Agenda - Constitutional and Legislative Affairs Committee

Meeting Venue:

Committee Room 1 - Senedd

Meeting date: 4 February 2019

Meeting time: 14.30

For further information contact:

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1 Introduction, apologies, substitutions and declarations of interest

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Cynulliad Cenedlaethol Cymru

National Assembly for Wales

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Statutory Instruments with Clear Reports

04 February 2019

SL(5)306 – The Developments of National Significance (Specified Criteria, Fees and Fees for Deemed Applications) (Wales) (Amendment) Regulations 2019

Procedure: Affirmative

As a result of the Wales Act 2017, the function of granting consent in respect of the following has been devolved to the Welsh Ministers ("newly devolved projects"):

(a) The consenting of generating stations both on and offshore with a capacity of 350MW or less; and
(b) The consenting of overhead lines with a nominal voltage of 132KV or less, where they are associated with a devolved generating station.

Onshore generating stations

Currently, the default position is that the consenting of newly devolved projects will require planning permission from the Local Planning Authority ("LPA"). This creates a perverse situation whereby already devolved smaller scale projects are consented by the Welsh Ministers, whereas larger scale generating stations are consented at the local level by LPAs. These Regulations alter this anomaly by ensuring a proportionate consenting procedure is in place.

Overhead electric lines

The default position following the Wales Act 2017 is that the consenting overhead electric lines up to and including 132KV which are associated with a devolved generating station is the responsibility of the LPA at local level. These Regulations transfer the responsibility to the Welsh Ministers for the decision to be made at a national level.

Electricity storage

These Regulations remove small scale electricity storage projects from the current Developments of National Significance (DNS) process, for decisions to be taken by LPAs at a local level. Hydroelectric storage schemes are retained within the DNS process.

Changes to fees for deemed applications

These Regulations also make changes to the Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015 to allow for a fee to be payable to the LPA in respect of a deemed application in certain circumstances where the application would otherwise have been made to the Welsh Ministers.

Parent Act: Town and Country Planning Act 1990

Date Made:

Date Laid:

Coming into force date:

Statutory Instruments with clear reports, that were previously considered for sifting and are now subject to scrutiny under Standing Orders 21.2 and 21.3

4 February 2019

The following instruments were previously considered for sifting in accorddance with Standing Order 21.3B. In the sift process, the Committee agreed that in all cases the appropriate procedure for the Regulations was the negative resolution procedure. Now the instruments are subject to usual scrutiny in accordance with Standing Orders 21.2 and 21.3. Although all the instruments have clear reports they also contain a merits point to highlight the sift process:

> **Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly**
>
> **A draft of these Regulations was laid before the Assembly for sifting in accordance with paragraph 4 of Schedule 7 to the European Union (Withdrawal) Act 2018. The Committee agreed that the negative procedure was the appropriate procedure for these Regulations**

SL(5)307 – The Livestock (Records, Identification and Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Procedure: Negative

These Regulations are made in exercise of the powers conferred by paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018 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. They amend the following legislation, which applies in relation to Wales, in the fields of the recording, identification and movement of livestock:

The Cattle Identification (Wales) Regulations 2007;
The Pigs (Records, Identification and Movement) (Wales) Order 2011; and
The Sheep and Goats (Records, Identification and Movement) (Wales) Order 2015.

Parent Act: European Union (Withdrawal) Act 2018

Sift requirements satisfied: 14 January 2019

Date Made: 21 January 2019

Date Laid: 24 January 2019

Coming into force: in accordance with regulations 1(2)

SL(5)308 – The Animal By-Products and Transmissible Spongiform Encephalopathies (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Procedure: Negative

The instrument will address deficiencies in domestic legislation arising from the withdrawal of the UK from the EU, and ensures that controls on Animal By-Products and Transmissible Spongiform Encephalopathies continue to operate on EU exit to protect animal and public health.

EU rules for the control of TSEs and ABPs are at least equivalent to, and in some cases higher than, the international standards set by the World Organisation for Animal Health (Office International des Epizooties – OIE). Whilst the UK will be under no legal obligation to adhere to EU rules for TSE and ABP controls following EU Exit, due to the history of the BSE epidemic in Europe (particularly within the UK in the 1980/90s), third countries will expect the UK to at least mirror the key EU controls, even though these exceed OIE safeguard standards.

Parent Act: European Union (Withdrawal) Act 2018

Sift requirements satisfied: 14 January 2019

Date Made: 21 January 2019

Date Laid: 24 January 2019

Coming into force: in accordance with regulations 1(2)

SL(5)309 – The Elections (Wales) (Amendment) (EU Exit) Regulations 2019

Procedure: Negative

The instrument removes references to Members of the European Parliament, European Parliament and European Parliamentary elections where these will no longer be needed after exit day. No alternative provision is made.

Parent Act: European Union (Withdrawal) Act 2018

Sift requirements satisfied: 7 January 2019

Date Made: 24 January 2019

Date Laid: 28 January 2019

Coming into force: in accordance with regulation 1

SL(5)311 – 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 been laid before Parliament in draft.

Parent Act: European Union (Withdrawal) Act 2018

Sift requirements satisfied: 21 January 2019

Date Made: 24 January 2019

Date Laid: 28 January 2019

Coming into force: in accordance with regulation 1

SL(5)304 – The Equine Identification (Wales) Regulations 2019

Background and Purpose

These Regulations supplement, and make provision for the enforcement of Commission Implementing Regulation (EU) 2015/262 (the EU Regulation), in Wales. The Regulations provide for the identification of equines, and replace the Equine Identification (Wales) Regulations 2009 (the 2009 Regulations).

Part 2 contains provisions which set out various administrative and procedural requirements. These include requirements in relation to the identification of equines and the identification document in relation to an equine.

Part 3 contains exceptions in respect of equines living under wild or semi-wild conditions.

Part 4 sets out various criminal offences for breach of these Regulations and the EU Regulation.

Part 5 contains provisions about enforcement and penalties, and gives powers to inspectors appointed by the Welsh Ministers or an enforcing authority (a local authority).

Part 6 makes provision for civil sanctions available to enforcing authorities.

Part 7 revokes the 2009 Regulations.

Procedure

Negative.

Technical Scrutiny

One point is identified for reporting under Standing Order 21.2(v) (that for any particular reason its form or meaning needs further explanation) in respect of this instrument.

Regulation 8 (in Part 2 of the Regulations) requires an owner to ask the issuing body to modify or update an equine's ID, if the responsible person (the owner or the keeper) believes that any identity details contained in the equine's ID require modification or updating. In cases where the responsible person is not the owner (but the keeper), there may be potential for an owner to not be aware of the keeper's belief that the ID needs to be amended. Regulation 8 does not include a requirement for the responsible person (where this is a keeper and not an owner) to notify the owner of their belief that amendment to the ID is necessary. Regulation 22(1) provides that an owner is guilty of an offence if the owner breaches a prohibition, or fails to comply with a requirement that applies to an owner, including under Part 2. As such, there is potential for an owner to commit an offence, and be punished for that offence, even where the owner did not know, and perhaps could not have known, that the equine's ID needed to be amended.

The equivalent regulations for England, The Equine Identification (England) Regulations 2018 (the English Regulations), make provision at regulation 8 for the modification of identity details. However, this requires the owner to ask the issuing body to modify or update the ID if "the owner believes that any identity details contained in the equine's ID require modification or updating". As such, the same issue does not exist in the English Regulations as is noted above for Wales. Under the English Regulations, an

owner would only commit an offence in respect of non-compliance with regulation 8, if they did not ask for changes to be made that they believed were needed.

Merits Scrutiny

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

Implications arising from exiting the European Union

These Regulations are made under section 2(2) of the European Communities Act 1972 and form part of "EU-derived domestic legislation" under section 2 of the European Union (Withdrawal) Act 2018, therefore these Regulations will be retained as domestic law and will continue to have effect in Wales on and after exit day.

Government Response

A government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
30 January 2019

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WELSH STATUTORY INSTRUMENTS

2019 No. 57 (W. 20)

ANIMALS, WALES

The Equine Identification (Wales) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations supplement, and make provision for the enforcement, of Commission Implementing Regulation (EU) 2015/262 (the "EU Regulation") in Wales. They provide for the identification of equines, and replace the Equine Identification (Wales) Regulations 2009 (S.I. 2009/2470) (W. 199).

Part 2 of the Regulations contains provisions which set out various administrative and procedural requirements. In particular, regulation 3 designates the Welsh Ministers as the competent authority and the zootechnical authority for the purposes of the EU Regulation. Other provisions in Part 2 set out various requirements in relation to the identification of equines and the identification document in relation to an equine.

Part 3 sets out various exceptions in relation to equines living under wild or semi-wild conditions.

Part 4 sets out various criminal offences for breach of provisions of these Regulations and the EU Regulation.

Part 5 contains provisions about enforcement and penalties and gives powers to inspectors appointed by the Welsh Ministers or an enforcing authority. In particular, regulation 35 provides that enforcing authorities may choose to apply civil sanctions instead of criminal penalties where they are sure that an offence has been committed. Part 6 then sets out the civil sanctions that are available to enforcing authorities.

Part 7 contains a provision for the revocation of the Equine Identification (Wales) Regulations 2009.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was

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considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff CF10 3NQ.

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WELSH STATUTORY INSTRUMENTS

2019 No. 57 (W. 20)

ANIMALS, WALES

The Equine Identification (Wales) Regulations 2019

Made *15 January 2019*

Laid before the National Assembly for Wales 17 January 2019

Coming into force in accordance with regulation 1

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The Welsh Ministers are designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) ("the 1972 Act") in relation to the common agricultural policy of the European Union.

The Welsh Ministers make these Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the 1972 Act(**3**).

These Regulations make provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears to the Welsh Ministers that it is expedient for references in these Regulations to provisions of

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(**1**) S.I. 2010/2690.

(**2**) 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7). It is prospectively repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16) from exit day (see section 20 of that Act).

(**3**) Paragraph 1A of Schedule 2 to the European Communities Act 1972 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006. It was amended by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 and by S.I. 2007/1388. It is prospectively repealed by section 1 of the European Union (Withdrawal) Act 2018 from exit day (see section 20 of that Act).

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European Union instruments to be construed as references to those provisions as amended from time to time.

PART 1

Introductory

Title, commencement and application

1.—(1) The title of these Regulations is the Equine Identification (Wales) Regulations 2019 and, except for regulation 13(3)(c), these Regulations come into force on 12 February 2019.

(2) Regulation 13(3)(c) comes into force on 12 February 2021.

(3) These Regulations apply in relation to Wales.

Interpretation

2. In these Regulations—

"Article" ("*Erthygl*") means an Article of the EU Regulation;

"compliance notice" ("*hysbysiad cydymffurfio*") has the meaning given in regulation 37;

"designated area" ("*ardal ddynodedig*") means an area described as such in regulation 16;

"enforcement costs" ("*costau gorfodi*") means the costs which a person is required to pay under an enforcement costs recovery notice;

"enforcement costs recovery notice" ("*hysbysiad adennill costau gorfodi*") has the meaning given in regulation 40;

"enforcing authority" ("*awdurdod gorfodi*") means a local authority falling within regulation 31;

"equine" ("*ceffyl*") means a wild, semi-wild or domesticated soliped within the genus Equus of the family Equidae and their crosses;

"EU Regulation" ("*Rheoliad yr UE*") means Commission Implementing Regulation (EU) 2015/262 of 17 February 2015(**1**) laying down rules pursuant to Council Directives 90/427/EEC(**2**) and 2009/156/EC(**3**) as regards the

(**1**) OJ No. L.59, 3.3.2015, p. 1.
(**2**) OJ No. L 224, 18.8.1990, p.55. The Directive was amended by Council Directive 2008/73/EC of 15 July 2008 (OJ No. L 219, 14.8.2008, p. 40).
(**3**) OJ No. L 192, 23.7.2010, p.1. The Directive was amended by Council Directive 2013/20/EU of 13 May 2013 (OJ No. L 158, 10.6.2013, p. 234 and by Commission Implementing Decision (EU) 2016/1840 of 14 October 2016 (OJ No. L 280, 18.10.2016, p. 33).

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methods for the identification of equidae, as amended from time to time;

"fixed monetary penalty" ("*cosb ariannol benodedig*") has the meaning given in regulation 39;

"fixed monetary penalty notice" ("*hysbysiad cosb ariannol benodedig*") has the meaning given in regulation 39;

"ID" ("*dogfen adnabod*") means the identification document for the identification of an equine in accordance with the EU Regulation and these Regulations;

"inspector" ("*arolygydd*") means a person appointed as such under regulation 32 or under the Animal Health Act 1981(**1**);

"issuing body" ("*corff dyroddi*") means an issuing body as referred to in Article 5(1);

"keeper" ("*ceidwad*") has the meaning given in Article 2;

"non-compliance penalty" ("*cosb am beidio â chydymffurfio*") has the meaning given in regulation 38;

"non-compliance penalty notice" ("*hysbysiad cosb am beidio â chydymffurfio*") has the meaning given in regulation 38;

"offender" ("*troseddwr*") has the meaning given in regulation 35(1);

"official veterinarian" ("*milfeddyg swyddogol*") has the meaning given in Article 2;

"owner" ("*perchennog*") has the meaning given in Article 2;

"responsible person" ("*person cyfrifol*") means—

(a) the owner; or

(b) if the owner does not have primary day-to-day responsibility for the equine concerned, the keeper;

"transponder" ("*trawsatebydd*") has the meaning given in Article 2;

"wild or semi-wild equine" ("*ceffyl gwyllt neu led-wyllt*") means an equine falling within regulation 16(1);

"within 24 hours" ("*o fewn 24 awr*") means before the end of the period of 24 hours beginning with the time at which—

(a) for the purposes of regulation 15(1)(a), the information is created or amended; or

(**1**) 1981 c. 22.

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(b) for the purposes of regulation 15(1)(b), the issuing body receives the Welsh Ministers' request,

but not including any time that is not part of a working day; and for this purpose "working day" ("*diwrnod gwaith*") means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971(**1**).

PART 2

Administrative and procedural provisions and requirements

Competent authority and zootechnical authority for the purposes of the EU Regulation

3. The Welsh Ministers are the competent authority and the zootechnical authority for the purposes of the EU Regulation.

Transfer of ownership of equines

4.—(1) A person who transfers the ownership of an equine to another person (the "transferee") must provide that equine's ID to the transferee at the time of the transfer.

(2) Before the end of the period of 30 days beginning with the day on which the transfer took effect, the transferee must—

(a) notify the issuing body of—

(i) the transfer of ownership; and

(ii) the transferee's name, address and contact details; and

(b) send the ID for the equine concerned to the issuing body.

Identification of equines

5. A person must not keep an equine unless it is identified in accordance with the EU Regulation and these Regulations.

Applications for IDs

6.—(1) For the purposes of Articles 3(3) and 11(2), the owner of an equine born in the European Union and located on a holding in Wales must ensure that an application for an ID for that equine is received by an

(**1**) 1971 c. 80.

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issuing body no later than 30 days prior to the final date for issuing an ID as set out in paragraph (2).

(2) The final date is the later of—

(a) 31 December in the calendar year of the equine's birth; or

(b) 6 months following the date of the equine's birth.

(3) An application must be accompanied by such fee specified by the issuing body to which it is submitted.

Completion of existing IDs for equines imported into the European Union

7. The keeper must provide to the issuing body all information necessary to allow the body to complete an existing ID for the purposes of Article 15(2), subject to Article 15(3), so that it complies with the requirements of Article 7(2).

Modification of identity details in IDs

8. If the responsible person believes that any identity details contained in the equine's ID require modification or updating, whether pursuant to Article 27(1) or otherwise, the owner must ask the issuing body to modify or update the ID.

Format and content of IDs

9.—(1) An issuing body—

(a) must ensure that any stock of pre-printed blank IDs ("pre-printed blank stock") which it holds or maintains;

(b) must ensure that any ID which it issues from such pre-printed blank stock; and

(c) may ensure that ID which it issues otherwise than from pre-printed blank stock,

complies with paragraph (2).

(2) For the purpose of paragraph (1), the ID or the pre-printed blank stock must, as a minimum, contain a serial number that is printed on each of the pages which form sections I to III of the ID (as set out in Annex I to the EU Regulation).

(3) An issuing body must ensure that all IDs and pre-printed blank stock are securely managed on its premises.

(4) If an ID or any pre-printed blank stock is lost, missing or stolen, the issuing body concerned must—

(a) notify the Welsh Ministers as soon as possible of the loss, misplacement or theft; and

(b) with the notification mentioned in sub-paragraph (a), inform the Welsh Ministers of—

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(i) the circumstances of the loss, misplacement or theft; and

(ii) the serial numbers for the ID or the pre-printed blank stock concerned.

(5) For the purposes of Article 9(1)(c), as read with, and subject to, Article 10(3), the issuing body concerned must ensure that section IV (details of ownership) of an ID is completed before the ID is issued under Article 9.

(6) An ID or any part of it may be in an additional language.

Verification of IDs

10. Upon request from the Welsh Ministers, an issuing body must verify whether an ID that has been, or which appears to have been, issued by it is unique, genuine and authentic.

Requirement to provide ID to a veterinary surgeon treating an equine

11.—(1) This regulation applies if a veterinary surgeon is treating an equine.

(2) Upon reasonable request from the veterinary surgeon, the responsible person must provide the equine's ID to the veterinary surgeon without delay.

Slaughter, death or loss of an equine

12.—(1) Where, in accordance with Article 34(1)(c)(ii), an official veterinarian, or a person acting under the supervision of an official veterinarian, is required to return an invalidated ID to the issuing body, the official veterinarian, or the person acting under his or her supervision, must return that ID to the issuing body as soon as is reasonably practicable.

(2) Where, in accordance with Article 35(1), a keeper is required to return an ID to the issuing body, the keeper must return that ID to the issuing body within a period of 30 days of the death or loss of the equine.

Transponders

13.—(1) For the purposes of Article 18(3), the minimum qualification required for the person entrusted with the implantation of a transponder is membership of the Royal College of Veterinary Surgeons, and in this regulation that person is referred to as a "veterinary surgeon".

(2) A veterinary surgeon who implants a transponder into an equine must take the measures set out in Articles 16 and 17(1) on behalf of an issuing body.

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(3) For the purposes of Article 18(5), the responsible person must arrange for a veterinary surgeon to implant a transponder into an equine that is deemed to be identified in accordance with Articles 4(2) or 43(1) if—

(a) a previously implanted and recorded transponder ceases to function;

(b) the equine arrives in Wales having been subject to an alternative method of identity verification authorised by another member State under Article 21; or

(c) the equine—

(i) does not fall within sub-paragraphs (a) or (b);

(ii) has not already had a transponder implanted in compliance with the requirements or specifications as to transponders set out in the EU Regulation or Commission Regulation (EC) No 504/2008([1]) of 6 June 2008 implementing Council Directives 90/426/EEC and 90/427/EEC as regards methods for the identification of equidae; and

(iii) was born on or before 30 June 2009.

(4) A veterinary surgeon who implants a transponder into an equine must ensure that the transponder displays a code that is unique to the transponder.

Smart cards

14.—(1) An equine in respect of which an ID has been issued may be moved or transported within Wales, or into Wales from other parts of the United Kingdom, without being accompanied by its ID if it is accompanied by a smart card issued in accordance with Article 25.

(2) The Welsh Ministers may issue guidance about the format of smart cards.

(3) In this regulation, "smart card" has the meaning given in Article 2.

Databases

15.—(1) An issuing body must provide the following information to the central database—

(a) within 24 hours of the information being created or amended by the body—

(i) the identification details described in Article 27(1);

([1]) OJ No. L 149, 7.6.2008, p.3.

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(ii) the information recorded in the issuing body's database under Article 38(1);

(b) within 24 hours of a request from the Welsh Ministers, such other information (not falling within sub-paragraph (a)) as the Welsh Ministers may reasonably request in relation to the issuing of any ID by the issuing body or the carrying out by the issuing body of its functions under these Regulations or the EU Regulation.

(2) Following a request in writing from an issuing body, the Welsh Ministers may extend the time within which the issuing body is to provide the information under paragraph (1) to the central database.

(3) Any extension of time under paragraph (2) must be notified to the issuing body in writing.

(4) For the purposes of Article 40(1), an issuing body must incorporate the information falling within Articles 28(e) and 38(1) into the central database.

(5) The Welsh Ministers may issue guidance to issuing bodies about the central database and how to enter information into it.

(6) The Welsh Ministers may share any data or information held or stored in, or which is to be held or stored in, the central database with the Secretary of State, the Scottish Ministers and, in Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.

(7) In this regulation, "central database" means the database established by the Secretary of State in accordance with Article 39.

PART 3

Equines living under wild or semi-wild conditions

Exceptions in respect of certain wild or semi-wild equines

16.—(1) The derogation in Article 13 applies in relation to equines that are—

(a) identified in the lists kept by the Hill Pony Improvement Societies of Wales ; or

(b) identified in the lists kept by the Cymdeithas Merlod y Carneddau.

(2) For the purposes of Article 13, as read with Article 43(3), the areas ("designated areas") defined by the Welsh Ministers containing wild or semi-wild equines that do not need to be identified with IDs while they remain within the designated areas are those areas notified by the Welsh Ministers to the Commission on 17 September 2009.

