

# Agenda – Constitutional and Legislative Affairs Committee

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Meeting Venue:

Committee Room 1 – Senedd

Meeting date: 26 November 2018

Meeting time: 14.30

For further information contact:

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Committee Clerk

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

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## Statutory Instruments with Clear Reports

26 November 2018

### SL(5)279 – The Civil Enforcement of Bus Lane and Moving Traffic Contraventions (County of Carmarthenshire)

#### Designation Order 2018

**Procedure: Negative**

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This Order designates the county of Carmarthenshire as a civil enforcement area for bus lane and moving traffic contraventions for the purposes of Part 6 of the Traffic Management Act 2004. The county of Carmarthenshire is already designated as a civil enforcement area for parking contraventions under that Act by the Road Traffic (Permitted Parking Area and Special Parking Area) (County of Carmarthenshire) Order 2004 (S.I. 2004/104 (W. 11)).

**Parent Act:** Traffic Management Act 2004

**Date Made:** 13 November 2018

**Date Laid:** 15 November 2018

**Coming into force date:** 10 December 2018



# Agenda Item 3.1

## SL(5)277 – The Government of Wales Act 2006 (Budget Motions and Designated Bodies) Order 2018

### Background and Purpose

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This Order designates, in relation to the Welsh Ministers, the bodies listed in the Schedule to the Order for the purposes of including within a Budget Motion the resources expected to be used by those bodies.

The explanatory memorandum to the Order confirms, at paragraph 2.2, that:

*"Inclusion of the resources of the designated bodies within the Budget Motion will minimise alignment discrepancies between the Budget, Budget Motion and consolidated accounts, but will have no effect on the resource limits of those bodies".*

### Procedure

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Negative.

### Technical Scrutiny

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

### Merits Scrutiny

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One point is identified for reporting under Standing Order 21.3 in respect of this instrument:

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

The Welsh Ministers had a choice of procedure for this instrument pursuant to sections 126A(9) and 126A(10) of the Government of Wales Act 2006 and chose the negative procedure, which appears to be appropriate.

### Implications arising from exiting the European Union

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

### Government Response

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No government response is required.

### Legal Advisers

**Constitutional and Legislative Affairs Committee**

**20 November 2018**



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

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**2018 No. 1173 (W. 237)**

**CONSTITUTIONAL LAW**

**The Government of Wales Act 2006  
(Budget Motions and Designated  
Bodies) Order 2018**

**EXPLANATORY NOTE**

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

This Order designates the bodies listed in the Schedule for the purpose of including within a Budget motion the resources expected to be used by those bodies.

The Order replaces the previous designations made by the Government of Wales Act 2006 (Budget Motions and Designated Bodies) Order 2016 (S.I. 2016/1096 (W. 260)) and the Government of Wales Act 2006 (Budget Motions and Designated Bodies) Order 2017 (S.I. 2017/946 (W. 235)) and therefore revokes those instruments.

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



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

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**2018 No. 1173 (W. 237)**

**CONSTITUTIONAL LAW**

**The Government of Wales Act 2006  
(Budget Motions and Designated  
Bodies) Order 2018**

*Made* 12 November 2018

*Laid before the National Assembly for Wales*  
14 November 2018

*Coming into force* 21 January 2019

The Welsh Ministers make the following Order in exercise of the powers conferred on them by section 126A(2) and (3) of the Government of Wales Act 2006(1).

In accordance with section 126A(4) and (6) of that Act the Welsh Ministers have consulted, where they think it appropriate, the Treasury and the Treasury has consented to the making of this Order.

**Title and commencement**

**1.**—(1) The title of this Order is the Government of Wales Act 2006 (Budget Motions and Designated Bodies) Order 2018.

(2) This Order comes into force on 21 January 2019.

**Revocations**

**2.** The following Orders are revoked—

- (a) the Government of Wales Act 2006 (Budget Motions and Designated Bodies) Order 2016(2);
- (b) the Government of Wales Act 2006 (Budget Motions and Designated Bodies) Order 2017(3).

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(1) 2006 c. 32. Section 126A was inserted by section 44(2) of the Constitutional Reform and Governance Act 2010 (c. 25).  
(2) S.I. 2016/1096 (W. 260).  
(3) S.I. 2017/946 (W. 235).

### **Designations**

**3.** A body which is listed in the Schedule to this Order is a designated body for the purposes of section 126A of the Government of Wales Act 2006 in relation to the Welsh Ministers<sup>(1)</sup>.

*Mark Drakeford*

Cabinet Secretary for Finance, one of the Welsh Ministers

12 November 2018

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(1) By virtue of section 124(3)(a) of the Government of Wales Act 2006 the Welsh Ministers are a “relevant person” for the purposes of section 126A of that Act.

## SCHEDULE

Article 3

### Designated Bodies

Career Choices Dewis Gyrfa Ltd

DCFW Limited

Hybu Cig Cymru-Meat Promotion Wales

Innovation Point Limited

Life Sciences Hub Wales Limited

Local Health Boards (as established under section 11 of the National Health Service (Wales) Act 2006<sup>(1)</sup>)

National Academy for Educational Leadership

Public Health Wales National Health Service Trust<sup>(2)</sup>

Sector Development Wales Partnership Limited

Transport for Wales

Velindre University National Health Service Trust<sup>(3)</sup>

Welsh Ambulance Services National Health Service Trust<sup>(4)</sup>

Welsh Revenue Authority<sup>(5)</sup>

WGC Holdco Limited

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<sup>(1)</sup> 2006 c. 42.

<sup>(2)</sup> Established by S.I. 2009/2058 (W. 177), article 2.

<sup>(3)</sup> Established by S.I. 1993/2838, article 2. Article 2 was substituted by S.I. 2018/887 (W. 176), article 3.

<sup>(4)</sup> Established by S.I. 1998/678, article 2.

<sup>(5)</sup> Established by section 2 of the Tax Collection and Management (Wales) Act 2016 (anaw 6).

## **EXPLANATORY MEMORANDUM TO THE GOVERNMENT OF WALES ACT 2006 (BUDGET MOTIONS AND DESIGNATED BODIES) ORDER 2018**

This Explanatory Memorandum has been prepared by the Permanent Secretary's Group and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

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

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Government of Wales Act 2006 (Budget Motions and Designated Bodies) Order 2018.

Mark Drakeford  
Cabinet Secretary for Finance

14 November 2018

## **1. Description**

1.1 The Government of Wales Act 2006 (Budget Motions and Designated Bodies) Order 2018 (“the Order”) designates bodies in relation to the Welsh Ministers. The purpose of such designation is so that information relating to the resources expected to be used by such bodies can be included within a Budget Motion.

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

2.1 Section 126A(9) and (10) of the Government of Wales Act 2006 (“GOWA 2006”) provide for the Order to be subject to either the affirmative or the negative resolution procedure.

2.2 The Cabinet Secretary for Finance is of the view that the Order be subject to the negative resolution procedure as there are no factors indicating the use of the affirmative procedure. The Order designates bodies for the purposes of including within a Budget motion, information relating to the resources expected to be used by those bodies. Inclusion of the resources of the designated bodies within the Budget Motion will minimise alignment discrepancies between the Budget, Budget Motion and consolidated accounts, but will have no effect on the resource limits of those bodies. The subject matter of the Order can therefore be regarded as administrative as the effect on the Budget will be presentational.

## **3. Legislative background**

3.1 This Order is made by the Welsh Ministers in exercise of the powers conferred on them by section 126A(2) and (3) GOWA 2006. This is the third Order made by the Welsh Ministers under these powers.

3.2 In accordance with section 126A(4) and (6) GOWA 2006, the Welsh Ministers have consulted, where they think it appropriate, with HM Treasury, and the Treasury has consented to the making of this Order.

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

### **Background**

4.1 In March 2015, the Finance Committee of the Fourth Assembly recommended, as part of its inquiry into Best Practice Budget Processes, that “the Welsh Government work closely with the Wales Audit Office to help ensure that the alignment of the budget and the Welsh Government’s accounts with the Treasury’s budget boundary is completed timeously and successfully”.

4.2 Under current arrangements, there are 3 main documents which set out the financial position of the bodies funded by the Welsh Consolidated Fund;

- the Budget to plan, monitor and control income and expenditure;
- the Annual and Supplementary Budget Motions to gain Assembly approval for income and expenditure; and
- after the year end, the Consolidated Accounts, to report and account for income and expenditure.

The boundaries of each of these documents i.e., the income and expenditure of the bodies which are included, differ for each causing misalignment and, accordingly can make it difficult to understand the links and inter-relationships between them. This can lead to a lack of transparency and understanding of the Welsh Government public expenditure.

4.3 Budget Motions voted by the National Assembly for Wales were aligned to the Welsh Government core account boundary. This was a different boundary to that used for the Welsh Government Consolidated Accounts and was subsequently different again to the boundary used for the HM Treasury Budget. The first two phases of alignment corrected the material differences.

4.4 Alignment ensures that the Welsh Government's consolidated accounts use the same boundary for the Budget Motions as that used by HM Treasury for the control of public expenditure, where those bodies are designated and material. Alignment will mean that the scope of the main control mechanisms is consistent.

## **Purpose**

4.5 The Order consolidates and replaces the first two orders and designates specified bodies in relation to the Welsh Ministers for the purpose of including within a Budget motion the resources expected to be used by those bodies. Accordingly, the Order revokes the Government of Wales Act 2006 (Budget Motions and Designated Bodies) Order 2016 (S.I. 2016/1096 (W. 260)) and the Government of Wales Act 2006 (Budget Motions and Designated Bodies) Order 2017 (S.I. 2017/946 (W. 235)).

## **Effect**

4.6 The designation of the bodies in the Order will allow closer alignment of the Budget Motions to the existing Welsh Government Consolidated Accounts Boundary. The resources expected to be used by the designated bodies can therefore be included within a Budget Motion replacing the cash funding they receive.

- 4.7 The Order, therefore, aligns the HM Treasury budget boundary to the Budget Motions and the Welsh Government Consolidated Accounts, enabling expenditure to be more easily tracked through the Budget Motions and Consolidated Accounts process. This will provide the benefits of increased transparency and understanding of Welsh public expenditure, making it easier for the Assembly, and the wider public, to understand and challenge spending plans and outturn. In turn, this should contribute to better involvement and awareness of public expenditure in Wales, therefore, indirectly contributing to well-being goals.
- 4.8 The Order leads to a more efficient approach to the impact on scrutiny of Budget Motions by the Finance Committee and the consolidated accounts by the Public Accounts Committee as variances between budget and outturn will be more consistent. In addition, the number of reconciliations required within the schedules supporting the Budget Motions will be reduced.
- 4.9 There would be no impact on the MEG budgets and limited impact on preparation of the consolidated accounts.
- 4.10 The Order does not amend or consolidate any other piece of legislation.

## **5. Consultation**

- 5.1 In addition to those bodies previously designated by the 2016 and 2017 Orders, this Order designates Transport for Wales, the Welsh Revenue Authority and the National Academy for Educational Leadership. These are virtually new public sector bodies and considered to be part of business as usual and, as such, an external consultation with these public bodies was not considered to be necessary before designation. The Welsh Government has already undertaken a targeted consultation with the bodies included in the previous orders from 8<sup>th</sup> May 2017 to 31<sup>st</sup> July 2017.
- 5.2 HM Treasury were consulted in accordance with section 126A(6) GOWA 2006, where a complete list of bodies proposed to be designated was provided.
- 5.6 The final phase of alignment is planned for 2019/20.

## **6. Regulatory Impact Assessment (RIA)**

- 6.1 A Regulatory Impact Assessment has not been prepared to accompany the Order; it is not expected to impose any cost on business, local government or the voluntary sector. This is consistent with the Welsh Ministers' Regulatory Impact Assessment Code for Subordinate Legislation.

6.2 Bodies to be designated in the Order already form part of the Welsh Government budgetary controls and so Welsh Government Groups are already monitoring in-year spending.



# Agenda Item 3.2

## SL(5)278 – The Humane Trapping Standards Regulations 2019

### Background and Purpose

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These Regulations amend the Wildlife and Countryside Act 1981 (c. 69) in order to implement in Great Britain requirements contained in the Agreement on international humane trapping standards concluded between the European Community, the Government of Canada and the Government of the Russian Federation (the "Agreement"). In doing so, the Regulations also implement the equivalent standards contained in a bilateral agreed minute between the European Community and the United States of America.

### Procedure

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Affirmative.

### Technical Scrutiny

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One point is identified for reporting under Standing Order 21.2(ix) in respect of this instrument, as the instrument is to be made in English only.

Paragraph 2 of Part 1 of the Explanatory Memorandum states as follows:

"...As the Regulations will be subject to UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually..."

The Committee has written to First Minister on this issue, following advice received from the House of Commons Procedures Committee, and awaits a response.

### Merits Scrutiny

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One point is identified for reporting under Standing Order 21.3(ii) in respect of this instrument. The EU has entered into agreements to improve the welfare standards of traps used to catch or kill some wild animals. Paragraph 4 of the Explanatory Memorandum states that "the deadline for implementation of the Agreement was July 2016". As such, the Agreement has not been implemented on time. The coming into force date for these Regulations is 28 March 2019, with transitional provision in Regulation 9 delaying implementation for stoat by 12 months (until 1 April 2020).

### Implications arising from exiting the European Union

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The European Union (EU) is a party to the Agreement. However, there is no implementing legislation at the EU level. Under EU law, the UK Government and the Welsh Ministers are obliged to implement the trapping standards directly through domestic legislation.

These Regulations are made under section 2(2) of the European Communities Act 1972 and therefore will form part of retained EU law after exit day.

### Government Response

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A government response is required.







### Amendment of section 11

3.—(1) Section 11 (prohibition of certain methods of killing or taking wild animals)(a) is amended as follows.

(2) For subsection (2) substitute—

“(2) Subject to the provisions of this Part, a person shall be guilty of an offence if that person—

- (a) uses any trap or snare for the purpose of killing or taking or restraining any wild animal included in Schedule 6 or 6ZA;
- (b) sets in position any trap or snare of such a nature and so placed as to be—
  - (i) in England and Wales, calculated to cause bodily injury to any wild animal included in Schedule 6 or 6ZA;
  - (ii) in Scotland, likely to cause bodily injury to any such wild animal;
- (c) sets in position any electrical device for killing or stunning, or any poisonous, poisoned or stupefying substance, of such a nature and so placed as to be—
  - (i) in England and Wales, calculated to cause bodily injury to any wild animal included in Schedule 6;
  - (ii) in Scotland, likely to cause bodily injury to any such wild animal;
- (d) uses for the purpose of killing or taking any wild animal included in Schedule 6—
  - (i) any electrical device for killing or stunning;
  - (ii) any poisonous, poisoned or stupefying substance;
  - (iii) any net;
  - (iv) any automatic or semi-automatic weapon;
  - (v) any device for illuminating a target or sighting device for night shooting;
  - (vi) any form of artificial light or any mirror or other dazzling device;
  - (vii) any gas or smoke not falling within sub-paragraph (ii);
  - (viii) any sound recording used as a decoy; or
  - (ix) any mechanically propelled vehicle in immediate pursuit of any such animal;
- (e) uses any mechanically propelled vehicle for the purpose of driving any wild animal included in Schedule 6; or
- (f) knowingly causes or permits to be done an act mentioned in paragraphs (a) to (e).”.

