

Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:	For further information contact:
Committee Room 1 – Senedd	Gareth Williams
Meeting date: 12 November 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

(Pages 1 – 2)

CLA(5)–28–18 – Paper 1 – Statutory instruments with clear reports

Negative Resolution Instruments

2.1 SL(5)268 – The Home Loss Payments (Prescribed Amounts) (Wales) Regulations 2018

3 Written statements under Standing Order 30C

3.1 The Maritime Transport Access To Trade And Cabotage (Revocation) (EU Exit) Regulations 2018

(Pages 3 – 6)

CLA(5)–28–18 – Paper 2 – Statement

CLA(5)–28–18 – Paper 3 – Commentary

3.2 The Heavy Goods Vehicles (Charging For The Use Of Certain Infrastructure On The Trans–European Road Network) (Amendment) (EU Exit) Regulations 2018

(Pages 7 – 10)

CLA(5)–28–18 – Paper 4 – Statement



CLA(5)–28–18 – Paper 5 – Commentary

**3.3 Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit)
Regulations 2018**

(Pages 11 – 14)

CLA(5)–28–18 – Paper 6 – Statement

CLA(5)–28–18 – Paper 7 – Commentary

**3.4 The Tobacco Products and Nicotine Inhaling Products (Amendment) (EU Exit)
Regulations 2018**

(Pages 15 – 18)

CLA(5)–28–18 – Paper 8 – Statement

CLA(5)–28–18 – Paper 9 – Commentary

4 Papers to note

**4.1 Letter from the Cabinet Secretary for Energy Planning and Rural Affairs to the
Climate Change Environment and Rural Affairs Committee: UK Agriculture Bill**

(Pages 19 – 22)

CLA(5)–28–18 – Paper 10 – Letter from the Cabinet Secretary for Energy,
Planning and Rural Affairs

**4.2 Letter from the Minister for Children, Older People and Social Care : Childcare
Funding (Wales) Bill**

CLA(5)–28–18 – Paper 11 – Letter from the Minister for Children, Older
People and Social Care (Paper to follow)

**4.3 Letter from the Cabinet Secretary for Education: SL(5)256 – School
Organisation Code**

(Pages 23 – 33)

CLA(5)–28–18 – Paper 12 – Letter from the Cabinet Secretary for Education:
SL(5)256 – School Organisation Code, 7 November 2018

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

6 Statutory Instruments requiring Consent: Brexit and Statements made under Standing Order 30C: Handling

(Pages 34 – 35)

CLA(5)-28-17 – Paper 13 – Statutory Instruments requiring Consent: Brexit and Statements made under Standing Order 30C: Handling

7 Sewel Convention: Approach to future work

(Pages 36 – 41)

CLA(5)-28-18 – Paper 14 – Briefing

Statutory Instruments with Clear Reports

12 November 2018

SL(5)268 – The Home Loss Payments (Prescribed Amounts) (Wales) Regulations 2018

Procedure: Negative

These Regulations, which apply in relation to Wales, increase the maximum and minimum amounts of home loss payments payable under the Land Compensation Act 1973 (“the Act”) to those occupying a dwelling who have an owner’s interest. These Regulations also increase the amount of home loss payment payable under the Act in any other case.

A person who is displaced from a dwelling by compulsory purchase or in other circumstances specified in section 29 of the Act is entitled to a home loss payment.

Section 30(1) of the Act provides that in cases where a person occupying a dwelling on the date of displacement has an owner’s interest, the amount of home loss payment is calculated as a percentage of the market value of that interest, subject to a maximum and minimum amount.

Section 30(2) of the Act specifies the amount of the home loss payment in any other case.

Regulation 2(a) of these Regulations increases the maximum amount payable under section 30(1) of the Act from £57,500 to £59,000 and regulation 2(b) increases the minimum amount from £5,750 to £5,900.

Regulation 2(c) increases the home loss payment in any other case, under section 30(2) of the Act, from £5,750 to £5,900.

The revised amounts apply where the displacement occurs on or after 3 December 2018.