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(3) For the purposes of Article 13(1), wild or semi-wild equines transferred under official supervision from one of the lists described in paragraph (1) to the other list described in paragraph (1) do not need to be identified with IDs.

(4) Wild or semi-wild equines living on a designated area must be identified with an ID when they are brought into domestic use.

Requirement for ID and transponder for wild or semi-wild equines treated with veterinary medicinal products

17. If a wild or semi-wild equine without an ID in a designated area is treated with any veterinary medicinal product, the responsible person must ensure that the equine has an ID and is implanted with a transponder—

(a) in accordance with the EU Regulation; and

(b) within 30 days of the treatment.

Wild and semi-wild equines: requirement for ID for movement from designated area

18. Subject to regulation 19, the responsible person may not move a wild or semi-wild equine without an ID out of a designated area.

Exception to requirement for ID: wild or semi-wild equines moved for welfare reasons or for slaughter

19.—(1) The responsible person may move a wild or semi-wild equine out of a designated area without an ID if—

(a) the equine is being moved out of the designated area temporarily and for welfare reasons; or

(b) the equine—

(i) is aged under 12 months and has visible dental stars of the temporary lateral incisors;

(ii) is being moved directly from the designated area in which it was born to a place for slaughter (whether or not for the purpose of human consumption);

(iii) has not previously been treated with any veterinary medicinal product; and

(iv) has a sticker issued by an issuing body attached to it before it leaves the designated area, and the sticker must be marked with a unique identification number and the date on which it was attached to the equine.

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(2) The responsible person must ensure that an equine falling within paragraph (1)(b) is slaughtered within 7 days of the date shown on the sticker.

Requirements for wild or semi-wild equines aged 12 months or over moved for slaughter

20.—(1) This regulation applies to a wild or semi-wild equine that is—

(a) aged 12 months or over; and

(b) being moved from a designated area to a place for slaughter (whether or not for the purpose of human consumption).

(2) The responsible person must ensure that the equine has (in addition to an ID) a sticker issued by an issuing body attached to it before it leaves the designated area, and the sticker must be marked with a unique identification number and the date on which it was attached to the equine.

(3) The responsible person must ensure that an equine falling within paragraph (1) is slaughtered within 7 days of the date shown on the sticker.

Requirements for wild or semi-wild equines moved other than for slaughter

21.—(1) This regulation applies to a wild or semi-wild equine that is—

(a) of any age; and

(b) being moved from a designated area to another place (the "holding destination") for a purpose other than for slaughter.

(2) The responsible person must ensure that the equine has (in addition to an ID) a sticker issued by an issuing body attached to it before it leaves the designated area, and the sticker must be marked with a unique identification number and the date on which it was attached to the equine.

(3) The responsible person must ensure that an equine falling within paragraph (1) reaches its holding destination within 7 days of the date shown on the sticker.

(4) The responsible person must ensure that a transponder is implanted into the equine before the expiry of the period of 30 days beginning with the day on which the equine arrives at the holding destination.

(5) Unless temporarily or for welfare reasons, the responsible person must ensure that the equine is not moved out of the holding destination until the transponder has been implanted.

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PART 4

Criminal offences

General

22.—(1) An owner is guilty of an offence if the owner breaches a prohibition, or fails to comply with a requirement, which applies to an owner (including an owner as a responsible person) in Parts 2 and 3 or in the EU Regulation.

(2) A keeper is guilty of an offence if the keeper breaches a prohibition, or fails to comply with a requirement, which applies to a keeper (including a keeper as a responsible person) in Parts 2 and 3 or in the EU Regulation.

(3) An issuing body is guilty of an offence if the issuing body breaches a prohibition, or fails to comply with a requirement, which applies to an issuing body in Parts 2 and 3 or in the EU Regulation.

(4) Subject to paragraph (5), a veterinary surgeon is guilty of an offence if the veterinary surgeon breaches a prohibition, or fails to comply with a requirement, which applies to a veterinary surgeon in Parts 2 and 3 or in the EU Regulation.

(5) A veterinary surgeon is not guilty of any offence for failing to enter information into, or failing to update, an ID if the veterinary surgeon has asked the responsible person for the ID for that purpose and the responsible person does not provide, or has not provided, the ID to the veterinary surgeon.

Withholding ID from the responsible person

23. A person is guilty of an offence if the person, without reasonable excuse, withholds an equine's ID from the responsible person.

Provision of false or misleading information

24. A person is guilty of an offence if the person makes a statement or provides information that is false or misleading—

(a) when applying for an ID to be issued or varied;

(b) in relation to the entering of information into an ID or the registration of an ID; or

(c) to any person acting in relation to the enforcement of these Regulations or the EU Regulation.

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Possession of a forged ID

25.—(1) A person is guilty of an offence if the person is in possession of an ID knowing it to be a forgery.

(2) Paragraph (1) does not apply if the person, at the time concerned, holds a forged ID simply for the purpose of destroying it or providing it to an enforcing authority, the police or the Welsh Ministers.

Improper destruction, defacement or alteration, etc

26. A person is guilty of an offence if the person, otherwise than in accordance with any entitlement, obligation or requirement to do so in these Regulations or the EU Regulation—

(a) destroys or defaces an ID;

(b) alters any entry in an ID; or

(c) defaces, obliterates or removes any mark applied under regulation 33, except under the written authority of an inspector.

Offences relating to implantation of transponder

27. A person is guilty of an offence if the person knowingly—

(a) implants, or attempts to implant, into an equine, a device which—

(i) is not a genuine transponder; or

(ii) has previously been implanted into, or used for, another animal; or

(b) tampers with, or otherwise alters, a transponder with intent to deceive.

Obstruction

28. A person is guilty of an offence if the person—

(a) intentionally obstructs an inspector acting in the course of enforcing these Regulations or the EU Regulation;

(b) without reasonable cause, fails to give to an inspector acting in the course of enforcing these Regulations or the EU Regulation any assistance or information that the inspector may reasonably require for that purpose; or

(c) fails to produce a document, record or ID when required to do so to any person acting in the course of enforcing these Regulations or the EU Regulation.

Offences by bodies corporate

29.—(1) Where a body corporate is guilty of an offence under these Regulations, and that offence is

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proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

(a) any director, manager, secretary or other similar person of the body corporate; or

(b) any person who was purporting to act in any such capacity,

that person (as well as the body corporate) is also guilty of the offence.

(2) In this regulation "director", in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

Offences by partnerships and unincorporated associations

30.—(1) Proceedings for an offence under these Regulations alleged to have been committed by a partnership or an unincorporated association may be brought in the name of the partnership or association.

(2) For the purposes of such proceedings—

(a) rules of court relating to the service of documents are to have effect as if the partnership or association were a body corporate;

(b) section 33 of the Criminal Justice Act 1925(**1**) and Schedule 3 to the Magistrates' Courts Act 1980(**2**) apply in relation to the partnership or association as they apply in relation to a body corporate.

(3) A fine imposed on a partnership or association on its conviction for an offence under these Regulations is to be paid out of the funds of the partnership or association.

(4) Where a partnership is guilty of an offence under these Regulations, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner (as well as the partnership) is also guilty of the offence.

(5) For these purposes, "partner" includes a person purporting to act as a partner.

(6) Where an unincorporated association is guilty of an offence under these Regulations, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the association, that officer (as well as the association) is also guilty of the offence.

(**1**) 1925 c. 86. Relevant amending enactments are Schedule 6 to the Magistrates' Court Act 1952 (c. 55) and Schedule 8 to the Courts Act 1971 (c. 23).

(**2**) 1980 c. 43.

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(7) For these purposes, "officer" means an officer of the association or a member of its governing body, or a person purporting to act in such capacity.

PART 5

Enforcement and penalties

Enforcing authorities

31.—(1) These Regulations and the EU Regulation are enforced by the local authority.

(2) The Welsh Ministers may direct, in relation to cases of a particular description or any particular case, that an enforcement duty imposed on the local authority under this regulation must be discharged by the Welsh Ministers and not by the local authority and in such cases, the Welsh Ministers will be the enforcing authority for the purposes of these Regulations.

Appointment of inspectors

32. The Welsh Ministers or an enforcing authority may appoint a person (an "inspector") for the purpose of enforcing these Regulations or the EU Regulation.

Inspectors: powers of entry and general powers

33.—(1) An inspector may, on producing a duly authenticated authorisation if required, enter any land, premises (excluding any premises not containing any equine and used only as a dwelling) or property for the purpose of administering and enforcing these Regulations or the EU Regulation; and, for the purposes of this regulation, "premises" includes any vehicle or container.

(2) An inspector may—

(a) require the production of an ID and mark it as necessary;

(b) carry out any inquiries;

(c) have access to, and inspect and copy any documents or records (in whatever form they are held) relevant to these Regulations or the EU Regulation, and remove them to enable them to be copied;

(d) inspect and check the operation of any computer and any associated apparatus or material that is, or that may have been, in use in connection with documents or records; and

(e) mark any equine for identification purposes.

(3) Where an inspector has entered any premises and it is not reasonably practicable to determine whether documents on those premises are relevant to these

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Regulations or the EU Regulation, the inspector may seize them to ascertain whether or not they are relevant.

(4) The inspector may be accompanied by—

(a) such other persons as the inspector considers necessary; and

(b) any representative of the European Commission acting for the purpose of the enforcement of an EU obligation.

Criminal penalties

34. Subject to regulation 35, a person who is guilty of an offence under these Regulations is liable, on summary conviction, to a fine.

Choosing to pursue civil sanctions instead of criminal penalties

35.—(1) An enforcing authority may impose a civil sanction, or a combination of civil sanctions, under Part 6 against a person (an "offender") if the authority is satisfied beyond reasonable doubt that the offender is guilty of an offence described in Part 4.

(2) Subject to paragraph (3), criminal proceedings against an offender may not be started or continued if an enforcing authority, in respect of the offence—

(a) chooses to apply civil sanctions under paragraph (1); and

(b) serves on the offender—

(i) a compliance notice;

(ii) a non-compliance penalty notice; or

(iii) a fixed monetary penalty notice.

(3) If the offender fails to comply with civil sanctions served under paragraph (2)(b), the enforcing authority may start criminal proceedings.

PART 6

Civil sanctions

Application

36. This Part applies if an enforcing authority decides, under regulation 35(1), to impose a civil sanction, or a combination of civil sanctions, on an offender.

Compliance notice

37.—(1) An enforcing authority may, by way of serving a written notice (a "compliance notice") on the offender, require the offender to take such steps as the

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authority may specify, within such periods as may be specified, to secure that the act or omission giving rise to the offence does not continue or recur.

(2) A compliance notice may not be served if a fixed monetary penalty notice has been served on the offender for the same act or omission.

Non-compliance penalty notice

38.—(1) If an offender fails to comply with a compliance notice, the enforcing authority may, by way of serving a written notice (a "non-compliance penalty notice") on the offender, require the offender to pay to the authority such sum (the "non-compliance penalty") as the authority may specify in respect of that failure to comply.

(2) The enforcing authority may determine—

(a) the amount of the non-compliance penalty, but this must not exceed the amount which corresponds with level 1 on the standard scale; and

(b) whether any discount is offered in relation to early payment and, if so, the amount of any such discount (but see regulation 41(2)).

(3) If the requirements of a compliance notice are met before the payment period specified in a related non-compliance penalty notice expires, liability to pay the non-compliance penalty is discharged.

Fixed monetary penalty notice

39.—(1) An enforcing authority may, by way of serving a written notice (a "fixed monetary penalty notice") on an offender, require the offender to pay to the authority such sum (the "fixed monetary penalty") as the authority may specify in relation to the act or omission giving rise to the offence.

(2) A fixed monetary penalty—

(a) may only be imposed if it is not reasonably practicable for the enforcing authority to serve a compliance notice; and

(b) may not be imposed more than once for the same act or omission.

(3) The enforcing authority may determine—

(a) the amount of the fixed monetary penalty, but this must not exceed the amount which corresponds with level 1 on the standard scale; and

(b) whether any discount is offered in relation to early payment and, if so, the amount of any such discount (but see regulation 41(2)).

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Enforcement costs recovery notice

40.—(1) An enforcing authority may, by way of serving a written notice (an "enforcement costs recovery notice") on an offender on whom a compliance notice has been served, require the offender to pay the costs incurred by the authority in relation to the compliance notice up to the time of its service on the offender.

(2) In sub-paragraph (1), the reference to "costs" means reasonably and necessarily incurred—

(a) investigation costs;

(b) administration costs; and

(c) costs of obtaining expert advice, including legal advice.

(3) An enforcing authority must provide a detailed breakdown of the costs specified in an enforcement costs recovery notice if requested to do so by the offender.

Information to be provided in or with a notice

41.—(1) If serving a notice, the enforcing authority must ensure that the notice contains, or is served with, the following information—

(a) the name and address of the offender on whom the notice is served;

(b) the reasons for serving the notice, including the date of the act or omission giving rise to the offence;

(c) information as to the steps that the offender must take in response to the notice, including the amount of any penalty that must be paid and the period within which those steps must be completed or any payment made;

(d) information as to—

(i) the right of appeal;

(ii) the consequences of an appeal, including notification that the notice is suspended pending final determination or withdrawal of any appeal; and

(iii) the consequences of failure to comply with the notice.

(2) If an enforcing authority offers a discount for early payment under regulation 38(2)(b) or 39(3)(b), the authority may not require payment of the full, undiscounted sum described in the notice before the expiry of the period of 28 days beginning with the date on which the notice is served.

(3) In this regulation, "notice" means—

(a) a compliance notice;

(b) a non-compliance penalty notice;

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(c) a fixed monetary penalty notice; or

(d) an enforcement costs recovery notice.

Withdrawing and re-issuing a notice

42.—(1) An enforcing authority may, at any time, in writing, withdraw a notice served by the authority under this Part.

(2) Paragraph (3) applies to a notice served on an offender under this Part but which is subsequently withdrawn by the enforcing authority before the offender files an appeal against the decision specified in the notice.

(3) The enforcing authority may serve a further notice on the offender for the failure described in the original notice.

(4) A notice may be withdrawn by an enforcing authority, if the enforcing authority determines that the offence to which the notice relates was not committed or that the notice ought not to have been issued to the person named as the person to whom it was issued.

(5) Where a notice requiring payment of a sum (such sum being specified in the notice) has been withdrawn—

(a) no amount is payable in pursuance of that notice; and

(b) any amount paid in pursuance of that notice must be repaid to the person who paid it.

(6) In this regulation, “notice” has the meaning given in regulation 41(3).

Appeals

43.—(1) A person may appeal against the following decisions of an enforcing authority—

(a) a decision, by the service of a notice under regulation 37, to serve a compliance notice on that person;

(b) a decision, by the service of a notice under regulation 38, to impose a non-compliance penalty on that person;

(c) a decision, by the service of a notice under regulation 39, to impose a fixed monetary penalty on that person;

(d) a decision, by the service of a notice under regulation 40, to require that person to pay enforcement costs.

(2) The grounds for appeal are that—

(a) the decision was based on an error of fact;

(b) the decision was wrong in law or for any other reason;

(c) the decision was unreasonable for any reason.

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(3) An appeal under this Part is to the First-tier Tribunal.

(4) An appeal under this regulation suspends the effect of the notice appealed against until the appeal is determined or withdrawn.

(5) On appeal the First-tier Tribunal may cancel, confirm or vary the notice appealed against.

Period within which payment is required and power to recover payments

44.—(1) To the extent that a decision to impose a non-compliance penalty, a fixed monetary penalty, or a decision to recover enforcement costs is upheld on appeal, or if the appeal is withdrawn, the penalty or costs must be paid before the expiry of the period of 28 days ("the period in which payment is required") beginning with the day on which the appeal is determined or withdrawn.

(2) Following the period in which payment is required, an enforcing authority may recover any non-compliance penalty or fixed monetary penalty imposed under this Part, and any enforcement costs recoverable by the authority under this Part—

(a) as a civil debt; or

(b) on the order of the court, as if payable under a court order.

Receipts

45.—(1) Subject to paragraph (2) and (3), an enforcing authority may retain sums ("receipts") paid in respect of enforcement notices served under this Part.

(2) The amount which an enforcing authority may retain under paragraph (1) must not exceed reasonable and necessary costs ("costs") incurred, in relation to enforcement notices, by the authority in discharging its functions under Parts 4 and 5 and this Part.

(3) If receipts exceed costs, the enforcing authority must pay the excess into the Consolidated Fund.

(4) For the purposes of paragraph (2), costs may include, in relation to enforcement notices—

(a) investigation costs;

(b) administration costs; and

(c) costs of obtaining expert advice, including legal advice.

(5) Upon request from the Welsh Ministers, an enforcing authority must provide to the Welsh Ministers information as to receipts and costs.

(6) In this regulation, "enforcement notices" means non-compliance penalty notices and fixed monetary penalty notices.

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PART 7

Miscellaneous

Revocation of the Equine Identification (Wales) Regulations 2009

46. The Equine Identification (Wales) Regulations 2009(**1**) are revoked.

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs**,**
one of the Welsh Ministers
15 January 2019

(**1**) S.I. 2009/2470 (W. 199).

Explanatory Memorandum to The Equine Identification (Wales) Regulations 2019

This Explanatory Memorandum has been prepared by the Department for Economy, Skills and Natural Resources and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Equine Identification (Wales) Regulations 2019 and I am satisfied that the benefits justify the likely costs.

Lesley Griffiths

Minister for Environment, Energy and Rural Affairs:

17 January 2019

1. Description

The aim of these Regulations is to improve the system of identification of equidae through the implementation of Commission Regulation (EU) 2015/262.

These Regulations ensure that the system of equine identification set out by Regulation 2015/262 functions effectively in Wales. This system includes requirements in relation to the identification of equines and the identification document in relation to an equine, the marking of equines by way of a transponder, and a central database. These Regulations make provisions in relation to these. They also set out a system of civil sanctions and criminal penalties for offences of breaching Regulation 2015/262 or offences contrary to these Regulations.

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

None

3. Legislative background

These Regulations implement Commission Implementing Regulation (EU) 2015/262 of 17 February 2015, regarding the identification of equidae and known as Equine Passport Regulation.

The Welsh Ministers are designated (by way of the European Communities (Designation) (No. 5) Order 2010, S.I. 2010/2690) for the purposes of section 2(2) of the European Communities Act 1972 in relation to the common agricultural policy of the European Union. The Equine Identification (Wales) Regulations 2019 are made in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the 1972 Act.

These Regulations revoke the Equine Identification (Wales) Regulations 2009 which implemented Commission Regulation (EC) No 504/2008 of 6 June 2008. (EU) 2015/262 replaces (EC) 504/2008.

These Regulations are being made under the negative resolution procedure.

4. Purpose & intended effect of the legislation

The European Commission issued a 5 point action plan in 2013 in response to the revelations surrounding horse meat contamination within the human food chain. The plan included actions to strengthen the requirements on equine identification in order to reduce the risk of horses which have been treated with certain medicinal products from entering the human food chain. Regulation 2015/262 came into force on 1 January 2016. The Equine Identification (Wales) Regulations 2019 implement Regulation 2015/262 in Wales. These Regulations support the requirement that all equines moving in, to or through the EU must be identified in accordance with Regulation 2015/262 and that the human food chain is protected against animals treated with potentially harmful veterinary medicines.

These Regulations require the unique identification of all equines by way of passport. The Regulations require all equines to be microchipped regardless of age. Previously only equines born after 2009 required a microchip. The new requirement in these Regulations for older equines to possess a microchip comes into force two years from the coming into force of these Regulations.

The main provisions contained within Regulation 2015/262 are fundamentally the same as those contained within the previous Regulation (Commission Regulation (EC) 504/2008), which was

implemented by way of the Equine Identification (Wales) Regulations 2009. The main changes include:

- A requirement for all Member States to operate a central database containing certain information on horses within their territory;
- Tighter controls over microchip numbering;
- A requirement to notify a Passport Issuing Organisation when a horse has been signed out of the food chain on receipt of certain medicinal treatments and the recording of these details on the central equine database;
- New minimum standards for passports together with stronger powers to suspend or withdraw approval to issue passports from organisations which fail to meet the standards.

The Regulations continue to use a derogation for certain equines living under wild or semi-wild conditions (those identified in the lists kept by the Hill Pony Improvement Societies of Wales and the Cymdeithas Merlod y Carneddau) and set out the circumstances in which they remain exempt from the requirement for a passport or transponder.

The Regulations expressly state that an identification document, or any part of it, may be in an additional language. Accompanying guidance will set out the way in which the Welsh Government will support passport issuing organisations in this regard.

Offences and penalties are set out in the Regulations. The Regulations confer on Local Authorities the ability to deal with breaches by way of civil sanctions and to recover the costs of doing so. A person served a notice under these Regulations has the right to appeal. An appeal is to be made to the First-tier Tribunal.

The combination of the more robust identification requirements, the establishment of the UK's Central Equine Database and the availability of civil sanctions for breaches of these Regulations will improve traceability during disease outbreaks as well as support appropriate resolution and enforcement in cases of loss, theft or lapses of welfare.