(3) In subsection (5), for “(2)(b), (c), (d) or (e)” substitute “(2)(a), (d) or (e)”.

(4) In subsections (6) and (7)—

- (a) for “subsection (2)(a)” substitute “subsection (2)(b) or (c)”;
- (b) for “Schedule 6” substitute “the relevant Schedule”.

(5) After subsection (7), insert—

“(7A) In subsections (6) and (7), “the relevant Schedule” means—

- (a) where proceedings relate to an offence under subsection (2)(b), Schedule 6 or 6ZA;
- (b) where proceedings relate to an offence under subsection (2)(c), Schedule 6.”.

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(a) Subsection (2) was amended in relation to England and Wales by section 2(3) of the Wildlife and Countryside (Amendment) Act 1991 (c. 39), and in relation to Scotland by paragraph 10 of Schedule 6 to the Nature Conservation (Scotland) Act 2004 (asp 6). Subsection (5) was amended by section 2(5) of the Wildlife and Countryside (Amendment) Act 1991, and paragraph 10 of Schedule 6 to the Nature Conservation (Scotland) Act 2004. Subsection (7) was inserted by section 2(6) of the Wildlife and Countryside (Amendment) Act 1991.

## Amendment of section 16

4. In section 16 (power to grant licences)(a), after subsection (3) insert—

“(3ZA) A licence granted under subsection (3) may permit the use of a trap or snare for the purpose of killing, taking or restraining a wild animal included in Schedule 6ZA only if the trap or snare—

- (a) meets the conditions relating to certification (see subsections (3ZB) to (3ZF)); or
- (b) meets the approved design conditions (see subsections (3ZG) to (3ZI)).

This subsection is subject to (3ZJ).

(3ZB) For the purposes of subsection (3ZA)(a) the conditions relating to certification are that—

- (a) the trap or snare is of a certified type and make;
- (b) the manufacturer of the trap or snare provides instructions as to how it should be set, operated safely and maintained; and
- (c) where it is manufactured on or after 28th March 2019, the trap or snare is identified by its manufacturer by means of a permanent marking as being of a certified type and make.

(3ZC) For the purposes of subsection (3ZB)(b), instructions provided by the supplier of a trap or snare with the authorisation of the manufacturer of that trap or snare are to be treated as provided by the manufacturer.

(3ZD) For the purposes of this section, a type and make of trap or snare is “certified” in relation to a wild animal included in Schedule 6ZA if it is certified by or on behalf of any of the following authorities as conforming (where the trap or snare is set in accordance with any instructions provided by the manufacturer) to the standards set out in the international trapping standards agreement in relation to the trapping of that animal—

- (a) the Secretary of State;
- (b) the Welsh Ministers;
- (c) the Scottish Ministers;
- (d) in Northern Ireland, the Department of Agriculture, Environment and Rural Affairs**(b)**;
- (e) an authority in another country or territory which is designated for the purposes of the international trapping standards agreement as a certifying authority.

(3ZE) The relevant authority shall—

- (a) publish in such manner as it considers appropriate a list of all traps and snares of a certified type and make of which it is aware; and
- (b) make the list available to anyone who asks for it in writing**(c)**.

(3ZF) For the purposes of subsection (3ZE), “the relevant authority” means—

- (a) in relation to England, the Secretary of State;

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- (a) Section 16 was amended by paragraph 11 of Schedule 9 to the Environment Protection Act 1990 (c. 43), paragraph 15 of Schedule 6 to the Nature Conservation (Scotland) Act 2004, paragraph 72 of Part 1 of Schedule 11 to the Natural Environment and Rural Communities Act 2006 (c. 16), section 10 of the Marine and Coastal Access Act 2009 (c. 23), section 104 of the Marine (Scotland) Act 2010 (asp 5), sections 4(1) and (4), 9, 13(1) and (4), 17(1) and (2) and 18(1) and (2) of the Wildlife and Natural Environment (Scotland) Act 2011 (asp 6), and paragraph 6 of Schedule 12 to the Countryside and Rights of Way Act 2000 (c. 37), and by S.I. 1995/2825, 2007/1843, and 2013/755.
  - (b) The powers relating to traps and snares under Articles 12 and 12A of the Wildlife Order (Northern Ireland) 1985 (S.I. 1985 No. 171 (N.I.2)) were transferred from the Department of the Environment to the Department of Agriculture, Environment and Rural Affairs by Article 8(1)(c) of the Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016 No. 76).
  - (c) Requests in writing can be made in England to the Wildlife Management Team, Natural Environment Policy Directorate, Defra, Horizon House, Deanery Road, Bristol, BS1 5AH. In Wales, requests in writing can be made to the Land, Nature and Forestry Division, Welsh Government, Rhodfa Padarn, Llanbadarn Fawr, Aberystwyth, Ceredigion, SY23 3UR. In Scotland, requests in writing can be made to Wildlife and Protected Areas, Natural Resources Division, Directorate for Environment and Forestry, The Scottish Government, Victoria Quay, Edinburgh, EH6 6QQ.

- (b) in relation to Wales, the Welsh Ministers;
- (c) in relation to Scotland, the Scottish Ministers.

(3ZG) For the purposes of subsection (3ZA)(b) a trap or snare meets the approved design conditions if it—

- (a) has been constructed by the person using it; and
- (b) complies with a design approved for this purpose by or on behalf of the Secretary of State (where it is used in England or Scotland) or the Welsh Ministers (where it is used in Wales).

(3ZH) The relevant authority must—

- (a) publish in such manner as it considers appropriate details of the design of a trap or snare approved in accordance with subsection (3ZG)(b); and
- (b) make the details available to anyone who asks for them in writing<sup>(a)</sup>.

(3ZI) In subsection (3ZH), “the relevant authority” means—

- (a) the Secretary of State, for designs of traps or snares approved for use in England;
- (b) the Welsh Ministers, for designs of traps or snares approved for use in Wales;
- (c) the Scottish Ministers, for designs of traps or snares approved for use in Scotland.

(3ZJ) Subsection (3ZA) does not apply where the licence—

- (a) is granted in accordance with any of paragraphs (a) to (d) or paragraphs (f) to (h) of subsection (3) and is subject to such conditions as the appropriate authority considers appropriate when granting the licence;
- (b) does not, in the opinion of the appropriate authority, undermine the objectives of the international trapping standards agreement; and
- (c) is accompanied by a written explanation of the reasons for that opinion and for the grant of the licence.

(3ZK) In this section “the international trapping standards agreement” means the Agreement on international humane trapping standards between the European Community, Canada and the Russian Federation<sup>(b)</sup>.”.

## **Amendment of section 22**

5. In section 22 (power to vary Schedules), at the end insert—

“(6) The Secretary of State may, for the purpose of complying with the international trapping standards agreement, by order add any animal to, or remove any animal from, Schedule 6ZA.

(7) In subsection (6), “the international trapping standards agreement” has the meaning given by section 16(3ZK).”.

## **New Schedule 6ZA**

6. After Schedule 6 to that Act, insert, as Schedule 6ZA to that Act, the Schedule set out in the Schedule to these Regulations.

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(a) Requests in writing can be made in England to the Wildlife Management Team, Natural Environment Policy Directorate, Defra, Horizon House, Deanery Road, Bristol, BS1 5AH. In Wales, requests in writing can be made to the Land, Nature and Forestry Division, Welsh Government, Rhodfa Padarn, Llanbadarn Fawr, Aberystwyth, Ceredigion, SY23 3UR. In Scotland, requests in writing can be made to Wildlife and Protected Areas, Natural Resources Division, Directorate for Environment and Forestry, The Scottish Government, Victoria Quay, Edinburgh, EH6 6QQ.

(b) The Agreement was approved on behalf of the European Community by Council Decision 98/142/EC (OJ No. L42, 14.2.98, p. 40). The text of the Agreement is attached to the Decision (at OJ No. L 42, 14.2.98, p. 43).

## PART 3

### Amendment of other legislation

#### Amendment of the Pests Act 1954

7. In section 8 of the Pests Act 1954 (restriction on type of trap in England and Wales)(a)—

(a) after subsection (3), insert—

“(3A) An order made under subsection (3) may not specify any type or make of trap as approved if the trap is a leghold trap.”; and

(b) after subsection (8), insert—

“(8A) In subsection (3A), “leghold trap” means a device designed to restrain or capture an animal by means of jaws which close tightly upon one or more of the animal’s limbs, thereby preventing withdrawal of the limb or limbs from the trap.”.

#### Amendment of the Agriculture (Scotland) Act 1948

8. In section 50 of the Agriculture (Scotland) Act 1948 (prohibition of night shooting, and use of spring traps)(b)—

(a) in subsection (4), for “the next following subsection” substitute “subsections (4A) and (5)”;

(b) after subsection (4) insert—

“(4A) An order made under subsection (3) may not specify any type or make of trap as approved, and an order made under subsection (4) may not authorise the use of any trap, where the trap is a leghold trap.”;

(c) in subsection (5) for “the last foregoing subsection”, in both places where it occurs, substitute “subsection (4)”;

(d) after subsection (8) insert—

“(9) In subsection (4A), “leghold trap” means a device designed to restrain or capture an animal by means of jaws which close tightly upon one or more of the animal’s limbs, thereby preventing withdrawal of the limb or limbs from the trap.”.

## PART 4

### Transitional provision

#### Transitional provision

9. Until 1st April 2020, Schedule 6ZA to the Wildlife and Countryside Act 1981, as set out in the Schedule to these Regulations, has effect as if the entry in respect of *Mustela erminea* (Stoat) were omitted.

Date

*Name*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural Affairs

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(a) 1954 c. 68. Section 8 was amended by section 1(1) of, and Part 8 of Schedule 1 to, the Statute Law (Repeals) Act 1973 (c. 39), section 31 of, and Schedule 6 to, the Criminal Law Act 1977 (c. 45) and section 46 of the Criminal Justice Act 1982 (c. 48).

(b) 1948 c. 45. Section 50 was amended by section 10 of the Pests Act 1954 (c. 68).

Date

*Name*  
Minister for Environment under authority of the Cabinet Secretary for  
Energy Planning and Rural Affairs, one of the Welsh Ministers

## SCHEDULE

Regulation 6

Schedule to be inserted as Schedule 6ZA to the Wildlife and Countryside  
Act 1981

### “SCHEDULE 6ZA

Section 11(2)

Animals which may not be killed or taken by trapping or snaring

<i>Common name</i>	<i>Scientific name</i>
Badger	<i>Meles meles</i>
Beaver, European	<i>Castor fiber</i>
Marten, Pine	<i>Martes martes</i>
Otter, Common	<i>Lutra lutra</i>
Stoat (otherwise known as Ermine)	<i>Mustela erminea</i>

NOTE. The common name or names given in the first column of this Schedule are included by way of guidance only; in the event of any dispute or proceedings, the common name or names shall not be taken into account.”

#### EXPLANATORY NOTE

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

These Regulations amend the Wildlife and Countryside Act 1981 (c. 69) (“the Act”) in order to implement in Great Britain requirements contained in the Agreement on international humane trapping standards concluded between the European Community, the Government of Canada and the Government of the Russian Federation (“the Agreement”)(a).

The Regulations restate the existing prohibitions in section 11 of the Act (animals which may not be killed or taken by certain methods) in relation to the animals listed in Schedule 6, without substantively adding to them. They introduce a prohibition on using or setting in position any trap or snare for the purpose of killing or taking the Stoat (otherwise known as the Ermine) or the European Beaver. The European Beaver and the Stoat are protected under the Agreement together with the Badger, which is already listed in Schedule 6 to the Act as it applies to England, Wales and Scotland; and the Otter and the Pine Marten, which are already listed in Schedule 6 to the Act as it applies to England and Wales. All five species are now also listed in Schedule 6ZA (animals which may not be killed or taken by trapping or snaring).

The prohibitions in section 11(2)(a) and (b) (as revised) (relating to using or setting in position a trap or snare) do not apply in relation to any animal specified in Schedule 6ZA where the use or

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(a) The Agreement was approved on behalf of the European Community by Council Decision 98/142/EC (OJ No. L42, 14.2.98, p.40).



setting of the trap is under and in accordance with a licence issued by Natural England, the Natural Resources Body for Wales or Scottish Natural Heritage (as the case may be), and the trap or snare is of a certified type and make and other conditions relating to certification are complied with, or is constructed by the person using it and complies with a design approved by the Secretary of State or the Welsh Ministers (as the case may be) (see section 16(3) together with new 16(3ZA) of the Act). This is subject to the exemption in new section 16(3ZJ) of the Act relating to the grant of individual licences, where in the opinion of the appropriate authority the licence does not undermine the objectives of the Agreement. For this purpose, a trap or snare is one of a certified type and make if its type and make are certified as conforming, when used in accordance with any instructions provided by the manufacturer, to the humane trapping standards set out in Annex 1 to the Agreement.

The Regulations contain a transitional provision, by virtue of which the requirement in new section 16(3ZA) does not apply to Stoat until 1st April 2020.

The Regulations also amend section 8 of the Pests Act 1954 (c. 68), and section 50 of the Agriculture (Scotland) Act 1948 (c. 45), so as to prevent the Minister and the Scottish Ministers, respectively, from approving or authorising the use of a leghold trap in an order made under those sections. This is consequential on the prohibition on the use of leghold traps contained in Council Regulation (EEC) No. 3254/91 prohibiting the use of leghold traps in the Community and the introduction into the Community of pelts and manufactured goods of certain wild animal species originating in countries which catch them by means of leghold traps or trapping methods which do not meet international trapping standards<sup>(a)</sup>.

A full impact assessment of the effect this instrument will have on the costs of business and on the private, voluntary or public sectors is available at [www.gov.uk](http://www.gov.uk) and is annexed to the Explanatory Memorandum which is available alongside the instrument at [www.legislation.gov.uk](http://www.legislation.gov.uk).

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(a) OJ No. L308, 9.11.1991, p.1.

## **Explanatory Memorandum to The Humane Trapping Standards Regulations 2019**

This Explanatory Memorandum has been prepared by the Department for Environment and Rural Affairs and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Cabinet Secretary/Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Humane Trapping Standards Regulations 2019. I am satisfied that the benefits justify the likely costs.

**Hannah Blythyn AM**  
**Minister for Environment**  
**Date: 14 November 2018**

## **PART 1**

### **1. Description**

The Humane Trapping Standards Regulations 2019 (“the Regulations”) amend the [Wildlife and Countryside Act 1981](#) (“the Act”) in order to implement, in Great Britain, requirements contained in the [Agreement on International Humane Trapping Standards](#) between the European Community, the Government of Canada and the Government of the Russian Federation (“the Agreement”). In doing so, the Regulations also implement the equivalent standards contained in the bilateral [Agreed Minute](#) between the European Community and the United States of America.

