

Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:	For further information contact:
Committee Room 1 – Senedd	Gareth Williams
Meeting date: 21 January 2019	Committee Clerk
Meeting time: 14.30	0300 200 6362
	SeneddCLA@assembly.wales

- 1 Introduction, apologies, substitutions and declarations of interest
14.30
- 2 Subordinate legislation subject to no procedure
14.30
 - 2.1 SL(5)300 – The Spring Traps Approval (Wales) Order
(Pages 1 – 13)

CLA(5)–03–19 – Paper 1 – Order
CLA(5)–03–19 – Paper 2 – Letter from the Minister for Energy, Environment
and Rural Affairs
- 3 Proposed negative instruments that raise no reporting issues
under Standing Order 21.3B
(Pages 14 – 15)

CLA(5)–03–19 – Paper 3 – Proposed negative instruments with clear reports
 - 3.1 pNeg(5)08 – The Flood and Water (Amendments) (England and Wales) (EU
Exit) Regulations 2019
 - 3.2 pNeg(5)10 – The Service Charges (Consultation Requirements) (Wales)
(Amendment) (EU Exit) Regulations 2019
- 4 Proposed negative instruments that raise reporting issues under
Standing Order 21.3B



4.1 pNeg(5)09 – The Animal Health and Welfare (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

(Pages 16 – 35)

CLA(5)–03–19 – Paper 4 – Report

CLA(5)–03–19 – Paper 5 – Regulations

CLA(5)–03–19 – Paper 6 – Explanatory Memorandum

5 Legislative Consent Memoranda on the UK Fisheries: Evidence session

14.45

(Pages 36 – 93)

Lesley Griffiths AM, Minister for Energy, Environment and Rural Affairs,

Tamsin Brown, Welsh Government

Graham Rees, Welsh Government

CLA(5)–03–19 – Briefing

CLA(5)–03–19 – Research Service Briefing

CLA(5)–03–19 – Legal Briefing

CLA(5)–03–19 – Paper 7 – Letter from the Chair of the Climate Change, Environment and Rural Affairs Committee to the Minister for Environment, Energy and Rural Affairs regarding the Legislative Consent Memorandum for the Fisheries Bill, 14 January 2019

CLA(5)–03–19 – Paper 8 – Letter from the Minister for Environment, Energy and Rural Affairs, regarding the supplementary Legislative Consent Memorandum on the Fisheries Bill, 8 January 2019

[LCM-LD11847 – Legislative Consent Memorandum Fisheries Bill](#)

[LCM-LD12027 – Supplementary Legislative Consent Memorandum \(Memorandum No 2\) Fisheries Bill](#)

6 Progress of the Review into Inter-Governmental Relations

15.30

(Pages 94 – 141)

CLA(5)–03–19 – Paper 9 – Letter to Rt Hon David Lidington CBE MP
Chancellor of the Duchy of Lancaster, 29 October 2019

CLA(5)–03–19 – Paper 10 – Letter from Rt Hon David Lidington CBE MP
Chancellor of the Duchy of Lancaster, 17 January 2019

CLA(5)–03–19 – Paper 11 – Letter from Michael Russell MSP Cabinet Secretary
for Government Business and Constitutional Relations, Scottish Government

CLA(5)–03–19 – Paper 12 – Letter from Mark Drakeford, Cabinet Secretary for
Finance, 29 November 2018

CLA(5)–03–19 – Research Service Briefing

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

15.40

**8 Legislative Consent Memoranda on the UK Fisheries Bill:
Consideration of evidence**

**9 Review of Statutory Instruments requiring Consent: Brexit and
Written Statements made under Standing Order 30 C**

(Pages 142 – 144)

CLA(5)–03–19 – Paper 13 – Review

Agenda Item 2.1

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

2019 No. 18 (W. 7)

ANIMALS, WALES

PREVENTION OF CRUELTY

**The Spring Traps Approval (Wales)
Order 2019**

EXPLANATORY NOTE

(This note is not part of the Order)

Under section 8 of the Pests Act 1954, it is an offence to use or knowingly to permit the use of any spring trap, other than a trap that has been approved by Order, for animals or in circumstances for which it is not approved.

This Order revokes and replaces the Spring Traps Approval (Wales) Order 2012, which approved types of spring trap for use in Wales.

Article 2 specifies approved traps, namely those listed in Column 1 of the Schedule and others which are equivalent in all relevant respects to those listed. Conditions attached to the approval of each type of trap are specified in Column 2 of the Schedule.

This Order was notified in draft to the European Commission in accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ No. L 241, 17.9.2015, p.1).

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.

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

2019 No. 18 (W. 7)

ANIMALS, WALES

PREVENTION OF CRUELTY

**The Spring Traps Approval (Wales)
Order 2019**

Made 8 January 2019

Coming into force 1 February 2019

The Welsh Ministers, in exercise of the powers conferred by section 8(3) and (7) of the Pests Act 1954⁽¹⁾ now vested in them⁽²⁾, make the following Order.

Title, commencement and application

1.—(1) The title of this Order is the Spring Traps Approval (Wales) Order 2019.

(2) This Order applies in relation to Wales.

(3) This Order comes into force on 1 February 2019.

Approval of spring traps

2.—(1) For the purposes of section 8(3) of the Pests Act 1954, the following spring traps are approved—

(a) a spring trap of a type and make specified in an entry in Column 1 of the Schedule; and

(b) a spring trap which is equivalent in all relevant respects to a spring trap of a type and

(1) 1954 c. 68. Section 8(7) was amended by section 1(1) of, and Part 8 of Schedule 1 to, the Statute Law (Repeals) Act 1973 (c. 39).

(2) The Minister of Agriculture and Fisheries was re-named “the Minister of Agriculture, Fisheries and Food” upon the transfer to that Minister of the functions of the Minister of Food by S.I. 1955/554. The functions of the Minister of Agriculture, Fisheries and Food were transferred, so far as exercisable in relation to Wales, to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). The functions were transferred to the Welsh Ministers by section 162 of, and paragraphs 30 and 32 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).

make specified in an entry in Column 1 of the Schedule.

(2) The approvals given by paragraph (1) are subject to the conditions that—

- (a) the trap must be used in accordance with the instructions (if any) provided by the manufacturer; and
- (b) so far as is practicable without unreasonably compromising its use for killing or taking target species, the trap must be used in a manner that minimises the likelihood of its killing, taking or injuring non-target species;

and to such further conditions (if any) as to the animals for which, and the circumstances in which, the spring trap may be used as are specified in the corresponding entry in Column 2 of the Schedule (or, in the case of a trap approved under paragraph (1)(b), as are specified in relation to the trap to which it is equivalent for the purposes of that paragraph).

(3) For the purposes of paragraph (1)(b), a spring trap is equivalent in all relevant respects to a spring trap of a type and make specified in the Schedule if it corresponds to the spring trap specified in its construction, in materials, in impact force or momentum, and in all other respects which are relevant to its effect or manner of operation as a trap.

Revocation

3. The Spring Traps Approval (Wales) Order 2012(1) is revoked.

Leslie Griffiths

Minister for Environment, Energy and Rural Affairs,
one of the Welsh Ministers

8 January 2019

(1) S.I. 2012/2941 (W. 300).

SCHEDULE

Article 2

<i>Column 1</i>	<i>Column 2</i>
<i>Type and make of trap</i>	<i>Conditions</i>
<p>Aldrich Spring Activated Animal Snare manufactured by or under the authority of Mr D. Schimetz, P.O. Box 158, Sekiu, Washington 98381, USA.</p>	<p>The trap may be used only for the purpose of taking large, terrestrial mammals of the order carnivora such as wolves.</p>
<p>BMI Magnum 55 manufactured by or under the authority of Butera Manufacturing Industries, 1068 E 134th St., Cleveland, OH, 44110-2248, USA.</p>	<p>The trap may be used only for the purpose of killing grey squirrels, rats, mice and other small ground vermin (except for those species listed in Schedule 5 or 6 to the Wildlife and Countryside Act 1981(1)).</p> <p>The trap must be set in a natural or artificial tunnel which is, in either case, suitable for the purpose.</p>
<p>BMI Magnum 110 manufactured by or under the authority of Butera Manufacturing Industries, 1068 E 134th St., Cleveland, OH, 44110-2248, USA.</p>	<p>The trap may only be used for the purpose of killing grey squirrels, weasels, rats, mice, other small ground vermin (except for those species listed in Schedule 5 or 6 to the Wildlife and Countryside Act 1981) and, before 1 April 2020, stoat.</p> <p>The trap must be set in a natural or artificial tunnel which is, in either case, suitable for the purpose.</p>
<p>BMI Magnum 116 manufactured by or under the authority of Butera Manufacturing Industries, 1068 E 134th St., Cleveland, OH, 44110-2248, USA.</p>	<p>The trap may only be used for the purpose of killing grey squirrels, mink, rabbits, weasels, rats, mice, other small ground vermin (except for those species listed in Schedule 5 or 6 to the Wildlife and Countryside Act 1981) and, before 1</p>

(1) 1981 c. 69. Schedule 5 was amended by S.I. 1991/367, 1992/2350, 1998/878, 2007/1843, 2008/431, 2008/2172 and 2011/2015.

	<p>April 2020, stoat. The trap must be set in a natural or artificial tunnel which is, in either case, suitable for the purpose.</p>
<p>DOC 150 manufactured by or under the authority of the Department of Conservation, Wellington, New Zealand.</p>	<p>When used in a closed-end trap configuration, the trap may be used only for the purpose of killing grey squirrels, rats, stoats and weasels. The trap must be set in an artificial tunnel constructed to the design specified by the Department of Conservation, using materials suitable for the purpose. When used in a run-through trap configuration, the trap may be used only for the purpose of killing rats, stoats and weasels. The trap must be set in accordance with the manufacturer's instructions for the run-through configuration in a natural or artificial tunnel which is, in either case, suitable for the purpose.</p>
<p>DOC 200 manufactured by or under the authority of the Department of Conservation, Wellington, New Zealand.</p>	<p>When used in a closed-end trap configuration, the trap may be used only for the purpose of killing grey squirrels, mink, rats, stoats and weasels. The trap must be set in an artificial tunnel constructed to the design specified by the Department of Conservation, using materials suitable for the purpose. When used in a run-through trap configuration, the trap may be used only for the purpose of killing rats, stoats and weasels. The trap must be set in accordance with the manufacturer's</p>

	instructions for the run-through configuration in a natural or artificial tunnel which is, in either case, suitable for the purpose.
DOC 250 manufactured by or under the authority of the Department of Conservation, Wellington, New Zealand.	<p>When used in a closed-end trap configuration, the trap may be used only for the purpose of killing grey squirrels, mink, rabbits, rats, stoats and weasels.</p> <p>The trap must be set in an artificial tunnel constructed to the design specified by the Department of Conservation, using materials suitable for the purpose.</p> <p>When used in a run-through trap configuration, the trap may be used only for the purpose of killing rats, stoats and weasels.</p> <p>The trap must be set in accordance with the manufacturer's instructions for the run-through configuration in a natural or artificial tunnel which is, in either case, suitable for the purpose.</p>
Duke 116 manufactured by or under the authority of Duke Company, 508 E. Brame Avenue, West Point, MS 39773, USA.	<p>The trap may be used only for the purpose of killing grey squirrels.</p> <p>The trap must be set in an artificial tunnel which is suitable for the purpose.</p>
Fenn Rabbit Trap Mark I manufactured by or under the authority of DB Springs, Unit 1, Double Century Works, High Street, Astwood Bank, Redditch, Worcestershire, B96 6AR (previously Mr A. A. Fenn of FHT Works, High Street, Astwood Bank, Redditch, Worcestershire).	<p>The trap may be used only for the purpose of killing rabbits.</p> <p>The trap must be set in a natural or artificial tunnel which is, in either case, suitable for the purpose.</p>
Fenn Vermin Trap Mark IV (Heavy Duty) manufactured by or under the authority of DB	The trap may be used only for the purpose of killing grey squirrels, weasels, rats, mice, other

<p>Springs, Unit 1, Double Century Works, High Street, Astwood Bank, Redditch, Worcestershire, B96 6AR (previously Mr A. A. Fenn of FHT Works, High Street, Astwood Bank, Redditch, Worcestershire).</p>	<p>small ground vermin (except for those species listed in Schedule 5 or 6 to the Wildlife and Countryside Act 1981) and, before 1 April 2020, stoat. The trap must be set in a natural or artificial tunnel which is, in either case, suitable for the purpose.</p>
<p>Fenn Vermin Trap Mark VI (Dual Purpose) manufactured by or under the authority of DB Springs, Unit 1, Double Century Works, High Street, Astwood Bank, Redditch, Worcestershire, B96 6AR (previously Mr A. A. Fenn of FHT Works, High Street, Astwood Bank, Redditch, Worcestershire).</p>	<p>The trap may be used only for the purpose of killing grey squirrels, mink, rabbits, weasels, rats, mice, other small ground vermin (except for those species listed in Schedule 5 or 6 to the Wildlife and Countryside Act 1981) and, before 1 April 2020, stoat. The trap must be set in a natural or artificial tunnel which is, in either case, suitable for the purpose.</p>
<p>Fuller Trap manufactured by or under the authority of Fuller Industries, Three Trees, Loxwood Road, Bucks Green, Rudgwick, Sussex.</p>	<p>The trap may be used only for the purpose of killing grey squirrels. The trap must be set within the housing provided by the manufacturer.</p>
<p>Goodnature A18 Grey Squirrel Trap manufactured by or under the authority of Goodnature Limited, 4-12 Cruickshank Street, Kilbirnie 6022, Wellington, New Zealand.</p>	<p>The trap may be used only for the purpose of killing grey squirrels and rats. The trap must be placed so that it can only be entered by way of an artificial tunnel which is suitable for the purpose.</p>
<p>Goodnature A18 Mink Trap manufactured by or under the authority of Goodnature Limited, 4-12 Cruickshank Street, Kilbirnie 6022, Wellington, New Zealand.</p>	<p>The trap may be used only for the purpose of killing mink. The trap must be placed so that it can only be entered by way of an artificial tunnel which is suitable for the purpose.</p>
<p>Goodnature A24 Pro manufactured by or under the authority of Goodnature Limited, 4-12 Cruickshank Street, Kilbirnie 6022,</p>	<p>The trap may be used only for the purpose of killing rats and mice. The trap must be placed so that it can only be entered by way of an</p>