5. Consultation

A 12 week consultation ran from 7March 2018 to 30 May 2018. The consultation was drawn to the attention of a wide audience of key stakeholders including Farming Unions, Welfare charities, Passport Issuing Authorities and Local Authorities. The consulters' were e-mailed the weblink to the online consultation and it was advertised in GWLAD, the Welsh Government magazine. There was no express legal requirement to consult. Section 71 of the Government of Wales Act 2006 allows the Welsh Ministers to do anything conducive or incidental to any of their other functions.

There was broad agreement to the proposals in the consultation.

A summary of the consultation responses is available at www.gov.wales

6. Regulatory Impact Assessment (RIA)

PART 2 – REGULATORY IMPACT ASSESSMENT

Options

Option 1 – Do Nothing

Under this option we would not implement the EU regulation. This would create a significant risk to food safety and the horse meat trade. Additionally it would likely lead to legal proceedings and potentially fines (infraction) form the EU. This option has therefore been ruled out, but will be used as a baseline for analysis of other available options.

Option 2 - Do the minimum set out in the EU Regulations

Under this option, the Regulations necessary to enforce Commission Regulation 2015/262 would be made but the opportunity to introduce further improvements to the equine identification regime in Wales would be missed. For this reason, this option has been rejected.

Option 3 – Implement the EU Regulations with some enhancement

This option considers a small number of enhancements to the EU legislation. The enhancements, which are set out in Table 1, are considered necessary to ensure the regime is safe, effective and practical and adequately protects public health. These options are gold plating but the Welsh Government considers they are justified, and they are also broadly supported by the sector itself, evidenced through Welsh government's engagement across the equine sector through our joint engagement with Defra of attending meetings, sending out policy updates and inviting views. From written and verbal feedback, we know the Equine Sector Council and enforcement bodies support these measures. All gold plating that incurs an overall cost to business has been consulted on.

Table 1: Enhancements being considered under option 3

Proposed additional measure	Further details	Article (EU Regulation 2015/262)	Justification
Microchipping			
Mandatory microchipping of older horses	Gold plating – additional requirement permitted by EU legislation which may incur some additional cost	Article 18 (5) (c)	Horses identified before 2009 did not previously need to be micro-chipped. As a result it is often hard to identify older horses causing difficulty with enforcement of identification, welfare and food safety legislation. Mandatory micro-chipping of older horses could help to overcome this. Many parts of the equine sector support mandatory microchipping of older horses as a means to ensure robust equine identification. However, views are polarised and there is a minority who oppose this change. Horse owners who have equines born before 2009 who are not already microchipped will incur additional costs.
Mandatory replacement of	Gold plating –	Article 18 (5)	Microchip failure is thought to be

failed microchips	additional requirement permitted by EU legislation which may incur some additional cost	(a)	extremely rare. However, if a horse's microchip were to fail this would create difficulties in ascertaining its identity. Outline diagrams are not always mandatory for horses that were originally microchipped, so the replacement of failed microchips is essential to link these horses to their passports. In the case of microchip failure horse owners will incur additional costs.
Central Equine Database (CED)			
PIOs to update CED with changes to horse details within 24 hours	Gold plating – goes beyond the minimum EU requirement	Article 38 (3)	New EU legislation requires Passport Issuing Organisations (PIOs) to notify CED of changes to a horse's details within 15 days. However the intention of the new EU Regulations is to tighten the identification of all equines. It is therefore essential that the CED contains up to date information on a horse's status so that the regime can be managed and enforced effectively. The majority of the sector agrees that a tighter updating timeframe for PIOs is required. PIOs may incur additional costs.
Basic horse details available to the public	Non-regulatory – additional to EU requirement	N/A	EU legislation requires certain horse details held on CED to be made available to other Member States. The same system, allowing searches of the CED for limited non-personal information, could be made available to the general public at negligible additional cost to the Devolved Administrations. Public access to data would enable owners to ensure that their records are correct, and would also be of uses to businesses to inform commercial decisions. Small cost to Government only
Option for owners to notify PIOs of changes to equine identification details via	Non-regulatory – use is	Articles 27 (3) and 37 (4)	Owners are responsible for reporting changes to their horse's details, including ownership

CED before forwarding their passport to the relevant PIO.	optional		information, to PIOs. Anecdotally equine stakeholders state that levels of reporting are currently low, which creates difficulties for enforcement authorities and PIOs as the data they hold is out of date. Stakeholders, including the British Horse Council (Formerly Equine Sector Council) believe that giving owners access to an optional online mechanism to notify PIOs of necessary changes to their records is vital to increasing reporting and therefore improving the efficacy of the regime. Defra have confirmed that this extra functionality would be simple to develop and would provide significant benefits as well as being provided at a low cost to Government.
Option for CED to notify changes in equine identification details to other Member States on behalf of PIOs	Non-regulatory – use is optional	Articles 38 and 40	EU legislation requires

7. Costs and benefits

To a large extent, the requirements set out in Commission Regulation 2015/262 reflect the UK's existing regime and are not expected to result in an additional cost to public bodies or horse owners. This section therefore focuses on the costs and benefits of the enhancements proposed under option 3.

Microchipping of older horses

Cost

Horses identified before 2009 do not currently need to be microchipped. As a result it is often hard to identify these horses in the field, causing difficulty with enforcement of identification, welfare and food safety legislation. Mandatory microchipping of older horses would overcome this. The majority of the costs associated with the measure would fall on private individuals rather than businesses, as most horses are owned by private individuals. This being the case it is likely that changes introduced in the Regulations would need to be phased in over an extended period to give owners the chance to comply with the requirement.

Data on the Central Equine Database (CED) shows almost 149,000 horses in Wales, of which approximately 86,000 (58%) were born before the 1st of July 2009. Some of these older horses are likely to have already been microchipped by their owner, however, the number this applies to is unknown. For the purposes of the RIA it is assumed that between 50% and 100% of older horses will need to be micro-chipped.

The consultation stage impact assessment published by Defra in 2016[1] indicated that 86% of horses in the UK are owned by private individuals, with the remaining 14% owned by businesses. In the absence of alternative or more up-to-date information for Wales, it is assumed that this split is representative of horse ownership in Wales.

The cost of microchipping a horse falls to the owner of the animal. The unit costs in Table 2 are taken from Defra's consultation stage IA but uprated to reflect inflation during the intervening period. On this basis, the cost to a private owner to microchip a horse is £45.18 and the cost to a business owner is £46.32.

Table 2 Unit cost of microchipping a horse*

Microchip insertion	£27.84	Typical veterinary charge for insertion of a microchip during a routine visit (Equine Industry Report)
Cost of passport update	£14.32	Typical charge levied by PIO for updating passport (Horse Passports Agency)
Postage	1.01	
Value of private owner time (15 minutes)	8.08 x 0.25 = 2.02	Value of travel/leisure time (DfT). This assumes it takes someone about a quarter of an hour to undertake the paperwork associated with recording the microchip number with the PIO.
Value of business owner time (15 minutes)	9.70 x 1.3 x 0.25 = 3.15	Median gross hourly pay related to raising horses and equines (ASHE 2018) increased by 30% to cover employer NI contribution and other employment costs.

* Figures are based on Defra's consultation stage IA published in 2016. The costs of microchip insertion, passport update, postage and private owner time have been uprated using the GDP deflator series. The value of business owner time is based on hourly earnings data for 'agricultural and related trades' in the Annual Survey of Earnings and Hours (ASHE) 2018.

The total cost to microchip all horses in Wales born before July 2009 is therefore estimated to be between £1.96 million and £3.91 million, of which between £0.28million and £0.56million is expected to fall to business owners. Owners of horses born before July 2009 will have two-years from when the Regulations come into force to get their horse microchipped, this is to provide them with an opportunity to have their animal microchipped during a routine veterinary visit. The costs are therefore expected to be spread over the period to February 2021.

Table 3 Cost of microchipping horses in Wales born before July 2009

[1]https://consult.defra.gov.uk/equine-id/revised-eu-rules-on-equine-id-eu-reg-eu-2015-262/supporting_documents/Appendix%20A%20%20Equine%20Identification%20England%20Regulations%20Impact%20Assessment%20IA%20No.%20Defra%201785.pdf

	Percentage of horses born before July 2009 which require microchipping	
	50%	100%
Total cost for all private owners	1,677,300	3,354,700
Total cost for all business owners	279,900	559,800
Total cost	**1,957,200**	**3,914,500**

To put the costs of microchipping a horse into context, figures from Equine World UK[2] suggest that the cost of owning a horse may range between £3,000 and £10,000 per annum depending upon the type of livery used. The, in most cases, one-off cost to microchip a horse of £45.18 - £46.32 therefore represents between 0.5% and 1.5% of the **annual** cost of owning a horse.

Benefit

Animal welfare organisations and local authorities deal with hundreds of cases of abandoned horses across the UK each year. In a number of cases, those organisations struggle to identify the horse and consequently the owner. Requiring all horses be microchipped will provide authorities with a quicker and more reliable means of identifying older horses. This will help to ensure the horses can be given the appropriate care, it increases the chances of recovering the costs incurred by welfare organisations in caring for the animals from the owner and it enables the authorities to take further action in cases of abuse or neglect. This is expected to result in a reduction in the number of horses being abandoned and an improvement in animal welfare.

Microchipping will also make it quicker and easier for authorities to reunite lost or stolen horses with their owners and may help to deter theft.

The UK has a relatively small export market for horse meat and providing a more efficient and reliable way of identifying horses reduces the risk of a horse which has been signed out of the food chain ending up in an abattoir, thus improving food safety.

It has not been possible to monetise these benefits as the relevant data is not available and it would be disproportionately costly to collect it.

Replacement of failed microchips

Cost

The number of microchips failing each year is unknown but it is thought to be extremely rare. However, if a horse's microchip were to fail this would create difficulties in ascertaining its identity. Outline diagrams, (a silhouette drawing of the horse on the passport where the markings have been annotated by the owner/keeper and verified by a qualified veterinary surgeon) are not always mandatory for horses that were originally microchipped, so the replacement of failed

[2] http://www.equineworld.co.uk/buying-loaning-selling-horses/buying-a-horse/cost-of-owning-a-horse

microchips is essential to link these horses to their passports and therefore their food safety records.

As identified above, the cost to a private owner to microchip a horse is estimated to be £45.18 and the cost to a business owner is estimated to be £46.32.

Benefit

The benefits of replacing failed microchips are similar to those of microchipping older horses. The move will ensure horses can be quickly and easily identified in the field and abattoir, improving animal welfare and food safety.

Time allowed for PIOs to update central equine database

The EU legislation requires PIOs to notify the central database of changes to a horse's details within 15 days of the change and within 24 hours of a passport being issued or updated. It is essential that the central database contains information that is as accurate and up to date as possible for the status of all horses identified or kept on holdings in the UK so that the equine identification regime can be managed and enforced effectively by PIOs and enforcement authorities. We propose that PIOs notify the central database within 24 hours (excluding non-working days) for the following reasons.

Food Standards Agency staff at abattoirs use the database to verify that the identification and food chain information on horse passports matches the central database and that horses presented for slaughter are safe for human consumption. If it does not match the horse must be excluded from the food chain. (Notably, before issuing a passport PIOs are required to check that a passport has not already been issued for that horse. If it has, the PIO is allowed to issue another passport but must record on the passport and database that the animal must not enter the food chain.) Also, when Local Authority officers find a horse that has been abandoned, lost or straying they will scan its microchip and use it to find the address of the owner on the database.

These controls rely on information being as up to date as possible. Most parts of the sector – including the Equine Sector Council Steering Committee, the National Panel for Animal Health and Welfare Officers and the FSA – have argued for real time information exchange between PIOs and the central database. This is not possible but as a balance we have proposed that PIOs notify changes to the central database within the permissible 24 hours after they have updated their own database. This should be achievable at negligible additional cost to PIOs (see table below). Some rare breed PIOs dealing with low horse volumes are not staffed full time by specific agreement with Defra but it should not be onerous for them to transfer changes electronically to the database within 24 hours of updating their database.

Cost

There are six Passport Issuing Offices (PIOs) based in Wales. Currently, a PIO will submit a batch of records to the CED at least every 15 days, this means a minimum of 24 updates to the CED each year. Under the new proposals, a PIO will be required to notify the CED within 24 hours of a horse passport being issued or updated. This equates to a maximum of one update each working day or 252 updates each year per PIO in Wales. Given that there are six PIOs based in Wales, this means there will be a maximum of an additional 1,368 updates from Wales each year.

The systems used by a number of the PIOs in Wales includes an automated link to the CED, so the CED is notified of any new or updated records automatically at no additional cost. Even where the update is sent manually, the amount of time taken by the PIO is expected to be minimal.

Engagement with the sector suggests the amount of time needed to send one update is around 3 minutes. Using a figure of £12.61 to reflect the value of one hour of a PIO owner's time, the maximum cost based on sending an additional 1,368 updates each year would be approximately £860. The cost of the policy change is therefore estimated to be between £0 and £860 per annum in Wales.

Benefit

This will keep the CED up to date, as close to real time as possible, and will help improve enforcement of identification, horse welfare and food safety. Other users of the Database will also have access to up to date information.

Public availability of horse details

Cost

EU legislation requires certain horse details held on CED to be made available to other Member States. The same system could be used by the public to allow them to also search the database for limited non-personal information. The necessary system changes have already been made to the CED and as such there are no additional costs in Wales.

Benefit

Public access to data would enable owners to ensure that their records are correct, and would also be of use to businesses such as abattoirs to inform commercial decisions.

Pre-notification of changes to equine identification details

Owners are responsible for reporting changes of their horse's details, including ownership information, to PIOs. Anecdotally equine stakeholders state that levels of reporting are currently low, which creates difficulties for enforcement authorities and PIOs as the data they hold is out of date. Stakeholders, including the Equine Sector Council, believe that giving owners access to an optional online mechanism (through the CED) to notify PIOs of necessary changes to their records is vital to increasing reporting and therefore improving the efficacy of the regime.

Cost

Defra has confirmed with the Government Digital Service that this extra functionality would be simple to develop and does not require additional complexity such as GOV.UK Verify. Defra therefore consider the cost of adding the necessary functionality to be low.

There is also a small cost for those who update the online facility associated with the time it takes them but this will be entirely voluntary and is an example of how we are seeking to use non-regulatory measure.

Benefit

Providing horse owners with a simple online facility to enable them to inform the PIOs of any changes to their horse's details is expected to increase the current, low reporting rates. Ensuring horse details are kept up-to-date provides a number of benefits to enforcement authorities and the PIOs.

Database to notify changes in equine identification on behalf of PIOs

EU legislation requires CED to notify other Member State's databases of changes to horse's details in certain situations. PIOs will be required to notify other Member State's databases of

changes to horse's details in other situations. It is proposed that the CED is adapted to enable it to provide these notifications to the other Member States on behalf of the PIOs.

Cost

The CED will need to be adapted to enable it to make notifications to other Member State's databases and these changes would also enable the CED to make the other, similar notifications on behalf of PIOs. The cost of making the necessary changes to the CED is expected to be very low. The Welsh Government is expected to pay 9% of the total UK cost.

Benefit

Adapting the CED to make notifications on behalf of the PIOs will reduce the administrative burden placed on PIOs, generating cost-savings for the latter. The move is also expected to improve the reliability of data-sharing between Member States.

Familiarisation Costs

There are costs (to businesses and to private horse owners) associated with the need to become familiar with the requirements of the new regulation and the way the database works. These are estimated to amount to about £97,400.

The six PIOS in Wales are each expected to need around two hours to familiarise themselves with the requirements of the Regulations. Assuming a value of time of £12.61 per hour (as described in the microchipping section), this gives a total cost of approximately £150.

All horse-owners will need to read the guidance that will accompany the Regulations and familiarise themselves with the new requirements. The CED indicates there are approximately 149,000 horses in Wales, with 86% of these thought to be privately owned and the remaining 14% believed to be owned by businesses. Assuming each private owner has an average of two horses and each business owner has an average of four horses, this equates to approximately 64,100 private owners and 5,200 business owners.

It is assumed that each owner will require ten minutes to familiarise themselves with the guidance which, based on the values of time identified above of £8.08 and £12.61 for private and business owners respectively, equates to a cost of approximately £97,200.

Enforcement

As with the current regime, local authorities will act as the enforcement authority for these Regulations. Local authorities will be able to use civil sanctions such as compliance notices and fixed monetary penalties to address non-compliance. Serious cases of non-compliance can still be prosecuted through the courts.

Specific impact tests

Welsh Language

A Welsh Language Impact Assessment has been undertaken and no direct impacts have been identified. The PIOs have always had the option to supply a passport in welsh should their customers request, therefore they have the necessary translations in place.

Equality, Children and Human Rights

There are no issues relating to children's rights or any impacts specifically for children and young people. Neither are there any issues of concern relating to the UN Human Rights Convention or equality.

9. Competition Assessment

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

10. Post implementation review

A review will be undertaken after 3 years to assess the effectiveness of the legislation in delivering the objective.

Government Response to draft CLAC Report on The Smoke Control Areas (Authorised Fuels) (Wales) Regulations 2019

This response refers to the Technical point raised in the draft CLAC report on the Smoke Control Areas (Authorised Fuels) (Wales) Regulations 2019, in respect of a discrepancy between the Welsh and English texts in paragraph 71(c) of the Schedule.

The English version of the regulations has been identified as including the correct specification, a size of "between approximately 30 millimetres and 130 millimetres in length". Therefore, the corresponding Welsh text should read as follows:

"rhwng 30 o filimetrau a 130 o filimetrau o hyd".

Given that it is unclear on the face of the instrument which text is correct, we intend on rectifying the error by means of an amending SI as soon as possible. This will ensure that the impact on the consumers of these products caused by this error, is kept to a minimum. As this will involve drafting a short SI, which can be made under the negative resolution procedure, that amending SI can come into force in the near future. Furthermore, an updating SI, which will update the list of Authorised Fuels will be produced and come into force before the end of this year and therefore these Regulations, as well as the amending instrument will be revoked at that point (following the pattern in these Regulations).

SL(5)301 – The Smoke Control Areas (Authorised Fuels) (Wales) Regulations 2019

Background and Purpose

These Regulations revoke and replace with amendments the Smoke Control Areas (Authorised Fuels) (Wales) Regulations 2017 (S.I. 2017/421 (W. 89)).

Section 20 of the Clean Air Act 1993 Act ("the 1993 Act") provides that it is an offence to emit smoke from a chimney of a building or a chimney serving a furnace of a fixed boiler or an industrial plant, if that chimney is within a smoke control area. However, by virtue of section 20(3), it is a defence to prove that the alleged emission was caused solely by the use of an authorised fuel.

By virtue of section 20(6), "authorised fuel" means a fuel declared by regulations to be an authorised fuel. The power to make such regulations is exercisable in relation to Wales by the Welsh Ministers.

These Regulations specify all fuels which are currently authorised for use in smoke control areas in Wales for the purposes of section 20 of the 1993 Act.

Procedure

Negative

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 (vii) (differences between the Welsh and English texts) in respect of this instrument.

In paragraph 71(c) of the Schedule, the English text specifies a size of "between approximately 30 millimetres and 130 millimetres in length". The corresponding Welsh text specifies a range of 30-150 millimetres.

Merits Scrutiny

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

Implications arising from exiting the European Union

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

Government Response

A government response is required.

Committee consideration

The Committee considered the instrument at its meeting on 28 January 2019 and reports to the Assembly in line with the technical point identified above.

Proposed Negative Statutory Instruments with Clear Reports

4 February 2019

Pn(5)015 – The Equine Identification (Wales) (Amendment) (EU Exit) Regulations 2019

Procedure: Negative

These Regulations make amendments to the Equine Identification (Wales) Regulations 2019 which supplement and make provision for the enforcement of Commission Implementing Regulation (EU) 2015/262 laying down rules pursuant to Council Directives 90/427/EEC and 2009/156/EC as regards the methods for the identification of equidae in Wales.

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

Pn(5)016 – The Learner Travel (Wales) (Amendment) (EU Exit) Regulations 2019

Procedure: Negative

These Regulations substitute “requirement of retained direct EU legislation” for “directly applicable requirement of European Union law” in section 14A(5) of the Learner Travel (Wales) Measure 2008.

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

Satisfied: Yes

Agenda Item 6.1

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 MA - L/LG/0870/18

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

SeneddCLA@assembly.wales

18 January 2019

Dear Mick

This letter is to inform you I have laid a Statutory Instrument Consent Memorandum in the National Assembly for Wales in respect of the Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2019, as required by Standing Order 30A.

I am not minded to lay a motion for debate about this SI in this instance. I have reached this decision on the basis our interest in this SI is restricted to operability amendments that will arise as a result of the UK leaving the EU.

The SI provision covers operability amendments in relation to the Agriculture Act 1970, and there is no divergence in policy between the Welsh Government and the UK Government in this case.

Given the volume of legislation the Assembly is considering, I do not believe a debate on this SI would be a productive use of valuable Plenary time. However, SO30A provides that any member may table a motion for a debate on this SI and I would be happy to participate in a debate, should one be held.

Regards

Lesley Griffiths

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

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STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2019

1. This Statutory Instrument Consent Memorandum is laid under Standing Order (“SO”) 30A.2. SO 30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the National Assembly for Wales (“Assembly”) if a UK Statutory Instrument (SI) makes provision in relation to Wales amending primary legislation within the legislative competence of the Assembly.