Parent Act: Land Compensation Act 1973



Date Made: 24 October 2018

Date Laid: 25 October 2018

Coming into force date: 03 December 2018



**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **The Maritime Transport Access To Trade And Cabotage
(Revocation) (EU Exit) Regulations 2018**

DATE **2 November 2018**

BY **Julie James AM, Leader of the House and Chief Whip**

**The Maritime Transport Access To Trade And Cabotage
(Revocation) (Eu Exit) Regulations 2018**

The Law which is being amended

- *Council Regulation (EEC) No 2919/85 (revocation)*
- *Council Regulation (EEC) No 4055/86 (revocation)*
- *Council Regulation (EEC) No 4057/86 (revocation)*
- *Council Regulation (EEC) No 4058/86 (revocation)*
- *Council Regulation (EEC) No 3921/91 (revocation)*
- *Council Regulation (EEC) No 3577/92 (revocation)*
- *Council Regulation (EC) No 1356/96 (revocation)*
- *Council Regulation (EC) No 789/2004 (revocation)*
- *Council Decision 83/573/EEC (revocation)*
- *Decision 167/2006/EC (revocation)*
- *Annex XIII to the EEA agreement*

**Any impact the SI may have on the Assembly's legislative competence and/or
the Welsh Ministers' executive competence**

No impact

The purpose of the amendments

The purpose of the amendments is to correct deficiencies in legislation arising from the UK leaving the European Union relating to the permitting cabotage across the EU.

The Cabotage regulations will revoke a number of Regulations and Decisions, including Regulation 3577/92 applying the principle of freedom to provide services to

maritime transport. This is in line with wider practice, as cabotage is generally restricted and not permitted in the UK by countries which are not member states. The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here:

<https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-maritime-transport-access-to-trade-and-cabotage-revocation-eu-exit-regulations-2018>

Why agreement was given

This SI revokes a variety of EU legislation around shipping/maritime transport services. The reservation of shipping in GoWA 2006 applies to ships on the sea or any other waterway and it covers all aspects of shipping, including shipping services. The competence of the NAFW is only in respect of financial assistance for shipping services to, from or within Wales.

The Welsh Government consider that it would not be proportionate for the Welsh Ministers to legislate in such a limited way, and that it is appropriate for the UK Government to do. No practical impact for Wales is expected to arise from these changes.

On this basis, it is considered making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Agreeing to a UK wide/ England and Wales wide SI ensures that there is a coherent approach wherever possible in preparing the statute book to function properly after the UK has left the EU. This approach will promote the clarity and accessibility of legislation across the UK. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

UK MINISTERS ACTING IN DEVOLVED AREAS

The Maritime Transport Access To Trade And Cabotage (Revocation) (EU Exit) Regulations 2018

Laid in the UK Parliament: 29 October 2018

Sifting

Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	13 November 2018
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	12 November 2018
Date sifting period ends in UK Parliament	19 November 2018
Written statement under SO 30C:	Paper 2
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	Not known
Procedure	Negative or Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

Assembly Legal Services agree with the summary and objective of the amendments made by these Regulations as set out by the Welsh Government in its Written Statement.

As to the reasons why the Welsh Government think it is appropriate that these UK Government Regulations include the devolved provisions, Members may wish to consider the reasoning provided in the final three paragraphs of the Written Statement:

“This SI revokes a variety of EU legislation around shipping/maritime transport services. The reservation of shipping in CoWA 2006 applies to ships on the sea or any other waterway and it covers all aspects of shipping, including shipping services. The competence of the NAFW is only in respect of financial assistance for shipping services to, from or within Wales.

The Welsh Government consider that it would not be proportionate for the Welsh Ministers to legislate in such a limited way, and that it is appropriate for the UK Government to do. No practical impact for Wales is expected to arise from these changes.

On this basis, it is considered making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Agreeing to a UK wide/ England and Wales wide SI ensures that there is a coherent approach wherever possible in preparing the statute book to function properly after the UK has left the EU. This approach will promote the clarity and accessibility of legislation across the UK. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.”

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE The Heavy Goods Vehicles (Charging For The Use Of Certain Infrastructure On The Trans-European Road Network) (Amendment) (EU Exit) Regulations 2018

DATE 2 November 2018

BY Julie James AM, Leader of the House and Chief Whip

The Heavy Goods Vehicles (Charging For The Use Of Certain Infrastructure On The Trans-European Road Network) (Amendment) (EU Exit) Regulations 2018

The Law which is being amended:

- *Heavy Goods Vehicles (Charging for the Use of Certain Infrastructure on the Trans-European Road Network) Regulations 2009*

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence

The proposed amendments will have no impact on the Assembly's legislative competence and/or the Welsh Ministers' executive competence.