The Agreement seeks to improve animal welfare standards by prohibiting the use of traps that do not comply with humane trapping standards, by requiring compliant traps to be certified and identified by manufacturers and by requiring trapping to be carried out in accordance with its standards.

The European Union (EU) is a Party to the Agreement. However, there is no implementing legislation at the EU level. Under EU law, the UK as a Member State (MS) is therefore obliged to implement the trapping standards directly through domestic legislation.

For ease, this document will generally refer to the implementation of the Agreement. However, as mentioned above, in doing so, we will also be meeting the commitments in the separate Agreed Minute between the EU and the USA.

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

These Regulations make amendments to an existing UK Act of Parliament, and are being made on a composite basis by the Welsh Ministers (in relation to Wales) and by the Secretary of State (in relation to England and Scotland). These Regulations are subject to affirmative resolution procedure before the National Assembly for Wales and the UK Parliament. As the Regulations will be subject to UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually.

There is no difference in the policy on which these Regulations are based between Wales, England and Scotland. The composite approach allows for a series of coordinated amendments to the Act, which is heavily amended. A single instrument for England, Scotland and Wales offers an effective and efficient mechanism that would mean that further changes could be coordinated with a view to providing greater clarity. A single SI to implement the provisions of an international agreement that will apply throughout Great Britain should assist with the accessibility of relevant provisions for members of the public and others.

### **3. Legislative background**

[Council Regulation \(EEC\) No 3254/91](#) (“the Leghold Trap Regulation”) prohibits the use of leghold traps in the EU. It also prohibits the introduction into the EU of pelts and manufactured goods of certain wild animal species originating in countries which catch them by means of leghold traps or trapping methods which do not meet international humane trapping standards.

The Leghold Trap Regulation defines a ‘leghold trap’ as a device designed to restrain or capture an animal by means of jaws which close tightly upon one or more of the animal's limbs, thereby preventing withdrawal of the limb or limbs from the trap. A leghold trap is something akin to what is commonly referred to as a ‘gin trap’. Gin traps haven’t been approved for use in the UK since the 1950s.

In 1997, the EU concluded the Agreement with Canada and the Russian Federation and a similar Agreed Minute with the USA, for the purpose of establishing humane trapping standards and facilitating trade in fur and fur products. By establishing international standards, these agreements allow Canada, the Russian Federation and the USA (the main importers of wild-sourced pelts) to import pelts and manufactured goods of certain wild animal species into the EU.

These Regulations are required to meet the UK’s obligations under EU law to implement the Agreement. The EU is a Party to the Agreement, however there is no implementing legislation at the EU level. Under EU law, Member States are obliged to ensure that the obligations arising from international agreements entered into by the EU, such as the Agreement, are implemented. This is an obligation of the UK Government and the Welsh Ministers, to the extent that the Welsh Ministers can implement the Agreement by the exercise of any of their functions (section 80 Government of Wales Act 2006). The Welsh Ministers designation in relation to ‘wild animals’ (S.I 2014/1890) for the purposes of section 2(2) of the European Communities Act 1972 enables them to implement the Agreement in relation to Wales.

Article 7 of the Agreement requires the UK to prohibit the use of traps that are not certified as meeting the humaneness standards which are set out in the Agreement, and Article 8 of the Agreement requires the UK to put in place appropriate processes to grant or remove permission for the use of traps.

Article 12 of the Agreement, allows authorisation of the use of traps certified by other Parties, including other Member States, as compliant or else provide justification in writing to the Joint Management Committee (JMC) for not doing so.

The Agreement does not prevent individuals from constructing and using their own traps and snares, provided that such traps comply with designs approved by the relevant competent authority. These traps constructed by individuals are meant to be simple home-made traps for the constructor’s personal use.

In exceptional circumstances the use of non-compliant traps is possible under Article 10 of the Agreement, which permits derogations to be granted on a case

by case basis, provided they are not applied in a manner that would undermine the objectives of the Agreement.

Domestically, section 11 of the Wildlife and Countryside Act 1981 protects all animals from certain methods of killing and taking, with increased protection provided to those species listed in Schedule 6 to the Act. Our approach to implementation has been to amend this section, and the related section 16 (which allows derogation from those prohibitions, by means of licences) to reflect the requirements of the Agreement.

The Regulations improve the clarity of our implementation of the Leghold Trap Regulation. Article 2 of the Leghold Trap Regulation prohibits the use of leghold traps in the EU. This prohibition is implemented in Great Britain by the spring trap approval system under the Pests Act 1954 and the Agriculture (Scotland) Act 1948. In Wales, and in other administrations in Great Britain, there is an understanding that the use of leghold traps would not be approved in a spring trap approval order under the Pests Act 1954.

However, we consider that our reliance on the spring trap approval system for the purposes of implementing Article 2 should be made more transparent. To improve clarity, the regulations amend [section 8 of the Pests Act 1954](#) and [section 50 of the Agriculture \(Scotland\) Act 1948](#) to make it clear that the Welsh Ministers, Secretary of State and Scottish Ministers would not approve or authorise the use of a leghold trap.

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

Under EU law, the UK Government and the Welsh Ministers are obliged to implement the Agreement. The deadline for implementation of the Agreement was July 2016.

These Regulations implement the Agreement using existing legislative frameworks. A 'do nothing option' would result in a continued failure to meet these obligations. In addition, there would be no improvement in animal welfare as there would be no incentive for trap operators to improve their traps.

The Agreement covers trapping of animals for a variety of different reasons and applies to 19 species in total, most of which are not native to the UK. All traps, including cage traps, are covered by the Agreement.

Of the 19 species covered by the Agreement, only five occur in the wild in the UK:

- European Badger, *Meles meles*
- European Beaver, *Castor fiber*
- European Otter, *Lutra lutra*
- Pine Marten, *Martes martes*
- Stoat, *Mustela ermine*

Of these, only the stoat is regularly and widely trapped in the UK and it is the only species for which kill (lethal) traps are commonly used.

The effects of the instrument will primarily impact those who trap stoats in the UK; especially the gamekeeping sector which regularly catch stoats to protect game birds, but also, farmers, pest controllers and conservation agencies. Businesses such as trap retailers, manufacturers and importers, pest control companies, farms and other land managers and traders of fur and fur products derived from trapped animals will also be affected.

In order to give manufacturers sufficient time to produce compliant traps in sufficient quantities and for trap users to replace their existing traps for stoats, Ministers have decided to include a transitional provision which delays implementation for stoat by 12 months (until 1 April 2020). This will provide a clear signal to manufacturers and trap users that they must transition to compliant traps, whilst recognising they will need time to do so. This transitional provision is permitted under paragraph 4.2.3 of the Standards (found in Annex 1 to the Agreement).

These Regulations enable the Welsh Ministers to certify traps and approve the design of traps. There are requirements for the Welsh Ministers to publish lists of traps that they have certified and approved - these will be made publicly available on gov.wales. In certifying traps, we propose to identify the trap by make, model and manufacturer. If the manufacturer of a certified trap were to change, we would need to certify the 'new' trap. Provided they are built using the same design and to the same standards, the certification process will be simple and straightforward (i.e. the submission of a trap to confirm it is to the same design and quality, then adding to certified list).

## **5. Consultation**

A Regulatory Impact Assessment (RIA) has been completed alongside this Explanatory Memorandum. Details of the [consultations undertaken are included in the RIA in Part 2, Section 8.](#)

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

The EU has entered into agreements with Canada, the United States of America and the Russian Federation to improve the welfare standard of traps used to catch or kill some wild animals. These agreements require EU Member States, including the UK, to have a system in place for certifying traps which meet specified humaneness standards and to prohibit the use of uncertified traps for trapping a list of specified species by 22 July 2016.

Parties to the AIHTS (Canada, Russian Federation and the EU) are required to meet on an ongoing basis. Delegates to these meetings make up the JMC, established under the terms of the AIHTS to administer the Agreement. The USA is a permanent observer on the JMC.

## 6. Options

International obligations under the agreements require us to prohibit non-certified traps. A 'do nothing option' or a non-regulatory approach would result in a continued failure to meet these obligations. The European Commission (EC) has already written to Member States reminding them of their obligation to implement the AIHTS and requesting details of implementation.

Our preferred option (Option 1) is to amend existing legislation to prohibit the use of non-certified traps against the five UK species and ensure the trapping of these species can be regulated through the existing licensing system. We intend to implement from 28 March 2019, with the provisions relating to stoat having effect from 1 April 2020 to facilitate transition from non-compliant to compliant traps.

## 7. Costs and benefits

### Summary: Analysis & Evidence

### **Policy Option 1**

**Description:** Implementation of the Agreement on International Humane Trapping Standards (AIHTS) in the UK

### **FULL ECONOMIC ASSESSMENT**

Price Base Year 2016	PV Base Year 2017	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -5.18	High: -0.12	Best Estimate: -1.12

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
<b>Low</b>	0.5		-0.1	<b>0.1</b>
<b>High</b>	6.0		-0.1	<b>5.2</b>
<b>Best Estimate</b>	1.8		-0.1	<b>1.1</b>

#### **Description and scale of key monetised costs by 'main affected groups'**

The main affected group are gamekeepers. They will be required to replace nearly all of their existing stoat traps before 1<sup>st</sup> April 2020 or else stop trapping stoats until they do and this comes to a total cost of £1.7m in the first year or so of the appraisal. This initial cost is offset by a reduced need to replace old traps in the following years, giving a total net present cost of this activity of around £1.0m. Gamekeepers also face a familiarisation cost of around £0.1m in the first year.

Under the High scenario there is also a large one-off cost associated with constructing new tunnels of around £2.6m and replacing traps around £2.3m. Together these factors make the estimated cost of the High scenario nearly five times larger than that of the Best Estimate (Central scenario), although the High

scenario would only represent an accurate view of the world if all of the independent “high” assumptions were true at the same time. This is extremely unlikely.				
<b>Other key non-monetised costs by ‘main affected groups’</b> N/A				
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Benefit (Present Value)</b>
<b>Low</b>	Optional		Optional	<b>Optional</b>
<b>High</b>	Optional		Optional	<b>Optional</b>
<b>Best Estimate</b>				
<b>Description and scale of key monetised benefits by ‘main affected groups’</b> None				
<b>Other key non-monetised benefits by ‘main affected groups’</b> By removing less humane traps from use, implementation will result in improvements to the welfare of the 5 species covered by the Agreement. Furthermore, because stoat trappers catch multiple species in their traps, other small ground pest species will also benefit from more humane stoat traps. Evidence shows that the UK public places a value on higher welfare standards for animals, which suggests non-market benefits associated with implementation of the preferred option.				
Key assumptions/sensitivities/risks			3.5%	
There are two key assumptions which influence the results: (1) The cost of new, compliant traps; (2) Whether new tunnels will need to be constructed when replacing traps. Variation in (1) is reflected in the “low” and “high” scenarios presented here. We assume that new tunnels need not be constructed in both the “low” and “best estimate” scenarios, but allowing for this accounts for the large increase in cost shown in the “high” scenario.				

#### **BUSINESS ASSESSMENT Option 1**

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>Score for Business Impact Target (qualifying provisions only) £m:</b>
<b>Costs: 0.1</b>	<b>Benefits: 0.0</b>	<b>Net: -0.1</b>	



## **Evidence Base for Summary Sheets**

### **Benefits**

The purpose of the AIHTS is to set minimal welfare standards for traps used to capture species commonly trapped for fur, food, pest control purposes or conservation. Implementation in the UK will result in improvements in the welfare of trapped animals by removing traps from use which have a lower standard of welfare.

There is significant evidence that the public value animal welfare. Research by the University of Reading ([Bennet, 2012](#)) conducted a small survey on animal welfare.

They found that 96% of respondents thought we had a moral obligation to safeguard the welfare of animals. They were also willing to pay approximately £5 more per month for meat from farm animals with improved welfare. These values relate to the welfare of farm animals and therefore cannot be applied directly to this case. However, it illustrates a clear preference for products which take animal welfare into account.

Improving the welfare of certain species, by complying with the AIHTS, is therefore likely to generate non-market benefits to the public. Implementation will also mean that we are meeting our EU obligations to comply with the AIHTS.

### **Public cost of licensing, enforcement and implementation**

The existing licensing mechanism would be used to allow compliant traps to be used. The AIHTS simply improves the standards with which traps must comply before they can be used and extends the scope of existing trap offences to two additional species (stoat and beaver). We propose that trapping of stoats using compliant traps should be permitted under a general licence granted by the licensing authority, which in Wales is Natural Resources Wales.

For other AIHTS species, we propose, licences would continue to be granted on a case-by-case basis or, in certain circumstances, under class licences.

In licensing trap use, we would require the licensing authority to only licence a trap or snare which is:

- of a certified type and make;
- identified by its manufacturer by means of a permanent marking as being of a certified type and make<sup>1</sup>; and

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<sup>1</sup> If manufactured by the manufacturer after the SI comes into force

- supplied with instructions for its appropriate setting, safe operation and maintenance; or
- if constructed by the person using it, compliant with a design approved by or on behalf of the Secretary of State for this purpose

In exceptional circumstances, the use of non-AIHTS compliant traps would be possible under licence on a case by case basis in accordance with Article 10 of the Agreement.

The impact on the public sector is likely to be minimal as we already have legal mechanisms in place for stipulating which traps can be used to capture certain species. This will result in negligible costs to the licensing authority and provides the least burdensome approach for trappers. It does not require the introduction of new offences or penalties and we would not anticipate significant additional enforcement costs as a consequence of implementing the Agreement.

### **Training requirements**

The Agreement requires that trappers are trained in the humane, safe and effective use of trapping methods, including new methods as these are developed. The EC has indicated that it is satisfied that instructions and guidance provided with traps when they are sold would meet this requirement. We are satisfied, therefore, that licence conditions of use which require a trapper to follow the manufacturer's instructions, such other instructions prescribed in the licence and the Spring Trap Approval Order, would be sufficient to meet the requirements of the Agreement with no additional training costs being incurred by gamekeepers as a result of implementation.

For home-made traps and snares, users should be required to follow the manufacturer's instructions for the certified design, or if there are no such instructions, in accordance with conditions of use set out in the licence under which the trapping is being permitted.

### **Requirements for manufacturers/retailers**

To be compliant with the Agreement, manufacturers will need to ensure their traps are identified as meeting the standards and provide instructions for their appropriate setting, safe operation and maintenance.

### **Marking of traps**

The identification of certified traps, the permanency and the purpose of such a marking is not prescribed in the Agreement. However, we have concluded that the best route to ensure that manufacturers fulfil their trap marking obligations would be for traps to carry permanent marking which clearly identifies the make and model of trap, and to build the requirement for trap marking into the certification process. Ideally, the marking should be stamped or embossed onto an ID plate permanently attached (e.g. riveted) to the trap itself.

Discussions with UK manufacturers and importers have indicated that these obligations could be fulfilled with minimal additional expense; many manufacturers already permanently mark their traps with data (e.g. their name). We do not have precise information on the proportion of manufacturers who do this. We sought to gather this information during the consultation process but no further reliable data was provided.

