

Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:	For further information contact:
Committee Room 1 – Senedd	Gareth Williams
Meeting date: 22 October 2018	Committee Clerk
Meeting time: 14.30	0300 200 6362
	SeneddCLA@assembly.wales

- 1 Introduction, apologies, substitutions and declarations of interest

- 2 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3 but have implications as a result of the UK exiting the EU
14.30

Negative Resolution Instruments
- 2.1 SL(5)259 – The Plant Health (Wales) Order 2018

CLA(5)–26–18 – Paper 1 – Report

(Pages 1 – 2)

- 3 Welsh Government Written Statement: Accessibility of Welsh Law
14.35–14.40
CLA(5)–26–18 – Paper 2 – Written Statement

(Pages 3 – 5)

- 4 SL(5)257 – The Town and Village Greens (Landowner Statements) (Wales) Regulations 2018 – Correspondence
14.40–14.45
CLA(5)–26–18 – Paper 3 – Letter to the Cabinet Secretary for Energy, Planning and Rural Affairs, 9 October 2018

(Pages 6 – 9)



CLA(5)-26-18 – Paper 4 – Letter from the Cabinet Secretary for Energy, Planning and Rural Affairs, 17 October 2018

5 Paper(s) to note

14.45-14.50

5.1 Letter from the Cabinet Secretary for Education regarding the School Organisation Code

(Pages 10 – 18)

CLA(5)-26-18 – Paper 5 – Letter from the Cabinet Secretary for Education, 11 October 2018

5.2 Letter from the Cabinet Secretary for Education regarding SL(5)239 – The Education (Student Loans) (Repayment) (Amendment) (No.3) Regulations 2018

(Pages 19 – 20)

CLA(5)-26-18 – Paper 6 – Letter from the Cabinet Secretary for Education, 12 October 2018

5.3 Letter from the Cabinet Secretary for Education regarding SL(5)240 – The Education (Student Support) (Wales) (Amendment) Regulations 2018

(Pages 21 – 22)

CLA(5)-26-18 – Paper 7 – Letter from the Cabinet Secretary for Education, 12 October 2018

5.4 Letter from the Cabinet Secretary for Energy, Planning and Rural Affairs regarding SL(5)248 – The Food and Rural Affairs (Miscellaneous Revocations) Regulations 2018

(Page 23)

CLA(5)-26-18 – Paper 8 – Letter from the Cabinet Secretary for Energy, Planning and Rural Affairs, 16 October 2018

5.5 Changes to Standing Orders relating to section 116C Orders in Council

(Pages 24 – 27)

CLA(5)-26-18 – Paper 9 – Letter to the Leader of the House and Chief Whip, 8 October 2018

CLA(5)-26-18 – Paper 10 – Letter from the Leader of the House and Chief Whip, 16 October 2018

5.6 Letter from the Minister for Children, Older People and Social Care regarding the Childcare Funding (Wales) Bill

(Pages 28 – 29)

CLA(5)-26-18 – Paper 11 – Letter from the Minister for Children, Older People and Social Care, 17 October 2018

6 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting

7 Legislative Consent Memorandum: Agriculture Bill

14.50-15.05

(Pages 30 – 65)

CLA(5)-26-18 – Paper 12 – Legal Briefing

CLA(5)-26-18 – Paper 13 – A written statement by the Welsh Government

CLA(5)-26-18 – Paper 14 – A joint statement by the UK Government and the Welsh Government

CLA(5)-26-18 – Paper 15 – Legislative Consent Memorandum

CLA(5)-26-18 – Paper 16 – Letter to the Cabinet Secretary for Energy, Planning and Rural Affairs, 24 September 2018

CLA(5)-26-18 – Paper 17 – Letter from the Cabinet Secretary for Energy, Planning and Rural Affairs, 11 October 2018

CLA(5)-26-18 – Paper 18 – House of Lords, Delegated Powers and Regulatory Reform Committee, 34th Report of Session 2017-19, Agriculture Bill

8 Scrutiny of proposed negative regulations made under the European Union (Withdrawal) Act 2018 – update

15.05–15.10

(Pages 66 – 68)

CLA(5)–26–18 – Paper 19 – Scrutiny of proposed negative resolution instruments: process

9 UK governance–post Brexit – Speakers' conference – update

15.10–15.15

10 Interparliamentary Forum on Brexit: update on schedule for 25 October meeting

15.15–15.20

11 Act of Union Bill

15.20–15.25

(Pages 69 – 76)

CLA(5)–26–18 – Paper 20 – Research Service Briefing

Background and Purpose

This Order replaces the Plant Health (Wales) Order 2006 (S.I. 2006/1643) (W. 158) and the Plant Health (*Phytophthora ramorum*) (Wales) Order 2006 (S.I. 2006/1344) (W. 134). It implements European Union ("EU") plant health legislation in relation to Wales.

Part 1 is introductory and includes definitions. Article 2(5) provides for references to the EU instruments listed to be read as references to those instruments as amended from time to time.

Part 2 applies to plant pests and relevant material coming from countries outside the EU, including relevant material from third countries coming via another part of the EU where the Welsh Ministers have agreed to carry out certain checks on that material. "Relevant material" is defined in article 2(1).

Part 3 applies to plant pests and relevant material from the EU (whether originating in the EU or in third countries). Articles 18-20 prohibit the introduction into Wales of certain plant pests and relevant material from another part of the EU and contain prohibitions and restrictions on the movement of plant pests and relevant material and other activities in Wales. Certain relevant material is required to be accompanied by a plant passport when it is moved within Wales or consigned to another part of the EU.

Part 4 imposes a requirement on plant traders to be registered in respect of any activity which they carry out and which is regulated by the Order (articles 25 to 28) and makes provision for the Welsh Ministers to authorise plant traders to issue plant passports (article 29).

Part 5 contains special arrangements governing relevant material from Switzerland.

Part 6 contains general enforcement powers given to plant health inspectors.

Part 7 imposes additional requirements in relation to certain solanaceous species (potatoes and tomatoes).

Part 8 makes provision for the Welsh Ministers to grant licences which authorise activities which would otherwise be prohibited by the Order.

Part 9 requires certain plant pests which are present or suspected to be present in Wales to be notified to the Welsh Ministers or an inspector and enables inspectors to request information.

Part 10 contain offences for non-compliance with the Order and with requirements imposed in accordance with the Order.

Part 11 deals with revocations and transitional provisions.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

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



Implications arising from exiting the European Union

This Order implements various EU obligations in respect of plant health law, and therefore this Order will form part of retained EU law after exit day.

The Intergovernmental Agreement on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks states that plant health law is a policy area likely to be subject to regulations made under the EU (Withdrawal) Act 2018. Therefore, the law covered by this Order is likely to be an area of EU law that is frozen while common frameworks are put in place.

Government Response

No government response is required.

Legal Advisers

Constitutional and Legislative Affairs Committee

16 October 2018



**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **Accessibility of Welsh Law**

DATE **12 October 2018**

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

I'm pleased to announce a series of initiatives, some already under way and others about to begin, to make Welsh law more accessible.

The first of these is legislation, part of which will set the framework for the work we are doing, and will continue to do, to make Welsh law more accessible.

I am looking forward to introducing a Bill later this year which will set Wales on a new journey to developing comprehensive and well-organised codes of law – the first part of the United Kingdom to take this step.

The purpose of the Legislation (Wales) Bill is to make Welsh law more accessible, clear and straightforward to use.

The Bill will propose that for each Assembly term the Welsh Ministers and the Counsel General must develop a programme of activity designed to improve the accessibility of Welsh law. The specific content of each programme will be a matter for the Welsh Ministers and the Counsel General of the time, but each programme must make provision to consolidate and codify Welsh law, maintain codified law and to facilitate use of the Welsh language in the law and in public administration more generally.

I wish to alert Members also to the fact that accompanying the Bill will be a draft taxonomy setting out the subject matter by reference to which Codes of Welsh law could be organised. Although we will be significantly constrained in what we do by the devolution settlement, we have been taking inspiration from other jurisdictions which organise their law in this way. I look forward to Members considering our plans once they are published. The work we are doing is being done with users of legislation in mind, so we must be sure that users of legislation can see the benefit in what we propose.

Also contained in the Bill will be provisions on the interpretation of Welsh law, another initiative that would put Wales on the same legal footing as Scotland and Northern Ireland who already have such legislation. These provisions, though technical and often detailed,

are important because they set out how legislation works. These rules sit in the background ready to be applied whenever there are problems. They are set out once so they don't have to be repeated every time we legislate.

In addition to the Bill, Members will wish to know that we are working on other projects which will eventually form part of the programme of work required by the Bill. The main focus here is to better publish and promulgate Welsh law. Despite our only comparatively brief existence as a legislature and government, the National Assembly has passed 59 Measures or Acts since 2007 and the Welsh Ministers have made around 6,000 statutory instruments since 1999.

We are working with The National Archives, whose role it is to publish Welsh laws, to develop a clearer and more accessible system of categorisation of law ahead of its future consolidation. This will enable us to arrange this legislation in accordance with its content rather than when it was made – which is a very unhelpful way of doing things. We intend, therefore, to publish our legislation differently, in ways that make it easier to find and, fundamentally, to be aware of its existence. Statutory Instruments are so numerous and made so frequently that it is very difficult to stay current. And the link between these instruments and the Act they are made under is also unclear. Organising this legislation by subject matter, even if it has not yet been re-made in a consolidated form, will be a significant breakthrough – especially where instruments implement European law.

We are also talking to The National Archives about taking a more prominent role in the way Welsh laws are published. This is the responsibility of the Queen's Printer and fulfilled in practice by the National Archives' legislation team. They have been making good progress recently in their aim of publishing the statute book in up to date form, which involves incorporating amendments made by subsequent legislation to existing legislation. This progress has, however, been limited mainly to primary legislation and disappointingly, only to the English language text of Welsh (primary) legislation. We are in the process of agreeing new arrangements under which the task of updating Welsh legislation – in both English and Welsh – will be taken on by the Welsh Government. Our first priority once we take over this role will be to deal with the discrepancy that currently exists between the English language and Welsh language texts of the published law. But we don't intend to stop there – my aim is to ensure that all Welsh legislation on the statute book is published in up to date form.

Next year I intend also to re-launch the Cyfraith Cymru / Law Wales website. This site already serves a useful purpose but it remains a work in progress and its content is limited. I recognise that what we have on the site at present falls short of people's expectations, not least my own. But I have also been clear, as have my predecessors in this office, that this is not something government can or should do alone. We recognise our responsibility to do more to make Welsh law more accessible, and indeed we are going as far as to propose imposing a statutory duty on ourselves in this respect. But there is a responsibility also on wider civic society to contribute. It is something that must be developed in collaboration and I call upon the Welsh legal community to play its part, together with the Welsh Government, in making this the best resource it can be.

The process of making laws in Wales, for Wales, won't stop, and the divergence between the laws of Wales and the laws of England won't stop.

This work must be done, therefore, to contribute towards the legal and constitutional infrastructure that we now require in Wales and to make the laws of Wales as accessible as possible to the people of Wales.

Agenda Item 4

Lesley Griffiths AM
Cabinet Secretary for Energy, Planning and Rural
Affairs
Welsh Government

09 October 2018

Dear Lesley

The Town and Village Greens (Landowner Statements) (Wales) Regulations 2018

At the meeting of the Constitutional and Legislative Affairs Committee yesterday, the Committee considered The Town and Village Greens (Landowner Statements) (Wales) Regulations 2018.