2. The National Assembly for Wales was initially notified that the Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2018 was published on 2 November 2018, as a negative procedure. A copy of the written statement can be found at:

   http://www.assembly.wales/laid%20documents/ws-ld11808/ws-ld11808-e.pdf

3. The Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2019 (“2019 Regulations”) were laid before the Houses of Parliament on 16 January 2019. The Regulations can be found at:

https://beta.parliament.uk/work-packages/lD8bF9CU

Summary of the Statutory Instrument and its objective

4. The objective of the SI is to address failures of retained EU law to operate effectively and other deficiencies arising from the UK leaving the European Union under powers in the European Union (Withdrawal) Act 2019.

5. As part of addressing the failures and other deficiencies, the SI makes amendments to the following primary legislation:

   - The Agriculture Act 1970

Relevant provision to be made by the SI

6. The amendment made by the 2019 Regulations makes a technical change to section 74A(4) of the Agriculture Act 1970, to ensure the provision is accurate and effective post EU Exit.

7. The change identified in paragraph 5 relates to a subject matter that is within the legislative competence of the National Assembly for Wales, and which could be the subject of a National Assembly Bill.

8. Section 108A of the Government of Wales Act 2006 enables the Assembly to legislate on any subject except those specifically reserved to the UK Parliament in Schedule 7A to the Act. The Assembly has legislative competence in relation to agriculture (which includes fertilisers and animal feed).

Why it is appropriate for the SI to make this provision

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

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

18 January 2019

Draft Regulations laid before Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972 and paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

D R A F T   S T A T U T O R Y   I N S T R U M E N T S

2019 No. 000

EXITING THE EUROPEAN UNION

AGRICULTURE

HEALTH AND SAFETY

The Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2019

Made - - - - ***

Coming into force in accordance with regulation 1(2)

The Secretary of State makes these Regulations in exercise of the powers conferred by—

(a) in relation to Part 1, the powers mentioned in paragraphs (b) and (c);

(b) in relation to Part 2, section 2(2) of the European Communities Act 1972 ("the 1972 Act")(**a**);

(c) in relation to Parts 3 and 4, section 8(1) of, and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018(**b**).

The Secretary of State is a Minister designated for the purposes of section 2(2) of the 1972 Act in relation to—

(a) materials providing or intended to provide nutrients for plants(**c**);

(b) regulation and control of classification, packaging and labelling of dangerous substances and preparations(**d**).

(**a**) 1972 c. 68. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1)(a) and the European Union (Amendment) Act 2008 (c. 7), the Schedule, Part 1. It is prospectively repealed by the European Union (Withdrawal) Act 2018 (c. 16), section 1 from exit day (see section 20 of that Act). The function of the former Minister of Agriculture, Fisheries and Food of making regulations under section 2(2) was transferred to the Secretary of State by S.I. 2002/794. Under section 57(1) of the Scotland Act 1998 (c. 46), despite the transfer to Scottish Ministers of functions in relation to implementing obligations under EU law in relation to devolved matters, the Secretary of State retains power to exercise such functions as regards Scotland. Under paragraph 5 of Schedule 3 to the Government of Wales Act 2006 (c. 32), despite the transfer to the Welsh Ministers of functions in relation to implementing obligations under EU law in relation to devolved matters, the Secretary of State retains power to exercise such functions as regards Wales.

(**b**) 2018 c. 16.

(**c**) S.I. 2001/3919, to which there is an amendment not relevant to these Regulations.

(**d**) S.I. 1976/897, to which there is an amendment not relevant to these Regulations.

In accordance with paragraph 2(2) of Schedule 2 to the 1972 Act and paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

Introductory

Citation and commencement

1.—(1) These Regulations may be cited as the Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2019.

(2) They come into force as follows—

(a) as regards this Part and Part 2, on the day after the day on which they are made;

(b) as regards the remainder, on exit day.

PART 2

Amendment of out of date references

The Fertilisers Regulations 1991

2.—(1) The Fertilisers Regulations 1991(**a**) are amended as follows.

(2) Omit regulations 1A and 2.

(3) Before regulation 3 insert—

“**Scope: “EC fertilisers”**

2A. These Regulations do not apply to fertilisers designated as “EC fertilisers”.”.

(4) In regulation 3—

(a) in the heading omit “not designated as EEC fertilisers or EC fertilisers”;

(b) renumber the existing regulation as paragraph (1) of regulation 3;

(c) omit the words from “, not being designated” to “EC fertiliser,”.

(5) In regulation 3A—

(a) renumber the existing regulation as paragraph (2) of regulation 3;

(b) omit the words from “, not being designated” to “EC fertiliser,”.

(6) In regulation 4(4) and (5) omit the words from “, not being designated” to “EC fertilisers,”.

(7) In the following regulations omit the words from “, not being designated” to “EC fertiliser,”—

(a) regulation 7(b) and (c);

(b) regulation 9(b) and (c).

(8) In regulation 10(1), in the words before paragraph (a), for the words from the beginning to “as respects” substitute “As respects”.

(9) Omit regulation 11.

(10) Schedule 1 is amended in accordance with paragraphs (11) to (13).

(**a**) S.I. 1991/2197, amended by S.I. 1995/16, 1998/2024, 2011/1043; there is another amending instrument but it is not relevant.

(11) In the following paragraphs omit the words from ", not being designated" to "EC fertilisers,"—

(a) paragraph 6;

(b) paragraph 7(a)(i) and (b).

(12) In Section B of the table, in column (4), in the table relating to nitrogen, in each place it occurs—

(a) omit the column headed "EC fertiliser";

(b) in the second column, for "Other than EEC fertilisers or EC fertiliser" substitute "Fertiliser".

(13) In Section C of the table, in group 2, in column (4), in each place they occur, omit—

(a) "EC fertiliser";

(b) "Other than EEC fertilisers or EC fertiliser".

(14) Schedule 2 is amended in accordance with paragraphs (15) and (16).

(15) In Part 1, in paragraph 1—

(a) omit sub-paragraph (a);

(b) in sub-paragraph (i) omit the words from the beginning to "EC fertilisers,";

(c) in sub-paragraph (k), in the second sentence omit the words from ", sold" to "EC fertiliser,".

(16) In Part 2, in paragraph 2 omit the words from the beginning to "EC fertiliser,".

The Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003

3. In Schedule 2 to the Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003(**a**), in paragraph 12, in notes 1 and 2, for the words from "Annex II" to "87/94/EEC" substitute "Annex 3 to Regulation (EC) No 2003/2003 of the European Parliament and of the Council relating to fertilisers(**b**)".

The EC Fertilisers (England and Wales) Regulations 2006

4.—(1) The EC Fertilisers (England and Wales) Regulations 2006(**c**) are amended as follows.

(2) In the following regulations, for "National Assembly for Wales", in each place it occurs, substitute "Welsh Ministers"—

(a) regulation 10;

(b) regulation 14;

(c) regulation 19.

(3) In regulation 10—

(a) in paragraph (2), for "it" substitute "they";

(b) in paragraph (3), for "it" substitute "them".

(4) Omit regulation 16.

(5) In regulation 17(c), for "33" substitute "30".

(**a**) S.I. 2003/1082, to which there are amendments not relevant to these Regulations.
(**b**) OJ No L 304 21.11.2003, p 1, as last amended by Commission Regulation (EU) 2016/1618 (OJ No L 242, 9.9.2016, p 24).
(**c**) S.I. 2006/2486, amended by S.I. 2011/1043.

PART 3

Amendment of retained direct EU legislation

Regulation (EC) No 2003/2003 of the European Parliament and of the Council relating to fertilisers

5.—(1) Regulation (EC) No 2003/2003 of the European Parliament and of the Council relating to fertilisers is amended as follows.

(2) In the Regulation—

(a) for "EC fertiliser", in each place it occurs, substitute "UK fertiliser";

(b) for "EC fertilisers", in each place it occurs, substitute "UK fertilisers";

(c) for "European standard" or "European Standard", in each place it occurs, substitute "recognised standard";

(d) for "European Standards", in each place it occurs, substitute "recognised standards".

(3) In Article 2—

(a) the existing text becomes paragraph 1;

(b) in that paragraph—

(i) in point (r), for "Community legislation" substitute "retained EU law";

(ii) for point (t) substitute—

"(t) 'Recognised standard' means either of the following standards:

(i) CEN (European Committee for Standardisation);

(ii) BSI (the British Standards Institution).";

(iii) in point (w), for "customs territory of the European Community" substitute "United Kingdom";

(iv) after point (x) insert—

"(y) "Appropriate authority" means:

(i) in relation to a decision in respect of ammonium nitrate fertilisers of high nitrogen content where the decision is outside devolved competence, the Secretary of State;

(ii) in relation to a decision in respect of other fertilisers:

— in relation to England, the Secretary of State;

— in relation to Wales, the Welsh Ministers;

— in relation to Scotland, the Scottish Ministers;

— in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.

(z) "Enforcement authority" means:

(i) in England and Wales, an enforcement authority specified in regulation 11 of the EC Fertilisers (England and Wales) Regulations 2006;

(ii) in Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(**a**);

(iii) in Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.

(z1) "Relevant authority" means:

(i) in relation to Wales, the Welsh Ministers;

(ii) in relation to Scotland, the Scottish Ministers;

(**a**) 1994 c. 39.

(iii) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.";

(c) after that paragraph insert—

"2. References in this Regulation to devolved competence are to be read in accordance with the following provisions:

(a) it is outside devolved competence to make any provision by subordinate legislation which would be outside the legislative competence of:

(i) in relation to Wales, the National Assembly for Wales if it were included in an Act of the Assembly (see section 108A of the Government of Wales Act 2006(**a**));

(ii) in relation to Scotland, the Scottish Parliament if it were included in an Act of the Parliament (see section 29 of the Scotland Act 1998(**b**));

(iii) in relation to Northern Ireland, the Northern Ireland Assembly if it were included in an Act of the Assembly (see section 6 of the Northern Ireland Act 1998(**c**));

(b) in the case of any function other than a function of making, confirming or approving subordinate legislation, it is outside devolved competence to exercise the function (or to exercise it in a particular way) if or to the extent that:

(i) in relation to Wales, a provision of an Act of the National Assembly for Wales conferring the function (or conferring it so as to be exercisable in that way) would be outside the legislative competence of the Assembly;

(ii) in relation to Scotland, a provision of an Act of the Scottish Parliament conferring the function (or conferring it so as to be exercisable in that way) would be outside the legislative competence of the Parliament;

(iii) in relation to Northern Ireland, a provision of an Act of the Northern Ireland Assembly conferring the function (or conferring it so as to be exercisable in that way) would be outside the legislative competence of the Assembly.".

(4) In Article 4, for "Community" (including in the heading) substitute "United Kingdom".

(5) Omit Article 5.

(6) In Article 6—

(a) in paragraph (1), in the first subparagraph, in the words before point (a)—

(i) for the words from the beginning to "may" substitute "Nothing in this Regulation prevents the appropriate authority, in order to satisfy the requirements of Article 9, from using any power the appropriate authority has to";

(ii) for "their market" substitute "the market";

(b) in paragraph (2), in the first subparagraph, in the words before point (a)—

(i) for "Member States may" substitute "Nothing in this Regulation prevents the appropriate authority from using any power the appropriate authority has to";

(ii) for "their markets" substitute "the market";

(c) in paragraph (3), for "Member States" substitute "The appropriate authority".

(7) In Article 8, in the second sentence, for "Member States" substitute "the enforcement authority".

(8) In Article 9—

(a) in paragraph 1, in the first subparagraph, in the words before point (a) omit "Without prejudice to other Community rules,";

(**a**) Section 108A was substituted, for section 108 as originally enacted, by the Wales Act 2017 (c. 4), section 3(1) and amended, from a date to be appointed, by the European Union (Withdrawal) Act 2018, section 12(3).

(**b**) Section 29 was amended by the Scotland Act 2012 (c. 11), section 9(2) and S.I. 2011/1043.

(**c**) 1998 c. 47. Section 6 was amended, from a date to be appointed, by the European Union (Withdrawal) Act 2018, section 12(5) and was amended by S.I. 2011/1043.

(b) for paragraph 4 substitute—

"4. The Secretary of State may make regulations in relation to the application of this Article.".

(9) In Article 11, for the words from "at least" to the end substitute "English and may also appear in other languages".

(10) In Article 15—

(a) in paragraph 1—

(i) in the first sentence—

(aa) for "a Member State" substitute "the appropriate authority";

(bb) for "it may" substitute "nothing in this Regulation prevents the appropriate authority from using any power the appropriate authority has to";

(ii) for the second sentence substitute—

"Except in the case of a decision in respect of ammonium nitrate fertilisers of high nitrogen content where the decision is outside devolved competence, the appropriate authority shall immediately inform the other appropriate authorities, giving the reasons for the decision.";

(b) for paragraph 2 substitute—

"2. The Secretary of State may, by regulations, in relation to a fertiliser which has been temporarily prohibited from the market under paragraph 1:

(a) amend Annex 1 to impose special conditions in relation to the fertiliser, or

(b) remove the fertiliser from Annex 1.

2A. Regulations under paragraph 2 must be made as soon as reasonably practicable—

(a) after the date of receipt of the information referred to in paragraph 1, or

(b) where there is no such information, after the date on which the temporary prohibition begins or special conditions are imposed, as the case may be.

2B. Except in the case of a decision in respect of ammonium nitrate fertilisers of high nitrogen content where the decision is outside devolved competence, if a decision is made not to make regulations under paragraph 2, the Secretary of State must immediately inform the other appropriate authorities. After the date of a decision not to make regulations under paragraph 2, the prohibition or special conditions imposed under paragraph 1 no longer have effect.";

(c) in paragraph 3, for "Commission or by a Member State" substitute "appropriate authority".

(11) In Article 26(3), in the second sentence, for "Member States" substitute "the enforcement authority".

(12) In Article 27—

(a) in the first sentence, for "EC" substitute "UK";

(b) in the second sentence omit "or 33(1)";

(c) in the third sentence——

(i) for "competent authority of the Member State concerned" substitute "appropriate authority";

(ii) for "European Community" substitute "United Kingdom".

(13) In Article 29—

(a) in paragraph 1—

(i) in the first subparagraph, for "Member States may" substitute "Nothing in this Regulation prevents the appropriate authority from using any power the appropriate authority has to";

(ii) in the second subparagraph, for "Member States may" substitute "Nothing in this Regulation prevents the appropriate authority from using any power the appropriate authority has to";

(b) in paragraph 2, for "Member States" substitute "The enforcement authority";

(c) in paragraph 4—

(i) in the first sentence, for "Commission shall" substitute "Secretary of State may, by regulations,";

(ii) omit the second sentence;

(iii) in the third sentence, for the words from "same procedure" to "needed to" substitute "Secretary of State may, by regulations,";

(iv) in the fourth sentence, for "Such rules" substitute "Regulations".

(14) In Article 30—

(a) in paragraph 1—

(i) in the first sentence, for the words from "Member States" to "territories" substitute "The Secretary of State must publish a list of approved laboratories";

(ii) omit the third sentence;

(b) omit paragraph 2;

(c) in paragraph 3—

(i) in the first sentence—

(aa) for "a Member State" substitute "the Secretary of State";

(bb) for the words from "it shall raise" to the end substitute "the Secretary of State must remove the name from the list referred to in that paragraph";

(ii) omit the second sentence;

(d) after paragraph 3 insert—

"3A. The Secretary of State may only act under this Article with the consent of each person who is a relevant authority.";

(e) omit paragraphs 4 and 5.

(15) In Article 31—

(a) at the end of the heading insert "and technical adaptations";

(b) in paragraph 1, for "Commission shall" substitute "Secretary of State may, by regulations,";

(c) in paragraph 2, for the words from "the technical documents" to the end substitute "any relevant guidance and the provisions of Regulation (EC) No 1907/2006";

(d) in paragraph 3, for "Commission shall" substitute "Secretary of State may, by regulations,";

(e) omit paragraph 4.

(16) For Article 32 substitute—

"*Article 32*

Regulations

1. Regulations made under this Regulation are to be made by statutory instrument.

2. Any power to make regulations conferred by this Regulation is the power to make regulations in relation to the whole of the United Kingdom.

3. Except in relation to regulations in respect of ammonium nitrate fertilisers of high nitrogen content where the regulations are outside devolved competence, the Secretary of State may not make regulations under this Regulation without the consent of each person who is a relevant authority.

4. Except in relation to regulations in respect of ammonium nitrate fertilisers of high nitrogen content where the regulations are outside devolved competence, where any of the relevant authorities requests that the Secretary of State make regulations under this Regulation, the Secretary of State must have regard to that request.

5. A statutory instrument containing regulations made under this Regulation is subject to annulment in pursuance of a resolution of either House of Parliament.

6. Such regulations may—

(a) contain consequential, incidental, supplementary, transitional or saving provision (including provision amending, repealing or revoking enactments (which has the meaning given by section 20(1) of the European Union (Withdrawal) Act 2018));

(b) make different provision for different purposes.".

(17) Omit Chapter 2 of Title 4.

(18) In Article 35—

(a) omit paragraph 1;

(b) in paragraph 2—

(i) for "the Directives repealed" substitute "Directives 76/116/EEC, 77/535/EEC, 80/876/EEC and 87/94/EEC";

(ii) omit the second and third sentences.

(19) Omit Articles 36 to 38.

(20) After Article 38 omit the words from "This Regulation" to "Member States.".

(21) In Annex 1—

(a) in Section A.2, in the table, in item 1, in column 6, in the third paragraph, after "the Netherlands" insert "Iceland, Liechtenstein, Norway";

(b) in Sections B.1, B.2 and B.4, for "for fertilisers based on Thomas slag: solubility (6a) (France, Italy, Spain, Portugal, Greece, Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia, Slovakia, Bulgaria, Romania), (6b) (Germany, Belgium, Denmark, Ireland, Luxembourg, Netherlands, United Kingdom and Austria)" substitute "for fertilisers based on Thomas slag: solubility (6b)";

(c) in E.3, for "requirements of Council Directive 67/548/EEC" substitute "provisions of Regulation (EC) No 1272/2008".

(22) In Annex 3, in paragraph 1.6, in the first subparagraph, for "the Committee" substitute "this Regulation".

(23) In Annex 4, in Section A, in the following provisions, for "Member States" substitute "appropriate authority"—

(a) paragraph 2;

(b) paragraph 4.1, the second sentence.

(24) In Annex 5—

(a) omit Section A;

(b) in section B, in paragraph 1 omit the second indent.

The EEA agreement

6. In Annex 2 to the EEA agreement, in Chapter 14 (fertilisers), in point 1 omit the words from "The provisions of the Regulation shall" to the end.

PART 4

Amendment of primary and secondary legislation

The Agriculture Act 1970

7. In section 74A(4) of the Agriculture Act 1970(**a**), for "implementing or supplementing any EU instrument" substitute "supplementing retained direct EU legislation".

The Fertilisers Regulations 1991

8.—(1) The Fertilisers Regulations 1991 are amended as follows.

(2) In regulation 2A, in the heading and in the regulation, for "EC" substitute "UK".

(3) After regulation 2A insert—

> "**Scope: "EC fertilisers"**
>
> **2B.** These Regulations do not apply to fertilisers designated as "EC fertilisers" which comply with the requirements set out in Regulation (EC) No 2003/2003(**b**) as it has effect in EU law as amended from time to time, where those fertilisers are placed on the market before the end of the period of two years beginning with exit day.".

(4) In Schedule 2, in Part 1, in paragraph 1(j), for "European Union" substitute "United Kingdom".

The Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003

9.—(1) The Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003 are amended as follows.

(2) In regulation 2(2)—

(a) in the definition of "batch"—

(i) in paragraph (a), in the words before sub-paragraph (i), omit the words from "which is" to the end;

(ii) omit paragraph (b);

(b) in the definition of "competent laboratory", in paragraph (a), for "European Union" substitute "United Kingdom".

(3) In regulation 4—

(a) in paragraph (1) omit "from within the European Union";

(b) in paragraph (2)—

(i) in the words before sub-paragraph (a) omit "from outside the European Union";

(ii) omit sub-paragraphs (a) and (b);

(iii) in sub-paragraph (c), for "each such" substitute "a";

(c) in paragraph (5)—

(i) in sub-paragraph (a) omit the words from the beginning to "Union,";

(ii) omit sub-paragraph (b) (together with the preceding "and").

(4) In regulation 5—

(a) omit paragraph (1)(b) (together with the preceding "and");

(**a**) 1970 c. 40. Section 74A was inserted by the European Communities Act 1972, Schedule 4, paragraph 6; subsection (4) was amended by S.I. 2011/1043.

(**b**) OJ No L 304, 21.11.2003, p 1, as last amended by Commission Regulation (EU) 2016/1618 (OJ No L 242, 9.9.2016, p 24).

(b) in paragraph (2) omit "from outside the European Union";

(c) in paragraph (3), in the words after paragraph (b) omit ", where the material has been imported from outside the European Union,";

(d) in paragraph (9)(c) omit ", if applicable,", in the first place it occurs.

(5) In regulation 9(5)(a), for "European Union" substitute "United Kingdom".