We need to consider the approval of traps which have been certified by other signatory countries, which means that the marking requirement would need to be suitably flexible to accommodate different approaches (e.g. Canada have implemented using serial numbers for traps). However, failure to have suitable markings on a trap would provide us with justification for not approving their use in the UK.

This requirement is placed on manufacturers and will therefore only apply to traps that are manufactured after the Regulations are implemented in Great Britain. Traps which are already with distributors or trappers and compliant with the Agreement, will not need to be marked (although trappers may choose to identify the trap as meeting the standards when tagging their traps). It is proposed that a condition of certification will be that the trap must be suitably identified as meeting the standards if manufactured after the implementation date. While this will create some initial enforcement issues, over time the numbers of unmarked traps in circulation will diminish as they are replaced.

### **Provision of user instructions**

There is some flexibility in how manufacturers provide instructions. For example, the instructions could be provided with the trap when purchased or separately on the internet, but we consider that they should continue to be obtainable via the manufacturer for the life of the trap, since traps may be in service for several years and instructions can be damaged or lost over time. All manufacturers/retailers we spoke to already provide this information and we don't expect any significant alteration of instructions will be required to ensure compliance, therefore we would anticipate no additional costs as a result of this requirement.

### **Live capture traps background and cost**

In evaluating whether a trap meets the Agreement, the humaneness assessment considers whether certain behavioural and injury indicators are shown. To be approved, the trap must meet the required standards for 80% of 20 humaneness assessments.

The UK AIHTS species other than stoat and European beaver are expressly protected under the Wildlife and Countryside Act 1981. These species are not frequently trapped, but when they are, it is usually for conservation, disease control or damage prevention purposes, under licence and using a live capture trap. European beaver has very recently begun to re-establish itself in the wild and will be subject to the same kind of trapping activity. Following

implementation of the Agreement, where there is a suitable certified AIHTS-compliant trap available, only a certified trap will be licensed.

We have adequate data on the cage traps most commonly used in the UK for the live capture of the European badger to certify their use under the AIHTS. We also have sufficient data to certify a cage trap model for stoat, pine marten and beaver. We are currently looking to acquire sufficient data to certify a cage trap model for otter.

Initially, our approach would be to rely on the above models and certifications by other AIHTS Parties (including EU Member States) who more commonly trap these species. It is likely that the traps used by UK trappers will be certified under AIHTS elsewhere. This means we can approve the same traps in the UK without cost to Government, manufacturers or end users.

If users have to replace non-compliant traps that they currently use for these species, there may be an additional cost. However, this is unlikely to be significant for a number of reasons:

- 1) Otters, beavers, stoats and pine marten are so rarely live caught that UK trappers will not have a significant stock of traps that need replacing.
- 2) There are several live capture traps certified by the Fur Institute of Canada for beaver. Whilst this is likely to mean the Canadian beaver (*Castor canadensis*) rather than the European beaver (*Castor fiber*), there are no significant morphological differences between the two species such that there are no welfare implications of approving traps for both species simultaneously. Agreement for simultaneous certification for both species would have to be sought from the JMC for AIHTS, but if this is secured, then these beaver traps will be available for use by UK trappers.
- 3) Because live caught animals are often released after capture, suitable medical assessments (to ensure they are fit for release) may already have been recorded such that certification of some UK trap models will be possible without a need for further humaneness assessment. We have already used such data to determine compliance of several cage traps as mentioned above.
- 4) Cage trap models are generally similar to each other, which means that small differences may not have an impact on the humaneness of the trap. Therefore, the certification of one trap model may mean a similar design can be certified without the need for separate humaneness assessment.

If there is no certified live capture trap design available, or insufficient welfare data available to consider certification of a design, or someone wants a trap design to be considered for certification for a particular AIHTS species, we would propose to use individual licences using the derogation purposes under Article 10 AIHTS to permit the use of unapproved live capture traps (e.g. cage

traps) to trap the species concerned, until we have gathered enough welfare data on the trapped animal to be able to determine whether the trap can be certified as AIHTS compliant.

A condition of such a licence will be that a suitable humaneness assessment should be carried out on any animals trapped under the licence and the suitability of the person undertaking the assessment would be recorded in the returnable assessment form.

The expectation would be that the licence applicant would be liable to any cost incurred in providing the data. However, part or even most of the humaneness assessment cost will already be incurred as part of current live capture trap user practice.

In summary, because humaneness assessments already take place, the number of trapping events (and therefore assessments undertaken) and the number of traps needing replacement, will be so small, it is assumed that the cost of implementing AIHTS with respect to live capture traps is likely to be negligible. We sought more information on frequency and cost in the consultation. However, the consultation didn't provide any further reliable data on this issue and for the purposes of this RIA, we will assume the cost here is £0.

### **Lethal traps background**

The Agreement's standards are met if the time to irrecoverable unconsciousness<sup>2</sup> does not exceed a specified time.

#### *Efforts to make available in the UK suitable run-through lethal traps for stoats*

The only country covered by the AIHTS other than the UK that has, to our knowledge, tested kill traps for stoats is Canada. The Fur Institute of Canada has certified over 20 traps as compliant with the AIHTS for stoat. However, the stoat is much smaller in Canada than in the UK (about the size of our weasel) and [scientific evidence from New Zealand](#) and subsequent trap testing in the UK demonstrates that the difference in the size of the two sub-species requires different trapping standards to ensure a humane kill.

Currently, Spring Trap Approval Orders made in England and Wales under the Pests Act 1954, Scotland under the Agriculture (Scotland) Act 1948 and Northern Ireland under the Wildlife (Northern Ireland) Order 1985 permit, by listing, the use of a number of traps for killing stoats. While there are limited data on trap use in the UK we know that the majority of these traps are either no longer manufactured or in use, or have already been assessed against the AIHTS criteria (see table 1).

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<sup>2</sup> Pain is not felt when unconscious

Evidence from the testing of run-through stoat traps has shown that there were no currently approved trap models available in the UK that have been shown to be compliant with AIHTS for European stoats using a run-through configuration.

A technical working group was established by Department of Environment Food and Rural Affairs (Defra) to identify AIHTS compliant traps that are suitable for stoats in the UK. The working group includes user representatives from the British Association of Shooting and Conservation (BASC), Countryside Alliance, the Game and Wildlife Conservation Trust (GWCT), the Moorland Association, the National Gamekeepers' Organisation and Scottish Land and Estates, as well as government organisations (Animal and Plant Health Agency and Science and Advice for Scottish Agriculture).

Besides the traps presently approved for stoat under the Spring Trap Approval Orders, we have also considered and tested several new potentially suitable trap designs, developed as commercial ventures.

As a result, four AIHTS-compliant trap models are to be listed on a new Welsh Spring Trap Approval Order, subject to required clearances, for use as run-through traps to trap stoat, by the time implementation starts. Other new potentially suitable traps are currently undergoing development and, if successful, will undergo approval in due course.

**Table 1: Traps approved for stoat in one or more<sup>3</sup> of the national Spring Traps Approval Orders - status in relation to the Standards.**

Part 1: Approved spring traps which are compliant with AIHTS	
Trap	AIHTS Status
DOC 150	AIHTS compliant. <b>Already approved</b> for use for stoats in baited configuration. Planned to be approved for run-through as well as baited set up.
DOC 200	AIHTS compliant. <b>Already approved</b> for use for stoats in baited configuration. Planned to be approved for run-through as well as baited set up.
DOC 250	AIHTS compliant. <b>Already approved</b> for use for stoats in baited configuration. Planned to be approved for run-through as well as baited set up.
Goodnature A24 rat and stoat trap	AIHTS compliant. Listed on English Spring Trap Order. Planned to be listed on new Welsh Spring Trap Order for use for stoats.
Part 2: Spring Traps which will not be approved for stoats after 1 April 2020	
Trap	AIHTS Status
BMI Magnum 110	Not compliant with AIHTS.
BMI Magnum 116	Not compliant with AIHTS.
Kania Trap 2000	Compliance with AIHTS unknown. It has been agreed with the manufacturer that this will not be tested as it is rarely if ever used for stoats. <b>Will not be approved</b> for stoats <b>unless industry funds testing.</b>

<sup>3</sup> Each Devolved Administration makes their own Spring Trap Approval Orders and the traps approved under them can vary between them at any given time.

Kania Trap 2500	Compliance with AIHTS unknown. It has been agreed with the manufacturer that this will not be tested as it is rarely if ever used for stoats. <b>Will not be approved</b> for stoats <b>unless industry funds testing.</b>
Fenn Mark IV	Not compliant with AIHTS.
Fenn Mark VI	Not compliant with AIHTS.
Solway Mark 4	Compliance with AIHTS unknown. Similar design to Fenn traps.
Solway Mark 6	Compliance with AIHTS unknown. Similar design to Fenn traps.
Springer No. 4	Replica of the Fenn Mark IV therefore not compliant with AIHTS.
Springer No. 6	Replica of the Fenn Mark VI therefore not compliant with AIHTS.
WCS tube trap	Compliance with AIHTS unknown. Rarely if ever used for stoats. Has been certified in Canada but it needs to be tested using European stoats. <b>Will not be approved</b> for stoats <b>unless industry funds testing.</b>
Part 3: Spring Traps which will have their approval withdrawn as soon as possible	
<b>Trap</b>	<b>AIHTS Status</b>
Fenn Mark I	Uncommonly used and almost certainly not compliant with AIHTS.
Fenn Mark II	Uncommonly used and almost certainly not compliant with AIHTS.
Fenn Mark III	Uncommonly used and almost certainly not compliant with AIHTS.
Imbra Mark I	Uncommonly used.
Imbra Mark II	Uncommonly used.
Juby Trap	Uncommonly used.
Lloyd Trap	Uncommonly used.
Sawyer Trap	Uncommonly used.

*Currently approved spring traps which are compliant*

Some of the assessed traps have been shown to be compliant with the AIHTS for European stoat and use of these will continue to be permitted after implementation (see Part 1 of Table 1 above). The DOC and Goodnature A24 traps have been shown to be compliant with the AIHTS. The use of DOC traps is presently on the current Spring Trap Order for Wales and will continue to be permitted after implementation and the Goodnature A24 is to be included in a new Spring Trap Order for Wales. However, in their current approved configuration (as baited traps) they are not suitable for most stoat trapping in the UK. Stoats will avoid entering baited traps when alternative preferred food is readily available which, in the UK, coincides with the main trapping period when prey is abundant.

Unlike the Goodnature trap, the DOC traps are capable of being used in a run-through configuration and we have successfully determined that they can be a compliant trap in this configuration without the need for any alteration of the trap design itself.

In addition to the DOC traps a new trap, the Tully Trap, has been shown to be compliant with AIHTS requirements.

*Currently approved spring traps which are commonly used but are not compliant*

Other assessed traps have been shown to be non-compliant. Published [trap testing data from New Zealand](#) indicates that Fenn IV and VI traps (the most commonly used type of stoat trap) fail to meet the AIHTS for European stoats. Given the similarity in design, expert opinion is that it is highly likely that other Fenn-type traps (e.g. Springer's and Solway's) will also not be compliant with AIHTS. In the light of this evidence, we will not test these traps against the AIHTS in the UK.

We have tested the BMI Magnum 55, 110 and 116 and also the Koro rodent snap trap and found that they do not meet the AIHTS for stoats.

These commonly available but non-compliant traps (see Part 2 of Table 1 above), will no longer be approved for use in targeting stoats after implementation.

*Currently approved spring traps which are rarely used and are not compliant*

We should be restricting the continued use of non-compliant traps to the minimum necessary to enable the continued trapping of stoats prior to implementation. The remaining traps approved for stoat have been out of production for some time and are not used in meaningful numbers to trap any permitted target species. These traps are identified in Part 3 of Table 1.

Even if a sufficient number of traps were available for humaneness assessment (a minimum of 10 is required), we do not propose to test them against the standards. Doing so would pose serious welfare issues and would be contrary to our approach to trap testing. Moreover, it would not be a responsible use of public money to test traps that we have every reasonable expectation will fail. We propose in the new Spring Trap Order for Wales to withdraw their approval for all current target species as soon as possible.

We propose that the trapping of stoats using AIHTS compliant traps should be permitted under a general licence<sup>4</sup> to minimise the licensing impact on both trappers and licensing authorities.

In exceptional circumstances, the use of non-AIHTS compliant stoat traps would be possible under licence on a case by case basis in accordance with Article 10 of the Agreement.

### **Lethal traps cost**

As a result of implementation, a number of traps will no longer be permitted for killing stoats. Most stoats caught in the UK are trapped by gamekeepers to protect game birds; therefore, the biggest impact of this will be on the gamekeeping sector as well as trap suppliers and manufacturers.

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<sup>4</sup> You don't need to apply for these licences but you must come within the terms of the licence and comply with its conditions



Lethal traps set for stoats are primarily general purpose run-through spring-traps designed to catch animals as they travel through their usual pathways across the landscape. The aim of the trapper may not be to catch one particular species when setting the trap but to catch a number of pest species for which the trap is approved. The traps listed in Part 2 of Table 1, which are not compliant with AIHTS for stoats, will still be permitted for use against other species, such as rats, weasels and squirrels.

Once the Agreement is implemented for stoat, trap users who set traps for those species in locations where a stoat may also be caught may, depending on the risk of catching a stoat, have to use AIHTS-compliant traps. This consideration will be part of the risk assessment that trap users already undertake when assessing the risk of capturing non-target species. Most pest control activity doesn't target stoat and occurs where stoats are unlikely to occur, therefore the pest control industry will be largely unaffected by these changes.

In most cases, the loss of the non-compliant traps will have a negligible economic impact as they are rarely, if ever, used. However, gamekeepers commonly use Fenn and Fenn-type traps such as the Springers and Solways. Gamekeepers will need to replace these traps with those that are compliant with the AIHTS which will result in transitional costs to ensure compliance with the AIHTS by the 1 April 2020 deadline.

There is no available information on the numbers of traps currently in circulation; however, an estimate of the number of traps that may need replacing can be made using annual sales figures. From discussions with manufacturers we can estimate the number of Fenn, Solway and Springer traps sold in the UK as well as their value. Manufacturers were unable to differentiate between the two types of Springer traps or the two types of Fenn traps and could only give overall sales figures. It was assumed that they were sold in the same proportion as the Solway traps for the purposes of these calculations. Manufacturers have estimated that only 20% of their trade in traps is with the gamekeeping sector, so we have reduced the reported annual sales figures by 80%.

These figures only represent the number of traps which have to be replaced each year, and not the total number/value of traps in circulation. Traps generally last a long time and are only replaced if damaged, stolen, or lost or if they have reached the end of their useable life. From discussion with trap users, we assume an average lifespan of 10 years for a trap, allowing us to calculate the number and value of traps in the game keeping sector that may need to be replaced with AIHTS-compliant traps. If a trap lasts 10 years, then in 10 years the entire stock of traps would have been replaced. We have therefore assumed a 10% per year replacement rate.