Our report highlighted concerns at the lack of justification for including personal details in a public register. In the absence of this justification, we expressed concern that Article 8 of the European Convention on Human Rights may have been breached and, as a result, that the regulations could be ultra vires.

The government response to our report accepted these points and indicated that it would make amending regulations “as soon as practicable”. However, we would be grateful for clarification on how you intend to amend the regulations (including details of how the amendments can be justified if they continue to raise any privacy concerns) and whether it is your intention for the amendments to come into force before these regulations come into force, i.e. before 22 October 2018.¹

¹ While doing so would breach the 21 day rule, we believe there is clear justification for doing so in the circumstances.



Given the time frame in which Assembly Members are able to table a motion to annul these regulations, I would be grateful for a response by close on 17 October 2018.

Yours sincerely

A handwritten signature in black ink that reads "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

Mick Antoniw AM

Chair

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





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

17

October 2018

Dear Mick

Thank you for your letter of 9 October regarding the Town and Village Greens (Landowner Statements) (Wales) Regulations 2018 ("the original Regulations"), in which you requested clarification in relation to my intention to amend those Regulations.

I will lay a fresh set of Regulations ("the new Regulations") on 19 October. They will come into force on 22 October. While I recognise this timetable involves breaching the 21 day rule, I agree with the Committee there is justification for doing so in the circumstances

The new Regulations will revoke the original Regulations, and will recast their content, albeit with changes to address the concerns expressed in the 'Technical Scrutiny' section of the Committee's draft report of 28 September. The distinction between the original Regulations and the new Regulations is described below.

The original Regulations require a statement under section 15A(1) of the Commons Act 2006 ("the 2006 Act") to be deposited in a form entirely equivalent to the one set out in Schedule 1 to the original Regulations, essentially to ensure the full range of information relevant for the purposes of its functions is available to the authority.

While this requirement will be preserved in the new Regulations, the additional requirement in regulation 7(2)(b) of the original Regulations, which provides the register must be kept by the authority under section 15B of the 2006 Act and must contain a copy of the statement so deposited, will not.

Bae Caerdydd • Cardiff Bay
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

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

Instead, the new Regulation's will require only *Part B* of a statement deposited in the form to be set out in the register.

The result is neither the telephone number or email address of a landowner depositing a statement will be required to be placed on the register; nor the name, postal address, telephone number or email of any person depositing the a statement on the landowner's behalf.

However a requirement equivalent to regulation 7(2)(c) of the original Regulations, which requires the name and postal address of the landowner to be placed on the register, will be included in the new Regulations.

The justification for the inclusion of such provision ("the relevant provision") in the new Regulations, set out by reference to the four questions arising from the case of, among others, *R (on the application of Tigere) v Secretary of State for Business, Innovation and Skills* is as follows.

The deposit of a statement by a landowner under section 15A(1) the 2006 Act brings to an end any period during which persons have indulged as of right in lawful sports or pastimes on the land to which the statement relates.

The exercise of a landowner's discretion under section 15A(1) therefore itself removes a right previously enjoyed by the local community and by members of the public generally. As such, it is in the public interest for those whose rights may be curtailed to know who has deposited the statement, and to enable the making of informal representations and enquiries should they so wish.

Accordingly, the relevant provision has a legitimate aim sufficient to justify the limitation of the landowner's rights under article 8 of the European Convention on Human Rights.

The relevant provision naturally facilitates, and by extension, is rationally connected to the public interest objective, and therefore the legitimate aim.

The relevant provision represents the least intrusive means of facilitating the public interest objective.

For the reasons stated above, the relevant provision strikes a fair balance between the rights of the landowner and the interests of the community.

A handwritten signature in black ink that reads "Regards" on the top line and "Lesley" on the bottom line. The signature is written in a cursive, flowing style.

Lesley Griffiths AC/AM

Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion Gwledig
Cabinet Secretary for Energy, Planning and Rural Affairs

Agenda Item 5.1

Mick Williams AM
Ysgrifennydd y Cabinet dros Addysg
Cabinet Secretary for Education



Llywodraeth Cymru
Welsh Government

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales

SeneddCLA@Assembly.Wales

11 October 2018

Dear Mick,

I am advised that following the CLA Committee's scrutiny of the draft School Organisation Code on 1 October the committee requested clarity on how in preparing the Code, the Welsh Ministers had regard to the requirements of the United Convention on the Rights of the Child in accordance with section 1 of the Rights of Children and Young Persons (Wales) Measure 2011.

I can confirm that the Welsh Government has assessed the impact on children's rights of strengthening the Code in respect of a presumption against the closure of rural schools through the completion of a Children's Rights Impact Assessment (CRIA).

A copy of the Impact Assessment is attached. This was developed at an early stage of policy development and has been updated at key stages, most recently when the Code was laid before the Assembly in September. The final CRIA will be published once the draft Code comes into force.

Yours sincerely

Kirsty Williams AC/AM
Ysgrifennydd y Cabinet dros Addysg
Cabinet Secretary for Education

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

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



Children’s Rights Impact Assessment (CRIA) Template

Title / Piece of work:	Strengthening the School Organisation Code in respect of a presumption against the closure of rural schools
Related SF / LF number (if applicable)	MA-L-KW-5346-16 MA-L-KW-0060-18 MA-L-KW-0204-18 MA-L-KW-0439-18
Name of Official:	David Weale, School Organisation and Admissions Branch
Department:	Department for Education & Public Services
Date:	17 September 2018
Signature:	

Please complete the CRIA and retain it for your records on iShare. You may be asked to provide this document at a later stage to evidence that you have complied with the duty to have due regard to children’s rights e.g. Freedom of Information access requests, monitoring purposes or to inform reporting to the NafW.

Upon completion you should also forward a copy of the CRIA to the Measure Implementation Team for monitoring purposes using the dedicated mailbox CRIA@wales.gsi.gov.uk

If officials are not sure about whether to complete a CRIA, they should err on the side of caution and seek advice from the Measure Implementation Team by forwarding any questions to our mailbox CRIA@wales.gsi.gov.uk

You may wish to cross-reference with other impact assessments undertaken.

NB. All CRIs undertaken on legislation must be published alongside the relevant piece of work on the WG website. All other CRIs must be listed in the WG CRIA newsletter and must be made available upon request. Ministers are however, encouraged to publish all completed CRIs.

Six Steps to Due Regard



Step 1. What's the piece of work and its objective(s)?

A brief description of the piece of work

In Plenary in November 2016 the Cabinet Secretary for Education announced a number of actions she proposed to take in respect of small and rural schools, recognising that schools and communities in different parts of Wales face different challenges as the Welsh Government moves forward with its reforms to raise education standards. As part of this she committed to consult on strengthening the School Organisation Code in respect of a presumption against the closure of rural schools. This commitment is one of the key actions in our national mission¹.

The School Organisation Code ("the Code") is made by the Welsh Ministers.² It sets out what must be done whenever significant changes to schools are proposed - such as a change in category of a school or the opening or closing of a school. There is currently no presumption in favour or against the closure of any type of school. The first edition of the Code recognises that the prime purpose of schools is the provision of education. However, it also recognises that in rural areas a school may also be the main focal point for community activity and its closure could have implications beyond the issue of the provision of education. When bringing forward proposals to close any school, proposers must give special attention to alternatives and assess the impact of closure on the community through the production of a Community Impact Assessment.

We propose to strengthen the first edition of the Code to include a specific presumption against the closure of rural schools. This will require proposers to follow a more detailed set of procedures and requirements in formulating a rural school proposal and in consulting on and reaching a decision as to whether to implement a rural school closure proposal.

A presumption against closure does not mean that rural schools will never close. The objective is to ensure that the case for closure is strong and that the decision to consult and move forward with closure is not taken until all viable alternatives have been conscientiously considered, including

¹ Education in Wales: Our national mission action plan for 2017-21.

² See sections 38 and 39 of the School Standards and Organisation (Wales) Act 2013

federation. Identifying alternatives to closure must be a two stage process with proposers doing this before they even decide to consult on closure and then considering any other viable alternatives that come forward as part of the consultation. A more open and transparent process will be one in which the proposer is seen to be open to new ideas suggestions and proposals emerging from the consultation.

In order to have a presumption against the closure of rural schools it is necessary to define a rural school for that specific purpose. When considering developing a proposal to close a school the proposer will need to check whether the school is on the list and the further requirements set out in the Code apply.

What is the time frame for achieving this?

Before issuing or revising the School Organisation Code the Welsh Ministers are required to consult with local authorities, governing bodies of maintained schools, Estyn and anyone else they consider appropriate.

A 14 -week web-based public consultation on the revised code ran from 30 June 2017 to 30 September 2017. The consultation sought views on the introduction of a presumption against closure of rural schools, the further requirements and procedures proposers would need to follow and an appropriate designation of rural schools based on the National Statistics Urban-Rural Classification. A total of 70 responses were received from a wide representative range of key stakeholders including local authorities, diocesan authorities, school governing bodies, parents and individuals, teaching unions, community and town councils, Estyn and others. A full summary of consultation responses can be accessed at: <https://beta.gov.wales/school-organisation-code>

There was broad support for all of the proposals. However, some respondents suggested other schools that should be designated as rural. Taking into account consultation responses the designation of rural schools that was extended to include a further category of the Urban-Rural Classification.

The draft Code has been updated to reflect consultation responses. In accordance with section 39 of the School Standards and Organisation (Wales) Act 2013 the draft Code was laid before the National Assembly for Wales for 40 days on 17 September 2018. The Code is expected to come into force on 1 November 2018 unless the National Assembly for Wales resolves not to approve it.

Who are the intended beneficiaries?

Pupils, parents and families, teachers and rural communities

Is it likely that the piece of work will specifically affect children?

Yes. The Welsh Government is bringing forward these proposals to protect and potentially benefit the well-being of all children who attend maintained rural schools in Wales, recognising that all children and young people deserve an equal opportunity - regardless of their background or where they live - to reach the highest possible standards.

The duty of implementing the proposals will usually be on local authorities, but may also fall on the

governing bodies of foundation and voluntary aided schools where those governing bodies have proposed the closure of their schools.

Will the piece of work have an effect on a particular group of children, if so, describe the group affected?

Our proposals will have an effect on those children who live in rural areas and attend schools designated as rural schools. The Code already has a focus on vulnerable groups, including children with Special Educational Needs and the impact that school organisation proposals may have on them and this will continue to be the case in the 2nd edition of Code.

Step 2. Analysing the impact

We envisage that the more open and transparent process introduced by the presumption against closure, will benefit pupils, their parents and the wider community. The two stage consideration of identifying alternatives to closure will give all those who have an interest in proposals more trust and confidence in the process.

Where a viable alternative is identified which results in a rural school remaining open, for example federation with another school and/or use of community buildings or shared services on site to make the school more viable, it has potential benefits for the schools concerned, their pupils and the wider community.

While introducing a presumption against closure does not mean that rural schools will not close, it improves the chances of such schools remaining open where a viable alternative to closure is identified. Anecdotal evidence is that rural communities with a local school are more likely to thrive as they are better able to attract families with school age children into the area. As a result, other businesses providing services and jobs may be encouraged into the area which could benefit the wider community, including children and their families.

If the chances of rural schools remaining open are improved, it means that the children who attend schools which would previously have closed do not now face the disruption of being moved to another school in a different community.

If children are able to continue to attend their local rural school rather than another school which is further away it will keep their travel time to a minimum, which will be of benefit to children and their families. Local authorities may also benefit from not needing to provide school transport.