(6) After regulation 12 insert—

"**Transitional provision**

13.—(1) This regulation applies to relevant ammonium nitrate material imported into Great Britain from within the European Union, where that material is imported into Great Britain before the end of the period of two years beginning with exit day.

(2) In regulation 2(2)(a), the definition of "competent laboratory" applies as if the reference to the United Kingdom were a reference to the United Kingdom and the European Union.

(3) Regulation 4(2)(c) does not apply.".

(7) In Schedule 3, in the words before sub-paragraph (a) omit "outside the European Union".

The EC Fertilisers (England and Wales) Regulations 2006

10.—(1) The EC Fertilisers (England and Wales) Regulations 2006 are amended as follows.

(2) In regulation 3—

(a) in the heading, for "EC" substitute "UK";

(b) in paragraph (1)—

(i) in the words before sub-paragraph (a), for "an "EC" substitute "a "UK";

(ii) in sub-paragraph (b), for "European Union" substitute "United Kingdom".

(3) In regulation 4(a), for "an "EC fertiliser"" substitute "a UK fertiliser".

(4) In regulation 5—

(a) in the heading, for "EC" substitute "UK";

(b) in paragraphs (1), (2) and (3), in the words before sub-paragraph (a), for "an EC" substitute "a UK".

(5) In regulations 6(a), 7(a) and 8(a), for "an EC" substitute "a UK".

(6) Omit regulation 12(2)(b) (together with the preceding "and").

(7) In regulation 17(a)(ii) omit "paragraphs (2) or (5) of".

(8) In regulation 18(1), for "an EC" substitute "a UK".

Name
Minister of State
Date Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in part in exercise of the powers conferred by the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular section 8(2)(a), (b), (d) and (g)) arising from the withdrawal of the United Kingdom from the European Union. They are also made in part to amend domestic legislation that is out of date.

Part 2 makes amendments to provisions in secondary legislation on fertilisers and ammonium nitrate material that are out of date. Regulation 2 amends the Fertilisers Regulations 1991 (S.I. 1991/2197) to remove references to EEC fertilisers and EC fertilisers, since the EU fertilisers regime is dealt with in other legislation. Regulation 3 amends the Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003 (S.I. 2003/1082) and regulation 4 amends the EC Fertilisers (England and Wales) Regulations 2006 (S.I. 2006/2486).

The remainder of the Regulations makes amendments arising from the withdrawal from the European Union to legislation regulating fertilisers and ammonium nitrate material. Part 3 amends retained direct EU legislation and Part 4 amends primary and secondary legislation.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

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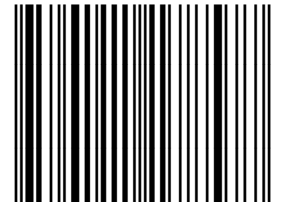

EXPLANATORY MEMORANDUM TO

THE FERTILISERS AND AMMONIUM NITRATE MATERIAL (AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. XXXX

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Environment, Food and Rural Affairs ("Defra") and is laid before Parliament by Act.

2. Purpose of the instrument

2.1 This instrument amends legislation relating to fertilisers, addressing failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom ("UK") from the European Union ("EU"). In particular, it creates a new domestic regime to replace the EU regime in the UK and ensures continuity of supply of EU fertilisers after exit day. It also in part amends domestic legislation that is out of date.

Explanations

What did any relevant EU law do before exit day?

2.2 Regulation EC No 2003/2003 of the European Parliament and of the Council relating to fertilisers ("the EU Regulation") lays down rules on the designation, definition, composition, identification and packaging of 'EC fertilisers' which can be freely traded throughout the EU.

Why is it being changed?

2.3 After exit, without amendment the relevant EU law would not operate properly and it would disrupt the trade in fertilisers currently authorised under EU law. Changes must be made to maintain fertiliser standards in UK law and provide continuity to the sector and security of supply for farmers.

What will it now do?

2.4 This instrument replaces the 'EC fertiliser' regime in EU law with a new domestic regime, providing for a 'UK fertiliser' label which will function in the same way. It also allows a two year transitional period during which 'EC fertilisers' can still be sold in the UK without a requirement to be relabelled, to ensure continued supply and reduce burdens on businesses as a result of exit. The instrument also amends the rules on the import of ammonium nitrate fertilisers to uphold current safety standards at the same time as ensuring consistency.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument varies between provisions.

3.3 The powers under which this instrument is made cover the entire UK (see in particular section 24 of the European Union (Withdrawal) Act 2018) and the territorial application of this instrument is set out in paragraph 4.2.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the UK except for regulations 2, 3, 8 and 9 which extend to England and Wales and Scotland, and regulations 4 and 10 which extend to England and Wales.

4.2 The territorial application of this instrument is the UK, except for regulations 2, 3, 8 and 9 which apply to England and Wales and Scotland, and regulations 4 and 10 which apply to England and Wales.

5. European Convention on Human Rights

5.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 The EU Regulation sets out the rules which apply to fertilisers which are designated as 'EC fertilisers'. Fertilisers are partially harmonised in that it is permissible for Member States to have domestic regimes in addition to the EU rules. The domestic regime for the UK is set out in the Fertilisers Regulations 1991 (S.I. 1991/2197) (for Great Britain ("GB")) and the Fertilisers Regulations (Northern Ireland) 1992 (S.R 1992/187). In addition, there are specific rules in GB concerning ammonium nitrate material in the Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003 (S.I. 2003/1082) ("the AN Regulations").

6.2 As a result of exit, corrections are required to the EU Regulation to convert the EU regime into a UK one, replacing the 'EC fertiliser' label with a 'UK fertiliser' label. This also requires amendment to the related domestic Regulations which currently enforce the EU Regulation (for England and Wales, the EC Fertilisers (England and Wales) Regulations 2006 (S.I. 2006/2486); amendment to Scottish and Northern Ireland legislation in this regard is being made separately). Finally, amendment to the domestic regime is also required to reflect these changes.

6.3 In addition, there are some changes to out of date references in the domestic legislation. These need to be amended to ensure clarity for users of the legislation. Some changes to out of date references in the AN Regulations are being made in a separate instrument (the Pesticides and Fertilisers (Miscellaneous Amendments) (EU Exit) Regulations 2019 – see https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-pesticides-and-fertilisers-miscellaneous-amendments-eu-exit-regulations-2019) because they are subject to the negative procedure. These will come into force before exit day.

7. Policy background

What is being done and why?

7.1 Fertilisers are materials that provide nutrients to plants and are essential yearly inputs for the UK agricultural, horticultural and amenity sectors. The manufacturing and marketing of fertilisers are regulated by legislation that provides for their definition, composition, labelling and packaging. The UK imports the majority of its fertiliser requirement to supplement domestic production.

7.2 Manufacturers can currently choose which legislative framework (EU or UK) they want their products to comply with but, having chosen, their products must comply with the relevant rules. This will continue to apply but there will be two options under the UK framework for marketing of fertilisers in the UK.

7.3 The new option under the UK framework provides for the replacement of the 'EC fertiliser' label (and all the rules that have to be complied with to allow the use of that label) with a 'UK fertiliser' label that will ensure that the same rules apply. It will further allow 'EC fertilisers' to continue to be sold in the UK for a two year transitional period, without the need for relabelling. This is to ensure essential business continuity and predictability for manufacturers and distributors, as well as for farmers.

7.4 The instrument makes amendments to the relevant pieces of domestic and EU legislation to allow them to operate properly after exit. For example, references to Member States and the EU Commission are amended to refer instead to UK authorities; and a requirement as to the language to be used on labels is also amended. There are also amendments to the domestic regime, in particular to remove out of date references to 'EEC fertilisers' and 'EC fertilisers'.

7.5 Amendments to Articles 6, 15 and 29 of the EU Regulation include provision that preserves the possibility of certain action by the relevant bodies in the UK which they previously had when the UK was a Member State. These relate to options for prescribing how specified fertilisers should be identified; the possibility of temporarily prohibiting the placing on the market of a fertiliser or making it subject to special conditions if there are justifiable grounds for believing that it constitutes a risk to safety or health of humans, animals or plants or a risk to the environment; and finally the option of subjecting fertilisers to official control measures and charging for those tests. The specific powers to take such actions are found in domestic legislation (see in particular the EC Fertilisers (England and Wales) Regulations 2006, which implemented the provisions in Articles 6 and 15 in regulations 5(1)(c), 6(c)(ii), 7(d) and 19).

7.6 The instrument also amends the AN Regulations which regulate fertilisers with high nitrogen content, since they can be misused as improvised explosives and pose safety risks if mishandled in manufacture, transport or storage. Currently the rules for imports from the EU are different from those for imports from outside the EU. Following the UK's exit from the EU, the rules need to be consolidated so that the import requirements apply consistently to all imported material. The critical safety aspects of the AN Regulations (in particular detonation resistance tests) will apply the more stringent third country regime to all imports. There are transitional arrangements (for two years) for imports from the EU in relation to the time limit for valid detonation resistance test certificates (60 days between testing of the material and its arrival in GB) and also the competent laboratories that can conduct detonation

resistance tests (those in the EU as well as in the UK). These arrangements mean that the current rules for EU imports in this regard will continue to apply for two years. This is to give manufacturers time to prepare for compliance with the new import rules and to ensure continuity of supply for the next two years.

7.7 Fertilisers are a devolved matter in Scotland and Wales and a transferred matter in Northern Ireland. However, decisions regarding ammonium nitrate are reserved in GB insofar as the subject matter of those decisions relates to health and safety and in Northern Ireland insofar as it relates to explosives. The corrections being made by this instrument to the fertilisers domestic and EU legislation provide for a common UK approach to fertilisers designated as 'UK fertiliser'. This will ensure a consistent and clear policy, without the need for a different set of rules for each Devolved Administration. It has been agreed that the Secretary of State will be empowered to make regulations with regard to 'UK fertilisers' for the UK only with the consent of the Devolved Administrations.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the UK from the EU. The instrument is also made under paragraph 21(b) of Schedule 7 to that Act. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

8.2 Alongside the European Union (Withdrawal) Act 2018 powers, the instrument is also being made under section 2(2) of the European Communities Act 1972. This relates to the amendments to out of date references in domestic legislation.

9. Consolidation

9.1 This instrument is not consolidating any provisions.

10. Consultation outcome

10.1 This instrument was not subject to formal consultation. However, there were discussions with key stakeholders (the fertiliser manufacturers' representative body (the Agricultural Industries Confederation) and the farmers' representative body (the National Farmers' Union)) about their concerns regarding exit in relation to fertiliser policy. Their main concerns were that there should be uninterrupted fertiliser supply and no added cost burdens to manufacturers and importers. This has been addressed through allowing for a time-limited adjustment period to allow time for relabelling and compliance with the new rules.

10.2 The changes to the rules on ammonium nitrate materials have also been developed in conjunction with the Health and Safety Executive.

10.3 This instrument and the policy reflected in it has been developed in collaboration with Devolved Administration officials.

11. Guidance

11.1 A Technical Notice has been published on the gov.uk website (see https://www.gov.uk/government/publications/manufacturing-and-marketing-

fertilisers-if-theres-no-brexit-deal/manufacturing-and-marketing-fertilisers-if-theres-no-brexit-deal). Further more detailed guidance will be published for stakeholders.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because the instrument relates to the maintenance of existing regulatory standards and no significant impacts are expected. There will be a time-limited period during which 'EC fertilisers' can be placed on the UK market as now, to ensure continued supply and minimise disruption. In addition, there will be a time-limited period during which importers of ammonium nitrate materials from the EU can operate as they do now.

12.4 In a scenario where an agreement with the EU is not reached, UK manufacturers of fertilisers would need to comply with the EU Regulation if they want to continue exporting to the EU after exit day, which means that they will need to send samples to EU laboratories for testing. This change is a result of EU exit and 'EC fertiliser' requirements, not because of changes made by this instrument. UK laboratories will still be recognised as competent testing bodies under UK law.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses was that no disproportionate impacts are expected to affect small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that Defra and its agencies, as well as the Devolved Administrations in relation to devolved matters, will monitor and review the impact of the instrument as part of their standard policy-making procedures, and will ensure that the provisions are adhered to.

14.2 In respect of provisions in Part 2 of the instrument, the Regulations do not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement. The Minister considers that inserting a review provision is not appropriate, because there is not expected to be a significant annualised net impact on business (greater than +/- £5 million net annualised). It would not be proportionate to undertake a review, given the costs of doing so and the limited scope for change, particularly in relation to out of date references.

14.3 In respect of provisions of this instrument which are made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 Henry Webber at Defra Telephone: 020 8026 9863 or email: henry.webber@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Maggie Charnley, acting as Deputy Director for the fertiliser policy area, at Defra can confirm that this Explanatory Memorandum meets the required standard.

15.3 George Eustice MP at Defra can confirm that this Explanatory Memorandum meets the required standard.

Annex

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 under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly 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	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	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	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the ‘good reasons’ for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister’s opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument’s effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority’s response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

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

1. Appropriateness statement

1.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2019 do no more than is appropriate."

1.2 This is the case because: the amendments to retained direct EU legislation and domestic legislation are the minimum required to make the legislation operable and they maintain current regulatory standards.

2. Good reasons

2.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, 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."

2.2 These are: the amendments to retained direct EU legislation and domestic legislation are the minimum required to make the legislation operable. They maintain current regulatory standards and ensure the continued supply of 'EC fertilisers' and ammonium nitrate materials for a two year transitional period, providing continuity to the sector and security of supply for farmers.

3. Equalities

3.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement(s):

"The 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."

3.2 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I, George Eustice MP 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."

4. Explanations

4.1 The explanations statement has been made in section 2 of the main body of this Explanatory Memorandum.

5. Legislative sub-delegation

5.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view it is appropriate to create a relevant sub-delegated power in the Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2019."

5.2 This is appropriate because: the relevant power in Article 30 of the EU Regulation concerns the identity of approved laboratories for the purposes of testing of fertilisers. The list of approved laboratories will be published and will not be made by legislation; this reflects the current process undertaken by the EU Commission. It is therefore not appropriate for the removal of a laboratory from the list because it does not meet the required standards to be made by way of legislation.

SICM(5)18 – The Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2019

Background

These affirmative Regulations are proposed to be made by the UK Government under:

- section 8(1) of, and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018, and
- section 2(2) of the European Communities Act 1972.

Summary

After exit, without amendment the relevant EU law would not operate properly and it would disrupt the trade in fertilisers currently authorised under EU law. Changes are being made to maintain fertiliser standards in UK law and provide continuity to the sector and security of supply for farmers.

This instrument replaces the 'EC fertiliser' regime in EU law with a new domestic regime, providing for a 'UK fertiliser' label which will function in the same way. It also allows a two-year transitional period during which 'EC fertilisers' can still be sold in the UK without a requirement to be relabelled, to ensure continued supply and reduce burdens on businesses as a result of exit. The instrument also amends the rules on the import of ammonium nitrate fertilisers to uphold current safety standards at the same time as ensuring consistency.

Statement by Welsh Government

Legal Advisers make the following comments in relation to the Welsh Government's statement dated **2 November 2018** regarding the Regulations.

The Regulations were originally proposed to follow the negative resolution procedure in the UK Parliament in **November 2018**. When the original draft Regulations were laid before the UK Parliament to be sifted, the Welsh Ministers laid before the Assembly a statement summarising the effect of the draft Regulations, in accordance with Standing Order 30C.

It appears that the draft Regulations were never formally made. Instead, these new Regulations have been laid which will follow the affirmative resolution procedure. This affirmative version of these Regulations is **different** to the proposed negative version of the Regulations. The most important difference for the Committee's purposes is that the new affirmative Regulations

amend the Agriculture Act 1970 and therefore require a Statutory Consent Memorandum (SICM) to be laid.

A SICM has been laid, but the Welsh Government has not laid an updated written statement to reflect the change made to the Regulations. The Committee considers that the new affirmative Regulations are a different set of regulations, and therefore a new written statement should have been made by the Welsh Government in accordance with Standing Order 30C.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

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

Regarding the amendment to the Agriculture Act 1970, we recognise this is a minor drafting change that is inevitable as a result of exiting the European Union.

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

Consent motion under Standing Order 30A.10

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

Legal Advisers
Constitutional and Legislative Affairs Committee
29 January 2019

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE	**The Import of and Trade in Animals and Animal products (Amendment etc.) (EU Exit) Regulations 2019**
DATE	**21 January 2019**
BY	**Rebecca Evans AM, Minister for Finance and Trefnydd**

The Import of and Trade in Animals and Animal products (Amendment etc.) (EU Exit) Regulations 2019

The law which is being amended

European Directly Applicable Instruments

- Commission Decision 93/352 laying down derogations from the conditions of approval for border inspection posts located in ports where fish is landed;
- Commission Decision 94/360/EC on the reduced frequency of physical checks of consignments of certain products to be implemented from third countries;
- Commission Decision 1997/152/EC concerning the information to be entered in the computerized file of consignments of animals or animal products from third countries which are re-dispatched;
- Commission Decision 1997/794/EC laying down certain detailed rules for the application of Council Directive 91/496/EEC as regards veterinary checks on live animals to be imported from third countries;
- Commission Decision 2000/571/EC laying down the methods of veterinary checks for products from third countries destined for introduction into free zones, free warehouses, customs warehouses or operators supplying cross border means of sea transport;
- Commission Decision 2000/572/EC laying down the animal and public health and veterinary certification conditions for imports of meat preparations into the Community from third countries;
- Commission Decision 2001/812/EC laying down the requirements for the approval of border inspection posts responsible for veterinary checks on products introduced into the Community from third countries;
- Commission Decision 2003/459/EC on certain protection measures with regard to monkey pox virus;
- Commission Decision 2003/467/EC establishing the official tuberculosis, brucellosis, and enzootic-bovine-leukosis-free status of certain Member States and regions of Member States as regards bovine herds;

- Commission Decision 2003/779/EC laying down animal health requirements and the veterinary certification for the import of animal casings from third countries;
- Commission Regulation (EC) No 136/2004 laying down procedures for veterinary checks at Community border inspection posts on products imported from third countries;
- Commission Regulation (EC) No 282/2004 introducing a document for the declaration of, and veterinary checks on, animals from third countries entering the Community;
- Commission Regulation (EC) No 2005/1739/EC laying down animal health requirements for the movement of circus animals between Member States;
- Commission Decision 2006/168/EC establishing the animal health and veterinary certification requirements for imports into the Community of bovine embryos;
- Commission Decision 2006/605/EC on certain protection measures in relation to intra-Community trade in poultry intended for restocking of wild game supplies;
- Commission Decision 2007/25/EC as regards certain protection measures in relation to highly pathogenic avian influenza and movements of pet birds accompanying their owners into the Community;
- Commission Decision 2007/240/EC laying down new veterinary certificates for importing live animals, semen, embryos, ova and products of animal origin into the Community;
- Commission Decision 2007/275/EC concerning lists of animals and products to be subject to controls at border inspection posts;
- Commission Decision 2007/777/EC laying down the animal and public health conditions and model certificates for imports of certain meat products and treated stomachs, bladders and intestines for human consumption from third countries;
- Commission Decision 2008/185/EC on additional guarantees in intra-Community trade of pigs relating to Aujeszky's disease and criteria to provide information on this disease;
- Commission Decision 2008/636/EC establishing the list of third countries from which Member States authorise imports of ova and embryos of the porcine species;
- Commission Regulation (EC) No 798/2008 laying down a list of third countries, territories, zones or compartments from which poultry and poultry products may be imported into and transit through the Community and the veterinary certification requirements;
- Commission Regulation (EC) No 1251/2008 implementing Council Directive 2006/88/EC as regards conditions and certification requirements for the placing on the market and the import into the Community of aquaculture animals and products thereof and laying down a list of vector species;
- Commission Regulation (EC) No 119/2009 laying down a list of third countries or parts thereof, for imports into, or transit through, the Community of meat of wild leporidae, of certain wild land mammals and of farmed rabbits and the veterinary certification requirements;
- Commission Regulation (EC) No 206/2009 on the introduction into the Community of personal consignments of products of animal origin;
- Commission Decision 2009/712/EC implementing Council Directive 2008/73/EC as regards Internet-based information pages containing lists of establishments and laboratories approved by Member States in accordance with Community veterinary and zootechnical legislation;
- Commission Decision 2009/821/EC drawing up a list of approved border inspection posts, laying down certain rules on the inspections carried out by Commission veterinary experts and laying down the veterinary units in Traces;