The purpose of the amendments

The purpose of the amendments is to correct deficiencies in legislation arising from the UK leaving the European Union relating to charges in respect of road charging for Heavy Goods Vehicles (HGVs)

The 2009 Regulations do not require road charging for HGVs, but when charging is implemented, they place requirements on its design, and limits on the maximum charges.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here:

<https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-heavy-goods-vehicles-charging-for-the-use-of-certain-infrastructure-on-the-trans-european-road-network-amendment-eu-exit-regulations-2018>

Why consent was given

There is no divergence between the Welsh Government and the UK Government on the policy for the correction, nor is the substance of the correction politically sensitive. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

UK MINISTERS ACTING IN DEVOLVED AREAS

The Heavy Goods Vehicles (Charging For The Use Of Certain Infrastructure On The Trans-European Road Network) (Amendment) (EU Exit) Regulations 2018

Laid in the UK Parliament: 30 October 2018

Sifting

Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	13 November 2018
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	12 November 2018
Date sifting period ends in UK Parliament	20 November 2018
Written statement under SO 30C:	Paper 4
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	Not known
Procedure	Negative or Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

Assembly Legal Services agree with the summary and objective of the amendments made by these Regulations as set out by the Welsh Government in its Written Statement. When considering why the Welsh Government think that it is appropriate that these Regulations have been made by the UK Government, Members may wish to consider the reasoning provided in the Written Statement:

“There is no divergence between the Welsh Government and the UK Government on the policy for the correction, nor is the substance of the correction politically sensitive. Therefore, making separate SIs in Wales and England would

lead to duplication, and unnecessary complication of the statute book. In these exceptional circumstances, the Welsh Government

considers it appropriate that the UK Government legislates on our behalf in this instance.”

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2018

DATE 2 November 2018

BY Julie James AM, Leader of the House and Chief Whip

Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2018

The 2018 Regulations amend:

EU Legislation:

- Regulation (EC) No 2003/2003 of the European Parliament and of the Council relating to fertilisers; and
- European Economic Area (EEA) Agreement

Domestic Legislation

- The Fertilisers Regulations 1991 (S.I. 1991/2197) (for Great Britain);
- The Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003(S.I. 2003/1082);
- The EC Fertilisers (England and Wales) Regulations 2006 (S.I. 2006/2486).

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence

Fertilisers are a devolved matter. However, ammonium nitrate is reserved to the UK Government in relation to Wales insofar as it relates to health and safety under Government of Wales Act 2006 (Schedule 7A).

This SI contains transfer functions in the EU Regulation to the Welsh Ministers in respect of Wales within areas of devolved competence.

The purpose of the amendments

This negative procedure SI addresses the failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the EU.

They also in part amend out of date references in domestic legislation, which are needed to ensure clarity for the users of the legislation.

After exit, without amendment the relevant EU law would not operate properly and it would disrupt the trade in fertilisers currently authorised under EU law. The changes must be made to maintain fertiliser standards in UK law and provide continuity to the sector and security of supply for farmers. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU.

This instrument will replace the 'EC fertiliser' regime in EU law with a new domestic regime, providing for a 'UK fertiliser' label, which will function in the same way. It will also allow a two-year transitional period during which 'EC fertilisers' can still be sold in the UK without a requirement to be relabelled, to ensure continued supply and reduce burdens on businesses.

There will be no material change for users of fertilisers, this approach will continue to allow all fertilisers currently marketed in the UK to continue to be imported and marketed in the UK after exiting the EU. This approach also ensures that the same high-quality product standards continue to apply to fertiliser products.

The SI and accompanying Explanatory Memorandum, setting out the effect of this amendment is available here:

<https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments>

Why consent was given

In these exceptional circumstances when we are required to consider and correct an unprecedented volume of legislation within a tight timeframe and with finite resources, the Welsh Government considers it appropriate that we ask the UK Government to legislate on our behalf in a large number of statutory instruments. This ensures that there is a coherent approach wherever possible, to clarify the law across the UK. As there is no divergence between the Welsh Government and the UK Government on the policy for the correction, it is appropriate for the SI to be made by the UK Government in this instance.

Failing to implement the textual amendments needed to preserve the application of EU Regulations, in this case EU Regulation (EC) 2003/2003 could have potential impacts trade implications. Trade in EU fertilisers is essential as ammonium nitrate supply is considered to be limited and any disruption to supply could amount to a significant shortfall in the UK.

UK MINISTERS ACTING IN DEVOLVED AREAS

Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2018

Laid in the UK Parliament: 1 November 2018

Sifting

Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	13 November 2018
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	12 November 2018
Date sifting period ends in UK Parliament	22 November 2018
Written statement under SO 30C:	Paper 6
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	Not known
Procedure	Negative or Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

Assembly Legal Services agree with the summary and objective of the amendments made by these Regulations as set out by the Welsh Government in its Written Statement.