## **Table 2. Trap sales, use and population estimates for the UK**

Trap	Annual Sales for Gamekeeping	Cost per unit	Value	Estimated stock of traps in use
Springer 4	2,570	£7.20	£18,500	25,700
Springer 6	430	£8.70	£3,700	4,300
Fenn Mk4	5,140	£9.00	£46,300	51,400
Fenn Mk 6	860	£9.00	£7,700	8,600
Solway 4	1,200	£7.96	£9,600	12,000
Solway 6	200	£8.50	£1,700	2,000
<b>Total / Weighted Average</b>	<b>10,400</b>	<b>£8.41</b>	<b>£87,500</b>	<b>104,000</b>

Source: Personal communications from manufacturers

### *Trap Replacement*

Under option 1, we assume that the stock of existing non-compliant traps will be replaced immediately (subject to availability of compliant traps). One of the replacement trap suitability criteria set out in the implementation plan is the retail cost. From initial consideration of candidate traps and discussion with their designers, we anticipate there will be a suitable replacement trap available which will cost approximately £17.00 per unit or about double the price of the average cost of existing, non-compliant, traps.

Replacing the stock of existing traps, in the UK, in the first year or so, with relatively expensive new traps, leads to a large one-off cost of around £1.7 million. However, there is an offsetting saving to gamekeepers over the following ten years, as they no longer have to undertake regular replacement of the older traps. Overall the change in pattern and unit cost of trap replacement leads to a net present cost of around £1.0 million.

The rate at which new AIHTS-compliant traps can be manufactured is limited. With an industry estimated best production rate<sup>5</sup> of 50,000 new traps a year it could take several years to replace all the traps in the UK set to catch stoats. It may not, therefore, be possible for sufficient AIHTS-compliant stoat kill-traps to be available before the proposed implementation date. We sought comments and further evidence on this issue in the consultation paper. However, the consultation did not provide any further reliable data on this issue.

If a trapper is not able to replace their Fenn-type traps by the implementation deadline, their options would be to:

- 1) seek licensed use of their illegal traps. These would only be granted in exceptional circumstances.
- 2) choose not to target stoats whilst trapping other pest species
- 3) purchase and use compliant but less effective traps (e.g. baited traps)

### *Familiarisation*

<sup>5</sup> Production rate will be initially lower as investment in production capacity will be driven by demand and market share with competitors, which will not be immediately apparent.

Trappers will need to be aware which traps are compliant with the legislation and review their existing stocks. We estimate that this will take 1 hour to familiarise themselves with the guidance and ½ an hour to check the make and model of their stocks of traps. Estimated hourly rates for gamekeepers range between £6.73 and £9.62 an hour depending on age and level of responsibility, according to the [National Careers Service](#). The Annual Survey of Hours and Earnings gives a wage of £8.30 for “Elementary Agricultural Occupations” and £9.49 for “Skilled Trades Occupations: Agricultural and Related Trades”. Given this range of estimates, we take a mid-point between the two ASHE estimates to represent the relevant average labour costs, and increase it by 30% to reflect non-wage labour costs. This gives an estimate of £11.56 per hour.

The National Game Keepers’ Organisation estimates that there are 7,000 game keepers in the UK. Therefore, the total familiarisation cost for the UK sector is around £0.1 million.

As required by the Spring Trap Approval Orders, Fenn-type traps are set in tunnels. The trapper may need to modify or even build new trap tunnels depending on replacement trap design. However, one of the replacement trap suitability criteria set out in the implementation plan is that the replacement trap should be comparable in size to those traps currently used to allow setting in existing tunnels/locations.

We do not have data on the proportion of tunnels which may or may not need modifying or the scale of the work involved, but at least one of the replacement traps which will be certified first will fit in the majority of existing tunnels. We assume that new tunnels need not be constructed in both the “low” and “best estimate” scenarios, but allowing for this accounts for the large increase in cost shown in the “high” scenario, based on an hour’s work and £8.00 of required material.

### *Total*

The overall net present cost faced by gamekeepers in complying with AIHTS is around £1.1 million.

We sought comments and further evidence on the issue of lethal trap use in the consultation paper. However, the consultation did not provide any further reliable data on the number of tunnels that may need modifying to accommodate replacement traps.

### **Sensitivity Analysis**

The analysis above is based on our central estimates for the various assumptions underlying the calculations. In order to test the sensitivity of the result to errors in our assumptions, we have analysed a range of plausible alternative values for the assumptions. The complete set of assumptions is given in table 3.

**Table 3: Range of assumptions used**

<b>Assumption</b>	<b>Low</b>	<b>Central</b>	<b>High</b>
1. Gamekeeper wage (including 30% non-wage costs)	£10.79	£11.56	£12.34
2. Number of gamekeepers	7,000	7,000	8,000
3. Familiarisation time (hours)	1	1.5	2
4. Proportion of traps sold for gamekeeping	15%	20%	25%
5. Trap lifespan (years)	7	10	10
6. Modify trap tunnels (hours per trap)	0	0	1
7. Modify trap tunnels (£materials)	0	0	£8.00
8. Average existing trap cost	£8.41	£8.41	£8.41
9. Average new trap cost	£8.41	£16.83	£25.24
10. Stock of existing traps	54,600	104,000	130,000

**Notes:**

- 1) The range for gamekeeper wages comes from using values for “elementary” and “skilled” agricultural trades from ASHE for Low and High, respectively.
- 2) The central estimate for the number of gamekeepers comes from membership of a trade body, so we assume that, even in the Low scenario, there are no fewer gamekeepers than members of that body. We allow for the possibility that there are some non-member gamekeepers in the High scenario.
- 3) Our central estimate of the familiarisation time is made up of one hour to read the relevant literature and half an hour to check records relating to the types of existing traps in use. We allow for this estimate, which is derived from expert trap user opinion, to be adjusted either up and down over a plausible range.
- 4) Based on discussion with expert trap users, our best estimate of the trap life is ten years, though we allow for the possibility that traps have shorter lives, which reduces the corresponding estimate of the total stock of traps in use.
- 5) One of the replacement trap suitability criteria set out in the implementation plan is that the replacement trap should be comparable in size to those traps currently used to allow setting in existing tunnels/locations. From consideration of candidate traps and discussion with their designers, our opinion is that there will be little need to adjust the size or shape of the structures in which traps are placed, as there will be a strong incentive for manufacturers to design traps which are of similar dimensions to existing traps. However, the use of internal baffles to control entry through the trap may in some cases require some tunnel modification, so we allow for some time spent fitting new traps into modified old structures.
- 6) As for the previous point, if modifications are required to fit new traps, there may be the need to purchase materials for use in that process, so we allow for this in the High scenario.
- 7) The existing trap cost is derived from commercial information on individual trap costs available on trap retailer websites. This is combined with the sales figures in table 2 to generate a weighted average cost.

- 8) It is possible that new, compliant, traps will be more expensive than existing traps and we treat this as the Central scenario, where the trap cost doubles. We allow for the cost to either remain constant or increase to three times the existing trap cost in the other scenarios.
- 9) The stock of existing traps is determined entirely by assumptions on the number of traps sold, the percentage bought for gamekeeping and the lifespan of the traps.

Table 4 presents the estimated net present costs for lethal traps, based on the different scenarios. The cost of implementing AIHTS with respect to live capture traps is likely to be negligible and for the purposes of this RIA, we will assume the cost here is £0 in all the different scenarios.

**Table 4: Scenario net present cost estimates**

	<b>Low</b>	<b>Central</b>	<b>High</b>
Trap Replacement	£44,000	£997,000	£2,340,000
Familiarisation	£76,000	£121,000	£197,000
Tunnel modification	£0	£0	£2,644,000
<b>Total</b>	<b>£120,000</b>	<b>£1,118,000</b>	<b>£5,181,000</b>

The Central scenario is dominated by the trap replacement cost which reflects the increase in price of the traps used by gamekeepers.

Trap replacement in the Low scenario has a relative small cost because there is no difference in price between the existing and replacement traps. The residual cost is a result of gamekeepers having to bring forward the regular replacement of traps into one year.

In the High scenario, the trap replacement cost is significantly higher due to both an increase in the estimated number of traps needing replacement and a higher price for new traps. In addition, the costs associated with modifying existing trap placements add a substantial further cost. Together these factors make the estimated cost of the High scenario nearly five times larger than that of the Central scenario.

These scenarios are defined in such a way that they describe the widest possible range of outcomes. For example, the High scenario would only represent an accurate view if all of the independent “high” assumptions were true at the same time. This is extremely unlikely, so the High and Low scenario estimates define the bounds of the possible cost outcomes.

### **Small business impacts**

Due to the nature of gamekeeping, the cost of implementation will primarily fall to small businesses. The policy objectives and benefits cannot be achieved without the impact to small business. Moreover, the AIHTS has no derogation options which would allow us to reduce its financial impact on this sector. To minimise these costs we aim to take the least burdensome approach to implementation where possible, for example, by proposing that the use of AIHTS-certified traps for stoat should be permitted via a general licence.

We have agreed with stakeholders a delay to the implementation of the AIHTS (as permitted under the Agreement) to give the sector sufficient time to obtain new compliant traps.

Trap manufacturers will be unlikely to commit to the cost of producing and marketing new traps which have passed AIHTS standards until the SI approving the traps for sale and use<sup>6</sup> has been made. This is currently anticipated to be December 2018.

We will maintain constant contact with industry bodies and provide information on the traps we know to be compliant with the AIHTS as soon as testing of the traps has been completed.

This will maximise the length of time manufacturers have to invest in production and gamekeepers have to transition to the use of new traps, where it is necessary for them to do so.

### **Charities or voluntary bodies**

The impact on charities or voluntary bodies is likely to be minimal as few if any will be involved in trapping, especially of stoats.

## **8. Consultation**

Following several years of informal consultation with key stakeholders (trap users, retailers and manufacturers, welfare groups), DEFRA, Welsh, Scottish and Northern Irish government officials, the UK-wide 6-week public consultation on implementation of the Agreement ended on 30 April 2018. While stakeholders were broadly supportive of welfare improvements they opposed the implementation of the Agreement for two reasons:

- 74% of respondents (mostly gamekeepers and trappers) were opposed to the proposed implementation date of January 2019. They believe there will not be sufficient numbers of compliant stoat traps available in time. The Game and Wildlife Conservation Trust, the British Association of Shooting and Conservation and the National Farmers' Union support a delay in implementation, but have not proposed an alternative date. The National Gamekeepers' Organisation proposed a delay of three years, whilst individual gamekeepers called for delays of up to 5 years.
- For many welfare groups, there was a general disagreement with implementation on the grounds of the perception that the Agreement facilitates the wider use of traps and international trade in fur. However, the obligations in the Agreement bind the UK already (via the EU), and we are obliged to implement the requirements of the Agreement under EU law.

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<sup>6</sup> A Spring Traps Approval Order made under the Pests Act 1954.

A [summary of consultation responses](#) has been published, with a link from the Welsh Government consultation webpages.

Such was the strength of feeling expressed by the consultation respondents that the government has concluded that implementing in January 2019 would not provide sufficient time for manufacturers to produce compliant traps in sufficient quantities or for trap users to replace their existing traps for stoats.

Ministers have decided to implement AIHTS in March 2019 but include a transitional provision for stoat which delays implementation for stoat for a further year (until April 2020). This will provide a clear signal to manufacturers and traps users that they must transition to compliant traps, whilst recognising they will need time to do so.

## **9. Competition Assessment**

### **Competition filter**

- Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share? Yes
- Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share? Yes
- Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share? Yes
- Q4: Would the costs of the regulation affect some firms substantially more than others? Yes
- Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation? Yes
- Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet? No
- Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet? No
- Q8: Is the sector characterised by rapid technological change? No
- Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products? Yes

As a result of implementation of AIHTS for stoats, 1 April 2020, a number of traps will no longer be permitted for killing stoats. Part 2 of Table 1 lists which traps are currently approved but are not compliant with AIHTS for stoats. However, they will still be permitted for use against other species, such as rats, weasels and squirrels but should not be set in locations where a stoat would be at risk of being caught. Kania and WCS tube traps are rarely used for stoats. The BMI magnum trap is manufactured in the USA and is rarely used for stoats in the UK. The Fenn traps are manufactured by DB Springs in England, Springer traps by AB County Products Ltd in England and the Solway traps by Solway Feeders Ltd in Scotland. For DB Springs and AB County Products, production of these traps is a significant part of their business, less so for Solway Feeders Ltd who are stockists, suppliers and manufacturers of a wide

range of products not just traps. There are no Wales-based manufacturers of these traps.

In most cases, the loss of the non-compliant traps will have a negligible economic impact as they are rarely, if ever, used. In the UK, the commonly used traps are Fenn and Fenn-type traps such as the Springers and Solways. For the UK, Table 2 lists trap sales, use and estimated stock for these commonly used traps.

At the initial stages of bringing forward this legislation, through e-mail and telephone conversations, trap manufacturers were contacted and informed of the implications of the AIHTS requirements. In January 2016, DEFRA held a meeting with trap users, manufacturers and retailers to discuss the implications of implementing the agreement. Out of this meeting, an implementation plan was drafted and signed off by UK government and representatives of trap manufacturers, retailers and users. Welsh Ministers later agreed to this planned approach.

In relation to design and use of a replacement trap, the main success criteria of the implementation plan are that, by the time AIHTS is implemented, at least one AIHTS-compliant killing trap model must be available to control stoat, this trap must be useable in a run-through or baited configuration, be approved for stoat, rat and weasel, and be available on the UK market in sufficient quantities and at a reasonable price. It should also be comparable in size to those currently available to allow setting in existing tunnels/locations.

This meeting highlighted some approved traps that could potentially meet the above criteria, however, testing of these traps proved they were not AIHTS compliant. So, in February 2017, a notice was issued in the specialist gamekeeper press calling for the development of new trap designs. The notice outlined that Defra had agreed to match funding provided by the countryside organisations and devolved administrations to finance the testing of new trap designs.

A steering committee consisting of representatives from each contributing organisation, would assess submitted trap designs and score them according to their likelihood of passing AIHTS and meeting the other success criteria of the implementation plan, the ease of setting and the build quality.

The highest scoring traps would then be prioritised for formal testing, with a view to having at least one approved, AIHTS compliant, run-through stoat trap available for summer 2018. The manufacturers of lower scoring traps, with potential for scoring higher if developed, were given feedback from the group with a view to re-submitting improved designs.

To be considered for testing, any new trap had to exist as a physical prototype, with ten examples required to complete the AIHTS testing. Any trap manufacturer or developer who had a design to submit for testing was encouraged to contact APHA for further technical advice. Trap manufacturers



were also advised that this was a short-term initiative with a strict time frame and they needed to get in touch as soon as possible.

Subsequently, existing trap manufacturers, including those adversely affected by implementation of the agreement, and private individuals submitted several designs for consideration. Both DB Springs and Springers manufacturers of Fenn type spring traps submitted designs which either failed to meet the requirements or are still subject to ongoing consideration.