- Commission Regulation (EU) No 206/2010 laying down lists of third countries, territories or parts thereof authorised for the introduction into the European Union of certain animals and fresh meat and the veterinary certification requirements;
- Commission Decision 2010/470/EC laying down model health certificates for trade within the Union in semen, ova and embryos of animals of the equine, ovine and caprine species and in ova and embryos of animals of the porcine species;
- Commission Decision 2010/472/EC on imports of semen, ova and embryos of animals of the ovine and caprine species;
- Commission Regulation (EU) No 605/2010 laying down animal and public health and veterinary certification conditions for the introduction into the European Union of raw milk, dairy products, colostrum and colostrum-based products intended for human consumption;
- Commission Decision 2011/163/EC on the approval of plans submitted by third countries;
- Commission Implementing Decision 2011/215/EU implementing Council Directive 97/78/EC as regards transhipment at the border inspection post of introduction of consignments of products intended for import into the Union or for third countries;
- Commission Implementing Decision 2011/630/EU on imports into the Union of semen of domestic animals of the bovine species;
- Commission Regulation (EU) No 28/2012 laying down requirements for the certification for imports into and transit through the Union of certain composite products;
- Commission Implementing Decision 2012/137/EU on imports into the Union of semen of domestic animals of the porcine species;
- Commission Implementing Regulation (EU) 139/2013 laying down animal health conditions for imports of certain birds into the Union and the quarantine conditions thereof;
- Commission Implementing Decision 2013/519 concerning the list of territories or third countries from which dogs, cats and ferrets are authorised to be imported in accordance with Directive 92/65/EEC;
- Regulation (EU) No 576/2013 of the European Parliament and of the Council on the non-commercial movement of pet animals;
- Commission Implementing Regulation (EU) No 577/2013 on the model identification documents for the non-commercial movement of dogs, cats and ferrets, the establishment of lists of territories and third countries and the format, layout and language requirements of the declarations attesting compliance with certain conditions provided for in Regulation (EU) No 576/2013;
- Commission Implementing Regulation EU No 743/2013 introducing protective measures on imports of bivalve molluscs from Turkey intended for human consumption;
- Commission Implementing Decision 2013/764/EU concerning animal health control measures relating to classical swine fever in certain Member States;
- Commission Implementing Regulation (EU) No 636/2014 on a model certificate for the trade of unskinned large wild game;
- Commission Decision 2015/1901/EU laying down certification rules and a model health certificate for importation into the Union of consignments of live animals and of animal products from New Zealand;

- Commission Implementing Decision (EU) 2018/320 on certain animal health protection measures for intra-Union trade in salamanders and the introduction into the Union of such animals in relation to the fungus Batrachochytrium salamandrivorans;
- Commission Implementing Regulation (EU) 2018/659 on the conditions for the entry into the Union of live equidae and of their semen, ova and embryos;
- Commission Delegated Regulation (EU) 2018/772 supplementing Regulation (EC) No 576/2013 of the European Parliament and of the Council with regard to preventive health measures for the control of *Echinococcus multilocularis* infection in dogs;
- Council Directive 88/407/EEC laying down the animal health requirements applicable to intra-Community trade in and imports of semen of domestic animals of the bovine species;
- Council Directive 89/556/EEC on animal health conditions governing intra-Community trade in and importation from third countries of embryos of domestic animals of the bovine species;
- Council Directive 90/439/EEC laying down animal health requirements applicable to intra-Community trade in and imports of semen of domestic animals of the porcine species;
- Council Directive 92/65/EEC laying down animal health requirements governing trade in and imports into the Community of animals, semen, ova and embryos trade;
- Council Directive 2002/99/EC laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption;
- Council Directive 2004/68/EC laying down animal health rules for the importation into and transit through the Community of certain live ungulate animals;
- Regulation (EC) No 854/2004 of the European Parliament and of the Council laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption;
- Council Directive 2009/156/EC on animal health conditions governing the movement and importation from third countries of equidae, and;
- Council Directive 2009/158/EC on animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs

The following provisions of retained direct EU legislation are revoked:

- Commission Decision 93/444/EC on detailed rules governing intra-Community trade in certain live animals and products intended for exportation to third countries.
- Commission Decision 1995/410/EC laying down the rules for the microbiological testing by sampling in the establishment of origin of poultry for slaughter intended for Finland and Sweden.
- Commission Decision 2004/292/EC on the introduction of the Traces system.
- Commission Decision 2006/146/EC on certain protection measures with regard to certain fruit bats, dogs and cats coming from Malaysia (Peninsula) and Australia.
- Commission Decision 2006/65/EC on certain protection measures in relation to intra-Community trade in poultry intended for restocking of wild game supplies.
- Commission Implementing Decision 2013/503/EU recognising parts of the Union as free from varroosis in bees and establishing additional guarantees required in intra-Union trade and imports for the protection of their varroosis-free status.

- Commission Implementing Regulation (EU) 2018/878 adopting the list of Member States, or parts of the territory of Member States, that comply with the rules for categorisation laid down in Article 2(2) and (3) of Delegated Regulation (EU) 2018/772 concerning the application of preventative health measures for the control of *Echinococcus multiocularis* infection in dogs.

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence
The amendments are to be made by the Secretary of State in relation to UK or GB wide legislation in relation to which the Welsh Ministers have executive functions and the subject matter of the legislation, namely the movement of animals and preventive health measures that apply to the movement of animals in relation to Wales is within the legislative competence of the National Assembly.

The purpose of the amendments
The 2019 Regulations make corrections that allow national and domestic legislation to be operable once the UK leaves the EU by replacing references where necessary for example substituting the definition of "community" with "United Kingdom" and by substituting "drawn up in accordance with the model as set out in Part 1 of the Annex" with "as published by the appropriate authority from time to time" and by appropriately referencing retained EU law, using powers under the Withdrawal Act. The instrument makes no policy changes.

The Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here: https://beta.parliament.uk/work-packages/D4Zg4HGP

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

UK MINISTERS ACTING IN DEVOLVED AREAS	
78 - The Import of and Trade in Animals and Animal Products (Amendment etc.) (EU Exit) Regulations 2019 *Laid in the UK Parliament: 17 January 2019*	
Sifting	
Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	21/01/2019
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 12
SICM under SO 30A (because amends primary legislation)	Not required
Scrutiny procedure	
Outcome of sifting	N/A
Procedure	Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of, and paragraph 7 of Schedule 4 and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

These Regulations make technical amendments to a series of European Union Regulations and Decisions relating to the importation and transit of live animals, products of animal origin, germplasm and non-commercial movement of pet animals, equines and circus animals.
The purpose of the Regulations is to address failures of domestic legislation and other deficiencies arising from the UK's exit from the EU. The Regulations amend redundant references to EU laws and systems which will no longer be relevant once the UK leaves the EU, revoke redundant EU laws and transfer a series of functions from the European Commission to the "appropriate authority" in the UK,

which in relation to Wales means the Welsh Ministers or (with the consent of the Welsh Ministers) the Secretary of State.
The Regulations apply across the whole of the United Kingdom and provide a legal framework relating to the importation, movement of and trade in animals and animal products, and include arrangements for the authorisation of businesses, pet travel documents, animal and public health certificates and conditions for transport. The Regulations also enable actions to be taken by UK authorities in cases of reported non-compliance or disease outbreaks.
The amendments made by these Regulations will only come into force in the event of a no deal scenario.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 21 January 2019 regarding the effect of these Regulations:

1. The subject Regulations, at Schedule 2, revoke "Commission Decision 2006/65/EC on certain protection measures in relation to intra-Community trade in poultry intended for restocking of wild game supplies". The stated Commission Decision reference appears to contain an error, and should read "2006/6**0**5/EC".
   The statement by the Welsh Government refers to the incorrect reference in its list of retained direct EU legislation being revoked, but also contains a duplicate reference to this Commission Decision (correctly referenced) in the section titled "European Directly Applicable Instruments".
2. The statement confirms that the amendments contained in these Regulations are "to be made by the Secretary of State in relation to UK or GB wide legislation in relation to which the Welsh Ministers have executive functions and the subject matter of the legislation, namely the movement of animals and preventive health measures that apply to the movement of animals in relation to Wales is within the legislative competence of the National Assembly."
   However, the statement does not identify the <u>impact</u> these Regulations may have, either on the executive competence of the Welsh Ministers or the legislative competence of the Assembly, as required under Standing Order 30C.3(ii). **Legal advisers recommend that clarification is sought on which devolved powers are affected.**

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.
As it is unclear from the Welsh Government's statement dated 21 January 2019 the impact the Regulations may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence, Legal Advisers have been

unable to assess whether any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE	**The Aquatic Animal Health and Plant Health (Legislative Functions) (EU Exit) Regulations 2019**
DATE	**22 January 2019**
BY	**Rebecca Evans AM, Minister for Finance and Trefnydd**

The Aquatic Animal Health and Plant Health (Legislative Functions) (EU Exit) Regulations 2019 ("the 2019 Regulations")

The law which is being amended

European Directly Applicable Instruments

The 2019 Regulations do not amend any directly applicable European instruments.

Instead, Part 2 of those Regulations provides for powers to amend Annexes 1A and 3 to Commission Regulation (EC) No 1251/2008 implementing Council Directive 2006/88/EC as regards conditions and certification requirements for the placing on the market and the import into the Community of aquaculture animals and products thereof and laying down a list of vector species. The power to amend Annex 1A is exercisable where the amendment is necessary or appropriate in light of certain specified criteria and any assessment carried out which is relevant to the determination of whether a disease is an exotic or non-exotic disease for the purpose of that Annex (and any assessment which is relied upon for that purpose must have been approved by the Secretary of State, the Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs). The power to amend Annex 3 is exercisable where the amendment is necessary or appropriate in light of an assessment of the risks to the health of aquatic animals in the United Kingdom from the introduction of aquaculture animals or products reared or produced in a third country (i.e. a country or territory outside the United Kingdom), taking account of certain specified factors. The powers in question are conferred on a concurrent basis, so that they are exercisable by the Welsh Ministers and the Secretary of State (the exercise of those powers by the latter being subject to the consent of the Welsh Ministers).

Part 3 of those Regulations provides a power to amend the Plant Health (EU Exit) Regulations 2019 which were the subject of a previous notification statement. Part 3 enables the following amendments, to be made by way of Regulations, to the Plant Health

(EU Exit) Regulations 2019: amendments to Schedules 1 – 7 (regulated plant pests and plant material) in the light of developments in scientific or technical knowledge or where technically justified and consistent with the risk to plant health; amendments to Schedule 8 (derogations from specific prohibitions and requirements) after an assessment has taken account of available scientific and technical information and confirms that the amendments would eliminate or safeguard against the risk to plant health; amendments to recognise where third countries demonstrate phytosanitary measures in relation to plant pests or relevant material that are equivalent to domestic phytosanitary measures and amendments to make temporary emergency provision for the purposes of preventing the introduction of a plant pest.

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence
Functions transferred to the Secretary of State with consent may constitute functions of a Minister of the Crown for the purposes Schedule 7B to the Government of Wales Act 2006. This may operate as a constraint on the Assembly's competence to legislate in the future in these areas.

The purpose of the amendments
The 2019 Regulations confer functions on UK authorities which are equivalent to various legislative functions exercisable by the European Commission in relation to EU aquatic animal health and plant health legislation and converts the EU procedures to appropriate UK procedures as appropriate.

The Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here: https://beta.parliament.uk/work-packages/AcjQdNDh

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

UK MINISTERS ACTING IN DEVOLVED AREAS	
79 - The Aquatic Animal Health and Plant Health (Legislative Functions) (EU Exit) Regulations 2019 *Laid in the UK Parliament: 17 January 2019*	
Sifting	
Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	21/01/2019
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 14
SICM under SO 30A (because amends primary legislation)	Not required
Scrutiny procedure	
Outcome of sifting	N/A
Procedure	Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

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

These Regulations provide for a number of legislative functions that are currently conferred by European Union legislation (in the fields of aquatic animal health and plant health) to be exercisable instead by public authorities (to include the Welsh Ministers) in the United Kingdom so that they can be exercised at a national level after the UK leaves the EU.

Legal Advisers agree with the statement laid by the Welsh Government dated 22 January 2019 regarding the effect of these Regulations.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

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

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

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The Chemicals (Health and Safety) and Genetically Modified Organisms (Contained Use) (Amendment etc.) (EU Exit) Regulations 2019**
DATE	**24 January 2019**
BY	**Rebecca Evans AM, Minister for Finance and Trefnydd**

The Chemicals (Health and Safety) and Genetically Modified Organisms (Contained Use) (Amendment etc.) (EU Exit) Regulations 2019 ("the 2019 Regulations")

The law which is being amended

European Directly Applicable Instruments

- Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH);
- Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures;
- Commission Regulation (EU) No 544/2011 of 10 June 2011 implementing Regulation (EC) No 1107/2009 of the European Parliament and of the Council as regards the data requirements for active substances;
- Commission Regulation (EU) No 545/2011 of 10 June 2011 implementing Regulation (EC) No 1107/2009 of the European Parliament and of the Council as regards the data requirements for plant protection products;
- Commission Regulation (EU) No 547/2011 of 8 June 2011 implementing Regulation (EC) No 1107/2009 of the European Parliament and of the Council as regards labelling requirements for plant protection products;
- Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products;
- Regulation (EU) No 649/2012 of the European Parliament and of the Council of 4 July 2012 concerning the export and import of hazardous chemicals;
- Commission Regulation (EU) No 283/2013 of 1 March 2013 setting out the data requirements for active substances, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market;

- Commission Regulation (EU) No 284/2013 of 1 March 2013 setting out the data requirements for plant protection products, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market;
- Commission Implementing Regulation (EU) No 354/2013 of 18 April 2013 on changes of biocidal products authorised in accordance with Regulation (EU) No 528/2012 of the European Parliament and of the Council;
- Commission Implementing Regulation (EU) No 414/2013 of 6 May 2013 specifying a procedure for the authorisation of same biocidal products in accordance with Regulation (EU) No 528/2012 of the European Parliament and of the Council;
- Commission Implementing Regulation (EU) No 88/2014 of 31 January 2014 specifying a procedure for the amendment of Annex I to Regulation (EU) No 528/2012 of the European Parliament and of the Council concerning the making available on the market and use of biocidal products;
- Commission Delegated Regulation (EU) No 1062/2014 of 4 August 2014 on the work programme for the systematic examination of all existing active substances contained in biocidal products referred to in Regulation (EU) No 528/2012 of the European Parliament and of the Council.

<u>Other non-domestic legislation</u>

- Part 2 of Annex II to the EEA agreement.

<u>Secondary legislation to be corrected</u>

- the Health and Safety (Enforcing Authority) Regulations 1998;
- the Control of Substances Hazardous to Health Regulations 2002;
- the Dangerous Substances and Explosive Atmospheres Regulations 2002;
- the Plant Protection Products (Fees and Charges) Regulations 2011;
- the Biocidal Products and Chemicals (Appointment of Authorities and Enforcement) Regulations 2013;
- the Biocidal Products and Chemicals (Appointment of Authorities and Enforcement) Regulations (Northern Ireland) 2013;
- the Genetically Modified Organisms (Contained Use) Regulations 2014;
- the Control of Major Accident Hazards Regulations 2015;
- the Explosives (Appointment of Authorities and Enforcement) Regulations (Northern Ireland) 2015;
- the Biocidal Products (Fees and Charges) Regulations (Northern Ireland) 2015;
- the Genetically Modified Organisms (Contained Use) Regulations (Northern Ireland) 2015;
- the Health and Safety and Nuclear (Fees) Regulations 2016.

The following retained direct EU law is repealed—

Commission Regulation (EU) No 440/2010 of 21 May 2010 on the fees payable to the European Chemicals Agency pursuant to Regulation (EC) No 1272/2008 of the European

Parliament and of the Council on classification, labelling and packaging of substances and mixtures.

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

The UK Chemicals regime covers both devolved and reserved matters, as it has been designed to protect the health and safety of workers (a reserved matter in Wales and Scotland) as well as public health and the environment (which are devolved). Import and export controls are also reserved for chemicals other than fertilisers and pesticides, as is animal testing for scientific purposes.

This SI contains provision which enables the Welsh Ministers to exercise functions in relation to Wales without encumbrance and for the Welsh Ministers to provide consent to the Secretary of State to exercise functions in relation to Wales. Functions transferred to the Secretary of State to be exercised concurrently with the consent of the Welsh Ministers constitute functions of a Minister of the Crown that relate to a qualified devolved function for the purposes Schedule 7B to the Government of Wales Act 2006. This therefore may be a relevant consideration in the context of the Assembly's competence to legislate in the future in these areas.

Functions transferred so that they are exercisable by the Secretary of State alone or to the Secretary of State but which are only exercisable with the consent of the Devolved Authorities in relation to devolved territories constitute functions of a Minister of the Crown for the purposes of Schedule 7B to GoWA 2006. A future Assembly Bill seeking to remove or modify these functions could trigger a requirement to consult the UK Government.

Functions transferred to the Health and Safety Executive alone constitutes functions of a public authority other than a devolved Welsh Authority for the purposes Schedule 7B to the Government of Wales Act 2006. This therefore may be a relevant consideration in the context of the Assembly's competence to legislate in the future in these areas.

The purpose of the amendments

The 2019 Regulations make the modifications necessary to continue to apply the current rules set out in law post-EU Exit. They are particularly important to facilitating the operation of chemical supply chains, which are critical to manufacturing and other chemical-using industries, because they set out the conditions that must be met before importing chemical substances and mixtures into the UK, manufacturing them or placing them on the market.

The Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here: https://beta.parliament.uk/work-packages/XnzRsY2j

Why consent was given

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

UK MINISTERS ACTING IN DEVOLVED AREAS	
80 - The Chemicals (Health and Safety) and Genetically Modified Organisms (Contained Use) (Amendment etc.) (EU Exit) Regulations 2019 *Laid in the UK Parliament: 21 January 2019*	
Sifting	
Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	21/01/2019
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 16
SICM under SO 30A (because amends primary legislation)	Not required
Scrutiny procedure	
Outcome of sifting	N/A
Procedure	Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of, and paragraphs 1 and 7 of Schedule 4 and paragraph 21(b) of Schedule 7 to, of the European Union (Withdrawal) Act 2018.

This instrument is made using powers in the European Union (Withdrawal) Act 20181 ("the Withdrawal Act") to address deficiencies in retained EU law in relation to chemicals and genetically modified organisms (GMOs) legislation arising from the withdrawal of the United Kingdom (UK) from the European Union (EU). This instrument ensures that UK chemicals and GMO regulations will continue to operate effectively at the point at which the UK leaves the EU ("Exit"). This instrument does not make any policy changes beyond the intent of ensuring continued operability of the relevant legislation.

As directly applicable European Regulations, requiring no transposition into UK law, the BPR, CLP and PIC Regulations will be retained under the arrangements offered in Section 3(1) of the Withdrawal Act. The instrument makes corrections to these Regulations using the Withdrawal Act powers.

Due to amendments to the CLP Regulation made in this instrument, amendments are to be made to downstream legislation i.e. legislation that sits ‘downstream’ of the CLP Regulation, but which relies on hazard classification, in whole or in part, to define its intended scope and to act as a ‘trigger’ for additional risk control measures. This is to ensure that the downstream legislation continues to provide the appropriate and necessary references to the CLP Regulation and (where required) to the UK mandatory classification and labelling list that the amended CLP Regulation provides for.

This instrument also amends relevant regulations to address deficiencies arising from the UK’s withdrawal from the EU to allow the Health and Safety Executive to enforce provisions and to recover costs for its work.

Legal Advisers make the following comments in relation to the Welsh Government’s statement dated 24 January 2019 regarding the effect of these Regulations:

- The statement refers to the following secondary legislation to be corrected: the Biocidal Products and Chemicals (Appointment of Authorities and Enforcement) Regulations (Northern Ireland) 2013; the Explosives (Appointment of Authorities and Enforcement) Regulations (Northern Ireland) 2015; the Biocidal Products (Fees and Charges) Regulations (Northern Ireland) 2015, and the Genetically Modified Organisms (Contained Use) Regulations (Northern Ireland) 2015. However, paragraph 4.2 of the Explanatory Memorandum states that these instruments “…apply to Northern Ireland only…”.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

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

WRITTEN STATEMENT

BY

THE WELSH GOVERNMENT

TITLE	**The State Aid (EU Exit) Regulations 2019**
DATE	**25 January 2019**
BY	**Jeremy Miles AM, Counsel General and Brexit Minister**

The State Aid (EU Exit) Regulations 2019

The 2019 Regulations make amendments to legislation in the field of State aid. Primarily, they:

- Transfer the State aid approval and regulatory functions of the European Commission to the Competition and Markets Authority (CMA);
- Transfer functions relating to the publishing of State aid policy and guidance to the CMA and Secretary of State.
- Replace the test of whether State aid affects trade between Member States with a test of whether State aid affects trade between the United Kingdom and the European Union;
- Restate large parts of the EU procedural provisions with appropriate deficiency corrections.

EU Directly Applicable

- Articles 107 to 109 of the Treaty on the Functioning of the European Union.
- Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union;
- Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest;
- Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid;

- Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector;
- Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union;
- Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty;
- Commission Decision 2012/21/EU of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest;

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

Functions exercisable by the Competition and Markets Authority (CMA)
This engages Paragraph 10 (1) of Schedule 7B to the Government of Wales Act 2006 (GOWA 2006). This provides that a provision of an Act of the Assembly cannot remove or modify, or confer power by subordinate legislation to remove or modify, any function of a public authority other than a devolved Welsh authority, unless the appropriate (UK) Minister consents to the provision. This means that any future attempt by the Assembly to legislate in relation to State aid and modify the functions of the CMA, for example by disapplying their functions in relation to Wales, would require the consent of the appropriate Minister of the Crown.