Ensuring that all viable options to keep the school open are properly considered may lead not only to the school remaining open but also to increased community use of school facilities by the wider community, which may also be of benefit to some children. For example, part of the school building or grounds may be used to accommodate childcare including wrap around childcare outside school hours, after school clubs, sports facilities, a library or post office.

The requirement that closure of any school – whether or not that school is “rural” - must be in the best interests of educational provision in the area remains unchanged.

A 14 week web-based public consultation on our proposals ran from 30 June 2017 until 30

September 2017. In addition to being publically available on the Welsh Government internet site, it was advertised in Dysg which is available to all schools, links to the consultation were provided to key stakeholders such as Estyn, local authorities and diocesan authorities, a 10% sample of school governing bodies (including various faith and non-faith schools), the Equality and Human Rights Commission, the Children’s Commissioner for Wales and education Consortia.

A children’s version of the consultation was not prepared. While the purpose of our proposals is to protect and potentially increase the wellbeing of children who attend rural schools and their families, we are seeking to bring this about by making changes to the statutory School Organisation Code. These changes will apply to local authorities and the governing bodies of foundation and voluntary schools only, as they are the bodies that may propose the closure of a school. In bringing forward proposals, including proposals to close schools proposers are required to comply with the School Standards and Organisation (Wales) Act 2013 and the School Organisation Code including in respect of consultation. This includes producing a child friendly version of their consultation document and making suitable arrangements to consult with pupils of any affected school, including consultation with the school council. Under the presumption against closure children and young people along with anyone else with an interest, will be able to put forward alternatives to closure as part of the consultation process, which local authorities and other proposers must consider.

Step 3. How does your piece of work support and promote children’s rights?

The introduction of a presumption against the closure of rural schools will help to ensure that the well-being of not only the children who attend these schools, but also their families and communities are conscientiously considered and consulted upon. This is because the proposer of the closure will have to consider and consult upon all viable options to keep a school open, which will necessitate the drafting of various impact assessments for all options – including an assessment of the impact on the community. Consideration of alternatives to closure will be a two stage process with the authority or other proposer having to do his before they even decide to consult on closure and for consultees including pupils, their parents and the community to come up with other viable alternatives to closure which the proposer must consider. When people are involved in decisions that affect them locally it improves their sense of wellbeing. There may even be longer term benefits in the form of increased prosperity for rural communities if the continuance of a rural school makes that community more attractive to families and inward investment from businesses. We believe that these proposals will maximise outcomes within the UNCRC articles discussed below.

Article 3

All organisations concerned with children should work towards what is best for each child.

Introducing a presumption against the closure of rural schools will ensure that all viable options to keep a school open are conscientiously considered and consulted upon along with the option to close a school, and the impact of all such options is appropriately assessed. This should mean that the well-being of the children who attend a rural school - as well as their families and wider community – is given appropriate weight whenever school closure is being considered.

Article 27

Children have a right to a standard of living that is good enough to meet their physical and mental needs. The Government should help families who cannot afford to provide this.

Rural poverty is often hidden. Village schools can act as the lynchpin for extended services in a community through the provision of other public services. By doing this they give us the best chance of reaching all people, but particularly those most at risk of social exclusion. Based in isolated communities small schools may hold the key to engaging the most disadvantaged families. Village schools have a role to play in supporting individual families in need, or as a hub for activities that will promote learning economic well-being and social cohesion. Maintaining small village schools in rural areas and extending their provision of services and we tackle the problems of poverty, aspiration and lack of economic opportunities for these areas. Rural Schools are often critical in engaging pupils and families from the most disadvantaged backgrounds.

As rural schools often play a pivotal role in the life of their communities, having a presumption against their closure will result in fewer rural schools closing and may help to encourage families and businesses into rural areas. This may give rural communities a better chance to thrive, and to have improved facilities and job prospects which will benefit the children - and their families – who live in such communities.

Step 4. Advising the Minister and Ministerial decision

The advice to the Minister for Education & Skills confirms that this CRIA has been completed.

Step 5. Recording and communicating the outcome

This CRIA will be sent to the Measure Implementation Team for monitoring purposes, listed in the Welsh Government CRIA newsletter and made available upon request. The final CRIA will be published once the revised School Organisation Code comes into force.

Step 6. Revisiting the piece of work as and when needed

The presumption against the closure of rural schools will be monitored on an ongoing basis and will be reviewed a year after implementation and as part of a wider review of the Code following three years of operation.

Budgets

<p>Does the piece of work have any associated allocation of budget?</p> <p>It is important that where any changes are made to spending plans, including where additional allocations or savings have been made, that this has been assessed and evidenced as part of the CRIA process.</p>	<p>No</p>
<p>Please give any details:</p> <p>The funding for the consultation on the school organisation code was met from DRCs within the BEL 5120 within the Education and Public Services MEG during 2017/18.</p>	

Monitoring & Review

<p>Do we need to monitor / review the proposal?</p>	<p>Yes</p>
<p>If applicable: set the review date</p>	<p>Month / Year November 2019 We expect that a review of the impact of the introduction of a presumption against the closure of rural schools will be undertaken following the first year in which this presumption has effect.</p>

Please forward a copy of this CRIA to CRIA@wales.gsi.gov.uk for monitoring purposes



THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

www.uncrcletsgetitright.co.uk

The United Nations Convention on the Rights of the Child is an international agreement that protects the human rights of the children under the age of 18. On 16 December 1991, the United Kingdom of Great Britain and Northern Ireland formally agreed to make sure that every child in the UK has all the rights as listed in the convention. The Welsh Government has shown its commitment to the convention by adopting it as the basis for policy making for children in Wales.

Altogether there are 54 articles in the convention. Articles 43-54 are about how adults and governments should work together to make sure all children are entitled to their rights. The information contained here is about articles 1-42 which set out how children should be treated.



**Llywodraeth Cymru
Welsh Government**

www.cymru.gov.uk

Article 1

Everyone under 18 years of age has all the rights in this Convention.

Article 2

The Convention applies to everyone whatever their race, religion, abilities, whatever they think or say and whatever type of family they come from.

Article 3

All organisations concerned with children should work towards what is best for each child.

Article 4

Governments should make these rights available to children.

Article 5

Governments should respect the rights and responsibilities of families to direct and guide their children so that, as they grow, they learn to use their rights properly.

Article 6

All children have the right to life. Governments should ensure that children survive and develop healthily.

Article 7

All children have the right to a legally registered name, the right to a nationality and the right to know and, as far as possible, to be cared for by their parents.

Article 8

Governments should respect children's right to a name, a nationality and family ties.

Article 9

Children should not be separated from their parents unless it is for their own good, for example if a parent is mistreating or neglecting a child. Children whose parents have separated have the right to stay in contact with both parents, unless this might hurt the child.

Article 10

Families who live in different countries should be allowed to move between those countries so that parents and children can stay in contact or get back together as a family.

Article 11

Governments should take steps to stop children being taken out of their own country illegally.

Article 12

Children have the right to say what they think should happen, when adults are making

decisions that affect them, and to have their opinions taken into account.

Article 13

Children have the right to get and to share information as long as the information is not damaging to them or to others.

Article 14

Children have the right to think and believe what they want and to practise their religion, as long as they are not stopping other people from enjoying their rights. Parents should guide their children on these matters.

Article 15

Children have the right to meet together and to join groups and organisations, as long as this does not stop other people from enjoying their rights.

Article 16

Children have a right to privacy. The law should protect them from attacks against their way of life, their good name, their families and their homes.

Article 17

Children have the right to reliable information from the mass media. Television, radio and newspapers should provide information that children can understand, and should not promote materials that could harm children.

Article 18

Both parents share responsibility for bringing up their children, and should always consider what is best for each child. Governments should help parents by providing services to support them, especially if both parents work.

Article 19

Governments should ensure that children are properly cared for, and protect them from violence, abuse and neglect by their parents or anyone else who looks after them.

Article 20

Children who cannot be looked after by their own family must be looked after properly, by people who respect their religion, culture and language.

Article 21

When children are adopted the first concern must be what is best for them. The same rules should apply whether the children are adopted in the country where they were born or taken to live in another country.

Article 22

Children who come into a country as refugees should have the same rights as children born in that country.

Article 23

Children who have any kind of disability should have special care and support so that they can lead full and independent lives.

Article 24

Children have the right to good quality health care and to clean water, nutritious food and a clean environment so that they will stay healthy. Rich countries should help poorer countries achieve this.

Article 25

Children who are looked after by their local authority rather than their parents should have their situation reviewed regularly.

Article 26

The Government should provide extra money for the children of families in need.

Article 27

Children have a right to a standard of living that is good enough to meet their physical and mental needs. The Government should help families who cannot afford to provide this.

Article 28

Children have a right to an education. Discipline in schools should respect children's human dignity. Primary education should be free. Wealthy countries should help poorer countries achieve this.

Article 29

Education should develop each child's personality and talents to the full. It should encourage children to respect their parents, and their own and other cultures.

Article 30

Children have a right to learn and use the language and customs of their families, whether these are shared by the majority of people in the country or not.

Article 31

All children have a right to relax and play, and to join in a wide range of activities.

Article 32

The Government should protect children from work that is dangerous or might harm their health or their education.

Article 33

The Government should provide ways of protecting children from dangerous drugs.

Article 34

The Government should protect children from sexual abuse.

Article 35

The Government should make sure that children are not abducted or sold.

Article 36

Children should be protected from any activities that could harm their development.

Article 37

Children who break the law should not be treated cruelly. They should not be put in prison with adults and should be able to keep in contact with their families.

Article 38

Governments should not allow children under 15 to join the army. Children in war zones should receive special protection.

Article 39

Children who have been neglected or abused should receive special help to restore their self respect.

Article 40

Children who are accused of breaking the law should receive legal help. Prison sentences for children should only be used for the most serious offences.

Article 41

If the laws of a particular country protect children better than the articles of the Convention, then those laws should stay.

Article 42

The Government should make the Convention known to all parents and children.

For further information on the United Nations Convention on the Rights of the Child please visit: The Welsh Government's UNCRC Website: www.uncrcletsgetitright.co.uk/

Cic - The National Information and Advice Service for Young People www.ciconline.co.uk/news/



Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales

SeneddCLA@Assembly.Wales

12 October 2018

Dear Mick

Thank you for your letter of 8 October seeking an explanation as to why responses to the consultation exercise for doctoral loan support, or a summary of those responses, did not appear in the Explanatory Memorandum of the Education (Student Loans) (Repayment) (Amendment) (No.3) Regulations 2018 and why a summary was then published after the regulations were made.

Student support in the form of loans is, from academic year 2018/19, available from the Welsh Ministers for, amongst others, students who are ordinarily resident in Wales and who are starting doctoral degree programmes. The Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018 (SI 2018/656) (“the Loans Regulations”) were made on 23 May 2018 and came into force on 25 June 2018.

The Education (Student Loans) (Repayment) (Amendment) (No.3) Regulations 2018 (SI 2018/810) (“the Repayment Regulations”), which were made on 2 July 2018 and came into force on 28 July 2018, provide for the repayment of those new doctoral degree loans.

The Welsh Government consulted on the policy for the doctoral degree loan support, including the basis on which such loans would be repaid, between 8 December 2017 and 2 March 2018. The Explanatory Memorandum which accompanied the Loans Regulations set out the list of stakeholders invited to respond to the consultation exercise, those who did respond and a summary of those responses. That Explanatory Memorandum also explained that the final policy remained largely unchanged from the policy as set out in the consultation paper.