Wellington, New Zealand.	artificial tunnel which is suitable for the purpose.
Goodnature A24 Rat and Stoat Trap manufactured by or under the authority of Goodnature Limited, 4-12 Cruickshank Street, Kilbirnie 6022, Wellington, New Zealand.	The trap may be used only for the purpose of killing stoats, rats, weasels and mice. The trap must be placed so that it can only be entered by way of an artificial tunnel which is suitable for the purpose.
Kania Trap 2000 manufactured by or under the authority of Kania Industries Inc., 63 Centennial Road, British Columbia, V9R 6N6, Canada.	The trap may be used only for the purpose of killing grey squirrels, mink, weasels, edible dormice (<i>Glis glis</i>)(1), rats, mice, other small ground vermin (except for those species listed in Schedule 5 or 6 to the Wildlife and Countryside Act 1981), and, before 1 April 2020, stoat. The trap must be set within the housing provided by the manufacturer.
Kania Trap 2500 manufactured by or under the authority of Kania Industries Inc., 63 Centennial Road, British Columbia, V9R 6N6, Canada.	The trap may be used only for the purpose of killing grey squirrels, mink, rabbits, weasels, edible dormice (<i>Glis glis</i>), rats, mice and, before 1 April 2020, stoat. The trap must be set in a natural or artificial tunnel which is, in either case, suitable for the purpose.
KORO Large Rodent Double Coil Spring Snap Trap manufactured by or under the authority of Koro Traps, Box 5 Grp.22 RR2, Dugald, Manitoba, R0E 0K0, Canada.	The trap may be used only for the purpose of killing grey squirrels and rats. The trap must be placed so that animals can only enter it from the front, and set within an artificial blind tunnel which is suitable for the purpose. (The front is the side from

(1) See, however, section 11(2)(b) of, and Schedule 6 to, the Wildlife and Countryside Act 1981. By virtue of those provisions, whether or not the trap in question is approved by this Order, it is an offence to use any trap for the purpose of taking or killing any dormouse, except pursuant to a licence granted by the appropriate authority under section 16 of that Act.

	which the letters KORO can be read face-on and the correct way up.)
KORO Rodent Snap Trap manufactured by or under the authority of Koro Traps, Box 5 Grp.22 RR2, Dugald, Manitoba, R0E 0K0, Canada.	The trap may be used only for the purpose of killing rats and weasels. The trap must be placed so that animals can only enter it from the front, and set within an artificial blind tunnel which is suitable for the purpose. (The front is the side from which the letters KORO can be read face-on and the correct way up.)
Nooski Rat Trap manufactured by or under the authority of Nooski Trap Systems, 50 White Street, Rotorua, New Zealand.	The trap may be used only for the purpose of killing rats. The trap must be set within the housing and artificial tunnel provided by the manufacturer.
Nooski Mouse Trap manufactured by or under the authority of Nooski Trap Systems, 50 White Street, Rotorua, New Zealand.	The trap may be used only for the purpose of killing mice. The trap must be set within the housing and artificial tunnel provided by the manufacturer.
Procoll Trap manufactured by or under the authority of Elgeeco, 108 Downlands Way, South Wonston, Winchester, Hampshire, SO21 3HS.	The trap may be used only for the purpose of killing grey squirrels.
Skinns Superior Squirrel Trap manufactured by or under the authority of E. Skinns Ltd., Witham Road, Woodhall Spa, Lincolnshire, LN10 6QX.	The trap may be used only for the purpose of killing grey squirrels. The trap must be set in a natural or artificial tunnel which is, in either case, suitable for the purpose.
Solway Spring Trap Mk4 manufactured by or under the authority of Solway Feeders Ltd., Main Street, Dundrennan, Kirkcudbright, DG6 4QH.	The trap may be used only for the purpose of killing grey squirrels, weasels, edible dormice (<i>Glis glis</i>), rats, mice and, before 1 April 2020, stoat. The trap must be set in a natural or artificial tunnel which is, in either case, suitable for the purpose.
Solway Spring Trap Mk6 manufactured by or	The trap may be used only for the purpose of

<p>under the authority of Solway Feeders Ltd., Main Street, Dundrennan, Kirkeudbright, DG6 4QH.</p>	<p>killing grey squirrels, mink, rabbits, weasels, edible dormice (<i>Glis glis</i>), rats, mice and, before 1 April 2020, stoat. The trap must be set in a natural or artificial tunnel which is, in either case, suitable for the purpose.</p>
<p>Springer No. 4 Multi-purpose (Heavy Duty) manufactured by or under the authority of AB County Products Ltd., Unit 3, Wellington Works, 15 The High Street, Redditch, Worcestershire.</p>	<p>The trap may be used only for the purpose of killing grey squirrels, weasels, rats, mice, other small ground vermin (except for those species listed in Schedule 5 or 6 to the Wildlife and Countryside Act 1981) and, before 1 April 2020, stoat. The trap must be set in a natural or artificial tunnel which is, in either case, suitable for the purpose.</p>
<p>Springer No. 6 Multi-purpose manufactured by or under the authority of AB County Products Ltd., Unit 3, Wellington Works, 15 The High Street, Redditch, Worcestershire.</p>	<p>The trap may be used only for the purpose of killing grey squirrels, mink, rabbits, weasels, rats, mice, other small ground vermin (except for those species listed in Schedule 5 or 6 to the Wildlife and Countryside Act 1981) and, before 1 April 2020, stoat. The trap must be set in a natural or artificial tunnel which is, in either case, suitable for the purpose.</p>
<p>Tully Trap manufactured by or under the authority of KM Pressings Ltd, 37B Copenhagen Road, Sutton Fields Industrial Estate, Hull, East Yorkshire, HU7 0XQ.</p>	<p>The trap may be used only for the purpose of killing stoats, weasels and rats. The trap must be set in a natural or artificial tunnel which is, in either case, suitable for the purpose.</p>
<p>VS squirrel trap manufactured by or under the authority of Pescon Services, 394 York Road, Stevenage, Hertfordshire, SH1 4EN.</p>	<p>The trap may be used only for the purpose of killing grey squirrels. The trap must be set within the artificial tunnel provided by the manufacturer.</p>
<p>WCS Collarum Stainless UK Fox Model</p>	<p>The trap may be used only for the purpose of</p>

<p>manufactured by or under the authority of Wildlife Control Supplies, LLC, P.O. Box 538, East Granby, CT 06026, USA.</p>	<p>taking foxes.</p>
<p>WCS Tube Trap International manufactured by or under the authority of Wildlife Control Supplies, LLC, P.O. Box 538, East Granby, CT 06026, USA.</p>	<p>The trap may be used only for the purpose of killing grey squirrels, mink, weasels, rats and, before 1 April 2020, stoat. The trap must be set within the artificial tunnel provided by the manufacturer for use in the UK.</p>
<p>WiseTrap 110 (article number 100110 or 110110), WiseTrap 160 (article number 100160, 110160, 101160 or 111160), WiseTrap 200 (article number 100200, 110200, 101200 or 111200) and WiseTrap 250 (article number 101250 or 111250) manufactured by WiseCon A/S, Skovgaardsvej 25, DK-3200 Helsingør, Denmark.</p>	<p>The trap may be used only for the purpose of killing rats. The trap must be set within a sewer, drainpipe, or similar structure.</p>

Lesley Griffiths AC/AM
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs



Llywodraeth Cymru
Welsh Government

Mike Hedges AM,
Chair of the Climate Change, Environment and Rural Affairs Committee

Mike.Hedges@assembly.wales

9 January 2019

Dear Mike

I wish to bring a procedural matter to your attention.

In accordance with section 8 of the Pests Act 1954, spring traps are prohibited in Wales unless approved by Order.

The Spring Traps Approval (Wales) Orders 2010 and 2012 were made under section 8(3) and (7) of the Pests Act 1954 and in accordance with the negative resolution procedure. The Spring Traps Approval (Wales) Order 2019 has been made under the same powers, but is not subject to a procedure.

The provision governing the procedure for the Orders is section 8(8) which, when untangled, provides that only Orders made under section 8(5) are subject to the negative resolution procedure. All of the Orders the Secretary of State has made under section 8(3) and (7) appear to have been made without a procedure. It is incongruous for Parliament and the National Assembly to apply different procedures to the same powers and it seems sensible we seek to end this anomaly.

I enclose a copy of the Spring Traps Approval (Wales) Order 2019 for your ease of reference. The Order has been made and will come into force on 1 February. As the Order is not subject to a procedure it will not be laid before the National Assembly or accompanied by an explanatory memorandum.

I apologise this issue has not been previously identified. However, I hope it will be recognised the application of a more onerous procedure was born of innocent error.

Regards

Lesley Griffiths
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

Cc Mick Antoniw AM, Chair of the Constitutional and Legislative Affairs Committee

Bae Caerdydd • Cardiff Bay
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CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Gohebiaeth.Lesley.Griffiths@llyw.cymru
Correspondence.Lesley.Griffiths@gov.wales

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

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.

Agenda Item 3

Proposed Negative Statutory Instruments with Clear Reports

21 January 2019

pN(5)008 – The Flood and Water (Amendments) (England and Wales) (EU Exit) Regulations 2019

Procedure: Negative

These Regulations are made in exercise of the powers in paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018, in order to address failures of retained EU law to operate effectively, as well as address other deficiencies in retained EU law arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to secondary legislation in the field of environmental protection, water and flood.

These Regulations were laid for the purposes of sifting under the European Union (Withdrawal) Act 2018 in accordance with Standing Order 27.9A.

Parent Act: European Union (Withdrawal) Act 2018

Sift requirements satisfied: Yes

pN(5)010 – The Service Charges (Consultation Requirements) (Wales) (Amendment) (EU Exit) Regulations 2019

Procedure: Negative

This instrument makes an amendment to the Service Charges (Consultation Requirements) (Wales) Regulations 2004 by removing a reference to the Publications Office of the EU and replacing it with a reference to the UK e-notification system. That reference is to a definition to be inserted into



regulation 51 of the Public Contract Regulations 2015 by regulation 5 of the Public Procurement (Amendment etc.) (EU Exit) Regulations 2019. Those Regulations have currently been laid before Parliament in draft.

These Regulations were laid for the purposes of sifting under the EU (Withdrawal) Act 2018 in accordance with Standing Order 27.9A

Parent Act: European Union (Withdrawal) Act 2018

Sift requirements satisfied: Yes



Agenda Item 4.1

pN(5)009 – The Animal Health and Welfare (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Background and Purpose

This instrument makes amendments to the Registration of Establishments (Laying Hens) (Wales) Regulations 2004, the Welfare of Animals (Transport) (Wales) Order 2007, the Welfare of Farmed Animals (Wales) Regulations 2007 and the Welfare of Animals at the Time of Killing (Wales) Regulations 2014. These amendments are said by the Government to be to ensure that the statute book remains operable following the UK's exit from the EU and to address deficiencies in domestic legislation arising from EU Exit.

These Regulations were laid for the purposes of sifting under the EU (Withdrawal) Act 2018 in accordance with Standing Order 27.9A

Committee Recommendation as to Appropriate Procedure

We have considered the criteria set out in Standing Order 21.3C. These Regulations raise matters of public, political or legal importance under paragraph (v) of that Standing Order in two respects.

Firstly, as is explained in paragraph 4.9 of the Explanatory Memorandum, they introduce a policy change in that "certificates of competence, issued to slaughtermen by other Member States" will no longer be recognised for the purposes of the Welfare of Animals at the Time of Killing (Wales) Regulations 2014.

Secondly, as is explained in the Explanatory Memorandum, many of the amendments made by these Regulations are to replace references to the National Assembly with references to the Welsh Ministers. This is not a consequence of the UK's departure from the EU, but of transitional provisions contained in the Government of Wales Act 2006.

Paragraph 21(b) of Schedule 7 to the European Union (Withdrawal) Act 2018 specifically includes "power to make supplementary, incidental, consequential, transitional, transitory or saving provision (including provision restating any retained EU law in a clearer or more accessible way).

Making it clear that functions are those of the Welsh Ministers, and not of the National Assembly, will make the Regulations being amended clearer and more accessible. However, we question whether, as the Minister states in paragraph 2 of Part 2 of the Explanatory Memorandum "all the changes being made are solely in order to address deficiencies arising from EU exit."

EITHER

Nevertheless, we recommend that the appropriate procedure for these Regulations is the negative resolution procedure.

OR



For these reasons, we recommend that the Government's approach should be confirmed by the National Assembly under the affirmative procedure.

Government Response

[If there is no recommendation to uplift, insert the following text here: No Welsh Government explanation is required in accordance with Standing Order 27.9B.]

[If there is a recommendation to uplift, insert the following text here: If the Welsh Government does not agree with the Committee's recommendation as to the appropriate procedure for these Regulations, the Welsh Government must explain why it disagrees with the Committee's recommendation in accordance with Standing Order 27.9B.]

Legal Advisers

Constitutional and Legislative Affairs Committee

11 January 2019



2019 No. (W.)

**EXITING THE EUROPEAN
UNION, WALES**

ANIMALS, WALES

The Animal Health and Welfare
(Miscellaneous Amendments)
(Wales) (EU Exit) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to subordinate legislation, which apply in relation to Wales, in the fields of the registration of laying hen establishments, animal welfare at transport, the welfare of farmed animals and animal welfare at slaughter.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. 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 these Regulations.

2019 No. (W.)

**EXITING THE EUROPEAN
UNION, WALES**

ANIMALS, WALES

**The Animal Health and Welfare
(Miscellaneous Amendments)
(Wales) (EU Exit) Regulations 2019**

Sift requirements satisfied ***

Made ***

Laid before the National Assembly for Wales

*Coming into force in accordance with
regulation 1(2)*

The Welsh Ministers, in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018⁽¹⁾, make the following Regulations.