As to the reasons why the Welsh Government think it is appropriate that these UK Government Regulations include devolved provisions, Members may wish to consider the reasoning provided in the final two paragraphs of the Written Statement.

“In these exceptional circumstances when we are required to consider and correct an unprecedented volume of legislation within a tight timeframe and with finite resources, the Welsh Government considers it appropriate that we ask the UK Government to legislate on our behalf in a large number of statutory instruments. This ensures that there is a coherent approach wherever possible, to clarify the law across the UK. As

there is no divergence between the Welsh Government and the UK Government on the policy for the correction, it is appropriate for the SI to be made by the UK Government in this instance.

Failing to implement the textual amendments needed to preserve the application of EU Regulations, in this case EU Regulation (EC) 2003/2003 could have potential impacts trade implications. Trade in EU fertilisers is essential as ammonium nitrate supply is considered to be limited and any disruption to supply could amount to a significant shortfall in the UK.”



**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **The Tobacco Products and Nicotine Inhaling Products
(Amendment) (EU Exit) Regulations 2018**

DATE **5 November 2018**

BY **Julie James AM, Leader of the House and Chief Whip**

**The Tobacco Products and Nicotine Inhaling Products (Amendment) (EU
Exit) Regulations 2018**

The Law which is being amended

The Tobacco Advertising and Promotion Act 2002

The Tobacco Advertising and Promotion (Brandsharing) Regulations 2004

The Standardised Packaging of Tobacco Products Regulations 2015

The Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015

The Tobacco and Related Products Regulations 2016

**Any impact the SI may have on the Assembly's legislative competence and/or the
Welsh Ministers' executive competence**

The Regulations will make minor amendments to UK legislation in relation to tobacco products and nicotine inhaling products, some of which is within devolved competence. These amendments will not confer any new functions on the Welsh Ministers or the Secretary of State and are purely technical with no policy impact.

The Regulations will also transfer a number of the European Commission functions in relation to the labelling and safety of tobacco and tobacco products to the Secretary of State. The Regulations provide that before using these powers to make regulations that apply in Wales, the Secretary of State must consult with the Welsh Ministers. The subject matter of these powers largely relates to specific areas of reserved competence namely product safety and liability and product labelling. Those elements of the powers which it might be argued are within devolved competence could not in practice be meaningfully exercised by the Welsh Ministers independently of the Secretary of State.

The purpose of the amendments

The purpose of the amendments is to correct minor deficiencies in UK legislation, some of which are within devolved competence, arising from the UK leaving the European Union

relating to labelling and retailing of products containing tobacco products.

The Regulations also transfers powers currently assigned to the European Commission in relation to tobacco legislation to the Secretary of State, but with the requirement that they can only be exercised after consultation with the Welsh Minister. These powers relate to:

- the setting of standards for tobacco products and e-cigarettes such as setting procedures for determining toxicity, updating the list of additives and modifying the methods of measurement of tar, nicotine and carbon monoxide; and,
- the modification of the combined health warnings on tobacco products for smoking and the health warnings on e-cigarette packaging.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here:

<http://www.legislation.gov.uk/ukdsi/2018/9780111174203/contents>

Why consent was given

There is no divergence between the Welsh Government and the UK Government on the policy for the correction. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting to a UK-wide SI ensures that there is a single legislative framework across the UK which promotes clarity and accessibility during this period of change. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

UK MINISTERS ACTING IN DEVOLVED AREAS

The Tobacco Products and Nicotine Inhaling Products (Amendment) (EU Exit) Regulations 2018

Laid in the UK Parliament: 1 November 2018

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	-
Date of consideration by the House of Commons European Statutory Instruments Committee	NA
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	NA
Date sifting period ends in UK Parliament	NA
Written statement under SO 30C:	Paper 8
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	NA
Procedure	Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	w/c 12 November

Commentary

Assembly Legal Services agree with the summary and objective of the amendments made by these Regulations, as set out by the Welsh Government in its Written Statement dated 5 November 2018.

When considering why the Welsh Government think that it is appropriate that these Regulations have been made by the UK Government, Members may wish to consider the reasoning provided in final paragraph of the Written Statement:

“There is no divergence between the Welsh Government and the UK Government on the policy for the correction. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting to a UK-wide SI ensures that there is a single legislative framework across the UK which promotes clarity and accessibility during this period of change. In these exceptional

circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.”