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

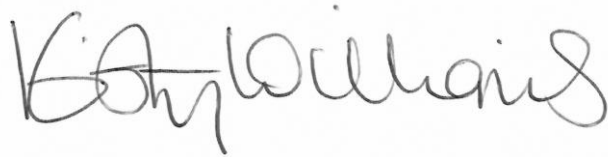
We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

The Welsh Government acknowledges that, despite the close connection between the Loans Regulations and the Repayment Regulations and the single consultation exercise undertaken which preceded the making of both sets of regulations, the Explanatory Memorandum to the Repayment Regulations should have included greater detail in relation to that consultation exercise.

The Welsh Government aims to publish a summary of responses as soon as is reasonably practical. Both the Loans Regulations and the Repayment Regulations were made against very tight timescales to ensure that appropriate legislation was in place such that students ordinarily resident in Wales were able to access doctoral degree loan support for the 2018 academic year. The UK Government was making similar support available to students ordinarily resident in England and the Welsh Government considered it an urgent requirement to ensure that Welsh students were not disadvantaged. Whilst a summary of the consultation exercise was included in the Explanatory Memorandum to the Loans Regulations, the Welsh Government accepts that it would have been preferable to publish a detailed summary of the consultation responses sooner.

I trust this satisfies your query.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kirsty Williams', written in a cursive style.

Kirsty Williams AC/AM
Ysgrifennydd y Cabinet dros Addysg
Cabinet Secretary for Education

Kirsty Williams AC/AM
Ysgrifennydd y Cabinet dros Addysg
Cabinet Secretary for Education

Agenda Item 5.3

Llywodraeth Cymru
Welsh Government

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales

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12 October 2018

Dear Mick

Thank you for your letter of 8 October 2018 seeking an explanation as to how the Education (Student Support) (Wales) (Amendment) Regulations 2018 (SL(5)240) have been made more permissive and how that fits in with the Government response that there is no change in policy or calculation, in determining entitlement.

Regulation 8 amends regulation 93 of the Education (Student Support) (Wales) Regulations 2018 by replacing a mathematical formula used to calculate a prisoner's reduced entitlement to maintenance support for periods spent in prison with a simple form of words. This approach mirrors that taken with regulations 94 and 95, and these regulations now each contain a straightforward explanation of how support will be calculated in the event of a student's absence from a course rather than utilise a mathematical formula.

The Regulatory Impact Assessment states that '[t]here is no cost associated with this amendment as the regulation has been made more permissive, but it does not alter the calculation that will be applied to determine entitlement'. This confirms clearly that there is no change to the results of the calculation. The Student Loans Company, which operates the system of student support on behalf of the Welsh Government, has not changed the way in which a prisoner's entitlement is calculated as a result of this amendment. The use of 'permissive' is to reflect the change from a formula to a form of words within the clearly articulated context of no change to the entitlement to support.

I trust this satisfies your query.

Yours sincerely

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

A handwritten signature in black ink, reading "Kirsty Williams". The signature is written in a cursive style with a large initial 'K' and 'W'.

Kirsty Williams AC/AM

Ysgrifennydd y Cabinet dros Addysg
Cabinet Secretary for Education

Lesley Griffiths AC/AM
Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion
Gwledig
Cabinet Secretary for Energy, Planning and Rural Affairs

Agenda Item 5.4



Llywodraeth Cymru
Welsh Government

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales

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16

October 2018

Dear Mick

Thank you for your letter of 8 October regarding the Food and Rural Affairs (Miscellaneous Revocations) Regulations. It is with apologies that a statement was not included within the Explanatory Memorandum in relation to why the Statutory Instrument was not made bilingually. As you note it is the Welsh Government's general practice to include this information in the Explanatory Memorandum; this was merely an unintentional oversight on this occasion. I will ensure officials are aware the Committee expects to see this information in the Explanatory Memorandum.

These Regulations were made on a composite basis; and were drafted by the UK Government. Composite statutory instruments are not made bilingually, as Parliament will not consider statutory instruments drafted in any language other than English. It was therefore not considered reasonable or practical to provide this instrument in the Welsh language.

Regards
Lesley

Lesley Griffiths AC/AM
Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion Gwledig
Cabinet Secretary for Energy, Planning and Rural Affairs

Julie James AM
Leader of the House and Chief Whip
Welsh Government

8 October 2018

Dear Julie,

Changes to Standing Order relating to section 116C Orders in Council

I refer to the report of the Business Committee on proposals to amend Standing Orders relating to the scrutiny of Orders in Council under section 116C of the *Government of Wales Act 2006*.

In previous correspondence with the Business Committee, we were advised that the Welsh Government considered it problematic to amend the existing Standing Order 25, which concerns the scrutiny of Orders in Council under section 109 of the 2006 Act. We would be grateful for an explanation as to why the Welsh Government consider it problematic to subject Orders in Council under section 116C of the 2006 Act to the same scrutiny process as those under section 109.

We would also welcome an explanation as to why you felt the new procedure should be included in Standing Order 27, rather than a new Standing Order 25A. As we explained in our letter to the Business Committee of 12 April 2018, we believe that creating a new Standing Order would have been a clearer, neater and more accessible way to proceed.

We note the commitments given by the Welsh Government in the Business Committee report at paragraph 10. We would be grateful if you could explain why the Cabinet Secretary is only prepared to meet with the Chair rather than the Committee as a whole.

Given that such a meeting would follow a meeting with the Joint Exchequer Committee, it would be helpful if you could indicate how you intend to notify us in advance of when the meetings with the Joint Exchequer Committee are to take place.



I look forward to hearing from you in due course.

Yours sincerely,

A handwritten signature in black ink that reads "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

Mick Antoniw

Chair

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



Julie James AC/AM
Arweinydd y Tŷ a'r Prif Chwip
Leader of the House and Chief Whip



Llywodraeth Cymru
Welsh Government

Mick Antoniw AM
Chair of Constitutional and Legislative Affairs Committee
National Assembly for Wales
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16 October 2018

Dear Mick,

Changes to Standing Order relating to section 116C Orders in Council

Thank you for your letter of 8 October. As I set out in the debate on the revisions to Standing Orders on 10 October, section 116C orders in Council are subordinate legislation subject to the affirmative procedure. As Dai Lloyd AM, on behalf of your committee, noted during the debate Standing Order 27 is the relevant Standing Order for scrutiny of subordinate legislation. It already provides for most of the procedure necessary to scrutinise s116C Orders. We agree the way in which the Assembly operates, through its procedures, needs to be accessible to the public. However, we consider incorporating the procedure in Standing Order 27 is the most appropriate approach, as it consolidates the Standing Orders for subordinate legislation and avoids duplication of procedures in different Standing Orders, thus helping with accessibility and transparency. Last week, the Assembly agreed the same approach to Standing Order 27 with regard to statutory instruments made by Welsh Ministers relating to EU exit.

Standing Order 25 was established to deal with section 109 Orders, as they existed under the pre-2011 devolution settlement—the old legislative competence Orders or LCOs of the third Assembly. Section 116C Orders, whilst relating to devolving new tax-making powers to the Assembly, are different from LCOs; they will only come forward after a period of negotiation and consultation and on the basis of consensus between the Welsh and UK Governments. The two-step process of the LCO, where proposed and draft Orders are scrutinised, is not appropriate in this situation.

The Government has made a number of commitments regarding the information that will be provided to the Assembly during the negotiating phase in advance of a section 116C being brought forward. These are set out in the Business Committee's report, and include providing briefings to you on behalf of the Committee. However, in light of the comments in your letter and during the debate, the Cabinet Secretary for Finance would be happy to consider other options to keep the committee as a whole updated, if they would find that helpful. This will of course be governed by the context of inter-governmental confidentiality and relationships.

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

There are ongoing discussions between our respective officials about future arrangements for keeping the Assembly committees informed about the operation of the inter-governmental relations machinery. The Government is very open to establishing appropriate arrangements. We can include the Joint Exchequer Committee in that process.

Finally, as Dai Lloyd AM said in his closing remarks, the process established by section 116C of the Government of Wales Act is new. I can confirm the commitment I made in the debate that the Government will review the process of devolving a new tax to Wales in the light of experience.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Julie', with a large, sweeping initial 'J'.

Julie James AC/AM

Arweinydd y Tŷ a'r Prif Chwip
Leader of the House and Chief Whip



Llywodraeth Cymru
Welsh Government

Ein cyf/ Our Ref: MA - L/HID/0595/18

Lynne Neagle AM
Chair
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National Assembly for Wales
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17 October 2018

Dear Lynne and Mick

Childcare Funding (Wales) Bill

In my response to both the Children, Young People and Education and Constitutional and Legislative Affairs committees following stage 1 scrutiny of the Childcare Funding (Wales) Bill, I said I would write again to update the committees in relation to two recommendations.

These are recommendation nine of the Children, Young People and Education Committee report and recommendation four of the Constitutional and Legislative Affairs Committee report, which state the Bill should include a duty on Welsh Ministers to provide the childcare offer.

I also committed to exploring some options in terms of CLAC recommendation three, which makes the case for a provision in the Bill, requiring the Welsh Government to review and repeal the legislation.

I have had an opportunity to consider these recommendations in more detail; the arguments put forward in your reports and to explore the options open to me. I will bring forward a government amendment at stage 3, which will place a duty on Welsh Ministers to provide funding in respect of the provision of childcare for qualifying children of working parents.

The amendment will place a duty on the Welsh Ministers to provide funding for the provision of childcare and enable the detail in respect of the age of the qualifying child and the specified

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

amount of childcare to be set out in regulations. I believe this strikes a reasonable balance between what both committees are seeking to achieve in respect of their recommendations, while respecting the principles of good law making.

I have also considered including provisions that would require the Welsh Government to review and repeal the legislation, should it be enacted and commenced. While there were particular legal reasons for including a sunset section in the Public Health (Minimum Price for Alcohol) Act 2018, a similar provision would not be applicable for this technical Bill.

I have given a series of commitments to regularly and routinely review the effectiveness of the legislation. It is important we have flexibility in the Bill's regulation-making powers to make any necessary adjustments to the legislation, if the evidence and feedback suggest we need to make changes to improve the effectiveness of the scheme.

However, I do accept the point the committee is making about the need for the legislation and the offer to be subject to review at a given point in time. I will therefore bring forward amendments during at Stage 3 to require Welsh Ministers to undertake a review and publish its findings as soon as practicable five years after commencement of the powers in section 1 of the Bill. The findings should provide an excellent basis on which to reflect on the offer and its impact.

I would like to take this opportunity to update the committees on the progress we have made in relation to some of the other commitments in my letters of 17 September.

I am pleased that we have been able to arrange for the independent evaluator to provide a confidential briefing for committee members about the first year of implementation on 24 October. This session has been organised for members of the Children, Young People and Education Committee but I would be pleased to extend an invitation to members of the Constitutional and Legislative Affairs Committee, if they are available to attend.

I hope an initial draft framework administrative scheme will be available for consideration by members of the Children, Young People and Education Committee by 2 November. I also intend to bring forward an integrated impact assessment in relation to the wider childcare offer, including an assessment of the impact on children's rights, in the spring.

In terms of the capital grant programme which we have announced, we have now received the bids and are discussing them in more detail with local authorities. We will be making announcements in the New Year, and as I set out in my response to one of the Children, Young People and Education Committee's recommendations, I would welcome the opportunity to return to the committee to discuss this programme further. I would also be very happy to facilitate visits for committee members to some of the settings funded by Welsh Government programmes.