Functions exercisable by the CMA with the consent of a Minister of the Crown
This engages Paragraph 10 (1) of Schedule 7B to the Government of Wales Act 2006 (GOWA 2006). This provides that a provision of an Act of the Assembly cannot remove or modify, or confer power by subordinate legislation to remove or modify, any function of a public authority other than a devolved Welsh authority, unless the appropriate Minister consents to the provision. This means that any future attempt by the Assembly to legislate in relation to State aid and modify the functions of the CMA, for example by disapplying their function in relation to Wales, would require the consent of a Minister of the Crown.

Functions exercisable by the Secretary of State (a Minister of the Crown) in consultation with the Welsh Ministers
The exercise of a power by a Minister of the Crown in consultation with the Welsh Ministers engages Paragraph 11(2) of Schedule 7B to GOWA 2006. This provides that a provision of an Act of the Assembly cannot remove or modify, or confer power by subordinate legislation to remove or modify, any function of a Minister of the Crown not falling within sub paragraph (1) unless the Welsh Ministers have consulted the appropriate Minister about the provision. This means that if the Assembly brought forward legislation in the future in relation to State aid which sought to modify the Secretary of State's functions, as set out in the Regulations, it would have to consult the appropriate Minister before doing so.

The purpose of the amendments
Part 2 amends retained EU law relating to the state aid framework that continues to be, or forms part of, domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018.

Part 3 sets out the process for the CMA to examine notified aid, unlawful aid, misused aid and existing aid schemes.
Part 4 includes provisions relating to enforcement.
Part 5 includes provisions relating to monitoring and reporting of aid.
Part 6 requires the CMA to adopt and publish statements of policy.
Chapter 1 of Part 7 includes general provisions relating to aid in urgent cases, interest rates and time periods.
Chapter 2 of Part 7 revokes certain retained EU law, inserts a schedule that contains transitional provisions and inserts schedules that make amendments to retained EU law and other legislation.
In particular, Schedule 8 includes transitional provisions setting out how these Regulations apply in relation to aid granted before exit day.
Schedule 9 contains amendments to the General Block Exemption Regulation.
Schedule 10 contains amendments to other legislation, including the Enterprise Act 2002 (c.40) and the Enterprise and Regulatory Reform Act 2013 (c.24).
Without the provisions provided in this SI, there would not be direct legal basis for the regulating of State aid in the UK.

The SI and accompanying Explanatory Memorandums, setting out the effect of each amendment is available here: https://beta.parliament.uk/work-packages/K0I2OYMp

Why consent was not given
Despite the Welsh Government's position that State aid is a devolved matter and not a reserved matter under any heading of the Reserved Matters Schedule in the Government of Wales Act 2006, the UK Government do not consider it as such, and therefore they have not requested Welsh Ministerial consent under the terms of the Intergovernmental Agreement. The Welsh Government has requested from the UK Government, an explanation of their legal position but there has been no response.

Separately, the Welsh Government has argued that the State aid regulations should include a requirement to obtain Welsh Ministerial consent to the publishing of a statement of policy by the Competition and Markets Authority's (CMA's) (the Regulations provide that the consent of the Secretary of State must be obtained);, the publishing of guidance by the Secretary of State relating to the approval of aid under 107(3) of the Treaty on the Functioning of the EU (TFEU); and the fixing of administrative penalties in relation to a breach of the State aid rules (a Secretary of State function) given that State aid is not reserved. The Regulations as laid do not provide this.

Welsh Ministers have called to be given a meaningful role in the State aid regime going forward, however the Regulations that have been laid do not provide for this.

The Regulations make a number of consequential amendments to legislation in other devolved areas for which consent should have been sought under the

Intergovernmental Agreement. Consent for these amendments has not been sought by UK Government.

The following amendments in devolved areas have been identified.

- Water Industry (Determination of Turnover for Penalties) Order 2005
- Community Infrastructure Levy Regulations 2010
- Criminal Justice and Police Act 2001

However, the Welsh Government, having seen the draft regulations prior to them being laid in the House of Commons, believe that they do achieve the Welsh Minister's overarching policy objectives of securing and maintaining the confidence of EU partners, facilitating a dynamic alignment with EU State aid rules and enabling effective cross-UK alignment. This in turn will form an important cornerstone of our future relationship with the European Union. The Welsh Government will continue to work to ensure that a Memorandum of Understanding that will underpin the regulations provides for a meaningful role for Welsh Ministers in the administration of the UK wide State aid regime.

Jeremy Miles AC/AM
Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister

Llywodraeth Cymru
Welsh Government

Mick Antoniw AM
Chair,
Constitutional and Legislative Affairs Committee
Mick.Antoniw@assembly.wales

25 January 2019

Dear Mick,

I thought it pertinent to outline the approach Welsh Ministers have decided to take in response to the UK Government laying of the State Aid (EU Exit) Regulations in Parliament on 21 January 2019.

The regime established by this SI and the supporting Memorandum of Understanding (MoU) are an important step in ensuring dynamic alignment between the UK and the EU on State aid. Welsh Ministers are pleased that regulations will secure and maintain the confidence of our EU partners, facilitate a dynamic alignment with EU State aid rules, and will enable cross-UK alignment, which in turn will form an important cornerstone of our future relationship with the European Union.

The Welsh Government's position is that State aid is a devolved matter and not a reserved matter under any heading of the Reserved Matters Schedule in the Government of Wales Act 2006. However, the UK Government do not consider it as such (as was noted in the Intergovernmental Agreement) and therefore they have not requested Welsh Ministerial consent). The Welsh Government has requested from the UK Government, an explanation of their legal position but there has been no response.

The Minister for Economy and Transport has written to the Secretary of State for Business, Energy and Industrial Strategy to reiterate our position that it is not acceptable for UK Government Ministers to take unilateral decisions on matters which have a direct effect upon areas of devolved competency. Understanding the importance and time constraints of ensuring that these regulations are laid and in force by the time the UK leaves the European Union, it is vital that the long-term UK State aid regime is one which is developed, altered and owned by the UK Government and Devolved Administrations jointly.

Discussions are ongoing between BEIS and WG officials to consider implementation. Despite this, Welsh Ministers are disappointed that the regulations as they have been laid do not provide for decision making by mutual consent and do not provide for a State aid regime that is truly owned by all four Government's in the UK.

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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.

It is possible for the Welsh Government to agree with the UK Government that a fully functioning UK wide State aid regime is desirable, and indeed necessary to ensure full and unfettered access to the single market, without agreeing to relinquish all statutory control over the State aid rules going forward to the UK Government. Consequently, Welsh Ministers do not plan to grant unilateral consent for this Statutory Instrument.

Yours sincerely,

Jeremy Miles AM
Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister

UK MINISTERS ACTING IN DEVOLVED AREAS	
81 - The State Aid (EU Exit) Regulations 2019 *Laid in the UK Parliament: 21 January 2019*	
Sifting	
Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	21/01/2019
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 18
SICM under SO 30A (because amends primary legislation)	Not required
Scrutiny procedure	
Outcome of sifting	N/A
Procedure	Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

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

They modify the rights, powers, liabilities, obligations, restrictions, remedies and procedures preserved by section 4 of the European Union (Withdrawal) Act 2018 (the Act) that relate to State aid (State aid rights) and amends and restates the procedure that applies to State aid cases.

The overall effect is to transpose the EU State aid regime as set out in Articles 107 and 108 of the Treaty on the Functioning of the European Union (TFEU) into domestic law and give the Competition and Markets Authority (CMA) the function of regulating the regime in place of the EU Commission (Commission).

In his letter to the Committee's Chair dated 25 January 2019, the Counsel General stated:

"The Welsh Government's position is that State aid is a devolved matter and not a reserved matter under any heading of the Reserved Matters Schedule in the Government of Wales Act 2006. However, the UK Government do not consider it as such (as was noted in the Intergovernmental Agreement) and therefore they have not requested Welsh Ministerial consent). The Welsh Government has requested from the UK Government, an explanation of their legal position but there has been no response."

Given the significant effect of these Regulations, **Members may wish to consider writing to the Secondary Legislation Scrutiny Committee of the House of Lords to make observations endorsing the Counsel General's arguments. It may also wish to draw the matter to the attention of the Constitution Committee of that House.**

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 25th January 2019 regarding the effect of these Regulations:

This Committee welcomes the detailed analysis, and commends this approach to the Government. It facilitates the work of the Committee and the understanding of Members when the statement contains a full explanation of the Welsh Government's position.

The Counsel General's letter and statement and the content of the Explanatory Memorandum to these Regulations confirm their effect. The letter and statement also explain the extent to which these Regulations would enact new policy in devolved areas.

Legal Advisers consider that significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations. That paragraph states:

"Under this agreement, the UK Government has committed to ensure that clause 11 regulations will not affect the operation of the Sewel convention and that related practices and conventions in relation to future primary legislation, including legislation giving effect to common frameworks, will continue to apply. Accordingly, those established practices and conventions will operate as if clause 11 regulations had not been made."

The Counsel General's letter and statement demonstrate that in this case functions are being transferred to a non-devolved public authority in a way that affects the Assembly's legislative competence without seeking the Assembly's consent. That appears to be a **clear breach of paragraph 8**.

As no consent memorandum has been laid, no consent motion under Standing Order 30A.10 may be tabled in relation to these Regulations.

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The Public Procurement (Amendment) (EU Exit) Regulations 2019**
DATE	**25 January 2019**
BY	**Rebecca Evans AM, Minister for Finance and Trefnydd**

The Public Procurement (Amendment) (EU Exit) Regulations 2019

The Law which is being amended

- The Greater London Authority Act 1999
- The Equality Act 2010
- The Public Services (Social Value) Act 2012
- The Public Contracts Regulations 2015
- The Concession Contracts Regulations 2016
- The Utilities Contracts Regulations 2016
- The Public Contracts Regulations 2006
- The Utilities Contracts Regulations 2006
- The Service Charges (Consultation Requirements) (England) Regulations 2003
- The Provision of Services Regulations 2009
- The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013
- Regulation 2195/2002 of the European Parliament and of the Council on the Common Procurement Vocabulary
- Commission Decision 2006/211/EC
- Commission Decision 2007/141/EC
- Commission Decision 2010/192/EU
- Commission Implementing Regulation (EU) No 2015/1986
- Section 155(2) and (3) of the Equality Act 2010

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

This SI contains provisions that enable functions to be exercised by the Minister for the Cabinet Office, some of which require the prior consent of the Welsh Ministers in relation to Devolved Welsh Authorities. The SI also contains provisions that enable functions to be exercised by either the Cabinet Office or the Minister for the Cabinet Office, and the Welsh Ministers concurrently in relation to Devolved Welsh Authorities.

These functions (Minister for the Cabinet Office/Cabinet Office) would constitute functions of either a Minister of the Crown or public authority (Cabinet Office) for the purposes Schedule 7B of the Government of Wales 2006, and this therefore will be a relevant consideration in the context of the Assembly's competence to legislate in these areas in the future.

The purpose of the amendments
The purpose of the amendments is to correct deficiencies in legislation relating to public procurement (including consequential amendments to non-procurement legislation) arising from the UK leaving the European Union. The Regulations also amend section 155(2) and (3) of the Equality Act 2010 to define a term by reference to the Public Contract Regulations 2015, rather than by reference to the Public Sector Directive. This amendment is technical in nature and is required in order for this provision to operate effectively after EU exit.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here:
http://www.legislation.gov.uk/ukdsi/2019/9780111176788/contents

Why consent was given
There is no divergence between the Welsh Government and the UK Government on the policy for the correction. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting to an England and Wales and Northern Ireland wide SI ensures that there is a single legislative framework across those parts of the UK which promotes clarity and accessibility during this period of change. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance. Those directives have been separately, and to some degree differently, transposed into the law of Scotland, and so the Scottish Ministers will be bringing forward a separate amending instrument in respect of the equivalent Scottish regulations.

A Statutory Instrument Consent Memorandum has also been laid in the National Assembly in respect of the amendments to The Equality Act 2010.

UK MINISTERS ACTING IN DEVOLVED AREAS	
The Public Procurement (Amendment Etc.) (EU Exit) Regulations 2019 *Laid in the UK Parliament: 18 December 2018*	
Sifting	
Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	19 December
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	8 January
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 21
SICM under SO 30A (because amends primary legislation)	N/A
Scrutiny procedure	
Outcome of sifting	N/A
Procedure	Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

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

These Regulations are being made in order to address deficiencies in retained EU law in relation to public procurement arising from the withdrawal of the United Kingdom (UK) from the European Union (EU), ensuring the legislation continues to operate effectively after the UK leaves the EU.

The Welsh Government laid a written statement under Standing Order 30C in respect of these UK Government Regulations on 18 December 2018. It seems that statement was withdrawn and the Welsh Government has now laid another statement in respect of the same Regulations. We were not informed that the original statement was withdrawn, therefore **we ask the Welsh Government to clarify when and why the original**

statement was withdrawn and why did it take until 25 January 2019 to lay a corrected statement.

The EU legal framework for the regulation of public procurement by public authorities and utilities consists of a package of directives (the EU Procurement Directives) that govern procedures for the award of public contracts over specified financial thresholds to suppliers of works, goods and services. They are aimed at ensuring that the EU public procurement market is open and competitive and that suppliers are treated equally and fairly.

The EU Procurement Directives were implemented for England, Wales and Northern Ireland by the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016 (the Regulations). This instrument also relates to certain directly applicable EU legislation in the field of public procurement.
This instrument addresses deficiencies in retained EU law that arise as a result of the withdrawal of the UK from the EU. It amends or removes provisions that are inoperable, inappropriate or would otherwise prevent the legislation from functioning effectively after exit day within the meaning of section 8 of European Union (Withdrawal) Act 2018. For example, provisions that relate to the publication of notices in the Official Journal of the EU (OJEU) and to the submission of reports to the European Commission (the Commission) would no longer be appropriate because they impose requirements and confer functions in respect of EU entities that no longer have such functions in relation to the UK after exit.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 25th January 2019 regarding the effect of these Regulations:

- The statement lists the legislation being amended by the Regulations but does not identify which legislative powers of the Assembly or executive powers of the Welsh Ministers are affected by this instrument. The statement says that the Regulations enables functions to be exercised by the Cabinet Office in relation to Devolved Welsh Authorities, either with the consent of the Welsh Ministers or exercised concurrently with the Welsh Ministers. However, the statement doesn't say whether this relates to all functions, whether the regulations restate existing arrangements or whether these represent new arrangements in terms of how functions are exercised in relation to devolved Welsh Authorities.
- The statement correctly identifies implications for the Assembly's competence in the
- future as they would need Minister of the Crown consent under Schedule 7B of the Government of Wales Act 2006 to make any changes in these areas. However, if these are new arrangements it is unclear why the Welsh Government did not lay a SICM as it has in

relation to changes that these regulations make to the Equality Act 2010.

Legal advisers recommend that clarification is sought on the points above in order to enable effective scrutiny of these regulations.

As it is unclear from the Welsh Government's statement dated 25th January the impact the Regulations may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence, Legal Advisers have been unable to assess whether any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Pending further clarification from the Welsh Government, Legal Advisers have not identified any legal reason to seek a consent motion at this time under Standing Order 30A.10 in relation to these Regulations.

HOUSE OF LORDS

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

25 January 2019

Dear Mick

Post-Brexit UK-EU interinstitutional relations, and the role of the devolved institutions

It was good to see you again at the meeting of the Interparliamentary Forum on Brexit on 17 January.

The House of Lords EU Select Committee, which I chair, is undertaking a piece of work on *Post-Brexit UK-EU interinstitutional relations*. This work is designed to examine how future UK-EU intergovernmental and interparliamentary mechanisms and dialogue will be conducted. An important component of this work is to consider the role that the devolved institutions (both at governmental and parliamentary level) should play in influencing and shaping this dialogue.

Given the continued uncertainty of the Brexit process, the Committee has decided not to launch a full-scale inquiry, but rather to engage in an information-gathering exercise with key stakeholders, which we intend to inform a report to be published before the scheduled date of UK withdrawal on 29 March 2019.

As part of this exercise, the Committee would like to take account of the views and perspectives of colleagues in the devolved legislatures. We would therefore like to invite your Committee to set out its views, in writing, on a number of key questions as set out below, as well as any other topical issues that aren't covered here. The list of questions is attached. In order to inform the Committee's forthcoming report, we would like to invite a response by **Friday 8 February**?

If you have any questions, please do not hesitate to get in touch. I have written in similar terms to the Chairs and Conveners of other relevant Committees in the Scottish Parliament and National Assembly for Wales. My officials are also in dialogue with officials in the Northern Ireland Assembly.

Yours sincerely,

Tim Boswell

Lord Boswell of Aynho
Chairman of the European Union Committee

LIST OF QUESTIONS

1. What is your assessment of the mechanisms set out in the Withdrawal Agreement and Political Declaration to govern UK-EU relations a) during the transition period; and b) after the end of the transition period, including at "summit, ministerial, technical and parliamentary level"?
    a. How do you envisage the mechanisms, including the proposed Joint Committee structures, dispute resolution mechanisms and 'high-level conference', operating in practice?
    b. How do the proposed mechanisms for UK-EU relations during the transition period, and in the post-transition period, relate to one another? What are the key similarities and differences?
    c. Notwithstanding the House of Commons' rejection of the Withdrawal Agreement and Political Declaration, how likely is it that the proposed structure will underpin future UK-EU relations in the event of a deal being reached?

2. How should the UK Parliament and the devolved legislatures seek to scrutinise the interinstitutional mechanisms, including the proposed dispute resolution mechanism, both during the transition period and post-transition? How, if at all, should the work of the UK Parliament and the devolved legislatures be coordinated in this regard?

3. What format should the proposed dialogue between the European Parliament and the UK Parliament take? Will this take the form of a 'delegation'?
    a. What role should the devolved legislatures play in this process?
    b. How could such an inter-parliamentary body influence the negotiation and/or governance of the future relationship?

4. What principles should underpin future intergovernmental and interparliamentary bilateral relations with individual EU Member States? What role should the devolved institutions play in the maintenance of such relations?

5. What role should the devolved governments and legislatures play in ensuring effective governance and scrutiny of the UK-EU relationship?

6. What lessons can be learned, both positive and negative, from the EU's relations with other third countries in its neighbourhood? What can the UK learn from other third countries in seeking to continue to exert influence in Brussels?
    a. How should the UK's representation to the European Union (UKREP) adapt to its new role as a third country representation?
    b. Should the UK Parliament continue to maintain a presence in Brussels?
    c. What presence should the devolved institutions have in Brussels?

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: MA(L)/LG/0076/19

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

SeneddCCERA@assembly.wales

22 January 2019

Dear Mike

Thank you for your letter of 11 January, regarding the Committee's consideration of the Fisheries Bill Legislative Consent Memoranda, and seeking clarification on a number of points.

I have addressed your questions in turn and look forward to discussing the Bill further with the Committee on Thursday.

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?*

The Bill provides a comprehensive suite of fishery management powers for the UK, including a wide range of powers for the Welsh Ministers. For example, Schedule 4 provides Welsh Ministers with the power to create financial assistance schemes in relation to Wales and Schedule 7 provides powers to Welsh Ministers via amendments to the Marine and Coastal Access Act 2009 in relation to the exploitation of sea fisheries resources.

None of these provisions could have been included in a Welsh Fisheries Bill in their current form as the provisions have elements which apply in the Welsh zone beyond Wales for which the National Assembly for Wales currently has no legislative competence. Clause 39 of the Fisheries Bill provides for an extension of the Assembly's Legislative Competence to the offshore area of the Welsh zone.

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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.

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

Schedule 4 (Financial Assistance), schedule 6 part 2 (Power to make further provisions: devolved authorities) and schedule 7 (Powers relating to the exploitation of sea fisheries resources) were included in the Bill at the request of Welsh Government.

Further, clause 39 which provides for the extension of the National Assembly for Wales competence in relation to fisheries matters in the Welsh zone beyond Wales, was included at the request of Welsh Government.

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

As previously stated, the Assembly does not currently have legislative competence for the area of the Welsh zone which lies beyond Wales. As such these provisions could not have been included in their current form in a Welsh Bill. We are considering bringing forward a Welsh Bill (if necessary) once the Assembly competence applies to the whole of the Welsh zone. This Bill provides important powers for managing our fish stocks and marine environment as we exit the EU. Given the extension of the Assembly's legislative competence will not be guaranteed until the Fisheries Bill becomes law, it is considered prudent to pursue all necessary powers for the Welsh Ministers in the UK 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?*

If these powers were not included in this UK Bill, Welsh Government would have a narrower range of powers to manage our marine environment and fish stocks than the other Fisheries Administrations. We would not be able to create a modern financial assistance scheme, if desired, which responds to wider considerations than just being for the purpose of the fishing industry. The Fisheries Bill also enables the Welsh Ministers to amend existing fisheries enactments and retained EU law. Without this power, we could be in a situation where other parts of the UK are able to amend the over arching legislation giving their fleets an advantage over Welsh vessels.

Finally it would hamper our ability to effectively manage our marine environment following EU exit.

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?*

These powers will be necessary as we leave the EU, as such it was not feasible to bring forward an Assembly Bill in the timescales available, which would have allowed full Assembly scrutiny. Any Assembly Bill brought forward at this time could also only extend to Wales. The exercise of the powers in Schedule 6 is through Statutory Instrument, both negative and affirmative procedure dependent on the scope of the regulation. As such Assembly scrutiny will be necessary in exercising those powers.