The only traps that are currently compliant with AIHTS requirements and meet the success criteria in run-through configuration are the DOC traps and the Tully Trap. DOC traps are manufactured in New Zealand. Tully is manufactured by an English company which isn't a traditional trap manufacturer and produces other unrelated products. Between them, these companies will, subject to commercial success, have over 50% of the market share, although future successful trap designs might eat into that market share. Other established trap manufacturer companies were given the opportunity to submit appropriate traps and have not done so.

#### **10. Post implementation review**

Welsh Government will monitor the measures introduced by this instrument by keeping under review the level and nature of prosecutions in respect of illegal trap use under the 1981 Act. This will be done through liaison with the Police and the Crown Prosecution Service.

## SL(5)276 – The Zootechnical Standards (Wales) Regulations 2018

### Background and Purpose

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These Regulations supplement, and make provision for the enforcement of, Regulation (EU) 2016/1012 of the European Parliament and of the Council on zootechnical and genealogical conditions for the breeding, trade in and entry into the Union of purebred breeding animals, hybrid breeding pigs, and the germinal products thereof (“the Animal Breeding Regulation”).

These Regulations revoke and replace the Horses (Zootechnical Standards) (Wales) Regulations 2006 and the Zootechnical Standards (Wales) Regulations 2015. They also amend the Trade in Animals and Related Products (Wales) Regulations 2011 to make provision in respect of border checks in certain circumstances by the Animal Breeding Regulation.

### Procedure

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Negative.

### Technical Scrutiny

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

### Merits Scrutiny

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

### Implications arising from exiting the European Union

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These Regulations implement and supplement various EU obligations in relation to zootechnical and genealogical conditions, and therefore these Regulations 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 provides that “agriculture – zootech” is a policy area likely to be subject to regulations made under section 12 of the EU (Withdrawal) Act 2018. Therefore, the law covered by these Regulations is likely to be an area of EU law that is frozen while common frameworks are put in place.

### Government Response

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No government response is required.

### Legal Advisers





## SL(5)280 – The Plant Health etc (Fees) (Wales) Regulations 2018

### Background and Purpose

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These Regulations, which apply to Wales, specify fees payable to the Welsh Ministers in relation to plant health services and the certification of seed potatoes, fruit plants and fruit plant propagating material. These Regulations revoke and replace the Plant Health Fees (Wales) Regulations 2014 (SI. 2014/792).

### Procedure

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Negative

### Technical Scrutiny

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

### Merits Scrutiny

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

### Implications arising from exiting the European Union

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These Regulations implement various EU obligations in relation to Plant Health and therefore, these Regulations 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 provides that “Plant health, seeds and propagating material” is a policy area likely to be subject to regulations made under section 12 of the EU (Withdrawal) Act 2018. Therefore, the law covered by these Regulations is likely to be an area of EU law that is frozen while common frameworks are put in place.

### Government Response

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No government response is required.

### Legal Advisers

**Constitutional and Legislative Affairs Committee**

**20 November 2018**





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## WRITTEN STATEMENT BY THE WELSH GOVERNMENT

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**TITLE**            **The Control of Mercury (Amendment) (EU Exit) Regulations 2018**

**DATE**            **12 November 2018**

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

### **The Control of Mercury (Amendment) (EU Exit) Regulations 2018**

#### **The [retained EU] Law which is being amended**

##### **EU Directly Applicable Legislation**

- Regulation (EU) 2017/852 of the European Parliament and of the Council on mercury, and repealing Regulation (EC) No 1102/2008
- Commission Implementing Decision (EU) 2017/2287 specifying the forms to be used in relation to the import of mercury and of certain mixtures of mercury pursuant to Regulation (EU) 2017/852

##### **Domestic Legislation**

- Control of Mercury (Enforcement) Regulations 2017/1200

##### **EU**

- EEA Agreement

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

The SI relating to the Control of Mercury is within devolved competence. However, 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's general principle is that it is appropriate that in the particular circumstance of exiting the EU, the UK Government can legislate on our behalf in a large number of statutory instruments.

#### **The purpose of the amendments**

The Control Mercury (Amendment) (EU Exit) Regulations 2018 are to be introduced by Department for Environment Food and Rural Affairs (DEFRA) and are all negative procedure

SIs. The purpose of the **Control Mercury (Amendment) (EU Exit) Regulations 2018** is to make the necessary amendments to the regime, which controls mercury and compounds of mercury that may be released into the environment as a result of human activities. Due to the on-going international requirements under the Minamata Convention, it is necessary to amend the retained EU law to ensure the UK is meeting its international obligations.

Without the amendments contained in the EU Exit SI, the legislation would contain a number of deficiencies, which could create legal uncertainty for those required to comply with the obligations.

### **Why consent was given**

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU.

The SIs and accompanying Explanatory Memorandums, setting out the effect of each amendment is available here: <https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments>

## UK MINISTERS ACTING IN DEVOLVED AREAS

### **The Control of Mercury (Amendment) (EU Exit) Regulations 2018**

*Laid in the UK Parliament: 8 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	20 November 2018
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	19/20 November 2018
Date sifting period ends in UK Parliament	26 November 2018
Written statement under SO 30C:	Paper 10
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**

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

The purpose of the Control Mercury (Amendment) (EU Exit) Regulations 2018 is to make the necessary amendments to the regime, which controls mercury and compounds of mercury that may be released into the environment as a result of human activities. Due to the on-going international requirements under the Minamata Convention, it is necessary to amend the retained EU law to ensure the UK is meeting its international obligations.

Without the amendments contained in the EU Exit SI, the legislation would contain a number of deficiencies, which could create legal uncertainty for those required to comply with the obligations.

The amendments in these Regulations do not make any divergence in current policy with the European Union.

Legal Advisers agree with the statement laid by the Welsh Government dated 12<sup>th</sup> November 2018 regarding the effect of these Regulations. The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.





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## WRITTEN STATEMENT BY THE WELSH GOVERNMENT

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<b>TITLE</b>	<b>The Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2018</b>
<b>DATE</b>	<b>12 November 2018</b>
<b>BY</b>	<b>Julie James AM, Leader of the House and Chief Whip</b>

### **The Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2018**

**The [retained EU] Law which is being amended**

#### **EU Directly Applicable Legislation**

- Regulation (EC) No 850/2004 of the European Parliament and of the Council

#### **Domestic Legislation**

- Persistent Organic Pollutants Regulations 2007/3106 which enforces the EU regulation in the UK.

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

The SIs relating to Persistent Organic Pollutants are within devolved competence. However, 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's general principle is that it is appropriate that in the particular circumstance of exiting the EU, the UK Government can legislate on our behalf in a large number of statutory instruments.

#### **The purpose of the amendments**

The Persistent Organic Pollutants (EU Exit) Regulations 2018 are to be introduced by Department for Environment Food and Rural Affairs (DEFRA) and are all negative procedure SIs.

The purpose of the **Persistent Organic Pollutants (EU Exit) Regulations 2018** are to ensure that the statute book remains functional following the UK's exit from the EU. The purpose of the amendments is to maintain the operability of regulations, which implement the Stockholm Convention through the elimination and restriction of the use of chemicals, which have been internationally recognised as toxic, persistent, bio-accumulative and highly mobile. The amendments are necessary to ensure the current regime can continue to function after exit day.

The international requirements will continue post membership of the EU, it is necessary to ensure the domestic regime is compliant with international obligations, which requires amendments to both domestic and EU directly applicable legislation to maintain compliance.

**Why consent was given**

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU.

The SIs and accompanying Explanatory Memorandums, setting out the effect of each amendment is available here: <https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments>

## UK MINISTERS ACTING IN DEVOLVED AREAS

### **The Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2018**

*Laid in the UK Parliament: 8 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	20 November 2018
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	19/20 November 2018
Date sifting period ends in UK Parliament	26 November 2018
Written statement under SO 30C:	Paper 12
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**

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

These Regulations make corrections to ensure that Regulation (EC) No 850/2004 of the European Parliament and of the Council on persistent organic pollutants functions once we leave the EU. This will maintain the operability of regulations which implement the Stockholm Convention through the elimination and restriction of the use of chemicals that have been internationally recognised as toxic, persistent, bio-accumulative and highly mobile.

These Regulations also amend the Persistent Organic Pollutants Regulations 2007 (S.I 2007/3106), to enable those regulations to continue to operate following the UK's exit from the EU.

Legal Advisers have reviewed the statement laid by the Welsh Government dated 12 November 2018. Legal Advisers agree with the statement laid by the Welsh Government regarding the effect of these Regulations.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.



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## WRITTEN STATEMENT BY THE WELSH GOVERNMENT

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**TITLE**        **The INSPIRE (Amendment) (EU Exit) Regulations 2018**  
**DATE**        **12 November 2018**  
**BY**            **Julie James AM, Leader of the House and Chief Whip**

### **The INSPIRE (Amendment) (EU Exit) Regulations 2018**

**The [retained EU] Law which is being amended**

#### **EU Directly Applicable Legislation**

- Commission Regulation (EC) No. 1205/2008 implementing Directive 2007/2/EC of the European Parliament and of the Council as regards metadata
- Commission Decision 2009/442/EC implementing Directive 2007/2/EC of the European Parliament and of the Council as regards monitoring and reporting
- Commission Regulation (EC) No. 976/2009 implementing Directive 2007/2/EC of the European Parliament and of the Council as regards the Network Services
- Commission Regulation (EU) No. 268/2010 implementing Directive 2007/2/EC of the European Parliament and of the Council as regards the access to spatial data sets and services of the Member States by Community institutions and bodies under harmonised conditions – **REVOKED**
- Commission Regulation (EU) No. 1089/2010 implementing Directive 2007/2/EC of the European Parliament and of the Council as regards interoperability of spatial data sets and services

#### **Domestic Legislation**

- The INSPIRE Regulations 2009/3157 England, Wales and Northern Ireland.

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

INSPIRE is listed as reserved in Schedule 7A of Government of Wales Act 2006 and as such consent was not required. Whilst INSPIRE is reserved it relates to environmental data which is within devolved competence. The approach taken to date acknowledges flexibilities in the approach that organisations and administrations take in complying with standards Seeking consent to the SI recognises this flexibility and what the Welsh Government are already doing in this area.

### **The purpose of the amendments**

The INSPIRE (Amendment) (EU Exit) Regulations 2018 are to be introduced by Department for Environment Food and Rural Affairs (DEFRA) and is a negative procedure SI.

The purpose of the INSPIRE (Amendment) (EU Exit) Regulations 2018, is to make the modifications necessary to continue to apply the current rules concerning Spatial Data Infrastructures (SDI's) operated by Public Authorities set out in law post EU Exit. The amendments are to ensure the legal operability of the Inspire regulations after EU Exit.

### **Why consent was given**

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU.

The SIs and accompanying Explanatory Memorandums, setting out the effect of each amendment is available here: <https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments>

## UK MINISTERS ACTING IN DEVOLVED AREAS

### The INSPIRE (Amendment) (EU Exit) Regulations 2018

*Laid in the UK Parliament: 8 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	20 November 2018
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	19/20 November 2018
Date sifting period ends in UK Parliament	26 November 2018
Written statement under SO 30C:	Paper 14
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

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of the European Union (Withdrawal) Act 2018 and paragraph 21 of Schedule 7 to it.

In order to allow the UK to continue to operate the spatial data infrastructure established by the INSPIRE Directive, 'deficiencies' in the INSPIRE Regulations 2009 and associated retained EU law that arise as a consequence of EU Exit are being 'corrected'. This ensures legal operability of the INSPIRE Regulations 2009 and the retained EU law after EU Exit.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 12 November 2018 regarding these Regulations:

These Regulations amend the following Commission Regulations: 1205/2008, 2009/442 and 976/2009 and 1089/2010 as well as the INSPIRE Regulations 2009. The Commission Regulations will be retained direct EU legislation by virtue of section 3 of the European Union (Withdrawal) Act 2018. Amongst other amendments, these Regulations amend the Commission Regulations to replace references to 'Member States' with references to 'appropriate authority'. This is defined as the Secretary of State in relation to England, Wales and Northern Ireland and the Scottish Ministers in relation to Scotland. Neither the statement of the Welsh Government nor the Explanatory Memorandum of the UK Government explains why Wales is being treated differently from Scotland.

The answer lies in the implementation of the INSPIRE Directive (2007/2/EC). It was transposed by the INSPIRE Regulations 2009 and the INSPIRE (Scotland) Regulations 2009. Accordingly, there is already a separate legislative framework for Scotland, which is retained by the present Regulations. It would not have been appropriate to use 'correcting' legislation to devolve responsibilities to the Welsh Ministers. Nevertheless, it would have been helpful if that had been explained in the Welsh Government's statement.

Subject to the observations above, the above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.





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## **WRITTEN STATEMENT BY THE WELSH GOVERNMENT**

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<b>TITLE</b>	<b>Provision of Services (Amendment etc.) (EU Exit) Regulations 2018</b>
<b>DATE</b>	<b>12 November 2018</b>
<b>BY</b>	<b>Julie James AM, Leader of the House and Chief Whip</b>

### **Provision of Services (Amendment etc.) (EU Exit) Regulations 2018**

SO30C –SI laid in Parliament which amends legislation in a devolved area

### **The EU Law which is being amended**

The EU Services Directive (2006/723/EC), which is implemented into UK legislation by the Provision of Services Regulations 2009.

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

This SI does not affect the legislative competence of the National Assembly for Wales or the Welsh Ministers' executive competence.

### **The purpose of the amendments**

This is a corrective SI for the scenario where the UK exits with 'no deal' and would no longer be bound to comply with the Services Directive.

The approach to corrections of the deficiencies in the Regulations is that EEA businesses will be treated like other third country service providers and will no longer have preferential access rights and protections within the UK. It would be essential to ensure non-discrimination under a WTO trading scenario. Competent Authorities may thereafter regulate EEA businesses in the same way as they regulate third country service providers.

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?keywords=&laid\\_date%5Bfrom%5D=&laid\\_date%5Bto%5D=&sifting\\_status%5B%5D=open](#)

### **Why consent was given**

Normally, it is the policy of the Welsh Government that where powers lie with the Welsh Ministers, it is the responsibility of the Welsh Ministers to legislate for Wales. However, in the extraordinary circumstances of the UK's withdrawal from the EU, Welsh Ministers recognise the need for the UK Government to legislate in certain devolved areas in order to have a fully operational statute book on exit day.

Welsh Ministers are therefore giving consent for Provision of Services (Amendment etc.) (EU Exit) Regulations 2018 on this occasion.

## UK MINISTERS ACTING IN DEVOLVED AREAS

### The Provision of Services (Amendment etc) (EU Exit) Regulations 2018

*Laid in the UK Parliament: 12 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	27 November 2018
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	W/C 26 November 2018
Date sifting period ends in UK Parliament	27 November 2018
Written statement under SO 30C:	Paper 16
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

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of the European Union (Withdrawal) Act 2018. These Regulations make a series of amendments to legislation in the field of the provision of services to ensure that the law in this area continues to operate after the UK leaves the European Union. In particular, these Regulations amend the Provision of Services Regulations 2009 (“**the 2009 Regulations**”), certain domestic insolvency legislation (some relating to Northern Ireland only) and the Employment Agencies Act 1973, and revokes Commission Decision 2009/793/EC concerning the exchange of information between Member States.