The requirements of paragraph 4(2) of Schedule 7 to the European Union (Withdrawal) Act 2018 (relating to the appropriate National Assembly for Wales scrutiny procedure for these Regulations) have been satisfied.

Title, commencement and application

1.—(1) The title of these Regulations is the Animal Health and Welfare (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019.

(2) These Regulations come into force on exit day.

(3) These Regulations apply in relation to Wales.

(1) 2018 c. 16.

The Registration of Establishments (Laying Hens) (Wales) Regulations 2004

2.—(1) The Registration of Establishments (Laying Hens) (Wales) Regulations 2004⁽¹⁾ are amended as follows.

(2) In regulation 2—

- (a) omit the definitions of “the Directive” and “the National Assembly”;
- (b) in the definition of “register”, for “National Assembly” substitute “Welsh Ministers”.

(3) In regulation 4—

- (a) in paragraph (1), for “National Assembly” substitute “Welsh Ministers”;
- (b) in paragraph (2)—
 - (i) for “National Assembly” substitute “Welsh Ministers”;
 - (ii) for “the Directive” substitute “paragraph (3)”;

(c) after paragraph (2) insert—

“(3) The distinguishing number must be composed of the appropriate farming method code determined in accordance with paragraphs (5) to (7), followed by the letters “UK”, followed by a unique identification number allocated to the establishment by the Welsh Ministers.

(4) Where it appears appropriate to the Welsh Ministers to do so, they may add further characters to the unique identification number required by paragraph (3) in order to identify single flocks kept in separate buildings of an establishment.

(5) Except where paragraph (6) applies, when the farming method in column A is used, the appropriate farming method code is the corresponding number in column B.

<i>Column A</i>	<i>Column B</i>
Free Range	1
Barn	2
Cages	3

(6) Where the farming method used in the establishment produces eggs under the conditions set out in Council Regulation (EC) No 834/2007 on organic production and labelling of organic products, the appropriate farming method code is “0”.

(1) S.I. 2004/1432 (W. 145), to which there are amendments not relevant to these Regulations.

(7) For the purposes of paragraph (5), the farming method used in an establishment is to be determined in accordance with Commission Regulation (EC) No 589/2008 laying down rules for implementing Council Regulation (EC) No 1234/2007 as regards marketing standards for eggs.”

(4) In regulation 6—

- (a) in paragraphs (2) and (4), for “National Assembly” substitute “Welsh Ministers”;
- (b) in paragraph (3), for “National Assembly requires” substitute “Welsh Ministers require”.

(5) In regulations 7(1) and 11, for “National Assembly” substitute “Welsh Ministers”.

The Welfare of Animals (Transport) (Wales) Order 2007

3.—(1) The Welfare of Animals (Transport) (Wales) Order 2007(1) is amended as follows.

(2) In article 2, omit paragraph (5).

(3) Omit article 20.

(4) In article 22—

- (a) in paragraphs (1), (3)(c) and (5), for “National Assembly” substitute “Welsh Ministers”;
- (b) in paragraph (2)(a), for “National Assembly considers” substitute “Welsh Ministers consider”;
- (c) in paragraph (4)—
 - (i) for “National Assembly”, in the first place where it occurs, substitute “Welsh Ministers”;
 - (ii) for “National Assembly decides” substitute “Welsh Ministers decide”.

(5) In article 23—

- (a) in paragraphs (1) and (3), for “National Assembly” substitute “Welsh Ministers”;
- (b) in paragraph (2), for “National Assembly’s” substitute “Welsh Ministers”;
- (c) in paragraph (4)—
 - (i) for “National Assembly” substitute “Welsh Ministers”;
 - (ii) for “its”, in both places where that word occurs, substitute “their”.

(6) In articles 24(9), 26(1)(a), 27(b) and 29(2), for “National Assembly”, in each place where it occurs, substitute “Welsh Ministers”.

(1) S.I. 2007/1047 (W. 105).

The Welfare of Farmed Animals (Wales) Regulations 2007

4.—(1) The Welfare of Farmed Animals (Wales) Regulations 2007⁽¹⁾ are amended as follows.

(2) In Schedule 1, in paragraph 27(2), for “has the meaning given in Article 1(2)(c) of Directive 96/22/EEC concerning the prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and of beta-agonists.” substitute “means the administering to an animal, in accordance with regulation 8 of the Veterinary Medicines Regulations 2013⁽²⁾, of veterinary medicinal products having an oestrogenic, androgenic or gestagenic action for synchronizing oestrus and preparing donors and recipients for the implantation of embryos, after examination of the animal by a veterinary surgeon or someone under the responsibility of a veterinary surgeon.”

(3) In Schedule 5A, in paragraph 2—

(a) for sub-paragraph (1) substitute—

“(1) A keeper must hold a recognised certificate.

(1A) In this paragraph, “recognised certificate” means a certificate recognised by the Welsh Ministers attesting to the completion of such training, or the acquisition of experience equivalent to such training, as the Welsh Ministers consider appropriate.”;

(b) in sub-paragraph (2), for “certificates recognised by the Welsh Ministers for the purposes of sub-paragraph (1)” substitute “recognised certificates”.

The Welfare of Animals at the Time of Killing (Wales) Regulations 2014

5.—(1) The Welfare of Animals at the Time of Killing (Wales) Regulations 2014⁽³⁾ are amended as follows.

(2) In regulation 3—

(a) in paragraph (1), in the definition of “EU Regulation”, at the end insert “as amended from time to time”;

(b) omit paragraph (4).

(3) In regulation 4(2), omit “, and act as the member State, for the purposes of the EU Regulation and these Regulations”.

(1) S.I. 2007/3070 (W. 264), amended by S.I. 2010/2713 (W. 229).

(2) S.I. 2013/2033, to which there are amendments not relevant to these Regulations.

(3) S.I. 2014/951 (W. 92).

(4) In regulation 11(3), for “England, Scotland, Northern Ireland or another member State of the European Union” substitute “England, Scotland or Northern Ireland”.

(5) In regulation 19(1), omit “(including a certificate or temporary certificate granted in another member State)”.

(6) In regulation 35, for paragraph (6) substitute—

“(6) An inspector may be accompanied by such other persons as the inspector considers necessary.”

(7) In Schedule 2, in paragraph 3(2), for “any EU obligation” substitute “any retained EU obligation”.

Name

Minister for Environment, Energy and Rural Affairs,
one of the Welsh Ministers

Date

Explanatory Memorandum to the Animal Health and Welfare (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019.

This Explanatory Memorandum has been prepared by Department for Energy, Planning 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 Animal Health and Welfare (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019.

I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the annex to this memorandum.

Lesley Griffiths AM
Minister for Environment, Energy and Rural Affairs
9 January 2019

PART 1

1. Description

- 1.1. This instrument makes amendments to The Registration of Establishments (Laying Hens) (Wales) Regulations 2004, The Welfare of Animals (Transport) (Wales) Order 2007, The Welfare of Farmed Animals (Wales) Regulations 2007 and The Welfare of Animals at the Time of Killing (Wales) Regulations 2014. These amendments are to ensure that the statute book remains operable following the UK's exit from the EU and will address deficiencies in domestic legislation arising from EU Exit.
- 1.2. The instrument comes into force on "exit day", which section 20(1) of the European Union (Withdrawal) Act 2018 ("the 2018 Act") defines as 29 March 2019 at 11.00 pm.

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

- 2.1 This instrument is being made using the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 ("the 2018 Act").
- 2.2 As set out in the Ministerial statement in Annex 2 of this Explanatory Memorandum it is proposed that the instrument be subject to negative procedure.

3. Legislative background

- 3.1 This instrument is being made using the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the 2018 Act in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

4. Purpose and intended effect of the legislation

What did any relevant EU law do before exit day?

- 4.1 The Registration of Establishments (Laying Hens) (Wales) Regulations 2004 implemented into Welsh law the requirements in relation to the registration of establishments with laying hens, which were set out in Directive 2002/4/EC.

Directive 2002/4/EC specifies registration requirements for establishments in the European Union which are covered by Directive 1999/74. Directive 1999/74 applies to all establishments keeping laying hens other than those with fewer than 350 laying hens or establishments that only rear breeding laying hens. Directive 1999/74 sets the minimum welfare standards required in the EU for the protection of laying hens.

Directive 2002/4/EC requires member states to establish a system for registering establishments caught by Directive 1999/74 and assigning each a unique identification number. Member States are required to ensure that this register is accessible to the relevant competent authority in that Member State for the purposes of tracing eggs put on the market for human consumption.

The distinguishing number under Directive 2002/4/EC was also required to specify the farming method used for the eggs and the Member State of registration. The farming methods and the corresponding numbers to be used in the unique number are defined in Regulation (EC) No 589/2008. Regulation (EC) No 589/2008, which lays down rules for implementing Council Regulation (EC) No 1234/2007 as regards marketing standards for eggs, defines the farming methods as 1: for free range eggs, 2: for barn eggs; and 3: for cage laid eggs. In addition, Regulation (EC) No 834/2007 sets out requirements for organic egg production and the corresponding farming method code for organic production is 0.

The Registration of Establishments (Laying Hens) (Wales) Regulations 2004 implemented these requirements in Wales. It places an obligation on the Welsh Ministers to establish such a register and assign unique identification numbers to establishments meeting the requirements of Directive 1999/74 in Wales.

- 4.2 The Welfare of Animals (Transport) (Wales) Order 2007 implements and provides enforcement powers in relation to Regulation (EC) No. 1/2005 on the protection of animals during transport and related operations. Regulation (EC) No. 1/2005 applies to the transport of live vertebrate animals carried out within the Community and includes specific checks which are to be carried out by officials on consignments of animals entering or leaving the customs territory of the Community. It also includes several derogations to Regulation (EC) No. 1/2005 that apply to Wales only.
- 4.3 The Welfare of Farmed Animals (Wales) Regulations 2007 transposes several EU Directives relating to the welfare of farm animals into Welsh law. These Directives are:
 - a) Directive 91/630/EEC, Directive 2001/88/EC and Directive 2001/93/EC which all related to the welfare of pigs. These Directives were repealed and consolidated in 2008 by Directive 2008/120/EC. Directive 2008/120/EC specifies the minimum standards required for pig production in the EU.
 - b) Directive 2007/43/EC which specifies the minimum requirements for the welfare of conventional meat chickens in the EU, including the maximum permitted stocking densities.

- c) Directive 1999/74/EC which sets out the specific minimum requirements for the welfare of laying hens in the EU for different permitted production systems.
- d) Directive 91/629/EEC, Directive 92/2/EC and Directive 97/182/EC in relation to calf welfare. These Directives were repealed and consolidated in 2008 by Directive 2008/119/EC which sets out specific minimum requirements for the keeping of calves. These include the prohibition of individual veal crates, the tethering of calves and the requirement for roughage to be provided in their diet.

The Welfare of Farmed Animals (Wales) Regulations 2007 also transposed the requirements of Directive 98/58/EC, which formed the framework directive for farm animal welfare in the EU. Directive 98/58/EC sets out minimum essential requirements for all farmed livestock, irrespective of the species.

- 4.4 The Welfare of Animals at the Time of Killing (Wales) Regulations 2014 implements and provides enforcement powers in Wales for the requirements of Regulation (EC) 1099/2009 on the protection of animals at the time of killing. Regulation (EC) 1099/2009 specifies the accepted method of killing and stunning for animals in the EU. The Welfare of Animals at the Time of Killing (Wales) Regulations 2014 includes these standards but it also includes several stricter national rules and higher welfare standards which apply to Wales only and includes provisions relating to the religious slaughter of animals in Wales.

Why is it being changed?

- 4.5 The changes made by the instrument are necessary to ensure that the current legislation continues to operate effectively after we leave the EU. It also introduces a policy change in relation to certificates of competence for slaughtermen that is required as a consequence of leaving the EU.
- 4.6 The instrument amends the Registration of Establishments (Laying Hens) (Wales) Regulations 2004 to ensure that the provisions relating the system of registration continue to be operable post exit. These amendments make no material changes to the requirements of the Registration of Establishments (Laying Hens) (Wales) Regulations 2004.

The instrument inserts into regulation 4 of the Registration of Establishments (Laying Hens) (Wales) Regulations 2004 a new reference to Council Regulation (EC) No 834/2007 on organic production and labelling of organic products and a new reference to Commission Regulation (EC) No 1234/2007 as regards marketing standards for eggs. These references are references to such instruments as they will form part of domestic law by virtue of section 3 of the 2018 Act. Such legal effect is to be provided by the proposed “European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations)

(EU Exit) Regulations 2019”, to be made by the UK Government in January 2019.

This instrument also makes consequential amendments to the Registration of Establishments (Laying Hens) (Wales) Regulations 2004 in order to change references to the National Assembly to Welsh Ministers instead.”.

- 4.7 For the Welfare of Animals (Transport) (Wales) Order 2007 the instrument omits article 20 which specifies the Welsh Ministers as the competent authority for the purposes of provisions contained within Council Regulation No 1/2005 and Council Regulation 1255/97. Such an omission is as a direct consequence of the UK Government making amendments to these EU Regulations so that on exit day, references in these EU Regulations to the competent authority in relation to Wales are to be read as the Welsh Ministers. This instrument also makes consequential amendments to the Welfare of Animals (Transport) (Wales) Order 2007 in order to change references to the National Assembly to Welsh Ministers instead.
- 4.8 The instrument makes amendments to the Welfare of Farmed Animals (Wales) Regulations 2007, in order to correct certain cross references to EU Directives which will no longer be operable on exit day. The definition of “zootechnical treatment” has been taken out of Council Directive 96/22/EC concerning the prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and of beta agonists and inserted into these Regulations. Requirements in relation to training certificates have been taken out of Council Directive 2007/43/EC laying down minimum rules for the protection of chickens kept for meat production and inserted into these Regulations. This will make no material changes to the requirements of the Regulations.
- 4.9 In relation to the Welfare of Animals at the Time of Killing (Wales) Regulations 2014 the instrument makes technical amendments to remove references to Member States and European Commission officials. 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 slaughtermen by other Member States, must be recognised in the UK. Certificates of competence are required by slaughterhouses in the EU to evidence that an individual has been trained and successfully assessed as reaching a sufficient level of competence to undertake the animal handling, stunning and killing and related operations required of them. The amendments made to regulations 11 and 19 of the Welfare of Animals at the Time of Killing (Wales) Regulations 2014 remove this mutual recognition requirement.