In the meantime, I look forward to the Bill's Stage 2 committee session on 18 October when we can continue to discuss some of these issues in more detail.

Yours sincerely



Huw Irranca-Davies AC/AM

Y Gweinidog Plant, Pobl Hŷn a Gofal Cymdeithasol
Minister for Children, Older People and Social Care

Agenda Item 7

Document is Restricted



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE Introduction of the UK Agriculture Bill

DATE 12 September 2018

BY Lesley Griffiths AM, Cabinet Secretary for Energy, Planning and Rural Affairs

I am today announcing I have asked the UK Government to include powers for Welsh Ministers in an Agriculture Bill which has been introduced to the UK Parliament. The Bill provides a legal basis for future support to farmers after Brexit, as we transition away from the Common Agricultural Policy. The powers being taken for Welsh Ministers are intended to be transitional until our own primary legislation can be brought forward, to design a 'Made in Wales' system which works for Welsh agriculture, rural industries and our communities. Provisions relating to Wales are contained in a separate Schedule so that any changes the National Assembly wishes to see for Welsh Ministers can be made easily.

'Brexit and our Land' is the Welsh Government's consultation on future support to farmers after Brexit. Our land supports livelihoods, anchors communities and generates the vital natural resources we all rely on. The people who manage it contribute a huge amount to our country. We must continue to support them. However, the way we provide the support needs to change after Brexit.

The Welsh provisions in the Agriculture Bill broadly mirror those proposed by the UK Government for England. These include:

- New financial powers for future schemes
- Collection and sharing of data
- Powers to intervene in exceptional market conditions
- Setting of marketing standards
- Modification of retained EU law relating to the financing, management and monitoring of payments to farmers, including the CAP Basic Payment Scheme

There are a small number of additional powers being taken in Wales. In addition to a small number of technical differences, our powers also include an emphasis on supporting rural communities and businesses involved in supply chains.

In general, these are enabling powers which provide for Welsh Ministers to bring forward Wales-specific regulations to the Welsh Assembly for scrutiny. Regulations will not be brought forward until the policy development process has concluded. In “Brexit and our Land” we committed to bring forward a white paper in spring 2019.

The Intergovernmental Agreement on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks sets out how the UK Government and Devolved Administrations will work together to create a fully functioning statute book across the UK when we exit the EU. The introduction of the Agriculture Bill is the first test of the principles in the Agreement of collaboration, cooperation and respect for devolution.

Today’s joint statement between the UK and Welsh Government on agriculture support demonstrates the considerable engagement and collaboration that is taking place to establish a UK common framework for agriculture support. The statement makes clear the majority of this framework will be managed through non-legislative, intergovernmental coordination. As a result, Wales will not be constrained in its design of new schemes and will be able to implement what is best for Wales.

While Welsh Government is generally supportive of the Bill as drafted, there are two outstanding issues which have not been resolved to our satisfaction: first, provisions relating to the World Trade Organisation (WTO) Agreement on Agriculture; and, second, the Red Meat Levy.

The management of the UK’s Agreement on Agriculture at the WTO is an issue which the UK Government believes to be reserved. As a matter of law, the Welsh Government does not accept all aspects of the clause are reserved and, in any case, there is a strong and self-evident relationship between the WTO powers and devolved responsibilities on agriculture support.

Welsh Ministers have secured an important agreement from the UK Government to commit in Parliament to consult the Devolved Administrations on WTO-related regulations. We have also agreed to find a process for how such regulations will be brought forward. However, a commitment to consult is insufficient given the importance of this matter. We will therefore continue to work towards an agreement which ensures appropriate engagement with and consideration of the views of Welsh Ministers and other administrations.

On the Red Meat Levy, it is disappointing powers relating to the redistribution of Red Meat Levy will not be on the face of the Bill at introduction. The Welsh Government expects a UK Government amendment to correct this as soon as possible. It is critical the red meat industry is able to access funds to prepare it best for the opportunities of Brexit and react to inevitable change. Given a legislative change is required to underpin any future agreed mechanisms about finding a solution, the Agriculture Bill – the first to be introduced in Parliament for some decades – is clearly an opportunity to resolve this longstanding issue.

Overall, the introduction of the Agriculture Bill is an important step in our transition to a new system of farm support. It gives significant new powers and flexibilities to Wales. We will continue to work with the UK Government to resolve our outstanding concerns and bring forward advice to the Assembly on legislative consent in the light of this work.

This statement is being issued during recess in order to keep members informed. Should members wish me to make a further statement or to answer questions on this when the Assembly returns I would be happy to do so.

Agricultural Framework Progress Update: September 2018

A joint statement by the UK Government and the Welsh Government

As agriculture is a devolved area, each administration of the UK will have the opportunity to develop policy to suit their own unique circumstances once the UK has left the EU. Both the UK Government and the Welsh Government have consulted separately on new agriculture policies to replace the Common Agriculture Policy (CAP) in England and Wales, respectively.

The UK Government published a 'Framework Analysis' policy paper in March 2018. This paper set out 153 areas where EU law currently intersects with devolved competence. This is where the UK Government and devolved administrations would need to work together to determine whether we would need UK or GB wide common approaches in future. It will be guided by the principles agreed at JMC (EN) in October 2017. The paper also identified a list of 24 policy areas to be subject to more detailed discussion to explore whether a legislative common framework arrangement might be needed, in whole or in part. The list included "agricultural support".

As we leave the EU and the CAP, we want our farmers and those with an interest in agriculture to be clear that we have been and will continue to work closely together. We want to achieve better outcomes for our farming industry, and to facilitate an open and transparent dialogue as our proposals develop.

The Agriculture Bill provides both administrations with new powers to bring replacement schemes into effect, as well as extending some provisions to Northern Ireland.¹ However, the Bill does not contain a legislative framework for these powers. This reflects the fact that the UK Government and Welsh Government are of the view, based on discussions to date, that the vast majority of policy areas can be suitably managed through non-legislative, inter-governmental coordination.

As part of this process, we are proposing to develop an administrative framework for coordinating agricultural support spending and changes to marketing standards. The aim of this is to ensure effective co-ordination and dialogue between the administrations on how any changes to legislation in one part of the UK may affect other parts. This framework will tie in closely with planned common UK frameworks being developed for other policy areas. There are other areas identified within "Agricultural Support" that we are expecting to work on while the Agriculture Bill passes through the UK Parliament. These include market intervention and data collection and sharing. Other agriculture-related frameworks within the 24 identified, on organic farming, the environmental release of GMOs, zotech and fertiliser regulations are also being discussed. Our joint aim is to reach agreement on all of these areas in order for frameworks to be in place by the end of the Implementation Period (December 2020).

We are also discussing arrangements for cross-border holdings, which is of particular interest to the numerous farmers along the English/Welsh border. We are aware that farmers with holdings that straddle borders and those with holdings located in another administration will want to ensure their businesses can operate as smoothly as possible. Our intention here is to reduce bureaucracy and to provide clarity for these businesses.

It is still the ambition of the UK Government and the Welsh Government to work towards a UK-wide approach where that is necessary. We fully expect our close collaboration to continue with the Department of Agriculture, Environment and Rural Affairs in Northern Ireland (DAERA) and the Scottish Government over the next 18 months to agree and

implement administrative frameworks to set out future working and coordination on agriculture. As part of that process, we welcome the views of Parliament, the devolved legislatures and wider stakeholders on these proposals.

ⁱ Given the absence of local Ministers in Northern Ireland to take decisions about future agricultural policy, UK Government Ministers have sought to ensure as far as possible that the status quo can be maintained until a new policy direction can be established. There is a need to take care not to prejudge or constrain the ability of an incoming Minister, NI Executive and NI Assembly to decide what is appropriate for the Northern Ireland agri-food sector. The overarching principles that have been applied when considering the extension of clauses to NI are:

- to ensure the continuation of a legal basis to provide the current suite of agricultural support payments (and options) post EU exit;
- to ensure that the NI Executive has maximum flexibility to develop future agricultural policy consistent with the principles agreed by JMC(EN), including ensuring the functioning of the UK Internal Market; and
- that the Agriculture Bill does not constrain the ability of the NI Executive to continue current schemes and options available under the Rural Development Programme and Common Market Organisation provided for by existing and retained EU legislation, for as long as NI Ministers consider this appropriate.

LEGISLATIVE CONSENT MEMORANDUM

Agriculture Bill

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the National Assembly.
2. The Agriculture Bill (the “Bill”) was introduced in the House of Commons on 12 September 2018 The Bill can be found at:

[Bill documents — Agriculture Bill 2017-19 — UK Parliament](#)

Policy Objective(s)

3. The UK Government’s stated policy objectives are to provide, for England, a new system of paying farmers “public money for public goods” – principally their work to enhance and protect the environment – and to phase out Direct Payments under the rules of the Common Agricultural Policy (CAP).

Summary of the Bill

4. The Bill is sponsored by the Department for Environment, Food and Rural Affairs.
5. The key provisions of the Bill provide the legal framework for the United Kingdom (UK) to leave the Common Agricultural Policy (CAP) and, in England, establish a new system based on public money for public goods for the next generation of farmers and land managers.
6. In addition, at the request of the Welsh Government, the Bill provides powers for Welsh Ministers.

Provisions in the Bill for which consent is required

7. Clause 26 gives the Secretary of State powers to make regulations about securing compliance by the United Kingdom with its obligations under the World Trade Organisation’s Agreement on Agriculture. These regulations can include provision about the classification of domestic support for the purposes of the Agreement on Agriculture; provision about the levels of domestic support; provision requiring devolved authorities to provide

information to the Secretary of State. It is the Welsh Government's view that consent is required for the provisions of Clause 26 because they fall within the legislative competence of the National Assembly for Wales as they relate to agriculture and the observation and implementation of international obligations, namely the Agreement on Agriculture.

8. Clause 27 Bill introduces Schedule 3 of the Bill which makes provision in relation to Wales. Schedule 3 of the Bill extends broadly similar powers to the Welsh Ministers as those conferred on the Secretary of State in Parts 1-5 of the Bill. Schedule 3 does not include a power for the Welsh Ministers which corresponds with the Secretary of State's powers under clause 21 (power to reproduce modifications under section 20 for wine sector, nor does it include provision about powers to modify aid schemes for fruit and vegetable producer organisations in Wales, as there are no such organisations in Wales. However, Schedule 3 does contain additional purposes for which Welsh Ministers may give financial assistance and there are small number technical differences to reflect the redistributive payments made under the basic payment scheme in Wales.

Schedule 3, Part 1: New financial assistance powers.

Part 1 allows Welsh Ministers to provide new financial assistance for future schemes. Additional powers for the Welsh Ministers enable them to give financial assistance for or in connection with, supporting businesses or communities in rural areas and supporting people who are involved in the production, processing, marketing or distribution of products deriving from an agricultural, horticultural or forestry activity.

Schedule 3, Part 2: Financial support after exiting the EU.

Part 2 makes provision about the Welsh Ministers' powers to modify after exiting the EU retained EU law relating to the financing, management and monitoring of payments to farmers.

Part 2 makes provision about an agricultural transition period for Wales which can be extended by regulations made by the Welsh Ministers.

Schedule 3, Part 3: Collection and sharing of data

Part 3 gives the Welsh Ministers powers to collect and share data from those within or closely connected to the agri-food supply chain. The data collected and shared under these provisions, for example, will help farmers and producers increase productivity, help producers to manage risk and market volatility and support animal and plant health and traceability.