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

Agenda Item 4.1

Llywodraeth Cymru
Welsh Government

Mike Hedges AM
Chair of Climate Change, Environment and Rural Affairs Committee
National Assembly for Wales
Cardiff Bay
Cardiff, CF99 1NA

30 October 2018

Dear Mike,

Thank you for your letter of 18 October raising a number of questions following the Committee's consideration of the UK Government's Agriculture Bill. I welcome the opportunity to clarify the Welsh provisions further. I have dealt with your questions broadly in the order in which they are raised in your letter. In some cases I have given grouped answers where it helps explain the position more clearly.

By way of context, the Welsh Government's Green Paper 'Brexiteer and our Land' sets out proposals for providing future support to farmers when the UK leaves the EU. It consults on proposals both to simplify existing schemes and a new land management programme which would replace the Common Agriculture Policy in its entirety. The consultation closed on 30 October and responses are now being considered. No decisions have been taken, including on timescales for the introduction of new schemes, and further consultation will take place next spring before I make decisions on the detail.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
Gohebiaeth.Lesley.Griffiths@llyw.cymru
Correspondence.Lesley.Griffiths@gov.wales

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 19

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 instructed the UK Government to take powers for Welsh Ministers in the Agriculture Bill to provide certainty to the Welsh agriculture sector as the UK Government continues to negotiate the terms of the UK's future relationship with the EU. I confirm it is still my intention to bring forward an Agriculture (Wales) Bill to the Assembly but this is unlikely to be in place for 2020 because of the pressure on the legislative timetable. The Welsh provisions in the Bill are needed now to provide Welsh Ministers with a legal base to continue with existing schemes following our exit from the European Union (EU) and provide flexibility for transition and potential implementation of new schemes, should that be required. Without such powers the Welsh Government would not be able to continue paying agricultural support in 2020 or to simplify existing schemes, for example, by removing the greening requirement of the Basic Payments Scheme and simplifying arrangements for payments to cross border farms. The powers provide the flexibility to begin transition, once policy decisions have been taken on the nature of new schemes.

Given the level of uncertainty surrounding Brexit, I did not consider it to be appropriate to include an explicit sunset provision for these powers to be on the face of the Bill. The provisions in the UK Agriculture Bill are, therefore, not time limited. I can confirm it is my intention for the powers to be transitional and superseded by a Wales Agriculture Bill at the appropriate time. I intend to bring forward a Wales Agriculture Bill before the end of the current Assembly term.

I would like to reassure the Committee the powers being taken now are broad enabling powers which do not constrain or predetermine future policy decisions. The Committee will appreciate it is necessary for legislation to be ready in good time in order the Government can react quickly once decisions are made. I acknowledge the Committee's concern regarding the significant regulation-making powers provided in the Bill to Welsh Ministers. I am committed to consulting stakeholders properly should these powers be used. We are already consulting on future policy and have outlined our intention to undertake further consultation before making any changes to payments. The powers in the Agriculture Bill are generally enabling powers which required separate secondary legislation to take effect. The Assembly and the Committee will, therefore, have the opportunity for scrutiny.

The Committee has asked for information on how powers in Schedule 3, Part 1 to delegate functions for the giving financial assistance may be used. In general terms, the powers would allow for a wide range of possible payment schemes to be established. The purposes for which Welsh Ministers will be able to give financial assistance are designed to be non-limiting in their scope and no decisions have yet been taken on the use and purpose of the powers. This will very much be dependent on the consultation outcomes and on the UK's future relationship with the EU and rest of the world.

As you note, the agricultural transition period for Wales mirrors that for England in the Bill. This reflects the Welsh Government's decision to make a neutral assumption and not pre-judge the consultation. Whilst we are consulting on an agricultural transition period from 2020 to 2025, it would be inappropriate for this to be on the face of the Bill. Our legal provisions for agricultural transition thus mirror the UK Government's approach for England, however, this would be amended later if necessary, once decisions have been made about the length of the transition period in Wales.

The Bill enables simplifications through a power to amend retained EU law relating to direct payments. These powers are separate to provisions providing for future financial assistance to deliver the new land management schemes. Secondary legislation laid under the EU (Withdrawal) Act will make operability fixes to the direct payments regulation. The powers under the Agriculture Bill may allow for further policy changes to that regulation if desired. There would need to be further consultation with those affected and work to understand risks of making changes to farmer payments.