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. Continued recognition of certificates

issued in other Member States would also open up enforcement problems after we leave as we would be unable to suspend or revoke a certificate issued in another Member State in the event a slaughterman breached the requirements of the Welfare of Animals at the Time of Killing (Wales) Regulations 2014. Other than the removal of mutual recognition the changes made by this instrument make no material changes to the requirements of these Regulations.

What will it now do?

- 4.10 The instrument will ensure that Welsh law, which implements current EU requirements for the registration of laying hen establishments, the welfare of animals on-farm, the welfare of animals during transport and the welfare of animals at the time of killing remain effective in Wales after we leave the EU. It will also end the mutual recognition of certificates of competence issued in other Member States in relation to Regulation 1099/2009.
- 4.10 The Welsh Government shares the British public's high regards for animal welfare and plans to retain the current standards set out in EU legislation and EU derived domestic regulations that protect the health and welfare of animals on-farm, the welfare of animals during transport, the welfare of animals at the time of killing and the system of registration for laying hen establishments when the UK leaves the EU.

5. Consultation

- 5.1 No public consultation was undertaken.

6. Guidance

- 6.1 There is no associated guidance in respect of this Statutory Instrument.

7. Regulatory Impact Assessment (RIA)

- 7.1 The impact on business, charities or voluntary bodies is minimal.
- 7.2 This instrument will end mutual recognition of certificates of competence that have been issued in respect of Regulation (EC) 1099/2009 on the protection of animals at the time of killing in another Member State. As a result a very limited number of slaughterhouse employees in Wales will need to apply for a certificate of competence issued by a competent authority in the UK in order to be able to continue to work in Wales from exit day. Doing so will cause these individuals to incur a cost. Applying and being assessed for a certificate of competence in the UK carries a cost (of around £225). We understand that 5 individuals in Wales will be affected in this way.

8. Monitoring & review

8.1 As this instrument is made under the Withdrawal Act, no extra review arrangement is required.

Annex [x] Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7 <i>Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)</i>	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the CLA Committee (as sifting committee)
Appropriateness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.

		committed to make the same statement when exercising powers in Schedule 2	
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	<p>A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.</p> <p>A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.</p>
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 77	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g. whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 18(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority.	A statement to explain why it is appropriate to create such a sub-delegated power.

		Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

The Cabinet Secretary for Energy, Planning and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Animal Health and Welfare (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of the National Assembly for Wales (i.e. the negative procedure)”. This is the case because the changes being made are technical in nature and make no substantive changes to how Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009 operate.

2. Appropriateness statement

The Cabinet Secretary for Energy, Planning and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Animal Health and Welfare (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 does no more than is appropriate”. This is the case because all the changes being made are solely in order to address deficiencies arising from EU exit.”

3. Good reasons

The Cabinet Secretary for Energy, Planning and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”. This is because the provisions ensure that protections provided by all the statutory instruments being amended continue to be operable after the UK leaves the European Union.”

4. Equalities

4.1 The Cabinet Secretary for Energy, Planning and Rural Affairs has made the following statement(s):

“The Animal Health and Welfare (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

- 4.2 The Cabinet Secretary for Energy, Planning and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Lesley Griffiths have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

5. Explanations

- 5.1 The explanations statement has been made in paragraph 4 (Purpose & intended effect of the legislation) of the main body of this explanatory memorandum.

6. Criminal offences

Not applicable/required.

7. Legislative sub-delegation

Not applicable/required.

8. Urgency

Not applicable/required.

Agenda Item 5

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

Document is Restricted

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

Document is Restricted

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

Document is Restricted

Lesley Griffiths AM
Minister for Environment, Energy and Rural Affairs

11 January 2019

Dear Lesley,

Consideration of the Legislative Consent Memorandum for the Fisheries Bill

Thank you for agreeing to give evidence on the Legislative Consent Memorandum ('LCM') for the UK Fisheries Bill at the Climate Change, Environment and Rural Affairs Committee's meeting on the 24 January.

We would like detail and/or clarification, beyond that provided in the LCM and the Supplementary LCM, on the following issues to inform our work:

The LCM states:

"The Fisheries Bill creates the primary legislative elements of the UK Framework for fisheries management and support post EU Exit. **These provisions could only appropriately be applied through a UK Bill**, providing a uniform set of powers, obligations and objectives...With the current devolution arrangements an Act of the Assembly would not be able to make all of the provisions necessary for the coherence of the Bill. **This would leave us relying in part on the UK Fisheries Bill and in part on a Welsh fisheries Bill.**"

The LCM goes on to state that, **at the request of Welsh Government**, the UK Bill also includes powers for the Welsh Ministers.

The Welsh Government has given commitments to publishing a consultation, *Brexit and our seas* in the spring term and to introducing a Welsh fisheries Bill.

The need for legislation and the approach taken

Question 1. To what extent does the UK Bill include provisions that are additional to those necessary to establish a legislative UK Framework for fisheries post EU Exit? Which of these provisions could have been included in a future Welsh fisheries Bill?



Question 2. Which of the powers for the Welsh Ministers were included at the request of the Welsh Government?

Question 3. What is the rationale for requesting these powers, particularly if the Welsh Government intends to introduce a Welsh fisheries Bill?

Question 4. What are the implications for the Welsh Government and the fisheries sector if these powers are not included in the UK Bill?

Question 5. Schedule 6 includes broad powers for Welsh Ministers to make provision for 'conservation' and 'fish industry' purposes. Why is it necessary to include these provisions in a UK Bill, rather than a future Welsh fisheries Bill which will be subject to the full Assembly scrutiny process?

Fisheries objectives

The Common Fisheries Policy objectives (set out in Article 2 of the EU Common Fisheries Policy Regulations) will no longer apply following the UK's exit from the EU. Clause 1 of the UK Bill sets out the UK's "fisheries objectives", which reflect some of the Common Fisheries Policy ('CPF') objectives.

Question 6. How do the fisheries objectives in clause 1 differ from, and improve on those set out in Article 2 of the Common Fisheries Policy Regulations?

Question 7. What consideration was given to including milestones and/or targets for achieving the fisheries objectives in the Bill, for example in relation to Maximum Sustainable Yield (as currently included in the CFP)? Will these be included elsewhere, for example, in a JFS?

Question 8 How will progress towards achieving the fisheries objectives be measured and monitored in Wales? Is there any intention to develop a common approach to measuring and monitoring progress across the UK?

Fisheries statements

Clause 2 to 6 make provision for a "Joint Fisheries Statement" ('JFS') and a "Secretary of State Fisheries Statement" ('SSFS'). Under this provision, the fisheries policy authorities (i.e. the UK Government and devolved administrations) must prepare and publish a JFS before 1 January 2021. A corresponding requirement is placed on the Secretary of State in respect of a SSFS.

Schedule 1 makes provision for the preparation and publication of a JFS. This includes consultation on a draft JFS before being laid before the appropriate legislature, and responding to any resolutions and recommendations.



Clause 2(1) provide that a JFS will state the fisheries authorities' policies for achieving, or contributing to the achievement of, the fisheries objectives. Clause 6(2) requires authorities (and the Marine Management Organisation - MMO) to exercise their functions relating to fisheries, fishing or aquaculture in accordance with the policies contained in a JFS.

However, authorities can deviate from those policies but must state their reason.

Question 9. Can you explain in detail how the fisheries policy authorities will “act jointly” in relation to the JFS? How will the Fisheries Management Framework Agreement, referred to in the Supplementary LCM, inform this approach?

Question 10. Can you clarify whether the fisheries policy authorities would be expected to consult appropriate legislatures on any revisions to a draft JFS arising from scrutiny of another appropriate legislature, before the final text of a JFS is published?

Question 11. While Schedule 1 provides for scrutiny of a JFS by the appropriate legislature before it is published, a JFS will not be subject to the approval of those legislatures. What consideration was given to including such provision?

Question 12. Can you explain how and to whom a statement under clause 6(2) will be made? Why is there no formal mechanism in the Bill to this effect?

The SSFS covers many of the more detailed objectives which are contained within Article 2(5) of the Common Fisheries Policy. The SSFS must include the Secretary of State's policies in relation to these objectives. These objectives would only be applicable to reserved powers and those that apply to England only.

Question 13. Can you clarify the purpose and intended effect of a SSFS as it relates to Wales?

- What are the reserved powers that the SSFS will apply to?
- Do you intend to provide comparable detailed objectives that would apply to Wales? If so, when and how?

Power of the Secretary of State to determine fishing opportunities

Clauses 18 and 19 make provisions in relation to fishing opportunities (or quota) for British fishing boats. Clause 18 provides that the Secretary of State may determine fishing opportunities. A determination may be made only for the purpose of complying with an international obligation of the UK in this regard.

Clause 19 requires the Secretary of State to consult Welsh Ministers (and the other devolved administrations) before making or withdrawing a determination under clause 18.



The Fisheries Concordat between the UK Government and devolved administrations ('the Concordat') states:

"The Administrations note that this Concordat involves an agreement to allocate amounts of quota to each Administration. Such allocations do not constitute a permanent split of UK fishing opportunities."

The Concordat sets out the basis on which quota currently allocated to the UK will be allocated to each of the administrations. It also enables the devolved administrations to make changes to how fishing opportunities can be allocated within their jurisdiction.

Question 14. Can you clarify whether the Bill, as drafted, provides Wales (and the other devolved administrations) with a *right* to fishing opportunities? If not, why not?

Wales currently receives 1% of the UK's quota share. Even if overall UK quota levels increase after Brexit, Wales will only get 1% of that increase.

Question 15. In terms of fishing quota, the benefit to Wales from the UK's exit from the EU will be marginal. Do you think this is acceptable? What discussion have you had with the UK Government in this regard?

Question 16. On what basis will fishing opportunities in Wales be distributed and what mechanism will be used?

Question 17. Will the Fisheries Concordat need to be reconsidered in light of the provisions in the Bill? If so, in what way?

Question 18. Can you clarify whether clause 20 relates to the distribution of fishing opportunities by the Secretary of State (or the MMO) to the UK's four nations, or to the distribution of fishing opportunities by the Secretary of State (or the MMO) to English fishing boats?

According to the Explanatory Notes accompanying the UK Bill, amendments to Article 17 of the Common Fisheries Policy Regulation provided for by clause 20, which describes how fishing opportunities should be distributed, will not apply to Wales. Article 17 contains provisions relating to transparent and objective criteria as the basis of that distribution. The Explanatory Notes state that clause 20 "does not apply Article 17 to the other Fisheries Administrations, at their request".



Question 19. Can you outline your reasons for this? What will this mean in practice?

Sale of fishing opportunities and discard prevention charging schemes

Clause 22 provides powers for the Secretary of State to introduce a different approach to quota allocation **for England only**. This includes setting out a process for selling fishing opportunities.

Article 15 of the CFP Regulations (which are unamended by the UK Bill) introduces a discard ban in the form of a landing obligation for all fish caught. The ban comes into full force on 1 January 2019.

Clauses 23 to 27 makes provision for the Secretary of State to establish, for England, a charging scheme allowing payment to be made for "an unauthorised catch of fish". According to the Explanatory Notes accompanying the UK Bill, clause 23 was included "to address the concerns on the impact of the discard ban". No equivalent provisions are made in relation to Wales.

Question 20. What consideration did you give to requesting corresponding provisions for sale of fishing opportunities and discard prevention charging schemes for Wales?

Finally, we are aware that the Bill has already completed committee stage in the House of Commons. **We would like you to provide a timeline for the Bill's passage through Parliament, and to seek assurance from you that this will provide sufficient time for the Welsh Government to negotiate any amendments that may be deemed necessary or desirable.**

I should be grateful if you would respond to the above by **Friday 18 January**. While I appreciate that this is a tight deadline, it will help ensure the best use of time at our session on 24 January.

Yours sincerely,



Mike Hedges AM

Chair of Climate Change, Environment and Rural Affairs Committee

Copied to: Mick Antoniw AM, Chair of Constitutional and Legislative Affairs Committee
David Rees AM, Chair of European Affairs and Additional Legislation Committee



Lesley Griffiths AC/AM
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref LG/0859/18

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

SeneddCLA@assembly.wales

8 January 2019

Dear Mick,

UK Fisheries Bill – Supplementary Legislative Consent Memorandum

As the Constitutional and Legislative Affairs Committee is scrutinising the Legislative Consent Memorandum for the Fisheries Bill, I would like to draw your attention to a Supplementary Legislative Consent Memorandum which has been laid today. I have attached a copy for your reference.

We have secured an amendment during the House of Commons Committee stage which makes provision to extend the National Assembly's legislative competence in relation to fishing, fisheries and fish health matters in relation to the Welsh Zone. This is a significant constitutional step forward and will enable the National Assembly for Wales to bring forward an Assembly Fisheries Bill in relation to Wales and the Welsh zone. The Welsh Government is of the view the National Assembly for Wales can already (and will continue to be able to) legislate in relation to Welsh fishing boats beyond Wales on the basis such legislation would be "in relation to Wales" for the purposes of section 108A(2)(b) of the 2006 Act.

The new clause 39 amends section 108A (legislative competence) of the Government of Wales Act 2006 ("2006 Act") and makes a number of further consequential changes to the 2006 Act.

The latest version of Bill is here:

<https://publications.parliament.uk/pa/bills/cbill/2017-2019/0278/18278.pdf>

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

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

The Supplementary Memorandum also sets out an updated position on Clause 18, following concerns we raised in the Legislative Consent Memorandum laid on 15 November, and notes Welsh Government continues to work with UK Government to ensure we have the most appropriate and widest toolkit for the management of our Welsh fisheries as we exit the European Union.

I expect to lay a further Supplementary Memorandum at a later stage in the Bill process, following discussions with the UK Government about further amendments and prior to tabling a debate for the Assembly to consider consent to the LCM.