Schedule 3, Part 4: Intervention in Agricultural Markets

Part 4 allows the Welsh Ministers to take action to declare a period of exceptional market conditions, and, during the period for which the declaration has effect, to give, or agree to give financial assistance to support agricultural producers in Wales whose incomes are being, or are likely to be adversely affected by the exceptional market conditions described in the declaration. Part 4 also allows the Welsh Ministers to make such use as they consider appropriate of any available powers under retained direct EU legislation which provides for the operation of public intervention and aid for private storage mechanisms in response to the declaration.

Schedule 3, Part 5: Marketing standards and carcass classification

Part 5 will give Welsh Ministers the powers to make provisions relating to marketing standards for products marketed in Wales and carcass classification by slaughterhouses in Wales, through regulations. This will include the ability to amend or revoke the current marketing standards and carcass classification rules as set out in retained EU legislation and in domestic legislation, as well as the flexibility to introduce new standards and rules that will be tailored to suit the domestic agricultural sectors.

Conclusions on Clause 27 and Schedule 3 Consent

9. Consent is required for all of the provisions in Clause 27 and Schedule 3 because they fall within the legislative competence of the National Assembly for Wales and do not relate to reserved matters as they relate to agriculture and the observation and implementation of international obligations.

Final Provisions

10. Part 9 of the Bill provides for different types of ancillary provision which could be made in regulations made under the Bill.
11. Clause 29 (1), (3), (4), (5), (6)(b), (7)(b), (8) and (9) apply in relation to Wales and set out how the regulation making powers given to the Welsh Ministers under the Bill can be exercised.
12. Clause 30 makes provision about the interpretation of the Bill.
13. Clause 31 introduces Schedule 5 of the Bill which makes provision to amend Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products.
14. Clause 32 makes provision to give the Secretary of State powers by regulations to make amendments (which would be consequential, supplemental, transitional or transitory provision or savings in connection with any provision of the Bill) to primary legislation, retained direct EU

legislation or subordinate legislation.

15. Clause 34 makes provision about the extent of clauses in, and Schedules to, the Bill to include the clauses and Schedules which apply in relation to Wales.
16. Clause 35 makes provision about the commencement of clauses in, and Schedules to, the Bill to include the clauses and Schedules which apply in relation to Wales.
17. Clause 36 makes provision about the short title of the Bill by which it will be known and referred to in other legislation.
18. It is the Welsh Government's view that consent is required for the provisions of Clauses 29, 30, 31, 32, 34, 35 and 36 of, and Schedule 5 to, the Bill as they extend to, and apply in relation to, Wales because they fall within the legislative competence of the National Assembly for Wales as they relate to agriculture and the observation and implementation of international obligations.

Powers to create subordinate legislation

19. In Schedule 3, a number of subordinate legislation making powers are given to Welsh Ministers. These powers, together with the relevant legislative procedures, are set out in the Annex to this Memorandum. 'Affirmative resolution procedure' and 'negative resolution procedure' are defined in Clause 29(6)(b) and (7)(b) of the Bill respectively as those terms apply to subordinate legislation made by the Welsh Ministers under the Bill.

Reasons for making these provisions for Wales in the Agriculture Bill

20. The powers being taken for Welsh Ministers are intended to be transitional until primary legislation can be brought forward, to design a 'Made in Wales' system which works for Welsh agriculture, rural industries and our communities. Such powers are required in order to enable the Welsh Government to continue making payments to land managers, related supply chains and other rural businesses and organisations in Wales under the current CAP Pillar 1 and Pillar 2 schemes from 2020, to make changes to the current schemes and to enable transition. It is our intention to bring forward a Wales Agriculture Bill during this term.
21. The Bill provides a legal basis for future support to farmers after Brexit, as we transition away from the Common Agricultural Policy. The provisions sought for Welsh Ministers reflect the opportunities identified for future agricultural support which are the subject of consultation set out in the Green paper 'Brexit and our Land – securing the Future of Welsh Farming'. The consultation runs until 30 October. This consultation and ongoing stakeholder engagement will lead to a White Paper with specific detailed proposals for consultation during spring 2019. The detail of the new land management reform schemes will be dependent on the outcome

of policy and operational decisions which cannot be taken until after the analysis of results from both the Green and White Papers.

22. There is considerable uncertainty about the UK's future relationship with the EU and the rest of the world and how best to support business to compete globally. We need to put primary legislation in place now to enable us to react quickly once decisions are made. The Bill provides enabling powers to the Welsh Ministers. No decisions will be made on how these will be used until the UK's future relationship with the EU and rest of the world is known and the consultation has concluded. By including provisions in the UK Agriculture Bill now Wales will not be constrained in its design of new schemes and will be able to implement what is best for Wales.
23. Welsh Government is generally supportive of the Bill as drafted; there are two outstanding concerns which have not been resolved to our satisfaction relating to the World Trade Organisation (WTO) Agreement on Agriculture and the Red Meat Levy. Further work to resolve our outstanding concerns will continue during the Bill's passage through Parliament and a supplementary Legislative Consent Memorandum will be brought forward if required at the appropriate point.

Financial implications

24. There are no direct financial implications for the Welsh Government or the Assembly as a result of taking these powers in this bill.

Conclusion

25. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill as it is an important step forward that will enable the Welsh Government to support farmers in Wales post-Brexit. These powers will be used until a Wales Agriculture Bill is introduced in the Assembly.

Lesley Griffiths AM
Cabinet Secretary for Energy, Planning and Rural Affairs
October 2018

Annex

LEGISLATIVE CONSENT MEMORANDUM: AGRICULTURE BILL – PROVISIONS WHICH CONTAIN POWERS FOR WELSH MINISTERS TO MAKE SUBORDINATE LEGISLATION

Paragraph of Schedule 3	Description of Power	Legislative procedure
2(7)	Power for Welsh Ministers by regulations to make provision for or in connection with requiring the Welsh Ministers or another person to publish specified information about financial assistance which has been given under Paragraph 1 of Schedule 3	Affirmative resolution procedure
3(1)	Powers for the Welsh Ministers by regulations to make provision for or in connection with checking, enforcing and monitoring compliance where financial assistance is to be or has been given under Paragraph 1 of Schedule 3	Affirmative resolution procedure
5(2)	Powers for the Welsh Ministers by regulations to extend the agricultural transition period for Wales set out in Paragraph 5(1) of Schedule 3	Affirmative resolution procedure
6(1)	Powers for the Welsh Ministers to modify legislation governing the basic payment scheme	Negative resolution procedure
7(1)	Powers for the Welsh Ministers by regulations to make provision for or in connection with either or both the phasing out of direct payments under the basic payment scheme in relation to Wales over the whole or part of the agricultural transition period for Wales, or the termination of direct payments under that scheme in relation to Wales and instead the making of delinked payments in relation to Wales in respect of the whole or part of the agricultural transition period for Wales.	Affirmative resolution procedure
9(1)	Powers for the Welsh Ministers by regulations to modify retained direct EU legislation relating to the financing, management and monitoring of the common agricultural policy and subordinate legislation relating to that legislation.	Negative resolution procedure
10(1)	Powers for the Welsh Ministers by regulations to modify retained direct EU legislation relating to support for rural development and	Negative resolution procedure

	subordinate legislation relating to that legislation	
11(2)	Powers for the Welsh Ministers by regulations to require persons in or closely connected with an agri-food supply chain to provide information about matters connected with any of the person's activities connected with the supply chain so far as the activities are in Wales.	Affirmative resolution procedure
15(1)	Powers for the Welsh Ministers by regulations to make provision for enforcement of a requirement imposed under paragraph 11(1) or (2) of Schedule 3 (agri-food supply chains: requirement to provide information)	Affirmative resolution procedure
18(1)	Powers for the Welsh Ministers by regulations to modify retained direct EU legislation relating to public market intervention or aid for private storage for the purposes of altering the operation of provisions of such legislation, so far as they have effect in relation to Wales in connection with exceptional market conditions which are the subject of a declaration under paragraph 16 of Schedule 3 (declaration relating to exceptional market conditions)	Negative resolution procedure
18(2)	Powers for the Welsh Ministers by regulations to modify retained direct EU legislation relating to public market intervention or aid for private storage for specified purposes	Negative resolution procedure
19(1)	Powers for the Welsh Ministers by regulations in relation to products which fall within a specified sector and are marketed in Wales, to make provisions about the standards with which those products must conform	Affirmative resolution procedure
19(3)	Powers for the Welsh Ministers to make provision about the classification, identification and presentation of bovine, pig and sheep carcasses by slaughterhouses in Wales	Affirmative resolution procedure
20(2)	Powers for the Welsh Ministers by regulations to amend the list of agricultural sectors in paragraph 20(1) of Schedule 3 to add or remove a sector and to set out products that fall within each sector or otherwise give further detail on the sectors	Negative resolution procedure

Lesley Griffiths AM
Cabinet Secretary for Energy, Planning and Rural
Affairs

24 September 2018

Dear Lesley

UK Agriculture Bill

At last week's meeting of the Constitutional and Legislative Affairs Committee, members considered your written statement of 12 September 2018 regarding the Introduction of the UK Agriculture Bill. Members also discussed the accompanying joint statement by the UK Government and the Welsh Government regarding the Agricultural Framework Progress Update of September 2018.

We have noted that, through the UK Bill, Welsh Ministers will be provided with substantial delegated powers in a number of significant areas. These areas include new financial powers for future agricultural schemes, the setting of marketing standards, supporting rural communities, and the modification of retained EU law relating to the CAP Basic Payment Scheme.

We have also noted that the UK Bill will give Welsh Ministers broad powers to give financial assistance to the agriculture industry in Wales without the need for primary legislation that may be fully scrutinised by the National Assembly. In highlighting this point, we acknowledge that the Assembly will have scope, albeit limited, to consider the UK Agriculture Bill as part of the legislative consent process.

While a number of these powers will mean that subordinate legislation made by Welsh Ministers under the UK Agriculture Bill will be subject to the affirmative procedure in the National Assembly, we have noted that, as drafted, the UK Bill will enable Welsh Ministers to bring forward subordinate legislation using the



negative procedure in a number of key areas. These include the modification of legislation that governs the basic payment scheme, and changing the EU Regulation on the financing, management and monitoring of the common agricultural policy. On this point, we would be grateful for your reasoning as to why you have asked the UK Government to include such powers in the Bill.

We further noted that it is not your intention to bring forward regulations (subject to the UK Bill being enacted) until the Welsh Government's policy development process has concluded. In your statement, you have reiterated the commitment in "Brexit and our Land" to bring forward a white paper in spring 2019. As the Committee responsible for scrutinising delegated legislation in the National Assembly, I would be grateful if you would keep us informed of the timetables for bringing forward these regulations.

Both your written statement and the Joint Statement state that the Welsh Government and the UK Government are of the view that the majority of the future agricultural framework will be managed through non-legislative, intergovernmental working. We would be grateful if you could elaborate on why this is the case and provide details of the minority of areas which you believe will require legislative under-pinning.

You may be aware that this Committee is in the process of finalising a written agreement with the Welsh Government (led by the Cabinet Secretary for Finance) that will represent the agreed position of the National Assembly for Wales and the Welsh Government on the information that the Welsh Government will provide to the National Assembly with regard to its participation in inter-governmental meetings, concordats, agreements and memorandums of understanding. Therefore we would also be grateful to receive information about any inter-governmental deals currently being discussed in respect of agriculture.