The EU Services Directive (2006/123/EC) (“**the Directive**”), which is primarily implemented into UK law by the 2009 Regulations, sets out overarching principles on the regulation of service provision in the Single Market and aims to make it easier for businesses to establish and provide

services in other European Economic Area (“**EEA**”) Member States. It applies to a wide range of non-financial services.

Following the UK’s departure from the European Union in March 2019, the Directive will no longer apply to the UK or to EEA businesses or individuals providing services in the UK. These Regulations ensure that regulatory principles that apply to the provision of services continue to operate effectively after exit day.

The approach taken by these Regulations is designed to ensure that the UK regulates EEA Member State businesses in the same way that it would regulate other third country service providers. The removal of certain protections for EEA service providers will enable the UK to meet commitments under World Trade Organisation (“**WTO**”) rules; specifically, the WTO’s “most favoured nation” principle, which prevents countries from discriminating between their trading partners outside of trade agreements. The Regulations also revoke redundant information sharing obligations between the UK and EEA Member States.

Legal Advisers make the following comments in relation to the Welsh Government’s statement dated 13 November 2018 regarding the effect of these Regulations:

The statement contains a minor referencing error in referring to the EU Services Directive “(2006/723/EC)”, which should instead read “(2006/123/EC)”.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations



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## WRITTEN STATEMENT BY THE WELSH GOVERNMENT

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<b>TITLE</b>	<b>The Environment, Food and Rural Affairs (Environmental Impact Assessment) (Amendment) (EU Exit) Regulations 2018</b>
<b>DATE</b>	<b>15 November 2018</b>
<b>BY</b>	<b>Julie James AM, Leader of the House and Chief Whip</b>

### **The Environment, Food and Rural Affairs (Environmental Impact Assessment) (Amendment) (EU Exit) Regulations 2018**

The [retained EU] Law which is being amended

#### **Domestic Legislation**

- Environmental Impact Assessment (Land Drainage Improvement Works) (England and Wales) Regulations 1999;
- Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999;
- Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003;
- Marine Works (Environmental Impact Assessment) Regulations 2007

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

The SI contains provisions within devolved competence. However, 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's general principle is that it is appropriate that in the particular circumstance of exiting the EU, the UK Government can legislate on our behalf in a large number of statutory instruments.

The SI includes a correction to one England-only SI, which does not require consent. A Welsh EU Exit SI will make the necessary corrections to the Welsh equivalent.

#### **The purpose of the amendments**

The purpose of the Environment, Food and Rural Affairs (Environmental Impact Assessment) (Amendment) (EU Exit) Regulations 2018, to be introduced by the Department for Environment Food

and Rural Affairs (DEFRA) is to make minimum changes required to ensure that all regimes for EIA remain operable after exit.

The SIs and accompanying Explanatory Memorandums, setting out the effect of each amendment is available here: <https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments>

**Why consent was given**

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May.

## UK MINISTERS ACTING IN DEVOLVED AREAS

### **The Environment Food and Rural Affairs (Environmental Impact Assessment) (Amendment) (EU Exit) Regulations 2018**

*Laid in the UK Parliament: 14 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	27 November 2018
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	W/C 26 November 2018
Date sifting period ends in UK Parliament	29 November 2018
Written statement under SO 30C:	Paper 18
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**

These Regulations are proposed to be made by the UK Government pursuant to section 8 of the European Union (Withdrawal) Act 2018.

These Regulations amend five sets of regulations, four of which apply to Wales; the remaining one applies only to England and is not relevant for these purposes. The Regulations to be amended define an environmental impact assessment and set out what it must identify, describe and assess and prescribe procedures related to it. It arises from Directive 2011/92/EU which deals with the assessment and effect of certain public and private projects on the environment. The Regulations make minor and technical amendments to ensure that the law in this area continues to operate after the UK leaves the European Union.

Legal Advisers agree with the statement laid by the Welsh Government dated 15 November 2018 regarding the effect of these Regulations.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas. Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.





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## WRITTEN STATEMENT BY THE WELSH GOVERNMENT

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<b>TITLE</b>	<b>The Aquatic Animal Health and Alien Species in Aquaculture (England and Wales) (Amendment) (EU Exit) Regulations 2018</b>
<b>DATE</b>	<b>16 November 2018</b>
<b>BY</b>	<b>Julie James AM, Leader of the House and Chief Whip</b>

### **The Aquatic Animal Health and Alien Species in Aquaculture (England and Wales) (Amendment) (EU Exit) Regulations 2018**

The [retained EU] Law which is being amended

### **The Aquatic Animal Health and Alien Species in Aquaculture (England and Wales) (Amendment) (EU Exit) Regulations 2018 amends the following:**

- The Aquatic Animal Health (England and Wales) Regulations 2009 implements Directive 2006/88/EC.
- The Alien and Locally Absent Species in Aquaculture (England and Wales) Regulations 2011 implements Council Regulation 708/2007.

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

The SI's (where relevant to Wales) are within devolved competence, however, 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's general principal is that it appropriate that we ask the UK Government to legislate on our behalf in a large number of statutory instruments.

### **The purpose of the amendments**

The purpose of this instrument (negative procedure), to be introduced by the Department for Environment Food and Rural Affairs (DEFRA) is to ensure that EU legislation in the fields of aquatic animal health and alien species in aquaculture will continue to be operable after the UK leaves the EU. The instrument will not introduce any policy changes.

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

<https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-aquatic-animal-health-and-alien-species-in-aquaculture-amendment-england-and-wales-eu-exit-regulations-2018>

**Why consent was given**

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May.

## UK MINISTERS ACTING IN DEVOLVED AREAS

### **The Aquatic Animal Health and Alien Species in Aquaculture (England and Wales) (Amendment) (EU Exit) Regulations 2018**

*Laid in the UK Parliament: 13 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	27 November 2018
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	W/C 26 November 2018
Date sifting period ends in UK Parliament	28 November 2018
Written statement under SO 30C:	Paper 20
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**

These Regulations are proposed to be made by the UK Government pursuant to section 8 of the European Union (Withdrawal) Act 2018.

The Regulations make amendments to two existing sets of England and Wales Regulations which relate to animal health requirements for aquaculture animals and products and the registration of aquaculture businesses. The effect of the Regulations now proposed to be made is to remove the power of EU officials to inspect UK premises and/or to accompany inspectors. They also replace references to diseases found in one particular EU Directive with a list found in an EU Regulation. The latter will form part of EU retained law, the former will not.

Legal Advisers agree with the statement laid by the Welsh Government dated 16 November 2018 regarding the effect of these Regulations.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.



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## WRITTEN STATEMENT BY THE WELSH GOVERNMENT

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**TITLE**            **The Livestock (Records, Identification and Movement) (Amendment) (EU Exit) Regulations 2018**

**DATE**            **16 November 2018**

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

**The [retained EU] Law which is being amended**

**The Livestock (Records, Identification and Movement) (EU Exit) Regulations 2018**  
**Bovines**

- EC Council and Parliament Regulation 1760/2000
- EC Commission Regulation 911/2004
- EC Commission Regulation 644/2005
- EC Commission Regulation 509/1999
- EU Commission Implementing Regulation 2017/949
- EC Commission Regulation (EC) No 1082/2003
- EC Commission Regulation 494/98
- EC Commission Decision No 2006/28

**Sheep & Goats**

- EC Council Regulation 21/2004
- EC Commission Regulation 1505/2006
- EC Commission Decision 2006/968

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

Identification and registration of livestock (Sheep, Goats, Cattle and Pigs) is a devolved function

**The purpose of the amendments**

The purpose of this SI (negative procedure), to be introduced by the Department for Environment Food and Rural Affairs (DEFRA) will be to ensure that the EU legislation on the identification and registration of livestock (Sheep, Goats, Cattle and Pigs) will continue to be operable in the UK after the UK leaves the EU.

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

<https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-livestock-records-identification-and-movement-amendment-eu-exit-regulations-2018>

**Why consent was given**

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May.

## UK MINISTERS ACTING IN DEVOLVED AREAS

### **The Livestock (Records, Identification and Movement) (Amendment) (EU Exit) Regulations 2018**

*Laid in the UK Parliament: 14 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	27 November 2018
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	W/C 26 November 2018
Date sifting period ends in UK Parliament	29 November 2018
Written statement under SO 30C:	Paper 22
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**

These Regulations are proposed to be made by the UK Government under section 8(1) of, and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018.

These Regulations ensure that retained EU legislation on the identification and registration of livestock will continue to be operable in the UK after the UK leaves the EU. The Explanatory Memorandum to the Regulations states that the government “wishes to retain the current high standard of traceability provided for by the EU legislation...and which underpins effective disease control”.

Legal Advisers agree with the statement laid by the Welsh Government dated 16 November 2018 regarding the effect of these Regulations.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.





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## WRITTEN STATEMENT BY THE WELSH GOVERNMENT

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**TITLE**        **The Animal Welfare (Amendment)(EU Exit) Regulations 2018**  
**DATE**        **16 November 2018**  
**BY**            **Julie James AM, Leader of the House and Chief Whip**

The [retained EU] Law which is being amended

### **The Animal Welfare (Amendment)(EU Exit) Regulations 2018**

- Council Regulation (EC) 1255/97 concerning Community criteria for control posts and amending the route plan referred to in the Annex to Directive 91/628/EEC;
- Council Regulation (EC) 1/2005 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97; and
- Council Regulation (EC) 1099/2009 on the protection of animals at the time of killing.

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

Animal Welfare is a devolved subject matter

### **The purpose of the amendments**

This purpose of this SI (negative procedure), to be introduced by the Department for Environment Food and Rural Affairs (DEFRA) is to ensure that relevant EU Regulations in relation to protecting the welfare of animals whilst being transported, kept at control posts or at the time of their killing continue to be operable and enforceable in the UK, after the UK leaves the EU.

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-animal-welfare-amendment-eu-exit-regulations-2018>

**Why consent was given**

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May.

## UK MINISTERS ACTING IN DEVOLVED AREAS

### The Animal Welfare (Amendment) (EU Exit) Regulations 2018

*Laid in the UK Parliament: 13 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	27 November 2018
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	W/C 26 November 2018
Date sifting period ends in UK Parliament	28 November 2018
Written statement under SO 30C:	Paper 24
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

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of, and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018 (the Act).

These Regulations are made in order to address failures of retained direct EU legislation to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

Legal Advisers make the following comment in relation to the Welsh Government's statement dated 16 November 2018 regarding the effect of these Regulations. The final paragraph of the Welsh Government's statement states that:

"Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The

amendments have been considered fully; and there is no divergence in policy”.

The Explanatory Memorandum to the Regulations note that the Regulations make a policy change in respect of the recognition of certificates of competence for slaughterers. Paragraph 10.1 states as follows:

“...this instrument makes mainly technical amendments...it does not change the substantive policy with the exception of the proposal to no longer recognise EU27 certificates of competence for slaughterers...”  
Paragraph 2.17 describes this change in more detail:

“2.17 ... As well as these technical changes to ensure operability of the regulation after exit, the instrument also introduces a policy change. Currently, certificates of competence, issued to slaughterers by other Member States, must be recognised in the UK. Certificates of competence are required by slaughterhouses in the EU to demonstrate that an individual has been trained and successfully assessed as DExEU/EM/7-2018.2 4 reaching a sufficient level of competence to undertake the animal handling, stunning and killing and related operations required of them. The amendments made to Article 21(4) of Council Regulation (EC) 1099/2009 removes this recognition requirement...”

Paragraph 2.18 of the UK Government’s Explanatory Memorandum, notes that there could be enforcement issues if certificates continued to be recognised:

“2.18 Continued recognition of certificates issued in other Member States would open up potential enforcement issues as we would be unable to suspend or revoke a certificate issued in another Member State in the event a slaughterer breached the requirements of the retained EU legislation or domestic legislation. The European Commission has already confirmed that certificates of competence issued in the UK will not be recognised in other Member States after the UK has left the EU.”

The Welsh Government’s statement does not explain how many people in Wales will be affected by this provision, nor the reasoning for deciding that it was appropriate for the UK Government to provide for this policy change in a UK statutory instrument.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas.

Legal Advisers draw the Committee’s attention to the issue mentioned above (regarding the proposal to no longer recognise EU27 certificates of competence for slaughterers) in relation to paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks. Paragraph 8 states that, in

respect of the powers in clauses 7, 8 and 9 of the Act, “the powers will not be used to enact new policy in devolved areas; the primary purpose of using such powers will be administrative efficiency”.  
Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.

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**WRITTEN STATEMENT  
BY  
THE WELSH GOVERNMENT**

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**TITLE**            **The Aquatic Animal Health and Alien Species in Aquaculture (Amendment)(EU Exit) Regulations 2018.**

**DATE**            **19 November 2018**

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

**The Aquatic Animal Health and Alien Species in Aquaculture (Amendment)(EU Exit) Regulations 2018.**

**The retained EU Law which is being amended**

- Commission Regulation (EC) No 1251/2008 implementing Council Directive 2006/88 as regards conditions and certification requirements for the placing on the market and the import into the Community of aquaculture animals and products thereof and laying down a list of vector species;
- Commission Decision 2008/392 implementing Council Directive 2006/88/EC as regards an Internet-based information page to make information on aquaculture production businesses and authorised processing establishments available by electronic means;
- Commission Decision 2008/896 on guidelines for the purpose of the risk-based animal health surveillance schemes provided for in Council Directive 2006/88/EC;
- Commission Decision 2008/946 implementing Council Directive 2006/88/EC as regards requirements for quarantine of aquaculture animals;
- Commission Decision 2009/177 implementing Council Directive 2006/88/EC as regards surveillance and eradication programmes and disease-free status of Member States, zones and compartments;
- Commission Decision 2010/221 approving national measures for limiting the impact of certain diseases in aquaculture animals and wild aquatic animals in accordance with Article 43 of Council Directive 2006/88/EC;
- Commission Decision 2015/1554 laying down rules for the application of Directive 2006/88/EC as regards surveillance and diagnostic methods.
- Council Regulation (EC) No 708/2007 concerning the use of alien and locally absent species in aquaculture, and

- Commission Regulation (EC) No 535/2008 laying down detailed rules for the implementation of Council Regulation (EC) No 708/2007 concerning the use of alien and locally absent species in aquaculture.

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

The SI is within devolved competence, however, 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's general principal is that it appropriate that we ask the UK Government to legislate on our behalf in a large number of statutory instruments.

This SI contains provision which enables the Welsh Ministers to exercise functions in relation to Wales without encumbrance and for the Welsh Ministers to provide consent to the Secretary of State to exercise functions in relation to Wales.

Functions transferred to the Secretary of State with consent would constitute functions of a Minister of the Crown for the purposes Schedule 7B to GoWA 2006. This therefore may be a relevant consideration in the context of the Assembly's competence to legislate in the future in these areas.