Regards,

A handwritten signature in black ink that reads "Lesley". The signature is written in a cursive style with a large, sweeping flourish at the end.

Lesley Griffiths AC/AM

Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

Rt Hon David Lidington MP
Chancellor of the Duchy of Lancaster
70 Whitehall
London

29 October 2018

Dear Mr Lidington,

Meeting of the Interparliamentary Forum on Brexit – 25 October

We, the members of the Interparliamentary Forum on Brexit, agreed at our meeting in Cardiff on 25 October to write to you, both to report the work the Forum has done in the last year, and to draw your attention to some of the key conclusions and recommendations made by the committees represented in the Forum on intergovernmental relations and interparliamentary relations.

The Interparliamentary Forum on Brexit was established following a recommendation made by the House of Lords European Union Committee in its report *Brexit: devolution*, that the structures of the interparliamentary dialogue within the UK should be strengthened.¹ The Forum brings together chairs and convenors of the Committees scrutinising Brexit-related issues in the Scottish Parliament, National Assembly for Wales, House of Commons and House of Lords. Representatives of the Northern Ireland Assembly have been unable to attend while the Power-Sharing executive in Northern Ireland has been suspended and the Assembly is not sitting, though officials from the Assembly have been in attendance as observers.

¹ [Fourth Report of the House of Lords European Union Committee of Session 2017–19](#), *Brexit: devolution*, HL 9, 19 July 2017, para 297-8

The Forum has met five times.

- 12 October 2017 at the House of Lords
- 18 January 2018 at the House of Lords
- 26 March 2018 at the Scottish Parliament
- 21 June 2018 at the House of Commons
- 25 October 2018 at the National Assembly for Wales

The meetings of the Forum have focused in particular on the implications for the devolution settlements of the European Union (Withdrawal) Act 2018, the progress of Article 50 negotiations and on the current state of intergovernmental and interparliamentary relations in the UK political system.

Annexed to this letter is a summary of conclusions and recommendations on these issues made by the committees of the House of Lords, National Assembly for Wales, Scottish Parliament and House of Commons that are represented in the Forum. These issues continue to be examined by committees.

We are copying this letter to the Cabinet Secretary for Government Business and Constitutional Relations in the Scottish Government and Cabinet Secretary for Finance in the Welsh Government, who we also urge to take note of this summary and engage in dialogue with the Forum.

From this summary there is a clear view among the committees that the Joint Ministerial Committee (JMC) mechanism is not fit for purpose. Members of the Forum are heartened that the Prime Minister and the first ministers of Wales and Scotland recognised this at the JMC (Plenary) on 14 March 2018, and we welcome the review of the JMC structures and Memorandum of Understanding that is being undertaken. The Forum is clear that this review must take into account the views and recommendations of the various Committees and we invite you to engage in a dialogue with us. We note that some Committees continue to examine these issues as part of their ongoing scrutiny work and that they may publish further recommendations, which should also be considered as part of the review. We look to this review to bring about an overhaul of the JMC structures.

We note that several committees represented within the Forum have recommended that the structure for intergovernmental relations within the UK should be put on a statutory basis. Some committees have also called for proper resourcing (including a permanent secretariat) and a commitment to meetings at least twice a year of the JMC (plenary). The review should take these recommendations carefully into account.

We note also that leaving the European Union will lead to a significant increase in the number of areas in which common UK positions and frameworks are required. It is important that there should be clearly-defined structures and processes for taking decisions on common frameworks in the years to come. More effective intergovernmental and interparliamentary mechanisms are required to examine this and the wider implications of UK withdrawal from the EU for the devolution settlement and other issues of common concern.

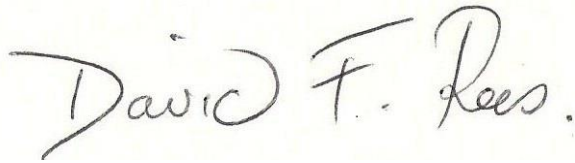
Establishing a structure for such intergovernmental dialogue that commands the trust of all parts of the UK will require significant investment of resources. It will also require a system of democratic, parliamentary oversight. We are therefore encouraged by the Government's statement, in its response to the Public Administration and Constitutional Affairs Committee's report on [*Devolution and Exiting the EU: reconciling differences and building strong relationships*](#), that "The UK Government welcomes the scrutiny of the UK Parliament and the devolved legislatures in relation to the ongoing work on common frameworks." It's now time to translate that welcome into action: as parliamentarians, we urge our respective Governments, and the authorities in the legislatures of the United Kingdom, to work closely with committees in developing a system of democratic oversight of intergovernmental relations fit for the post-Brexit United Kingdom.

The next meeting of the Forum is scheduled for the week commencing 14 January 2019. We would be grateful for a response to this letter ahead of that meeting.

Yours sincerely,

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

Mick Antoniw AM, Chair of the Constitutional and Legislative Affairs Committee

A handwritten signature in black ink that reads "David F. Rees.". The signature is written in a cursive style.

David Rees AM, Chair of the External Affairs and Additional Legislation Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

Members in attendance at the Forum

House of Commons

Sir Bernard Jenkin MP, Chair of the Public Administration and Constitution Committee

Hywel Williams MP, Member of the Exiting the European Union Committee

Anna McMorrin MP, Member of the Welsh Affairs Committee

House of Lords

Lord McFall of Alcluith, Senior Deputy Speaker

Lord Boswell of Aynho, Chair of the EU Select Committee

Lord Wallace of Tankerness, Member of the Constitution Committee

Lord Thomas of Gresford, Member of the Delegated Powers and Regulatory Reform Committee

Lord Kirkwood of Kirkhope, Member of the Secondary Legislation Scrutiny Committee

National Assembly for Wales

Elin Jones AM, Llywydd (Presiding Officer)

Mick Antoniw AM, Chair of the Constitutional and Legislative Affairs Committee

David Rees AM, Chair of the External Affairs and Additional Legislation Committee

Scottish Parliament

Bruce Crawford MSP, Convenor of the Finance and Constitution Committee

Adam Tomkins MSP, Deputy Convenor of the Finance and Constitution Committee

Graham Simpson MSP, Convenor, of the Delegated Powers and Law Reform Committee

Annex: Conclusions and recommendations of committees

House of Lords EU Select Committee

The House of Lords EU Select Committee considered intergovernmental relations issues in its 2017 inquiry into Brexit: devolution.² Chapter 7 of the final report, published in July 2017, focuses on ‘engagement with the devolved administrations’. It summarises evidence collected on the operation of the JMC and, more particularly given the report’s focus on Brexit, of the Joint Ministerial Committee (EU Negotiations) (JMC (EN)). Evidence to the Committee from the Scottish Government, Welsh Government and academic experts all suggested that the JMC (EN) had not been operating effectively. With regards to possible ways of improving intergovernmental relations the Committee recommended –

- The Joint Ministerial Committee has been re-energised by Brexit, and we also welcome the establishment of the Joint Ministerial Committee (European Negotiations). We note, however, the concerns expressed by the Scottish and Welsh Ministers that the JMC (EN) is not fulfilling its terms of reference, and it is clear that at a basic level its meetings are not being treated with respect or organised efficiently. This needs to change: if the UK Government wishes the JMC (EN) to make a useful contribution, it must give it appropriate support, both in political and resource terms.³
- More generally, we note that the JMC and the JMC (EN) are not decision-making bodies, and that there is a perception in some quarters that they are used to

² Fourth Report of the House of Lords European Union Committee of Session 2017–19, Brexit: devolution, HL 9, 19 July 2017

³ Fourth Report of the House of Lords European Union Committee of Session 2017–19, Brexit: devolution, HL 9, 19 July 2017, para 291

manage disagreements, rather than to engage with issues and find solutions. This is exacerbated by the perception that the participants are not doing so on equal terms.⁴

- We therefore endorse the view of most of our witnesses that the UK Government needs to raise its game to make the JMC (EN) effective. This means better preparation, including bilateral discussions ahead of meetings, a structured work programme, greater transparency, and a willingness to accept that the JMC (EN), even if not a formal decision-making body, is more than a talking-shop—that it should be authorised to agree common positions on key matters affecting devolved competences in time to inform the UK Government’s negotiating position.⁵
- Given the four-week negotiating cycle structure announced for the Brexit negotiations, we further recommend that a long-term programme of meetings of the JMC (EN) should be adopted, with the meetings coinciding with the fourth week in each cycle. This would enable the Government both to report on progress in the preceding cycle, and to identify and agree common positions on devolved issues arising in the forthcoming cycle.⁶
- We note the suggestion by the Governments of Wales and Scotland that they should have a seat at the negotiating table with the EU when devolved matters are being discussed, and that they should be ‘in the room’ throughout. We call on the UK Government to respond to this suggestion as a matter of urgency, and at all events before the negotiations turn to the future relationship

⁴ Fourth Report of the House of Lords European Union Committee of Session 2017–19, Brexit: devolution, HL 9, 19 July 2017, 292

⁵ Fourth Report of the House of Lords European Union Committee of Session 2017–19, Brexit: devolution, HL 9, 19 July 2017, para 293

⁶ Fourth Report of the House of Lords European Union Committee of Session 2017–19, Brexit: devolution, HL 9, 19 July 2017, para 294

between the UK and the EU, where issues of strong devolved interest, such as fisheries, are likely to arise.⁷

- The devolved governments, and some of our witnesses, have also argued that fundamental reform is needed to give the devolved institutions a more formal role in UK decision-making post-Brexit, analogous to that of regions and states in federal systems. While there may be merit in such proposals, this would be a far-reaching constitutional reform, which falls outside the scope of this report and the remit of this Committee.⁸

⁷ Fourth Report of the House of Lords European Union Committee of Session 2017–19, Brexit: devolution, HL 9, 19 July 2017, para 295

⁸ Fourth Report of the House of Lords European Union Committee of Session 2017–19, Brexit: devolution, HL 9, 19 July 2017, 296

House of Lords Constitution Committee

The House of Lords Constitution Committee published its report *Inter-governmental relations in the United Kingdom* in 2015.⁹ The committee made several conclusions and recommendations on the overall state of inter-governmental relations parliamentary scrutiny of the existing mechanisms in the report. It made the following recommendations regarding the JMC structure:

- We recommend that the Cabinet Office, as part of its current review of intergovernmental structures, consider and report on how a revised Joint Ministerial Committee structure might best be used to facilitate joint policymaking and co-ordination. Provision should be made to ensure that policy initiatives can come from the devolved administrations, as well as from the UK Government.¹⁰
- The Government should consider whether the framework of intergovernmental relations should be set out in statute. Such a statute could set out the existence and membership of the Joint Ministerial Committee and its core sub-committees, along with the core principles governing relations between administrations. This legislation could provide a basic framework, within which the Memorandum of Understanding and departmental concordats would continue to detail how inter-governmental interactions would function in practice.¹¹

⁹ Eleventh Report of the House of Lords Constitution Committee of Session 2014–15, Inter-governmental relations in the United Kingdom, HL146, 27 March 2015

¹⁰ Eleventh Report of the House of Lords Constitution Committee of Session 2014–15, Inter-governmental relations in the United Kingdom, HL146, 27 March 2015, para 70

¹¹ Eleventh Report of the House of Lords Constitution Committee of Session 2014–15, Inter-governmental relations in the United Kingdom, HL146, 27 March 2015, para 86

- Greater transparency around the Joint Ministerial Committee is vital. A balance needs to be maintained between confidentiality and openness, but the current lack of information is not acceptable. We recommend that the dates, venues and headline agenda items of Joint Ministerial Committee meetings be announced further in advance.¹²
- Were the Joint Ministerial Committee framework to be placed on a statutory footing, Parliament should ensure that the legislation requires adequate information to be published to enable effective parliamentary scrutiny of inter-governmental relations.¹³

The Constitution Committee returned to this issue in its report *The Union and Devolution*. Where it made the following recommendations:

- The stability of the Union requires careful management of the balance between unity and diversity. The development of devolution in recent decades, and the emerging ‘devolution deals’ in England, have accentuated diversity in the Union. A counter-balancing effort to support and promote unity is now required. The Government should set out a strategy for taking this work forward.¹⁴
- We reiterate the conclusions from our 2015 report on intergovernmental relations. The formal structures of inter-governmental relations—in particular, the JMC—must not be allowed to degenerate into a forum for grandstanding and gesture politics which emphasise differences, conflict and division. Instead, the JMC should be reformed to promote and manage

¹² [Eleventh Report of the House of Lords Constitution Committee of Session 2014–15](#), Inter-governmental relations in the United Kingdom, HL146, 27 March 2015, para 184

¹³ [Eleventh Report of the House of Lords Constitution Committee of Session 2014–15](#), Inter-governmental relations in the United Kingdom, HL146, 27 March 2015, para 186

¹⁴ [Tenth Report of the House of Lords Constitution Committee of Session 2015–16](#), *The Union and Devolution*, HL 149, 25 May 2016, para 283

co-operation and coordination between the UK Government and the devolved administrations.¹⁵

¹⁵ Tenth Report of the House of Lords Constitution Committee of Session 2015–16, The Union and Devolution, HL 149, 25 May 2016, para 291

National Assembly for Wales Constitutional and Legislative Affairs Committee

The National Assembly for Wales' Constitutional and Legislative Affairs Committee ('the CLA Committee') published a report on UK Governance post-Brexit in February 2018.¹⁶ The report addresses current inter-governmental arrangements, reforming inter-governmental relations, and the understanding of devolution by Whitehall civil servants. The Committee also exchanged correspondence with the UK Minister for the Constitution regarding the latter point.¹⁷

One of the main recommendations of the report is the need for a Speakers' conference to assess current intergovernmental relations arrangements with a view to help building consensus on reform.¹⁸ The report also envisaged the conference considering how the Interparliamentary Forum on Brexit could be strengthened to ensure that inter-parliamentary dialogue is maintained post-Brexit.