Finally, we note that you are continuing to work with the UK Government to resolve your outstanding concerns (namely provisions relating to the World Trade Organisation (WTO) Agreement on Agriculture and the Red Meat Levy) before bringing forward advice to the Assembly on legislative consent. We look forward to considering any Legislative Consent Memorandum for this UK Bill when such a Memorandum is laid before the Assembly.

This letter is copied to the Chair of the Climate Change, Environment and Rural Affairs Committee.



Yours sincerely,

A handwritten signature in black ink that reads "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

Mick Antoniw

Chair

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





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

||

October 2018

Dear Mick

Agriculture Bill

Thank you for your letter of 24 September. I welcome the opportunity to explain the provisions further.

As you note, the nature of the Wales schedule is to confer a series of delegated powers on Welsh Ministers. The powers are broadly similar to those taken by the UK Government in relation to England. The breadth of the provisions reflects the uncertainty of Brexit and the fact Welsh policy remains subject to consultation. I believe it is prudent to take these powers but am clear no policy decisions have been made.

As you note, my intention remains to bring forward an Agriculture (Wales) Bill to the Assembly once the Welsh Government has completed the necessary consultations and impact assessments. "Brexit and our Land" marks the first, high-level consultation and I expect further documents to follow. The next consultation will be a White Paper in Spring 2019.

In relation to delegated authority, the general approach taken in the Bill is to use the affirmative procedure for regulation-making powers to establish new frameworks (for example, financial assistance and information gathering frameworks) and the negative procedure for technical matters relating primarily to the administration of payments under existing legislation. I expect this distinction to be debated in the UK Parliament during the Bill's passage, particularly by the Delegated Powers and Regulatory Reform Committee.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

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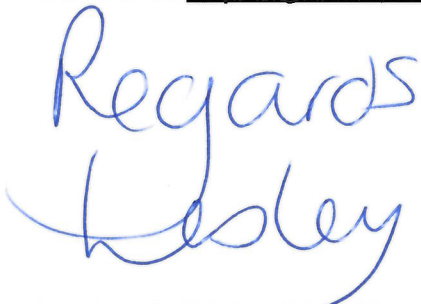
Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

Pack Page 54

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

I am committed to ensuring the Assembly has appropriate opportunities to scrutinise these provisions through the Legislative Consent Motion process and I have provided a memorandum. This includes a reference to the two outstanding issues: the World Trade Organisation and Red Meat Levy provisions. I will keep the Assembly and the Committee updated as negotiations progress with UK Government on both these matters.

I will also keep the Assembly updated on my inter-ministerial discussions on cross-UK frameworks. Alongside the publication of the Agriculture Bill, I issued a joint statement with the Secretary of State on these matters which is available on the Welsh Government website at <https://gov.wales/about/cabinet/cabinetstatements/2018/introukagribill/?lang=en>

A handwritten signature in blue ink that reads "Regards Lesley". The word "Regards" is written in a cursive style, and "Lesley" is written below it in a similar cursive style.

Lesley Griffiths AC/AM

Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion Gwledig
Cabinet Secretary for Energy, Planning and Rural Affairs

HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

34th Report of Session 2017–19

Agriculture Bill

Ordered to be printed 17 October 2018 and published 17 October 2018

Published by the Authority of the House of Lords

The Delegated Powers and Regulatory Reform Committee

The Committee is appointed by the House of Lords each session and has the following terms of reference:

- (i) To report whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate degree of parliamentary scrutiny;
- (ii) To report on documents and draft orders laid before Parliament under or by virtue of:
 - (a) sections 14 and 18 of the Legislative and Regulatory Reform Act 2006,
 - (b) section 7(2) or section 19 of the Localism Act 2011, or
 - (c) section 5E(2) of the Fire and Rescue Services Act 2004;

and to perform, in respect of such draft orders, and in respect of subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001, the functions performed in respect of other instruments and draft instruments by the Joint Committee on Statutory Instruments; and

- (iii) To report on documents and draft orders laid before Parliament under or by virtue of:
 - (a) section 85 of the Northern Ireland Act 1998,
 - (b) section 17 of the Local Government Act 1999,
 - (c) section 9 of the Local Government Act 2000,
 - (d) section 98 of the Local Government Act 2003, or
 - (e) section 102 of the Local Transport Act 2008.

Membership

The members of the Delegated Powers and Regulatory Reform Committee who agreed this report are:

[Baroness Andrews](#)

[Lord Blencathra](#) (Chairman)

[Lord Flight](#)

[Lord Jones](#)

[Lord Lisvane](#)

[Lord Moynihan](#)

[Lord Rowlands](#)

[Lord Thomas of Gresford](#)

[Lord Thurlow](#)

[Lord Tyler](#)

Registered Interests

Committee Members' registered interests may be examined in the online Register of Lords' Interests at www.publications.parliament.uk/pa/ld/ldreg.htm. The Register may also be inspected in the Parliamentary Archives.

Publications

The Committee's reports are published by Order of the House in hard copy and on the internet at www.parliament.uk/hldprrcpublications.

General Information

General information about the House of Lords and its Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is on the internet at <http://www.parliament.uk/business/lords/>.

Contacts for the Delegated Powers and Regulatory Reform Committee

Any query about the Committee or its work should be directed to the Clerk of Delegated Legislation, Legislation Office, House of Lords, London, SW1A 0PW. The telephone number is 020 7219 3103 and the fax number is 020 7219 2571. The Committee's email address is hlddelegatedpowers@parliament.uk.

Historical Note

In February 1992, the Select Committee on the Committee work of the House, under the chairmanship of Earl Jellicoe, noted that "in recent years there has been considerable disquiet over the problem of wide and sometimes ill-defined order-making powers which give Ministers unlimited discretion" (Session 1991–92, HL Paper 35-I, paragraph 133). The Committee recommended the establishment of a delegated powers scrutiny committee which would, it suggested, "be well suited to the revising function of the House". As a result, the Select Committee on the Scrutiny of Delegated Powers was appointed experimentally in the following session. It was established as a sessional committee from the beginning of Session 1994–95. The Committee also has responsibility for scrutinising legislative reform orders under the Legislative and Regulatory Reform Act 2006 and certain instruments made under other Acts specified in the Committee's terms of reference.

Thirty Fourth Report

AGRICULTURE BILL

1. The Agriculture Bill was introduced in the House of Commons on 12 September 2018 and had its Second Reading on Wednesday 10 October. The Bill provides a legal framework for the United Kingdom to leave the Common Agricultural Policy (CAP) and establish a new system for agricultural support in this country. It is a skeleton bill, the operation of which is essentially a matter for subordinate legislation.
2. Normally we report on a bill in sufficient time to allow Members of the House of Lords to consider it before the bill's committee stage in this House. Given the significance of this Bill as part of the suite of Brexit-related bills, we have reported in time for Members of the House of Commons to consider it at committee stage in their House. We adopted the same approach in relation to the European Union (Withdrawal) Act 2018, an approach that appeared to be welcomed by MPs. In due course, we propose to report on the Agriculture Bill in the form in which it comes to this House.

The Bill's overall approach to delegated powers

3. The Bill contains only 36 clauses and yet confers 26 powers on Ministers to make law. The comparatively large number of delegated powers in an otherwise small-to- medium-sized bill is ominous. The Government say that the Agriculture Bill is a “deliberate departure from the approach under the CAP of setting out detailed legislative rules”. The Bill will “provide the legal framework required to transition out of the EU, replace the CAP and deliver a range of reforms”. It will enable government to “move away from the rigid bureaucratic constraints of the current CAP legislation”.¹
4. **We are dismayed at the Government's approach to delegated powers in the Agriculture Bill.**
 - (a) The Agriculture Bill represents a major transfer of powers from the EU to Ministers of the Crown, bypassing Parliament and the devolved legislatures in Wales and Northern Ireland.²
 - (b) Parliament will not be able to debate the merits of the new agriculture regime because the Bill does not contain even an outline of the substantive law that will replace the CAP after the United Kingdom leaves the EU. Most debate will centre on delegated powers because most of the Bill is about delegated powers. At this stage it cannot even be said that the devil is in the detail, because the Bill contains so little detail.
 - (c) The Government encourage departments to engage in clear, concise, purposeful, informative and targeted consultations before making new

1 Department for Environment, Food and Rural Affairs, [Agriculture Bill Delegated Powers Memorandum](#), paras 6 and 7.

2 Schedules 3 and 4 to the Bill set out law-making powers conferred on Ministers in the governments of Wales and Northern Ireland that are broadly similar to many of the powers in the Bill that are exercisable by the Secretary of State in England.

law. Apart from the one consultation requirement in clause 24(5),³ consultation is merely optional so far as concerns the considerable amount of subordinate legislation to be made under the Agriculture Bill.

- (d) The central purpose of the Agriculture Bill is to provide a framework that confers on Ministers extensive powers to make law in more than two dozen classes of statutory instrument. Extensive powers are conferred on Ministers with correspondingly few duties. The words “The Secretary of State may” occur 36 times in the Bill. The words “The Secretary of State must” occur three times.
 - (e) Significantly, powers are exercisable indefinitely and without sunset clauses.⁴ They include unlimited monetary penalties, the ability to create criminal offences punishable by up to two years’ imprisonment, and the conferral of enforcement functions on third parties. We are not convinced by the need for such extensive powers to be conferred on Ministers indefinitely.
 - (f) It is one thing to move away from rigid and unnecessary bureaucratic constraints. But a bill that is so short on substantive legislative changes will require extensive bureaucratic regulation to fill in the gaps. Parliamentary scrutiny of the Bill is minimised because most of the Bill concerns a framework for future regulatory changes rather than substantive legislative changes that can be debated here and now.
 - (g) In clauses 6, 9 and 11, the introduction of a test allowing Ministers to make changes to existing law that they consider will “simplify or improve” it introduces a wider test even than the heavily criticised “appropriate” test found in the European Union (Withdrawal) Act 2018. One person’s improvement is another person’s vandalism.⁵
 - (h) It is regrettable that Defra has not supplied any indicative draft statutory instruments alongside the Bill. This would have enabled Parliament to see how some of the many powers in the Bill might in due course be exercised, without committing the Government at this stage.
 - (i) The Government are committed to introducing other EU-exit bills, including a fisheries bill, an immigration bill and legislation to implement any withdrawal agreement. We would deplore such bills being skeleton bills in the fashion of the Agriculture Bill.
5. At paragraph 2 of the Explanatory Notes to the Agriculture Bill, the Government give an overview of the Bill in twelve points. All twelve points involve Ministers having the power to make law, including:
- Powers to set unlimited monetary penalties and to create criminal offences punishable by up to two years’ imprisonment
 - Powers to modify retained CAP regulations

3 Relating to new sector-specific provision in regulations made under clauses 22 and 23.

4 Clause 7 gives power for the Secretary of State to phase out direct payments during an “agricultural transition period” set, in clause 5(1), at seven years starting with 2021 and extendable. This power will make way for other financial assistance schemes under clause 1. It is a transitional provision, not a sunset clause.

