).
BEIS	State aid				Articles 107 - 109 of TFEU and associated Treaty articles, Regulations and EU legislation prohibit State aid by Member States and create a framework for assessing compatibility of aid with the internal market, investigating and making complaints about allegedly unlawful aid and creating exemptions for certain categories of aid.
DfT	Vehicle standards - various type approval Directives (roads)				Directives and regulations setting standards for vehicles and components on the road (2007/46/EC), including rules for agricultural vehicles (167/2013), motorcycles (168/2013), non-road mobile machinery (2016/1628), emissions targets for different types of vehicle, and tyre labelling (1222/2009) insofar of the reservation at paragraph 38 of Schedule 3 to the Northern Ireland Act 1998 does not apply.

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**WRITTEN STATEMENT  
BY  
THE WELSH GOVERNMENT**

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**TITLE** UK Government's analysis of where they consider EU law to intersect with devolved competence

**DATE** 14 March 2018

**BY** Mark Drakeford, Cabinet Secretary for Finance

Last week I met with my Scottish and UK counterparts, as part of that meeting we discussed the publication of the UK Government's analysis of where they consider EU law to intersect with devolved competence. This builds upon the list the UK Government shared with us last year, which was covered by a written statement on 24 October 2017. We have previously asked the UK Government to release a consolidated list from all three Administrations and welcome the transparency this publication represents.

It is important to clarify that this is a UK Government document, it had not been agreed with us and does not represent Welsh Government views. We will be considering the document in detail and working with the UK Government, the Scottish Government and the Northern Ireland Executive to overcome any differences where we can.

Of the 167 areas there are 64 which the UK Government considers to apply to the National Assembly for Wales. The analysis itself separates the different intersecting areas into several groups:

- 21 - where no joint action will be required upon exit from the EU;
- 19 - where non-legislative frameworks may be required;
- 24 - where there is the potential need for a legislative framework; and
- 12 - areas that the UK Government believes are wholly reserved.

While the overall number remain similar to the list shared with us last year the content has changed and will require careful consideration. The overall number of areas in each group is largely meaningless, because areas such as 'Agricultural Support' and 'Fisheries management and support' are significantly broader and have a greater impact on devolved competence in Wales than important, but narrower, areas such as 'electronic road toll systems' and 'blood safety and quality'.

Whatever the UK Government's provisional analysis says, and there may well be changes in the details, any future common framework must secure legitimacy, engagement and effectiveness for areas operating across the UK. The most important issue for the Welsh Government is to secure the role of devolved administrations and legislatures in the shaping and running of any cross-UK matters that intersect our devolution settlements.

Language around devolving "significant brand new powers" is misleading and unhelpful. These powers are not being handed to the National Assembly, they are already here. We should instead be focusing on establishing new systems to take these areas forward together. It is only through cooperation and jointly designed approaches that we can ensure stability and a functioning internal market once we leave the European Union. We look forward to working constructively with the UK Government on creating these systems.

Link to UK Government publication:

<https://www.gov.uk/government/publications/frameworks-analysis>

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# Agenda Item 8

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