With regards to possible ways of improving intergovernmental relations the Committee recommend that: –

- In the short-term the JMC is strengthened by: ensuring that the JMC(P) fulfils the functions of an annual Heads of Government Summit, as suggested in 2016 by the House of Commons PACAC; adding new committees to the

¹⁶ National Assembly for Wales Constitutional and Legislative Affairs Committee, [UK Governance post Brexit](#), February 2018

¹⁷ [Correspondence with Chloe Smith MP, Minister for the Constitution](#)

¹⁸ National Assembly for Wales Constitutional and Legislative Affairs Committee, [UK Governance post Brexit](#), February 2018, Recommendation 5

existing JMC format to cover the single market and trade, and in particular to agree on common frameworks.¹⁹

- Post-Brexit, the JMC is subject to fundamental reform so that it becomes a UK Council that: is a decision-making body; has an independent dispute resolution, arbitration and adjudication mechanism; is transparent and accountable in all of its functions and operations, in particular, in its decision-making.²⁰
- The UK Government place inter-governmental relations on a statutory footing as suggested in 2015 by the House of Lords Constitution Committee and in 2017 by the House of Common Public Administration and Constitutional Affairs Committee.²¹
- The MoU (subject to the UK Government's response to recommendation 2) and DGNs should: be subject to a thorough overhaul involving collaboration between all governments of the UK with the aim of establishing shared governance around the machinery that supports the delivery of effective and fair inter-governmental relations; as part of that overhaul, be subject to full public consultation, enabling scrutiny by parliamentary committees across the UK...; be reviewed on a regular basis thereafter.²²

¹⁹ National Assembly for Wales Constitutional and Legislative Affairs Committee, [UK Governance post Brexit](#), February 2018, Recommendation 1

²⁰ National Assembly for Wales Constitutional and Legislative Affairs Committee, [UK Governance post Brexit](#), February 2018, Recommendation 3

²¹ National Assembly for Wales Constitutional and Legislative Affairs Committee, [UK Governance post Brexit](#), February 2018, Recommendation 2

²² National Assembly for Wales Constitutional and Legislative Affairs Committee, [UK Governance post Brexit](#), February 2018, Recommendation 4

National Assembly for Wales External Affairs and Additional Legislation Committee

The External Affairs and Additional Legislation Committee ('the EAAL Committee') has considered intra-UK intergovernmental and interparliamentary relations, insofar as they relate to the UK exiting the European Union.

In its first report, *Implications for Wales of leaving the European Union* ('the *Implications for Wales* report'),²³ the EAAL Committee drew a range of conclusions that are relevant.

Aspects of its subsequent reports are also relevant, including its work on the European Union (Withdrawal) Act 2018 and the associated development of common UK policy frameworks.

Involvement in the Article 50 negotiations

In terms of the Article 50 negotiations, the EAAL Committee recommended that the Welsh Government should seek full involvement in shaping the UK Government's negotiating position and direct participation in those negotiations which involve devolved areas of responsibility (or matters that affect devolved areas of responsibility) using the model of the devolved administrations' participation in the Council of Ministers through the Joint Ministerial Committee ('the JMC') Europe.²⁴

²³ National Assembly for Wales External Affairs and Additional Legislation Committee, [Implications for Wales of leaving the European Union](#), January 2017

²⁴ National Assembly for Wales External Affairs and Additional Legislation Committee, [Implications for Wales of leaving the European Union](#), January 2017, Recommendation 6

Reform of the JMC structures

On the JMC intergovernmental structures, the EAAL Committee expressed reservations about the JMC structure.²⁵

The EAAL Committee believes that there is a need for a more equitable arrangement for facilitating intergovernmental relations within the UK and that there is a case to be made for reform of the JMC so that it becomes a UK Council of Ministers based on the principles of partnership and equality.²⁶

When subsequently reporting on the European Union (Withdrawal) Bill White Paper, the EAAL Committee concluded that:

“It is concerning that we are entering into a period of intense negotiation on the future of the United Kingdom apparently without a shared understanding of the law as it exists or the way in which future constitutional relationships within a United Kingdom outside the European Union should be conducted.”²⁷

The EAAL Committee made a similar recommendation in its report on ‘Future of regional policy in Wales’ and called on the Welsh Government to continue to press the UK Government on the need to bring forward proposals for a formal intergovernmental structure for agreeing funding allocations and resolving conflict along the lines of a UK ‘Council of Ministers’.

²⁵ National Assembly for Wales External Affairs and Additional Legislation Committee, [Implications for Wales of leaving the European Union](#), January 2017, paragraph 220

²⁶ National Assembly for Wales External Affairs and Additional Legislation Committee, [Implications for Wales of leaving the European Union](#), January 2017, paragraph 220

²⁷ National Assembly for Wales External Affairs and Additional Legislation Committee, [The Great Repeal Bill White Paper: Implications for Wales](#), June 2017, conclusion 39

Interparliamentary relations

The EAAL Committee has been involved in a range of inter-parliamentary initiatives and has a direct and formal inter-parliamentary relationship with the UK Parliament's European committees in relation to subsidiarity monitoring.²⁸

In its *Implications for Wales* report, the EAAL Committee recognised the need for a more co-ordinated approach to scrutinising intergovernmental relations and, particularly, the JMC(EN).²⁹

The EAAL Committee also endorsed and encouraged the development of relationships between the Assembly and all the UK legislatures.³⁰

In reporting on the new legislative consent arrangements to be established under the (then) European Union (Withdrawal) Bill, the EAAL Committee concluded that Assembly Committees, through established interparliamentary links, should seek to establish more formalised arrangements for the sharing of information between legislatures.³¹

Further, the EAAL Committee concluded that good interparliamentary communication could ensure that this new aspect of the legislative consent convention, a parliamentary convention, need not rest solely on the opinions of governments.³²

²⁸ [National Assembly for Wales Standing Orders 21.9](#)

²⁹ National Assembly for Wales External Affairs and Additional Legislation Committee, [Implications for Wales of leaving the European Union](#), January 2017, paragraph 283

³⁰ National Assembly for Wales External Affairs and Additional Legislation Committee, [Implications for Wales of leaving the European Union](#), January 2017, paragraph 285

³¹ National Assembly for Wales External Affairs and Additional Legislation Committee, European Union (Withdrawal) Bill: Progress towards delivering our six objectives, May 2018, conclusion 5

³² National Assembly for Wales External Affairs and Additional Legislation Committee, European Union (Withdrawal) Bill: Progress towards delivering our six objectives, May 2018, conclusion 5

In the same report, the EAAL Committee included a chapter on inter-parliamentary relations. In broad terms, it concluded that:

“Working with committees in the other legislatures of the UK has been a longstanding aspect of European scrutiny. Considering the implications of Brexit has intensified and broadened the level of engagement between legislatures. There is an opportunity to build on existing relationships to co-ordinate scrutiny of common UK policy frameworks, to the benefit of all the constituent parts of the United Kingdom.”

The legislative consent convention

In its *Implications for Wales* report, the EAAL Committee concluded that:

“We believe that this [legislative consent] convention should be extended to require the consent of devolved legislatures in circumstances where devolved competence is affected by non-legislative means, for example in relation to international trade treaties. This would, of course, include those relating to the European Union.”³³

The principle of subsidiarity

In addition to considering the structure of the relationship between the governments and legislatures of the UK., the EAAL Committee had given some preliminary thought to the underpinning principles that could govern post-Brexit relationships.

Due to its responsibility for subsidiarity monitoring in the Assembly, the EAAL Committee has taken some evidence on the loss of the subsidiarity principle on exit from the European Union.

³³ National Assembly for Wales External Affairs and Additional Legislation Committee, [Implications for Wales of leaving the European Union](#), January 2017, paragraph 314

The EAAL Committee has concluded that adopting subsidiarity as an underpinning principle for intra-UK relations post-Brexit merits further consideration.³⁴ It intends to consider this further in its current inquiry into *EU Law in Wales: What happens during the Brexit transition?*³⁵

³⁴ National Assembly for Wales External Affairs and Additional Legislation Committee, [Implications for Wales of leaving the European Union](#), January 2017, paragraph 260

³⁵ See the inquiry webpage for more information: [EU Law in Wales: What happens during the Brexit transition?](#)

Scottish Parliament Finance and Constitution Committee

The Scottish Parliament's Finance and Constitution Committee considered intergovernmental relations as part of its work on the EU (Withdrawal) Bill. In its interim report on the LCM for the Bill the Committee recognised that the structure of intergovernmental relations has been widely recognised as not fit for purpose.³⁶

The Committee noted the proposals set out by the Welsh Government for a UK Council of Ministers which could potentially be established on a statutory basis and organised along lines similar to the EU Council of Ministers. This would include an independent adjudication mechanism and be supported by an independent secretariat.

The Committee also heard from the Minister for UK Negotiations on Scotland's Place in Europe who placed an emphasis on co-decision making and suggested there may be a range of solutions. With regard to the Welsh Government's proposals he indicated that a system of qualified majority voting "might work on occasion; it might be too complex on others."

The Committee recommended that a new structure of intergovernmental relations requires to be placed on a statutory basis including establishing a process for joint decision making and that this new structure is supported by an independent secretariat and provide a mechanism for independent dispute resolution.

The Committee also recommended that inter-parliamentary co-operation is a key component of scrutiny of the Brexit process and considers that the Inter-parliamentary Forum on Brexit will form a central part of this process.

³⁶ Scottish Parliament Finance and Constitution Committee, Interim Report on the EU (Withdrawal) Bill LCM, 9 January 2018

Scottish Parliament Delegated Powers and Law Reform Committee

The importance of joint parliamentary working and the specific contribution of the Inter-parliamentary Forum on Brexit was highlighted by the Delegated Powers and Law Reform Committee in its report on the supplementary LCM on the EU (Withdrawal) Bill. The DPLR Committee also said that given the expected challenging and complex programme of secondary legislation, it was essential for Governments to work together co-operatively to deliver that programme.

Scottish Parliament Culture, Tourism, Europe and External Relations Committee

The Culture, Tourism, Europe and External relations Committee considered intergovernmental relations issues as part of its 2017 report on Determining Scotland's future relationship with the EU.³⁷ The Committee noted that the Scottish Government has always, to some degree, been involved alongside UK Government ministers in negotiations with their counterparts in other Member States in meetings of the Council of Ministers. Scottish Ministers have participated in negotiations following the prior agreement of a UK negotiating line and set of priorities. The Committee recommended that this principle should apply to the withdrawal agreement and any new free trade agreements.

The Committee also recommended that once the UK has agreed its negotiating position and Article 50 has been triggered, we recommend that ways are found to involve the Scottish Government and its officials in the negotiations that follow with the EU, both at the high-level and on the technical detail. Such involvement has been commonplace in the past in areas such as fisheries, agriculture, regional development, judicial co-operation etc. in the Council of Ministers and various working groups. Brexit should be no different.

The Committee also recommended that a means is found to involve the Scottish Government in bilateral and quadrilateral discussions on future trade deals. This could include the creation of a Joint Ministerial Committee on International Trade. This could also include government officials and organisations such as Scottish Development International meeting regularly with their UK counterparts.

³⁷ Fourth Report of the Scottish Parliament Culture, Tourism, Europe and External Affairs Committee 2017 (Session 5), [Determining Scotland's future relationship with the European Union](#), SP 99.1, 5 March 2017

Finally, in relation to parliamentary scrutiny and accountability, the Committee believes that it is important that the recently established Written Agreement is augmented to ensure the flow of appropriate information from the Scottish Government to this and other parliamentary committees once Article 50 is triggered and also in relation to discussions on future free trade agreements.

Scottish Parliament Devolution (Further Powers) Committee (Session 4)

In a report published in October 2015 the Scottish Parliament's Devolution (Further Powers) Committee focused on parliamentary scrutiny of intergovernmental relations.³⁸ In considering the role of legislatures in considering in scrutinising intergovernmental relations the Committee sought to learn from the experience of federal and quasi-federal systems. The Committee commissioned external research on the legislative oversight of intergovernmental relations in Belgium, Canada, Germany, Spain, Switzerland and the USA. The research reached two broad conclusions as follows –

- In every country considered intergovernmental relations is dominated by executives, with relatively limited opportunities for parliaments and parliamentarians to engage in legislative oversight of processes, negotiations and agreements.
- In spite of this general constraint, in almost every country examined, the role of parliaments in scrutinising intergovernmental relations is greater than the role the UK's parliaments currently enjoy in the scrutiny of UK intergovernmental relations.

The Committee concluded that there is no ideal model of parliamentary scrutiny of intergovernmental relations to adopt from the countries which they examined. However, its consideration of practices in other jurisdictions reaffirmed its view that there is a need for improved scrutiny in this area and for specific structures and processes to facilitate this to be put in place.

³⁸ Eighth Report of the Scottish Parliament Devolution (Further Powers) Committee, 2015 (Session 4), Changing Relationships: Parliamentary Scrutiny of Intergovernmental Relations, SP 809, 6 October 2015

In order to achieve this aim the Committee identified two key principles –

- Transparency – the revised structure of intergovernmental relations must be transparent and ensure that there is information about meetings, agendas, policy objectives and decision making in the public domain.
- Accountability – must be built into the revised intergovernmental relations structures and any agreements must be subject to parliamentary scrutiny.

The Committee recommended introducing a new Written Agreement on Parliamentary Oversight of intergovernmental relations between the Scottish Government and the Scottish Parliament. The Scottish Government accepted this recommendation.³⁹

The Scottish Government has agreed to provide, as far as practicable, advance written notice at least one month prior to scheduled intergovernmental relations meetings which would allow the relevant committee to consider the agenda and take evidence from Ministers in advance of the meeting. After each meeting the Scottish Government has agreed to provide a written summary of the issues discussed.