5 See further para 14 below.

- Powers to intervene in exceptional market conditions
 - Powers to regulate marketing standards for agricultural products
 - Powers to control contractual dealings between producers and first purchasers
 - Powers for the Secretary of State to legislate for the UK to comply with the World Trade Organisation (WTO) Agreement on Agriculture.
6. 17 of the 26 delegated powers allow for regulations to be made by the affirmative procedure. This is a high proportion by the standards of most bills. However, the affirmative procedure offers nothing like the scrutiny given to a bill. A bill typically goes through several substantive stages in each House and can be amended. An affirmative statutory instrument is unamendable during its making and is debated once in each House. The fact that Defra proposes to make so many classes of affirmative instrument in the Agriculture Bill is an acknowledgment that the Bill covers matters of great importance to farmers, the food industry and consumers. The Bill provides an extensive framework for a wholly new agricultural regime. And yet the Bill is very short on matters of substance.
7. The Delegated Powers Memorandum says:
- “This memorandum includes examples of how the powers might be used. One of the reasons for taking delegated powers is that this Bill will be before Parliament before the terms of the UK’s withdrawal from the EU are known, and while full-scale design of future farming policy is under development in consultation with stakeholders and the sector. Any examples used in this paper are therefore illustrative of the way the powers could be used and do not represent confirmed plans at this stage.”⁶
8. We have made it clear that if a bill is wholly or mainly a skeleton bill, we will expect a full justification for the decision to adopt that structure of powers.⁷ Given the significant delegation of powers in this Bill, we did not find convincing the Government’s attempted justifications that consultation is ongoing and that there is not yet a withdrawal agreement. The Agriculture Bill could have contained more detail than it does. There could have been more statutory consultation as a pre-condition to making subordinate legislation. The subject-matter of clause 20 (marketing standards and carcass classification) is worth a bill on its own. As for the structure of the powers in the Bill being justifiable because it is being debated before the withdrawal agreement has been finalised, we disagree. The Government have committed to legislating to give effect to any withdrawal agreement. At that stage, any necessary changes to the Agriculture Bill can be made. The existence or otherwise of a withdrawal agreement is not an argument for giving Ministers so many law-making powers in a bill that offers so little substantive detail.

6 HMG has issued a policy statement and two press notices which give some information: ‘The future for food, farming and the environment’ (13 September 2018): <https://www.gov.uk/government/publications/the-future-for-food-farming-and-the-environment-policy-statement-2018> [accessed 17 October 2018]; ‘Landmark Agriculture Bill to deliver a Green Brexit’ (12 September 2018): <https://www.gov.uk/government/news/landmark-agriculture-bill-to-deliver-a-green-brexit> [accessed 17 October 2018] and ‘UK Government Agriculture Bill - Scotland myth-buster’ (13 September 2018): <https://www.gov.uk/government/news/uk-government-agriculture-bill-scotland-myth-buster> [accessed 17 October 2018].

7 See para 36 of our [Guidance for Departments](#) issued in 2014.

9. It is true that the extensive powers in this Bill largely replace directly applicable EU regulations. **But the practical effect of the Bill is that very considerable repatriated powers are momentarily returning to Parliament on exit day only to be immediately granted to Ministers of the Crown.**

Particular delegated powers

Clauses 3(2)(g), 20(4)(e) and 23(4)(d): monetary penalties

10. Clauses 3(2)(g), 20(4)(e) and 23(4)(d) confer power on the Secretary of State to make regulations about monetary penalties concerning the following:
- (a) checking, enforcing and monitoring in connection with the financial assistance provisions of the Bill (clause 3(2)(g));
 - (b) marketing standards relating to certain agricultural products (clause 20(4)(e));
 - (c) requirements on recognised organisations who benefit from certain competition law exemptions (clause 23(4)(d)).
11. These provisions relate to enforcement and allow the Secretary of State to make regulations “imposing monetary penalties”. By contrast, clause 16(4)(a), relating to the enforcement of information requirements, gives considerably more detail about the imposition of monetary penalties in regulations under that clause:
- “(a) provision for the imposition of monetary penalties for non-compliance with requirements, whether penalties—
- (i) of a specified amount, or
 - (ii) of an amount calculated in a specified manner, or
 - (iii) of an amount, not exceeding a specified maximum or a maximum calculated in a specified manner, decided by a specified person or a person of a specified description, or
 - (iv) by way of suspending, or withholding, payment of any amounts;
- (b) provision for recovery of amounts due in respect of monetary penalties, including provision for any of interest, set-off and security for payment;”.
12. **We recommend that the Minister be asked to explain why the extended treatment for monetary penalties found in clause 16 should not also apply to clauses 3(2)(g), 20(4)(e) and 23(4)(d).**

Clauses 6, 9 and 11(2): basic payment and financial support

13. Clause 6(1) allows the Secretary of State to make regulations amending or repealing legislation governing the basic payment scheme⁸ for or in connection with making changes the Secretary of State “considers will simplify or improve” the scheme so far as it operates in relation to England. Clauses 9 and 11 contain similar provisions allowing the Secretary of State to simplify or improve retained direct EU legislation relating to the financing,

⁸ As defined in clause 4(3).

management and monitoring of the CAP (clause 9) and support for rural development (clause 11).

14. During the passage of the European Union (Withdrawal) Act 2018, Ministers came under sustained criticism for taking powers to make law that they considered “appropriate” (rather than necessary) to correct deficiencies in retained EU law arising from the United Kingdom’s withdrawal from the EU. At least section 8(2) and (3) of that Act gives an exhaustive definition of what counts as a deficiency in retained EU law. By contrast, the “simplify or improve” test in clauses 6, 9 and 11 of the Agriculture Bill gives the Minister a much wider discretion than does the “appropriate” test in the European Union (Withdrawal) Act 2018. It allows Ministers to do what they like, providing they consider it a simplification or improvement. The Government acknowledge that the powers under clauses 6, 9 and 11 can significantly increase bureaucratic burdens providing they qualify as improvements or simplifications.⁹ Indeed, something could qualify as a simplification even if not amounting to an improvement, and *vice versa*.
15. In the context of clause 6, the Government’s expressed intention is only to make “technical changes” to the basic payment scheme. The negative procedure is justified on the ground that the amendments will “largely be minor or technical simplification measures”.¹⁰ But this restriction does not appear on the face of the Bill. The delegated powers in clauses 6, 9 and 11 allow for much more than minor or technical simplifications. The powers allow highly controversial and indubitably major “improvements”.
16. **We regard the “simplification or improvement” test in clauses 6, 9 and 11 as inappropriate. It is a highly subjective test. A clearer, more focused and proportionate test is required. If the delegated powers in clauses 6, 9 and 11 will largely be for “minor or technical” simplification measures, the Bill should say so.**

Clause 20: marketing standards

17. Clause 20 is a very significant clause, allowing the Secretary of State to make affirmative regulations concerning marketing standards in relation to a wide range of agricultural products, including milk, beef, veal, poultrymeat, eggs, fruit, vegetables, hops, wine, olive oil and live plants. We would ordinarily expect a clause of this exceptional range to be a bill in its own right.
18. Clause 20(2) states that the regulations “may cover matters such as” (implying that they may go beyond):
 - Grading into classes, weight, size, age and category
 - Presentation, labelling, packaging
 - Appearance, consistency, product characteristics, water content
 - Content, purity and identification of substances used in production
 - Types of farming and production method

⁹ Department for Environment, Food and Rural Affairs, [Agriculture Bill Delegated Powers Memorandum](#), paras 29 and 45.

¹⁰ *Ibid.*, paras 32 and 60.

- Frequency of collection, delivery, preservation, handling, temperature, storage and transport
 - Use and restrictions on use
 - The place of farming or origin
 - Conditions of disposal, holding, circulation and use of products not in conformity with the marketing standards.
19. The regulations allow Ministers to create a powerful enforcement regime against farmers, food processors and others, including:
- powers of entry, inspection, search and seizure;
 - unlimited monetary penalties;
 - criminal offences punishable by up to two years' imprisonment; and
 - the conferral of enforcement functions on third parties.¹¹
20. The current EU legislation relating to marketing standards will become retained EU law under the European Union (Withdrawal) Act 2018. Changes to such law made by regulations under section 8 of that Act are limited by the need to show that changes are appropriate to correct deficiencies in that law arising from the UK's withdrawal from the EU and by the provision that no regulations may be made under section 8 more than two years after exit day. By contrast, regulations made under clause 20 of the Agriculture Bill are subject to no such restrictions.
21. The Government have not given much indication as to how they propose to use their extensive powers under clause 20. Paragraphs 112 and 116 of the Delegated Powers Memorandum state the Government's intention not to impose an "excessive burden" on farmers or other members of the food supply chain. Paragraph 116 states that the regulations will amend overly bureaucratic EU rules. However, the Bill neither prevents excessive burdens being imposed nor requires the removal of overly bureaucratic rules.
22. **Clause 20 contains an inappropriately wide delegation of power to Ministers. The Bill should contain more detail on the relevant principles, policies and criteria underlying marketing standards in the various agricultural sectors.**¹²
- Clause 25(3)(b): fair dealing obligations of first purchasers of agricultural products*
23. Clause 25 addresses the relatively weak economic position of some primary producers compared with food processors and others in agri-food supply chains. The Secretary of State has power to make regulations imposing contractual obligations on first purchasers of agricultural products from producers.
24. Clause 25(3) allows three types of obligation to be imposed under regulations:
- (a) The obligation to contract in writing.

11 For example, clauses 20(4) and 29(5).

12 The Government may add further sectors by a Henry VIII power: Schedule 1, Part 3, para 1.

- (b) The obligation to include, or not to include, contractual terms dealing with matters specified in regulations.
 - (c) Where such terms are included: (i) obligations relating to the provision that must be made by those terms and (ii) obligations to comply with specified principles and practices as to the provision that should be made by those terms.
25. Regulations under clause 25(3)(c) must adopt the affirmative procedure; other regulations need only adopt the negative procedure.¹³ The Government justify the affirmative procedure because intrusion into the commercial relationship between third parties warrants a higher degree of parliamentary scrutiny. However, for regulations to require the parties *not to include* certain specified contractual terms is also an intrusion into the commercial relationship between third parties. **We recommend that regulations under clause 25(3)(b) should be subject to the affirmative procedure.**

Schedule 1, Part 3, paragraph 1(1)(a)

26. Part 1 of Schedule 1 lists the agricultural sectors for which marketing standards may be set (clause 20). Part 2 of Schedule 1 lists the agricultural sectors in which producers are eligible for producer organisation recognition (clauses 22–24) and the agricultural sectors in relation to which the Secretary of State may make regulations promoting fair contractual dealing by first purchasers (clause 25). Paragraph 1(1)(a) of Part 3 contains a Henry VIII power allowing the Secretary of State to add or remove an agricultural sector to or from Part 1 or 2 of Schedule 1. The power is subject only to the negative procedure.
27. We normally expect Henry VIII clauses to be subject to the affirmative procedure in the absence of compelling reasons to the contrary. Here the effect of adding new agricultural sectors to Schedule 1 is to impose significant new burdens on industry. It is not necessarily correct to say, as the Delegated Powers Memorandum does, that the power will be “exclusively of a technical nature”.¹⁴ **We recommend that regulations under paragraph 1(1)(a) of Part 3 of Schedule 1 should be subject to the affirmative procedure.**

¹³ Clause 25(8) and (9).

¹⁴ Para 207.

APPENDIX 1: MEMBERS AND DECLARATIONS OF INTERESTS

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 17 October 2018, Members declared the following interests:

Baroness Andrews

Vice President, National Parks Association

Lord Lisvane

Countryside Alliance

Lord Tyler

Ambassador, The National Forest, UK

Attendance

The meeting on the 17 October 2018 was attended by Baroness Andrews, Lord Blencathra, Lord Jones, Lord Lisvane, Lord Moynihan, Lord Rowlands, Lord Thomas of Gresford and Lord Tyler.

The Chairman recused himself from the deliberation and took no part in it because of his role as Deputy Chairman of Natural England.

Agenda Item 8

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Agenda Item 11

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