### **The purpose of the amendments**

The purpose of these instruments (negative procedure), to be introduced by the Department for Environment Food and Rural Affairs (DEFRA) is to ensure that EU legislation in the fields of aquatic animal health and alien and locally absent species in aquaculture will continue to be operable after the UK leaves the EU. These instruments will not introduce any policy changes.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment are available here: <https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-aquatic-animal-health-and-alien-species-in-aquaculture-amendment-etc-eu-exit-regulations-2018>

### **Why consent was given**

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May.

## UK MINISTERS ACTING IN DEVOLVED AREAS

### **The Aquatic Animal Health and Alien Species in Aquaculture (Amendment etc.) (EU Exit) Regulations 2018**

*Laid in the UK Parliament: 13 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	27 November 2018
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	W/C 26 November 2018
Date sifting period ends in UK Parliament	28 November 2018
Written statement under SO 30C:	Paper 26
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**

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

The Regulations address 9 directly applicable pieces of EU legislation. These relate to the establishment of an EU-wide biosecurity framework for fish and shellfish diseases. They also set out a process for moving aquatic non-native species. They replace references to the EU's Trade Control and Export System (TRACES) with references to the UK's system for import control notifications. References to movements between EU member states are changed to refer to movements between the EU and the UK. A list of diseases subject to EU-wide controls is re-stated. Finally, some deficient cross-references are corrected.



Legal Advisers agree with the statement laid by the Welsh Government dated 19 November 2018 regarding the effect of these Regulations.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.

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**WRITTEN STATEMENT  
BY  
THE WELSH GOVERNMENT**

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**TITLE** Pipe-lines, Petroleum, Electricity Works and Oil Stocking  
(Miscellaneous Amendments) (EU Exit) Regulations 2018

**DATE** 20 November 2018

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

**Pipe-lines, Petroleum, Electricity Works and Oil Stocking (Miscellaneous Amendments) (EU Exit) Regulations 2018**

The 2018 Regulations contain a number of provisions which fall entirely or in part within devolved competence, these provisions amend the following legislation.

Domestic Legislation

- Hydrocarbons Licensing Directive Regulations 1995;
- Offshore Combustion Installations (Pollution Prevention and Control) Regulations 2013;
- Petroleum Licensing (Applications) Regulations 2015
- Electricity Works (Environmental Impact Assessment)(England and Wales) Regulations 2017

**The SIs impact in relation to Wales:**

In terms of the SIs impact in Wales, it makes amendments to the following regulations in so far that they relate to technical amendments and exit issues in respect to specific energy sector activities. They will address failures of retained EU law to operate effectively and other deficiencies arising from the UK's exit from the European Union.

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

The SIs (where relevant) to Wales are within devolved competence, however, 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's general principal is that it appropriate that we ask the UK Government to legislate on our behalf in a large number of statutory instruments.

### **The purpose of the amendments**

The European Union Withdrawal Act 2018 ('EUWA') will allow EU-derived legislation to be fixed to ensure it operates properly and effectively once the UK has left the EU.

These amendments address deficiencies arising from the exit of the UK from the EU. This instrument amends provisions which will for example, become inappropriate or redundant.

After exit, without amendment the relevant EU law would not operate properly to such an extent that powers to continue carrying out statutory functions could be put in doubt.

This instrument amends the relevant legislation to ensure that existing protections and regulatory frameworks are maintained and continue to work in the same way once the UK has left the EU.

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

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

### **Why consent was given**

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May.

## UK MINISTERS ACTING IN DEVOLVED AREAS

### **The Pipe-Lines, Petroleum, Electricity Works and Oil Stocking (Miscellaneous Amendments) (EU Exit) Regulations 2018**

*Laid in the UK Parliament: 15 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	27 November 2018
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	W/C 26 November 2018
Date sifting period ends in UK Parliament	3 December 2018
Written statement under SO 30C:	Paper 28
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**

These Regulations are proposed to be made by the UK Government pursuant to section 8 (1) of the European Union (Withdrawal) Act 2018.

These Regulations make amendments to legislation in the fields of hydrocarbon licensing, oil stocking and the assessment of environmental effects for electricity work, pipe-lines and oil and gas projects.

Legal Advisers agree with the statement laid by the Welsh Government dated 20 November regarding the effect of these Regulations.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal)

Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.



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**WRITTEN STATEMENT  
BY  
THE WELSH GOVERNMENT**

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**TITLE** Nagoya Protocol (Compliance) (EU Exit) Regulations 2018  
**DATE** 20 November 2018  
**BY** Julie James AM, Leader of the House and Chief Whip

**Nagoya Protocol (Compliance) (EU Exit) Regulations 2018**

**The [retained EU] Law which is being amended**  
EU Directly Applicable

- Regulation (EU) No 511/2014 of the European Parliament and of the Council
- Commission Implementing Regulation (EU) No 2015/1866

Domestic Legislation

- Nagoya Protocol (Compliance) Regulations 2015

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

The SI relates to mixed competency, it falls within an area of devolved competence, in particular the conservation and sustainable use of natural resources, in this case genetic resources but also to areas which fall under reservations within Schedule 7A of the Government of Wales Act 2006.

However, in these exceptional circumstances of the UK leaving the EU when we are required to consider and correct an unprecedented volume of legislation within a tight timeframe and with finite resources, the Welsh Government's general principle is that it is appropriate, the UK Government can legislate on our behalf in a number of statutory instruments, where there is no divergence in policy or risk to devolved interests.

All functions within the current domestic regime are undertaken by the Secretary of State.

**The purpose of the amendments**

The purpose of this negative procedure SI is to correct deficiencies as necessary to ensure that regulations enable continued UK compliance with an International agreement, the Nagoya Protocol are maintained in the UK after exit day.

The aim of the SI is to retain the status quo, to provide certainty for the research and development institutions on carrying out their activities which relate to access and benefit sharing of genetic resources. The SI contains some minor and technical amendments references to the Union, Member States and the Commission as references to UK and removing some references which will no longer be appropriate such as obligations to inform the Commission or other Member States. In addition, the amendments clarify that the current responsibilities of the European Commission with regards to best practices and registered collections will in future lie with the Secretary of State. This is in alignment with the current domestic regime.

Without the amendments contained in the EU Exit SI, the legislation would contain a number of deficiencies, which could create legal uncertainty for those required to comply with the obligations.

#### **Why consent was given**

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU.

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-nagoya-protocol-compliance-amendment-eu-exit-2018>

## UK MINISTERS ACTING IN DEVOLVED AREAS

### **Nagoya Protocol (Compliance) (EU Exit) Regulations 2018**

*Laid in the UK Parliament: 15 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	27 November 2018
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	W/C 26 November 2018
Date sifting period ends in UK Parliament	3 December 2018
Written statement under SO 30C:	Paper 30
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**

These Regulations are proposed to be made by the UK Government under section 8(1) of, and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018.

The purpose of these Regulations is to ensure that regulations in the UK which implement the Nagoya Protocol on access to genetic resources and the fair and equitable sharing of benefits arising from their utilisation, will continue to be operable after the UK leaves the EU.

The UK is a party to the Nagoya Protocol in its own right and will continue to be bound by the obligations of the Protocol after the UK leaves the European Union. These Regulations ensure continued compliance with the Protocol after exit.

The current regime (which covers both devolved and non-devolved matters) is applied uniformly across the UK by the UK Government. These Regulations provide that a uniform UK-wide approach will continue after exit.



Legal Advisers agree with the statement laid by the Welsh Government dated 20 November 2018 regarding the effect of these Regulations.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.

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**WRITTEN STATEMENT  
BY  
THE WELSH GOVERNMENT**

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**TITLE**            **The Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2018**

**DATE**            **20 November 2018**

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

**The Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2018**

**The [retained EU] Law which is being amended**

Legislation amended by - The Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2018:

- The Genetically Modified Organisms (Risk Assessment) (Records and Exemptions) Regulations 1996
- Regulation (EC) No. 1946/2003 on transboundary movements of genetically modified organisms
- Regulation (EC) No. 1830/2003 on the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms
- Commission Regulation (EC) No. 65/2004 establishing a system or the development and assignment of unique identifiers for genetically modified organisms
- Commission Decision 94/730/EC establishing simplified procedures concerning the deliberate release into the environment of genetically modified plants
- Council Decision 2002/812/EC establishing the summary information format relating to placing on the market of genetically modified organisms as or in products
- Council Decision 2002/813/EC establishing the summary notification information format for notifications concerning the deliberate release into the environment of genetically modified organisms for purposes other than marketing
- Commission Decision 2003/701/EC establishing a format for presenting the results of the deliberate release into the environment of genetically modified higher plants for purposes other than placing on the market
- Commission Decision 2009/770/EC establishing standard reporting formats for presenting the monitoring results of the deliberate release into the environment of genetically modified organisms, as or in products, for the purpose of placing on the market

- Commission Implementing Decision (EU) 2016/321 adjusting the geographical scope of the authorisation for cultivation of genetically modified maize (*Zea mays* L.) MON-00810-6.

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

Control of Genetically Modified Organisms is a devolved function

**The purpose of the amendments**

The purpose of this SI (negative procedure) is to correct retained, directly-applicable EU legislation and the Genetically Modified Organisms (Risk Assessment) (Records and Exemptions) Regulations 1996, as the latter pre-date devolution and applies to Great Britain. The amendments would ensure on day-one exit GMOs could continue to be authorised, marketed and cultivated. The overarching EU legislation in the case is the 2001/18 EU Directive on the deliberate release into the environment of genetically modified organisms.

The SIs and accompanying Explanatory Memorandums, setting out the effect of each amendment is available here: <https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-genetically-modified-organisms-amendment-eu-exit-regulations-2018>

**Why consent was given**

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK’s exit from the EU. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May.

**UK MINISTERS ACTING IN DEVOLVED AREAS**

**The Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2018**

*Laid in the UK Parliament: 15 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	27 November 2018
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	W/C 26 November 2018
Date sifting period ends in UK Parliament	3 December 2018
Written statement under SO 30C:	Paper 32
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**

These Regulations are proposed to be made by the UK Government pursuant to section 2(2) of the European Communities Act 1972 and section 8(1) of, and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018.

The purpose of this SI (negative procedure) is to correct retained, directly-applicable EU legislation and the Genetically Modified Organisms (Risk Assessment) (Records and Exemptions) Regulations 1996, as the latter pre-date devolution and applies to Great Britain. The amendments would ensure on day-one exit GMOs could continue to be authorised, marketed and cultivated. The overarching EU legislation in the case is the 2001/18 EU.

Legal Advisers agree with the statement laid by the Welsh Government dated 20 November 2018 regarding the effect of these Regulations.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.

**Mark Drakeford AC/AM**  
Ysgrifennydd y Cabinet dros Gyllid  
Cabinet Secretary for Finance

Ein cyf/Our ref MA-L/MD/0670/18

20 November 2018

Dear colleague,

As you are aware, it is my intention to test the Wales Act 2014 mechanism by seeking the devolution of competence for a vacant land tax. Ahead of the amended Standing Order 27 process for the scrutiny of section 116C Orders, the Welsh Government has committed to keep the Assembly informed of progress.

My officials are commencing discussions with UK Government officials on a draft Order in Council to give legal effect to the transfer of competence. Once these discussions progress to a Joint Exchequer Committee meeting I will brief you on the latest position, in line with the commitments I have made.

Best wishes,



**Mark Drakeford AC/AM**  
Ysgrifennydd y Cabinet dros Gyllid  
Cabinet Secretary for Finance

# Agenda Item 6.2

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



Llywodraeth Cymru  
Welsh Government

Mike Hedges AM  
Chair  
Climate Change, Rural Affairs and Environment Committee  
National Assembly for Wales

21

November 2018

Dear Mike

Thank you for your letter of 9 November seeking further clarification following my attendance at the Committee session on the Welsh Government's draft budget report 2019-20 held on 8 November.

Please accept my apologies for the slight delay in responding. There was a need to conclude discussions with DEFRA on some of the queries you raised with regards to the UK Agriculture Bill.

## Consideration of the Climate Change (Carbon Budget) (Wales) Regulations 2018

I have noted your intention to report on the regulations, in accordance with Standing Order 27.8.

## Low Carbon Delivery Plan

A copy of the Delivery Plan will be made available to the Committee in week commencing 18 March 2019.

## UK Agriculture Bill

I am confident the Bill does not constrain future policy. The Welsh provisions in the Bill provide broad, enabling powers which allow the flexibility for a wide range of possible payment schemes to be designed and implemented dependent on the nature of the UK's exit from the EU and the outcome of the consultation 'Brexit and our Land'.

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.

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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.

It is necessary to take these broad powers now so the Government can react appropriately once decisions are made. As I outlined in my letter of 30 October, I would like to reassure the Committee no policy decisions will be made before further consultation and the use of these powers will require separate secondary legislation to take effect, giving the Assembly opportunity for proper scrutiny. I also reconfirm my intention to bring forward an Agriculture (Wales) Bill to the Assembly once decisions have been made on future policy.

If the UK leaves the EU without a Brexit agreement, new regulations correcting deficiencies in the EU regulations (including the Common Agricultural Policy (CAP) Direct Payments regulation for scheme year 2020) will come into effect on 29 March 2019 under the UK Withdrawal Act. In this scenario, the Direct Payments regulation would apply up until claim year 2020 only. The provision to allow the making of Direct Payments beyond 2020 is therefore being taken under the UK Agriculture Bill.

In the event of an agreement on an Implementation Period running up until 31 December 2020, EU regulations would continue to apply until that date, with the exception of the CAP Direct Payments regulation which is not included in the current draft Withdrawal Agreement for scheme year 2020. As currently drafted, the Agriculture Bill does not include powers to make Direct Payments in 2020 in this scenario. The legislative mechanism to resolve this cannot be brought forward until Parliament has had a meaningful vote on the final Withdrawal Agreement. If agreement is reached we expect the provision to continue to make Direct Payments in claim year 2020 to be taken under UK legislation.

As you acknowledge, I was very clear to the Constitutional and Legislative Affairs Committee that the issue of the WTO rules is a red line for the Welsh Government and I would be unable to recommend the Assembly gives its consent to the Bill until this has been resolved. I have had recent positive discussions with the Secretary of State and officials are also making good progress in finding a solution. It may not be necessary to amend the Bill to achieve this and it could be possible to reach a satisfactory outcome through an agreement between governments as to how the existing provision should operate. I am hopeful our two governments will reach agreement and that I will be able to recommend the Assembly gives its consent in due course.

#### UK Fisheries Bill

Standing Order 29 requires the Welsh Government to table legislative consent memorandums normally within two weeks of a Bill's introduction and we always seek to comply with that deadline. This has not been possible in a few recent cases, but we have to recognise both the Fisheries Bill has significant consent issues to consider, being a UK Bill dealing with the implications of Brexit for important sectors for which responsibility is devolved. As a result, it has taken longer than normal to lay the memorandum which was laid on 15 November. On Assembly consent matters such as this, the Welsh Government is keen for there to be plenty of scrutiny time for Committees.



**Lesley Griffiths AC/AM**

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



# Agenda Item 8

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

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# Agenda Item 10

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