³⁹ INTER-GOVERNMENTAL RELATIONSWRITTEN AGREEMENT BETWEEN THE SCOTTISH PARLIAMENT AND SCOTTISH GOVERNMENT

House of Commons Welsh Affairs Committee

In September 2017, the Committee launched an inquiry into Brexit: agriculture, trade and the repatriation of powers. The Committee published a Report, *Brexit: priorities for Welsh agriculture*, on 9 July 2018. The Report included a Chapter considering responsibility for agricultural policy, which included the following conclusions and recommendations on inter-governmental relations:

- We recognise the agreement between the UK and Welsh Governments on the approach of the European Union (Withdrawal) Bill to responsibility for areas of agricultural policy which will return to the UK post-Brexit. It is essential that any changes to the devolution settlement for Wales which result from Brexit are agreed with the Welsh Government, and not imposed by Westminster. It is regrettable that it took so long for this agreement to be reached.⁴⁰
- It is clear that, post-Brexit, UK-wide common frameworks will be required in some areas of devolved policy, to ensure there are no barriers within the UK market, that the UK is in compliance with international obligations and that the UK's common resources are protected. We welcome the agreement between the UK Government and devolved administrations about the areas where these will be necessary.⁴¹
- UK-wide common frameworks could be established in a number of different ways, but it is still not clear where they will apply, what they will look like, how they will work, or how any disputes would be resolved. It is imperative that these frameworks are agreed mutually between the UK and devolved governments and ensure the unique issues that face each of the administrations are given due consideration. We believe that these

⁴⁰ [Brexit, priorities for Welsh agriculture](#), para 33

⁴¹ [Brexit, priorities for Welsh agriculture](#), para 39

frameworks will need to be supported by robust and transparent intergovernmental mechanisms. *We urge the UK Government to work with the Welsh Government to agree on the areas of agricultural policy to which common frameworks will need to apply, and to establish how these will work, and the mechanisms for their governance. This should be done ahead of the Agriculture Bill being introduced in the UK Parliament. The UK Government should keep us updated on the timeframes for the establishment of common frameworks, to ensure that we have an opportunity to scrutinise these arrangements before they come into effect.*⁴²

- Post-Brexit the Welsh Government will have an increased interest in trade deals negotiated by the UK Government, and particularly their implications for devolved policy areas. Given the inter-dependencies between trade deals and devolved policy, there will need to be robust intergovernmental arrangements to ensure that Welsh interests, and the consequences of trade deals for devolved policy, are considered during negotiations. *We recommend that the UK Government agree with the Welsh Government arrangements for seeking the input and consent of the devolved institutions in Wales on trade deals.*⁴³

⁴² [Brexit, priorities for Welsh agriculture](#), para 44

⁴³ [Brexit, priorities for Welsh agriculture](#), para 48

House of Commons Northern Ireland Affairs Committee

In the absence of a Northern Ireland Executive, the Committee has focused on identifying the needs of Northern Ireland and how these can best be represented during the Brexit process. The Committee's most substantive piece of work on the implications of Brexit for Northern Ireland focused on the land border between Ireland and Northern Ireland, a [report](#) for which was published on 16 March 2018. The Committee also looked at Brexit in its [report](#), published on 22 May 2018, which considered the consequences of the lack of a devolved government in Northern Ireland. The Committee is also currently holding two inquiries investigating the implications of Brexit for [fisheries](#) and [agriculture](#) in Northern Ireland. Areas where the Committee has touched on intergovernmental relations – which have covered relations with the Republic of Ireland as well as relations between the UK Government and devolved institutions in NI – include:

- On NI–RoI relations (in the land border report): The importance of North–South cooperation, which is facilitated by shared regulatory frameworks and governance bodies.
- On UK–RoI relations (in report on the absence of the NI executive): Noting the ongoing need for relations with the RoI, as specified in the Belfast/Good Friday Agreement.
- The role of the NI civil services (in report on the absence of the NI executive and in fisheries evidence): That NI civil servants had been active at informing discussions about implications of Brexit for devolved policy areas, but that the absence of the Executive created challenges.
- On design of common frameworks (in fisheries and agriculture evidence): The possibility of the devolved administrations being involved in co-designing UK-wide common frameworks.

House of Commons Exiting the EU Committee

In its report on the European Union (Withdrawal) Bill,⁴⁴ the Committee on Exiting the EU examined the implications of the Bill for the devolution settlements. In respect of inter-governmental relations, the Committee noted the evidence that its predecessor Committee had taken in the last Parliament that “the JMC (EN) meetings had not been effective from the point of view of the devolved administrations”.⁴⁵ The Committee went on to conclude that

The future [inter-governmental] arrangements for the UK after leaving the EU will only be successful if they work for the whole of the UK. This will only be possible if there is mutual trust and cooperative, participative mechanisms for joint working between the UK Government and the devolved administrations. These mechanisms will be required not just to resolve issues relating to the repatriation of EU competencies, but also in the long term to ensure that devolved interests are properly considered when developing new international agreements.

*We recommend that the JMC (EN) meets much more regularly and that it addresses the concerns expressed by the devolved administrations about the effectiveness of its operations. Government should also set out whether it is considering formal structures for inter-governmental relations, and its proposed arbitration system for disputes, so that the views of the devolved governments can be heard, including in any future trade agreements.*⁴⁶

The Committee also published a report on Parliamentary scrutiny and approval of the Withdrawal Agreement and negotiations on a future relationship in which it examined provision for scrutiny of negotiations on the UK’s future relationship with the EU and also future agreements with non-EU states.⁴⁷ It concluded that

⁴⁴ First Report, Session 2017-19, HC373

⁴⁵ Ibid. paragraph 78.

⁴⁶ Ibid. paragraphs 78-79.

⁴⁷ Sixth Report, Session 2017-19, HC1240.

The UK's future trade agreement with the EU and negotiations on trade with non-EU states will have significant impacts on devolved policy areas and interests. As we said in our First Report, there needs to be cooperative, participative mechanisms for joint working between the UK Government and the devolved administrations to ensure that devolved interests are properly considered when entering into and developing new international agreements. We also asked the Government to set out whether it is considering formal structures for inter-governmental relations, including any arbitration system for disputes, so that the views of the devolved governments can be heard. The Government should set out in detail the processes by which the views of the devolved governments and parliaments will be fed into the negotiations on the UK's future relationship with the EU and on future trade agreements with non-EU states. The Government should also commit to seeking the views of the devolved parliaments as part of the process of seeking approval for the Withdrawal Agreement and Political Declaration. ⁴⁸

⁴⁸ Ibid. paragraph 107.

House of Commons Scottish Affairs Committee

The Committee produced a Report *European Union (Withdrawal) Bill and its implications for devolution* in November 2017.⁴⁹ On intergovernmental relations, the report focused on arrangements for common frameworks, saying:

- That areas where common frameworks will apply should be agreed between the UK and Scottish Governments, based on the premise that all powers should be devolved unless there is good reason to reserve them.⁵⁰
- That the content of any common frameworks for these areas be agreed with the devolved administrations, not imposed by Westminster.⁵¹
- That new intergovernmental machinery will be needed to support any common frameworks.⁵²
- That the UK Government and devolved administrations should agree a mechanism by which disputes can be resolved in the event that common frameworks cannot be agreed.⁵³

⁴⁹ First report of the House of Commons Scottish Affairs Committee of Session 2017-19, [European Union \(Withdrawal\) Bill and its implications for devolution](#), HC 375, 19 November 2017

⁵⁰ First report of the House of Commons Scottish Affairs Committee of Session 2017-19, [European Union \(Withdrawal\) Bill and its implications for devolution](#), HC 375, 19 November 2017, para 17

⁵¹ First report of the House of Commons Scottish Affairs Committee of Session 2017-19, [European Union \(Withdrawal\) Bill and its implications for devolution](#), HC 375, 19 November 2017, para 22

⁵² First report of the House of Commons Scottish Affairs Committee of Session 2017-19, [European Union \(Withdrawal\) Bill and its implications for devolution](#), HC 375, 19 November 2017, para 22

⁵³ First report of the House of Commons Scottish Affairs Committee of Session 2017-19, [European Union \(Withdrawal\) Bill and its implications for devolution](#), HC 375, 19 November 2017, para 22

House of Commons Public Administration and Constitutional Affairs Committee

Public Administration and constitutional Affairs committee published its Report *Future of the Union part 2: inter-institutional relations in the UK* in December 2016.⁵⁴ In the report PACAC concluded that there is longstanding criticism of the ineffectiveness of the existing JMC structures and recommended that they be reformed, and the Memorandum of Understanding between the UK and devolved government reconsidered.⁵⁵ The committee recommended that there was an ideal opportunity at the end of 2016 for the formal machinery of intergovernmental relations in the UK to be imbued with a sense of purpose with a revitalised and reformed JMC.⁵⁶ The Committee recommended the creation of subcommittees in the areas of Agriculture, fisheries, and economic affairs.⁵⁷ PACAC also concluded that there were limits to the effect that intergovernmental machinery could have by itself and as the effectiveness of any model of intergovernmental relations rests on the ability of the four administrations to collectively develop an atmosphere of trust and goodwill. PACAC recommended that in order to develop such an atmosphere of trust and goodwill, the UK Government must show a

⁵⁴ Sixth Report of the House of Common Public Administration and Constitutional Affairs Committee of Session 2016-17, [The Future of the Union, part two: interinstitutional relations in the UK](#), HC 839, 8 December 2016

⁵⁵ Sixth Report of the House of Common Public Administration and Constitutional Affairs Committee of Session 2016-17, [The Future of the Union, part two: interinstitutional relations in the UK](#), HC 839, 8 December 2016, para 48-50

⁵⁶ Sixth Report of the House of Common Public Administration and Constitutional Affairs Committee of Session 2016-17, [The Future of the Union, part two: interinstitutional relations in the UK](#), HC 839, 8 December 2016, para 65

⁵⁷ Sixth Report of the House of Common Public Administration and Constitutional Affairs Committee of Session 2016-17, [The Future of the Union, part two: interinstitutional relations in the UK](#), HC 839, 8 December 2016, para 66

genuine receptiveness to the concerns and suggestions put forward by the devolved administrations.⁵⁸

PACAC returned to the issue of Intergovernmental relations in its report *Devolution and Exiting the EU: Reconciling Differences and Building Strong Relationships*. This report built on the previous recommendations and further recommended:

- Devolution is now an established and significant feature of the UK constitutional architecture and should be treated with respect to maintain the integrity of the United Kingdom. The Government needs to bring clarity to the situation by setting out, in response to this report, its Devolution Policy for the Union. A document setting out the Government's Devolution Policy for the Union should be issued at the start of every Parliament. This policy should outline where the constitutional architecture of devolution needs to be buttressed or amended and should, where necessary, provide justification for asymmetry within the devolution settlement. While we accept that asymmetry may be necessary and even preferable within the UK context, the Government should explicitly recognise and be held accountable for representational and institutional asymmetries within the UK political system.⁵⁹
- the Government take the opportunity provided by Brexit to seek to develop, in conjunction with the devolved Administrations, a new system of inter-governmental machinery and ensure it is given a statutory footing. Doing this will make clear that inter-governmental relations are as important a

⁵⁸ Sixth Report of the House of Common Public Administration and Constitutional Affairs Committee of Session 2016-17, [The Future of the Union, part two: interinstitutional relations in the UK](#), HC 839, 8 December 2016, para 67

⁵⁹ Eighth Report of the House of Common Public Administration and Constitutional Affairs Committee of Session 2017-19, [Devolution and Exiting the EU: Reconciling Differences and Building Strong Relationships](#), HL 1485, 31 July 2018, para 21

part of the devolution settlement as the powers held by the devolved institutions.⁶⁰

- the JMC must be reformed. The new inter-governmental apparatus that emerges from this reform should ideally have an independent secretariat to schedule and organise intergovernmental meetings. The secretariat should also provide an independent conduit for discussions among administrations at official and ministerial level in between formal inter-governmental meetings.⁶¹
- It is important that inter-governmental relations mechanisms have a clearly defined purpose and are not just arrangements for the airing of grievances. Common Frameworks should if possible be agreed by consensus and, if a consensus cannot be reached, each government should report the reasons for the failure to agree to their respective legislatures.⁶²
- that England should be better represented at inter-governmental meetings. In the short-term, the Government should develop proposals for including the metropolitan mayors and other local leaders in reformed inter-governmental mechanisms. For the long-term, the Government should consider establishing a committee which would represent English cities and

⁶⁰ Eighth Report of the House of Common Public Administration and Constitutional Affairs Committee of Session 2017-19, [Devolution and Exiting the EU: Reconciling Differences and Building Strong Relationships](#), HL 1485, 31 July2018, para 132

⁶¹ Eighth Report of the House of Common Public Administration and Constitutional Affairs Committee of Session 2017-19, [Devolution and Exiting the EU: Reconciling Differences and Building Strong Relationships](#), HL 1485, 31 July2018, para 133

⁶² Eighth Report of the House of Common Public Administration and Constitutional Affairs Committee of Session 2017-19, [Devolution and Exiting the EU: Reconciling Differences and Building Strong Relationships](#), HL 1485, 31 July2018, para 135

counties and would have representation on JMCs (or their replacement) to advocate the interests of all parts of England.⁶³

⁶³ Eighth Report of the House of Common Public Administration and Constitutional Affairs Committee of Session 2017-19, [Devolution and Exiting the EU: Reconciling Differences and Building Strong Relationships](#), HL 1485, 31 July 2018, para 137



Our Ref: CDL/2533

Mr Antoniwi and Mr Rees
Interparliamentary Forum on Brexit
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

17 January 2019

Dear Mr Antoniwi and Mr Rees,

Thank you for your letter of 29 October 2018, providing an update on the Interparliamentary Forum on Brexit meeting that took place on 25 October 2018, as well as a summary of conclusions and recommendations on intergovernmental and interparliamentary relations made by the committees represented in the Forum.

I am pleased to provide here further detail on the progress of the current review into intergovernmental relations.

Devolution in the UK over the past 20 years is something we should celebrate. Intergovernmental relations are vital to the effective functioning of devolution and, most importantly, to the delivery of services for all citizens across the UK. Since the inception of devolution, intergovernmental relations have continued to evolve to meet the needs of the various administrations across the UK.

As you note in your letter, discussions between the UK Government and devolved administrations are underway in order to determine what changes we might make for the future that can strengthen our relations as part of the review of intergovernmental relations.

One of the first exercises undertaken as part of the review was looking at the evidence developed by Parliamentarians and academics about the current operation of intergovernmental relations

and recommendations for reform, so your perspectives have informed the content and direction of the review.