Officials are continuing discussions on the WTO and Red Meat Levy clauses with the UK Government and I hope to resolve these issues as the Bill passes through Parliament.

In terms of timescales, the Bill passed second reading in the House of Commons on 10th October and is now at the Committee stage. The Public Bill Committee met on Tuesday 23 October 2018 and is expected to report to the House by Tuesday 20 November 2018. Beyond this, the timetabling of subsequent stages is a matter for Parliament but I can reassure the Committee that officials are in regular communication with the UK Government to ensure provisions for Wales are properly taken account of.

My clear objective is to retain broad powers for Welsh Ministers as the Bill passes through Parliament. Where amendments to English provisions are tabled they will be considered carefully on a case by case basis to see whether equivalent amendments are needed in Wales. If amendments are made to Welsh provisions which would require consent, I confirm that a Supplementary Memorandum will be laid.

You have asked me to give oral evidence to the Committee To which I am of course agreeable and my Diary Secretary will be in touch to confirm.

Regards
Lesley

Lesley Griffiths AC/AM

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

Kirsty Williams AC/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

7 November 2018

Dear Mick,

Thank you for your letter of 24 October on behalf of the Constitutional and Legislative Affairs Committee (CLAC) seeking further clarity on how, in particular Article 12 of the UNCRC has been taken into account in completing the Children's Rights Impact Assessment (CIA).

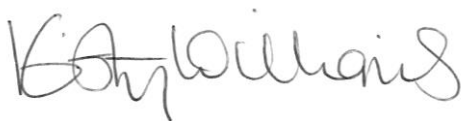
In bringing forward proposals, including proposals to close any school, proposers are required to comply with the School Standards and Organisation (Wales) Act 2013 and the School Organisation Code including in respect of consultation. Under the existing Code which came into force in October 2013, proposers must make suitable arrangements to consult with pupils of any school affected by their proposals and, where possible, with children and young people who are likely to attend those schools. As a minimum, this must include consultation with the school councils of the affected schools. This requirement remains unchanged in the second version of the Code.

The Welsh Government issued guidance to local authorities, the governing bodies of maintained schools and other proposers on consultation with children and young people in respect of school organisation proposals to support the Code.

Under the revised Code the decision to consult and move forward with the closure of a rural school must not be taken until all viable alternatives to closure have been considered. Consideration of alternatives must be a two stage process with the proposer doing this before they even decide to commence consultation on closure, with an opportunity for anyone with an interest including pupils and prospective pupils and their parents, to suggest alternatives to closure which the proposer must consider. As such children's rights to have a say on the proposed closure of a rural school and to have their opinions taken into account are further enhanced by the new arrangements.

Whilst consideration of Article 12 was considered within the body of the CRIA, Article 12 was not specifically referred to in Step 3 of the CRIA. An updated version of the CRIA is now attached and will be published shortly.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kirsty Williams'.

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



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 MA-L-KW-0656-18
Name of Official:	David Weale, School Organisation and Admissions Branch
Department:	Department for Education & Public Services
Date:	29 October 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 CRIAs undertaken on legislation must be published alongside the relevant piece of work on the WG website. All other CRIAs must be listed in the WG CRIA newsletter and must be made available upon request. Ministers are however, encouraged to publish all completed CRIAs.

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 would 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 federation. Identifying alternatives to closure must be a two stage process with proposers doing

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

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. The consultation also therefore sought views on an appropriate designation of rural school, using the National Statistics Urban-Rural Classification.

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 the designation of rural schools and list of rural schools that derived from it. 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 also be designated as rural. Taking into account consultation responses the designation of rural schools 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 process of identifying and considering 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 families 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 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

There is an existing duty on proposers to produce a child friendly version of their consultation document and make suitable arrangements to consult with pupils of any schools affected by their

proposals and where possible, with children who are likely to attend those schools. As a minimum this must include consultation with the school councils of the affected schools. This requirement remains unchanged in the second version of the Code. The Welsh Government has issued guidance to local authorities, school governing bodies and other proposers on school organisation consultations with children and young people.

Under the presumption against closure of rural schools the decision to consult and move to closure must not be taken until all viable alternatives to closure have been conscientiously considered, Under the new arrangements consideration of alternatives is a two-stage process, with the proposer doing this before they even decide to proceed to consultation and an opportunity for anyone with an interest, which includes children and young people and their parents to put forward suggestions for alternatives as part of the consultation, which the proposer must consider.

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 on 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/



Agenda Item 6

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

Document is Restricted

Agenda Item 7

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

Document is Restricted