In 2018, officials jointly developed five key themes and workstreams for the review, including:

- The principles underpinning intergovernmental relations, including Parliamentary scrutiny and dialogue;
- The structures needed to assist domestic UK governance, for example the formal and informal forums and engagement needed to govern common frameworks;
- How we seek to avoid and resolve disagreements in the future;
- The formal Ministerial machinery, including the Joint Ministerial Committee and the secretariat;
- Engagement on international matters, including the UK's future relationships with the EU.

In the coming months, we will continue to work closely with the devolved administrations on these workstreams.

We note that the suggestion for intergovernmental relations to be placed on a statutory footing would require the UK Parliament to agree any changes that the four administrations wish to make to the agreements underpinning our relationship. Placing the MoU in statute may therefore limit the participating administrations' ability to adapt its function in what is a rapidly changing political landscape. This could include for example the creation or removal of additional committee structures. We remain of the view that the intergovernmental structures must remain adaptable enough to address the four governments' interests at any given time, not least at present to manage the UK's exit from the EU.

We also note and welcome your interest in Parliamentary scrutiny and dialogue in the intergovernmental relations. We recognise the importance of consulting with wider stakeholders and we are therefore working closely with academics and commentators to ensure we explore the full range of options. We remain open to new suggestions for the effective conduct of intergovernmental relations and am pleased that the Minister for the Constitution will be able to discuss your recommendations further at the Forum's next meeting later this week.

I am also pleased to provide the Forum with an update on the Ministerial engagement that has taken place with the devolved administrations since my last correspondence in October.

Joint Ministerial Committee (EU Negotiations)

The Joint Ministerial Committee (EU Negotiations) (JMC(EN)) has met three times since our last correspondence, on Thursday 11 October, Tuesday 13 November and Monday 19 November.

On 11 October, the Secretary of State for Exiting the European Union provided an update on the progress of the EU Exit negotiations ahead of European Council on 17/18 October and the Committee discussed recent developments. The Committee also discussed the UK Government's position on migration, with the Minister of State for Immigration and, from the Scottish Government, the Minister for Europe, Migration and International Development, in attendance to speak further to this matter. The Committee also discussed domestic issues. The former Parliamentary Under Secretary of State for Exiting the EU, Suella Braverman MP, gave an update

on the EU (Withdrawal Agreement) Bill. The Committee discussed the ongoing engagement on common frameworks and agreed further work to ensure progress across the priority areas and on cross-cutting issues. The meeting concluded with a discussion on operational readiness and the Committee agreed to discuss this further at the next meeting in November.

On 13 November, I provided the Committee with an update on negotiations with the EU including further developments in relation to the Withdrawal Agreement and the Future Framework. On domestic issues, the former Parliamentary Under Secretary of State for Exiting the EU, Suella Braverman MP, provided an update on the EU (Withdrawal Agreement) Bill. The Committee also noted the ongoing engagement on common frameworks and operational readiness, including the European Union (Withdrawal) Act and Common Frameworks report that had been laid before Parliament earlier that day.

The Committee met again on 19 November following the publication of the draft Withdrawal Agreement and Outline Political Declaration. I provided an overview of these two documents and the Committee discussed these further. The next meeting of JMC(EN) is scheduled to take place later this month.

Joint Ministerial Committee (Plenary)

The Joint Ministerial Committee met in Plenary (JMC(P)) on 19 December at 10 Downing Street. The meeting was chaired by the Prime Minister, and attended by the First Ministers of Scotland and Wales and the Head of the Northern Ireland Civil Service. The Prime Minister provided an update on negotiations with the EU and the Committee discussed next steps on the UK's exit from the EU. The Committee also noted progress on the review of intergovernmental relations that they had discussed and commissioned at the previous meeting in March 2018 and remitted further work to officials.

Joint Ministerial Committee (Europe)

The Joint Ministerial Committee (Europe) (JMC(E)) has continued to meet quarterly since the referendum, ahead of European Council meetings. The meetings are chaired by the Minister of State, Lord Callanan, and provide an opportunity for ministers from the devolved administrations to provide input on UK positions on ongoing EU business. The most recent meeting took place on 11 October. As well as the standing agenda item of UK priorities for the European Council, the forum also discussed the Multiannual Financial Framework for 2021-27, and the Commission Work Programme 2019 Letter of Intent. The Committee also commissioned a paper to consider the future role of JMC(E) during the implementation period. This paper is currently being developed by UK Government officials, with input from officials from each of the devolved administrations. The next JMC(E) is due to take place in late January, where this paper will be considered. The agenda will also include a discussion on Blue Growth, and consideration of a paper on the priorities for the upcoming Romanian Presidency.

Ministerial Forum (EU Negotiations)

The Ministerial Forum (EU Negotiations) (MF(EN)), co-chaired by the Parliamentary Under Secretary of State for Exiting the European Union, Robin Walker MP, and the Minister for the Constitution, Chloe Smith MP, has now met six times since it was established in May 2018. MF(EN) provides the devolved administrations with increased opportunity to contribute to the

development of UK negotiating lines in greater breadth and depth. Since our last correspondence, there have been two further meetings of MF(EN), on 22 October and 3 December.

On 22 October 2018, MF(EN) met in London to discuss the UK Government's proposal for dialogue and exchanges between the UK and the EU in areas of shared interest, with a view to identifying opportunities to cooperate, share best practice and expertise. Topics of discussion included science and innovation, culture and education and UK participation in EU programmes. This followed Robin Walker's regular update on negotiations in Brussels.

MF(EN) last met on 3 December 2018, to discuss the following topics in the context of our future relationship with the EU: transport, led by Jesse Norman MP, from the Department for Transport; financial services, led by John Glen MP, the Economic Secretary to the Treasury; services; and energy, both led by Claire Perry MP, from the the Department for Business, Energy and Industrial Strategy. In addition to the regular ministerial attendees from the devolved administrations, Graeme Dey MSP, Minister for Parliamentary Business and Veterans for the Scottish Government and Rebecca Evans AM, in her previous role as Minister for Housing and Regeneration for the Welsh Government, and senior officials from Northern Ireland, the Scottish Government's Minister for Energy, Connectivity and the Islands, Paul Wheelhouse MSP was also in attendance. From the Welsh Government, the Cabinet Secretary for Economy and Transport, Ken Skates AM and the Cabinet Secretary for Energy, Planning and Rural Affairs, Lesley Griffiths AM were also present. Ministers noted a good degree of alignment with regards to the items under discussion, while recognising the importance of further joint working to ensure that devolved interests are accounted for in the development of UK Government policy. The next meeting of MF(EN) is being planned for this month, where we look forward to a substantive policy discussion on internal security and civil judicial cooperation in the context of the UK's future relationship with the EU.

Underpinning this ministerial engagement, there is ongoing official-level engagement to discuss the policy detail behind topics relating to the future relationship with the EU; there have been over 20 such meetings to date. These discussions continue to highlight policy areas and issues for discussion at future meetings of MF(EN).

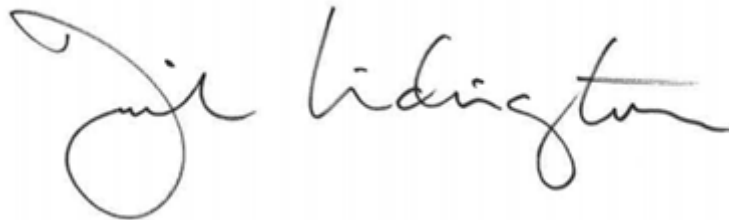
British-Irish Council

The 31st Summit of the British-Irish Council took place on 8/9 November 2018, hosted by the Government of the Isle of Man. I was pleased to lead the UK delegation, which included the Secretary of State for Northern Ireland, the Parliamentary Under Secretary of State for Exiting the EU, Robin Walker MP, and the Minister of State for Digital and the Creative Industries, Margot James MP.

The main discussion items at the Summit meeting focused on digital inclusion and latest political developments, including EU Exit and the political situation in Northern Ireland. Ministers from each member administration provided an overview of their latest activity in preparation for the UK's exit from the EU. Preparations are underway for the 32nd Summit of the British-Irish Council which is due to be hosted by the UK Government later this year.

I hope that this provides a useful summary of recent engagement with the devolved administrations and look forward to continuing these regular updates.

Yours,

A handwritten signature in black ink, reading "David Lidington". The signature is written in a cursive style with a large, looping initial "D".

Rt Hon David Lidington CBE MP

T: 0300 244 4000
E: scottish.ministers@gov.scot

Mick Antoniw AM
Chair, Constitutional and Legislative Committee
David Rees AM
Chair, External Affairs and Additional Legislation
Committee
National Assembly of Wales
Cardiff Bay
CF99 1NA

17 January 2019

Dear Mick and David

Many thanks for your letter of 29 October 2018 on behalf of the Interparliamentary Forum on Brexit. I understand the Forum meets again on 17 January, so I wanted to place on record my appreciation of the work of the Forum and the Committees represented in it.

It has been clear for some time that current constitutional arrangements cannot bear the weight of Brexit, neither to negotiate the UK's withdrawal from the EU nor in the longer term. Long-standing weaknesses in our arrangements - lack of robust legal protections of devolved powers, lack of effective mechanisms for inter-governmental working, and cultural attitudes - have been illustrated starkly through the Brexit processes. The annex to your letter shows the range and quality of the work of Parliamentary Committees across the United Kingdom to examine these issues and make valuable recommendations.

Your letter concentrates on intergovernmental processes and interparliamentary processes. I have seen Mark Drakeford's letter to you of 29 November, and I agree with the points that he makes on these issues, particularly on the quality of engagement. The current review of inter-governmental relations is an opportunity that must be used to address constructively the difficulties you and he identify.

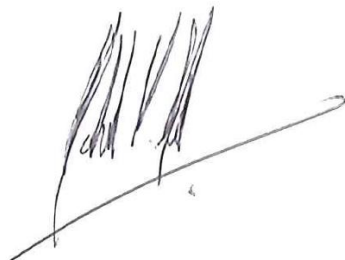
There is also a need to address the other constitutional issues that Brexit has exposed. The Scottish Government is particularly concerned about the Sewel Convention, following the unprecedented decision of the UK Government to proceed with the European Union (Withdrawal) Act after the Scottish Parliament explicitly refused to give its consent. The Withdrawal Act also allows UK Government Ministers to change the competence of the Scottish Parliament (and the Welsh Assembly) without consent, breaching a fundamental principle of the devolution settlement put in place in 1998

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

The Scottish Government believes there is a need for a widespread debate about the implications of Brexit for the UK's constitutional arrangements. We intend to develop further proposals to secure Scottish interests, whatever the outcome of the Brexit process, and to contribute to wider consideration of the future governance of these islands.

The work of the Parliamentary Committees, and the Forum itself, will continue to be a crucial part of these debates over the coming months, and I look forward to our continuing engagement.

I am copying this letter to David Lidington, Jeremy Miles and Bruce Crawford MSP, Joan McAlpine MSP and Graham Simpson MSP at the Scottish Parliament.

A handwritten signature in black ink, appearing to read 'Michael Russell', written over a horizontal line.

MICHAEL RUSSELL

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot



Eich cyf/Your ref
Ein cyf/Our ref

Mick Antoniw AM, Chair of the Constitutional and Legislative Affairs Committee
David Rees AM, Chair of the External Affairs and Additional Legislation Committee
National Assembly for Wales

29 November 2018

Dear both,

Thank you for copying to me your letter of 29 October, sent on behalf of the Interparliamentary Forum on Brexit to the Chancellor of the Duchy of Lancaster.

I welcome the Forum's interest in the relations between governments across the UK. The Welsh Government has been in the vanguard of calls for reform of intergovernmental relations; we set these out in 'Brexit and Devolution', which we published almost 18 months ago, and which itself built on positions outlined initially in 'Securing Wales' Future'. I believe our ideas are gaining traction: there is a growing recognition that we need a different way of working, because the current structures are not capable of bearing the weight EU withdrawal is placing upon them.

Our position in these matters is very much aligned with those expressed by a number of committees in recent years, as summarised in the annex to your letter, and I am able to assure you that we are taking careful note of the findings of these committees. Indeed, one of the first products undertaken as part of the IGR review was a review of the evidence from external commentators, including parliamentarians and academics, about the current state of intergovernmental relations, and recommendations for reform.

The need for reform is further demonstrated by our recent experiences in respect of the Ministerial Forum for EU negotiations. We welcomed the creation of the Forum, which is a sub-group of the JMC (EN) and a useful addition to the intergovernmental machinery, with the aim of allowing the views of the Devolved Administrations to feed into the negotiations process.

However, the quality of engagement in that Forum has been below expectations. Whilst some fruitful discussions have now been held on specific topics like cooperative accords, engagement on major elements of the negotiations has been unsatisfactory.

We remain disappointed and frustrated by the lack of meaningful engagement more widely. We were not shown or provided the detail of the draft Withdrawal Agreement or the political declaration before it was published, despite the fact that the UK Government cannot speak for the whole UK on many of the issues covered – many are in areas within the devolved competence of Welsh Ministers and the National Assembly for Wales.

It nevertheless remains essential that we present the Welsh Government's position at every opportunity. We fully expect to be involved in the detailed negotiations with the EU on the future economic partnership on matters within our devolved competence, and have made clear that we believe the model used to prepare for Council negotiations on fisheries in particular is one we should build upon to make sure the views of the devolved administrations are incorporated into the UK negotiating position.

The Welsh Government is keen to see the development of inter-parliamentary relationships through initiatives such as the Forum, and whilst these relationships are a matter for the Assembly and the other legislatures, we would be willing to participate in work to facilitate their development.

I am copying this letter to the Chancellor of the Duchy of Lancaster, and the Cabinet Secretary for Government Business and Constitutional Relations at the Scottish Government.

Best wishes,

A handwritten signature in black ink that reads "Mark". The letters are cursive and slightly slanted to the right.

Mark Drakeford AC/AM

Ysgrifennydd y Cabinet dros Gyllid
Cabinet Secretary for Finance

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

Document is Restricted

Agenda Item 9

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

Document is Restricted