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?*

The provisions contained in Clause 1 of the Bill broadly replicate those in Article 2 of the common fisheries policy, in a way which is operable within a UK legislative framework.

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?*

Provisions in relation to the Joint Fisheries Statement were developed by UK Government. Discussions in relation to the contents of the Joint Fisheries Statement are on-going and will be informed by the scrutiny of the Bill. It is understood that milestones you mention will be included in the Joint Fisheries Statement.

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?*

Discussions around the nature of the Joint Fisheries Statement are ongoing and will be informed by the scrutiny of the Bill and depend on the final provisions of the Act.

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?*

The Joint Fisheries Statement will be prepared by officials from across the fisheries policy authorities. Part 1 of Schedule 1 to the Fisheries Bill sets out the procedures to be applied when preparing and publishing the Joint Fisheries Statement. As previously stated, the contents of the JFS are still under discussion. The final contents of the JFS will be informed by the scrutiny of the Bill, engagement with stakeholders, and scrutiny of the relevant legislatures in line with the final provisions of the Act.

The JFS will form the key part of the Fisheries Framework setting out the shared objectives of the UK fisheries policy authorities. This will be underpinned by a range of memoranda of understanding detailing how the policy authorities will work together. These will be supported by effective joint governance mechanisms and suitable dispute resolution mechanisms.

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?*

The Bill currently does not make specific provision for this. However, I would expect the legislatures to be informed of any changes after the legislatures have considered the statement and, subject to the scale of the changes, we may wish to lay an amended statement for consideration.

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?*

The provisions relating to schedule 1 were drafted by Parliamentary Council following instructions from UK Government. Welsh Ministers were not consulted on the instructions. I am not aware of what consideration UK Government gave to this specific point.

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?*

In the unlikely circumstances clause 6(2) is engaged in Wales I would expect to issue a Written Statement to the Assembly. Clause 6(2) was drafted by Parliamentary Council following instructions from UK Government. Welsh Ministers were not consulted on the instructions. I am not aware of what consideration UK Government gave to this specific point.

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?*

The purpose of the SSFS is to cover specific English issues, it would not extend to Wales unless reserved functions are included, for example, the overall setting of the UK's fishing opportunities following coastal state negotiations. I do not believe there is any need for these specific policies to be detailed in a separate statement. The policies relevant to Wales are expected to be included within the JFS as they contribute to the achievement of the fisheries objectives.

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?*

The Bill does not provide such a right to the devolved administrations. However, the distribution of fishing opportunities between the UK administrations is not dealt with through legislation but is dealt with administratively.

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?*

I want Welsh Fishermen to receive their fair share of fishing opportunities within Welsh waters. The Welsh Centre for Public Policy report '*Implications of Brexit for fishing opportunities in Wales*' clearly demonstrated this is not the case at the moment. However, without a change to the way fishing opportunities are allocated within the UK, this will not change. Any rebalancing of fishing opportunities between the UK and EU following our exit from the EU should be used to redress this imbalance. Discussions regarding the distribution of future fishing opportunities have yet to begin.

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

The basis under which we distribute fishing opportunities in Wales is currently set out in the UK fisheries quota management rules. Allocation of fishing opportunities in the future will be subject to consultation as we work with stakeholders to develop the future fisheries policy referred to in *Prosperity for All*.

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

The concordat will need to be reviewed in light of EU exit and the creation of a fisheries framework.

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?*

Clause 20 relates to the distribution of fishing opportunities by the Secretary of State, this could be at the UK level or and English level. In relation to the MMO, clause 20 only applies to English fishing boats.

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

During discussions regarding the content of the Bill, officials from the devolved administrations voiced a number of concerns about the inclusion of this provision in the bill. This included the appropriateness of a UK Bill setting allocation criteria for devolved decisions and the risk of an overlap with existing legislation.

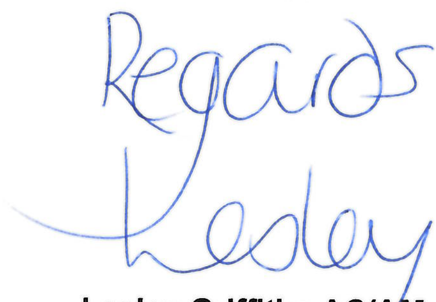
Our understanding is in practice, when allocating fishing opportunities, article 17 of the Common Fisheries Policy will not apply to Welsh Ministers. Article 17 sets a requirement to use transparent criteria for the allocation of fishing opportunities, including those of an environmental, social and economic nature. Without Article 17 of the CFP, Welsh Ministers decisions in this area will need to be guided by other legislation, including the Well-being of Future Generations Act.

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

Given the nature and size of the fishing industry in Wales we do not face the same challenges with the landings obligation as other parts of the UK. However, it is my intention to bring forward a Welsh fisheries Bill, and solutions to the landings obligation will be considered appropriately as part of this process. I am still considering the provisions in relation to the sale of quota for a calendar year.

Timetable

The timetable of the Bill is a matter for Parliament and UK Government. I am not in a position to provide the Committee with a timetable for the Bill. I can confirm I will consider the representations made by both committees and, as appropriate, seek further discussions with UK Government to ensure the Bill meets Welsh needs. However, I am aware, with the prospect of the UK exiting the EU in March, the Bill is on an accelerated timetable and as a result further opportunities to influence the Bill may be scarce.



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Our Ref MA-L/LG/0068/19

Mr Mick Antoniw AM
Chair of Constitutional and Legislative Affairs Committee
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29 January 2019

Dear Mick

Following my attendance at your committee meeting on 21 January, I offered to provide an update following the most recent Senior Steering Group meeting on Marine and Fisheries last week, at which senior Welsh Government officials met with Defra and the Devolved Administrations.

At the meeting officials discussed clause 18 of the draft UK Fisheries Bill and I am advised they have registered the concerns on this matter and have asked DEFRA to consider and respond, taking into account the existing intergovernmental principles and practices on co-operative working.

Regards
Lesley

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

5. Memoranda Cydsyniad Deddfwriaethol ar Bysgodfeydd y DU: Sesiwn dystiolaeth

5. Legislative Consent Memoranda on the UK Fisheries: Evidence session

Mick Antoniw AM14:44:50

Video

So, the Constitutional and Legislative Affairs Committee reconvened. I welcome the Cabinet Secretary to this meeting to give evidence in respect of the Fisheries Bill. So, I welcome you and your officials, Graham Rees and Tamsin Brown. Did you want to make any opening comments or are you happy for us to go straight into questions? 26

14:45

Lesley Griffiths AM14:45:11

Video

I'm very happy to go straight into questions, Chair. 27

Mick Antoniw AM14:45:13

Video

Okay. Just a couple of opening questions from myself, which are why you consider the Bill and the provisions within it necessary—if you could perhaps explain why.28

Lesley Griffiths AM 14:45:23

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Video

Thank you. So, the Bill as far as it relates to Wales is absolutely necessary for us to be able to manage our fisheries and our marine environment appropriately when we exit the EU. Obviously, once the UK leaves the European Union we will become an independent coastal state, subject to international laws and objectives, and the responsibility will require a much wider range of tools in order for the four administrations and the UK to work to collectively meet the requirements that are required in those international obligations. Also, the way that we share out the funding, so—. It's very different to agricultural funding, obviously—we don't fund our fishers in the way we fund our farmers—but that European Maritime and Fisheries Fund funding is used in a variety of ways that we will have to do ourselves after. 29

Mick Antoniw AM 14:46:13

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Video

Thank you for that. In the preparation of the Bill—as you know, there have been issues in terms of engagement between Welsh Government and the UK Government, for example, on the Agriculture Bill and other pieces of legislation. This is a much more detailed Bill. I wonder if you consider that Welsh Government has been adequately engaged within the construction of this Bill. And, perhaps, what might have been different in the construction of this as opposed to other legislation? 30

Lesley Griffiths AM 14:46:39

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Video

I think it's probably safe to say we didn't get off to the best start. Certainly, we weren't involved in the drafting of the Bill. However, as soon as the Bill did come forward, we had then extensive engagement, particularly at an official level, but also at a ministerial level. So, Members will be aware I have regular quadrilateral meetings with the Secretary of State for the Department for Environment, Food and Rural Affairs and my Scottish counterparts, and, obviously, Northern Ireland officials. So, I think the level of engagement was very good—much quicker than the Agriculture Bill; I think we learned lessons there. So, I think it's really important, from our perspective, that the Bill meets the Welsh needs, and that—. I think I'm much happier with the engagement in relation to this Bill. You've just mentioned it's much more—. It is a detailed Bill. It's much more detailed than the UK agri Bill. And I think we've also—. Although I didn't have as many red lines with this Bill as I did with the Agriculture Bill, I think we've been able to be much more influential and we've been able to bring forward changes to the Bill much easier than the previous one. 31

Mick Antoniw AM14:47:45

Video

Okay, thank you for that. We've got quite a number of questions, so I'll move on through them fairly swiftly. Mandy Jones. 32

Mandy Jones AM14:47:51

Video

Why have you not made a statement about this Bill as you did with the Agriculture Bill?33

Lesley Griffiths AM14:47:55

Video

I think because, again, they're two very different Bills. They're quite often compared—and I've just done the same thing myself. They're quite often conflated and compared in a way that they shouldn't be because, again, they're very different. Agriculture's very different to fisheries management, so I don't think we can compare them. So, I think we're in a very different space with this Bill, which is why I haven't made a statement as yet. And I think, because—and this sounds really obvious—the four countries share the same fish, we are much keener to work together to find a solution and to get the right framework in place. 34

Mandy Jones AM14:48:29

Video

But you are going to do that in the future.35

Lesley Griffiths AM14:48:30

Video

Yes.36

Mick Antoniw AM14:48:31

Video

Okay. Dawn Bowden. 37

Dawn Bowden AM14:48:32

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Video

Yes, thank you, Chair. Just a couple of questions on the common frameworks and the provisions of the Bill that relate solely to the establishment of common frameworks and those that refer to the common frameworks that are devolved to the Assembly but are not within our legislative competence. Can you just explain the two, because one shouldn't be in there, it seems to me, but both are in? So, perhaps you could just explain that. 38

Lesley Griffiths AM14:49:04

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Video

So, you're about the provisions in the Bill—39

Dawn Bowden AM14:49:06

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Video

The provisions, yes. So, the provisions in the Bill: we've got one area that relates solely to the establishment of the common frameworks. So, I just wanted to know a bit about that, but then whether there were any provisions in the Bill that don't relate to the common frameworks but are within our legislative competence. 40

Lesley Griffiths AM 14:49:21

Video

Okay. So, let's take the latter one first. So, there are several clauses in Schedule 1 that are around the joint fisheries committee—I think it's clauses 1 to 6—then we've obviously got the common licensing powers around the licences of vessels, which are in Schedule 3, and then Schedule 6 has got several clauses. And then Schedule 4 is in relation to the financial powers that I referred to before and Schedule 7 is around amendments to the Marine and Coastal Access Act 2009. And, if you're asking why some of them are in the Bill, it's because—and it's an amendment that we've been able to secure now around Wales and the Welsh zone. So, the 12 nautical miles are the Wales zone, and then we've got—. We didn't have, or the Assembly didn't have, legislative competence beyond the Wales zone and that was an inequity with Scotland, for instance. So, that's one of the amendments. I referred before to that we've secured some very important amendments, and that was one of them.41

14:50

Dawn Bowden AM 14:50:23

Video

Right. So, this is a matter of clarity, then.42

Lesley Griffiths AM 14:50:25

Video

Yes. So, we when we bring forward our own Welsh fisheries Bill, if we hadn't got that clause in, we wouldn't have been able to have the legislative competence in relation to that.43

Dawn Bowden AM14:50:34

Video

Okay, that's fine. Okay, thank you, Chair.44

Mick Antoniw AM14:50:36

Video

Okay. Suzy Davies.45

Suzy Davies AM14:50:39

Video

Yes, thank you. If I understand correctly, you as Welsh Government asked for some delegated powers in this process. Can you tell us why they're necessary? Why are they not adequately explained in the legislative consent memoranda? And can you give us an example of the regulations you might expect to introduce by using the powers that you've asked for?46

Lesley Griffiths AM14:50:56

Video

So, at our request, we had some powers in relation to financial assistance and I gave an example of why we need to have those powers. We also amended the Marine and Coastal Access Act 2009. That was to provide new powers to Welsh Ministers, again to enable for us to manage our fisheries post Brexit much more dynamically, if you like. And also, for nature conservation reasons, it was really important to have that. And, again, I go back to Wales and the Welsh zone—if we hadn't got the powers now, when the time comes for us to have our Welsh fisheries Bill, we wouldn't have been able to legislate in that area.47

Suzy Davies AM14:51:40

Video

Do any of these powers give you access to new policy that—? Is this just a like-for-like equivalent or have you got the opportunity here to introduce new policy by using the powers that you've asked for? 48

Lesley Griffiths AM14:51:52

Video

I think it's probably like-for-like and it's to enable us to be able to manage our fisheries in a much more meaningful way. We will have to, obviously, amend existing fisheries enactments. We may have to change EU legislation—so, retained EU legislation. We could only do that through primary legislation. So—49

Suzy Davies AM14:52:20

Video

Sorry to interrupt. Yes, I accept that—the operability of it—but it's just that, the powers as drafted, would they give you any openings, if you like, to introduce any new policy that wouldn't be consulted on?50

Lesley Griffiths AM 14:52:33

Video

That wouldn't be consulted—. I suppose it would be able to—. No, I don't think new policy in that. It would enable us to deviate from EU legislation, wouldn't it, but I don't think it would enable us to do it without consultation.51

Suzy Davies AM 14:52:44

Video

Okay. It's just that I recognise that, in the explanatory memorandum we did get, the reason you want to introduce an LCM in the first place is for uniformity. So, as far as I can tell, the powers give you opportunities to deviate from uniformity and I just wanted to know what you might want to do—some specific examples of how you might use those powers, then. Basically, why can't we wait for a Wales fisheries Bill? What's so urgent? 52

Lesley Griffiths AM 14:53:09

Video

Well, I go back to what I was saying about Wales and the Welsh zone, because, if we hadn't got those powers changed—53

Suzy Davies AM 14:53:16

Video

They're coming in now, though, aren't they?54

Lesley Griffiths AM 14:53:17

Video

Yes, but only because we had the amendment.55

Suzy Davies AM 14:53:20

Video

Oh, yes, and that's great for that, but there are still additional powers to that. I'm just wondering how you're intending to use them, really, particularly as you asked for them.56

Lesley Griffiths AM 14:53:27

Video

Graham.57

Graham Rees 14:53:28

Video

The issue that we're also dealing with is the risk of leaving the EU at the end of March, and so we need a toolset of powers to be able to manage fisheries and the marine environment from that point onwards. What these do in effect—so, the changes to the Marine and Coastal Access Act just change existing powers that are there at the moment to make them more flexible. The changes to the financial instrument change existing powers that are there to make them more broadly applicable, just to deal with the change in circumstances that we're likely to face as we exit the European Union.58

Suzy Davies AM 14:54:05

Video

Okay. So, they're not quite like-for-like, then, because you've just mentioned it twice—changes.59

Graham Rees 14:54:09

Video

They're enhancements to our existing powers. They're not changes to policy; they're enhancements.60

Suzy Davies AM 14:54:14

Video

Oh, enhancements. Well, again, we'd be quite interested in hearing about enhanced powers, because that's not what we would have been expecting. What would you use enhanced powers for? And why aren't they in the LCM, on why you'd need enhanced powers?61

Graham Rees 14:54:28

Video

At the moment, for example, in the Marine and Coastal Access Act, the permitting powers that are there at the moment would require us to remake legislation every time we amended a permit. As we're dealing with a lot of unknown circumstances as we exit the European Union, the ability

to be able to adapt those permits means that it would be a more fit-for-purpose way of controlling fisheries.62

Suzy Davies AM 14:54:53

Video

And you couldn't wait for a Wales fisheries Bill for that? 63

Graham Rees 14:54:56

Video

As the Minister's already—64

Suzy Davies AM 14:54:57

Video

It may just be timing.65

Lesley Griffiths AM 14:54:58

Video

Well, we might have to bring regulations in very quickly. It could be the first week of April, so—66

14:55

Suzy Davies AM14:55:03

Video

You've answered my second question that I don't need to ask.67

Lesley Griffiths AM14:55:05

Video

But, you know, we could have to make those changes incredibly quickly, so we would need to have the powers there. Obviously, you know the legislative programme that we currently have during this term—it's very full, so we're going to have to look at that, obviously, to bring it through the fisheries policy.68

Suzy Davies AM14:55:24

Video

Okay, but yes, enhanced powers. Thank you, Chair.69

Dai Lloyd AM14:55:30

Video

Mae'r rhan fwyaf o fy nghwestiynau i wedi cael eu hateb eisoes gan y Gweinidog. A allaf i jest gofyn un? Ai'r bwriad ydy i'r pwerau yn y Bil fod yn bwerau dros dro yn unig? Os nad y bwriad oedd iddyn nhw fod yn dros dro, pam nad yw'r Bil yn cynnwys cymal machlud, felly, os oedd disgwyl iddyn nhw fod yn hirdymor?70

The majority of my questions have already been answered by the Minister. Can I just ask one question? Is it the intention that the powers in the Bill should be temporary in nature? If it wasn't

the intention for them to be temporary in nature, then why doesn't the Bill contain a sunset provision, if they're expected to be longer term in nature?

Lesley Griffiths AM 14:55:54

Video

Yes, absolutely, they are temporary. I've always made it very clear that we expect to bring forward a Welsh fisheries policy. There's no sunset clause because we don't yet have fisheries built into our legislative programme, so that's the reason for that. 71

Dai Lloyd AM 14:56:09

Video

Iawn, diolch yn fawr. 72

Fine, thank you.

Mick Antoniw AM 14:56:16

Video

Okay. I'd just like to come on now to clause 18. The UK Government's own explanatory memorandum doesn't consider that clause 18 is a matter requiring consent. I was wondering if perhaps you would outline your position in that respect, particularly with regard to the legislative consent memorandum that's been laid, and, of course, subsequent discussions, because there has been an amendment laid to the Bill, I think in the Committee Stage, isn't it, that is obviously a result of that. So, it'd be helpful if you could outline, I suppose, the issues of consent that were of

concern, why they were of concern to you, what discussions you've had on them and how those have now been resolved, if they have been resolved.73

Lesley Griffiths AM 14:57:10

Video

They haven't fully been resolved. Basically, the UK Government doesn't share our view on this matter, so the discussions are ongoing. And, certainly, I've had these discussions at a ministerial level and, obviously, officials are continuing to have them. I absolutely recognise that the conduct of international obligations is reserved, but when you come, then, to implement those obligations, if they're in a devolved area, that's up to us. But, as I say, the UK Government doesn't really share the view on that.74

I think, myself, Scotland, Northern Ireland and the UK Government all agree that the Secretary of State needs to be able to set the top-level fishing opportunities in UK waters, bur our concern is, I suppose, around the very broad way that the power is currently written. So, at the moment, as it stands now, the DEFRA Secretary of State could decide on quotas for scallops in Cardigan bay. So, he would be able to set that at the moment. Now, Michael Gove tells me he wouldn't do that; okay, that's fair enough, I can take that, but what about future UK Governments? So, it's really important. He could also decide on the number of days that the fisheries was open, for instance, so we don't accept that that is the case. So, those discussions are ongoing. I am hopeful that we will get an agreement in the next few weeks.75

Mick Antoniw AM 14:58:44

Video

Okay. Dai, you wanted to come in on this.76

Dai Lloyd AM14:57:45

Video

Well, yes. The crux of this is that the implementation of international agreements in areas of devolved competence is not reserved, as you've said, and that seems to have been confirmed by the Supreme Court as regards the Scottish Government—their continuity Bill, which emphasised that. Yet, you're saying that the UK Government still does not accept that position.77

Lesley Griffiths AM14:59:07

Video

I think we're getting there. As I say, the discussions I've had—. I had a very brief discussion about this last Monday at the quadrilateral in London. I do think we're getting there. I don't know if Graham can add any more—I know you've got an official meeting this week. I don't know if you can add any more.78

Graham Rees14:59:21

Video

The issue hinges on the term 'international obligations' in the clause itself, which we feel is too broad. So, what we're seeking is some reassurance, maybe in the form of the mechanics of the inter-ministerial agreement that we've got in place, because this area does span reserved and devolved—some assurance that the National Assembly for Wales can be consulted and also provide a view on any changes that are brought forward that affect devolved administrations' powers.79

Dai Lloyd AM14:59:59

Video

Because this is the crux of it. And, are you minded, then, if you don't get the amendment that you're chasing, to withhold legislative competence in this matter?80

15:00

Lesley Griffiths AM15:00:06

Video

Certainly it's something that we're considering. I have red lines, and I think this, obviously, comes in that category. I think, as we work forward on the fisheries management framework, this is an area where officials know it is absolutely a priority that we get this right.81

Mick Antoniw AM15:00:27

Video

Carwyn Jones.82

Carwyn Jones AM15:00:29

Video

Thank you. Just concentrating on clause 18, it appears to give the UK Secretary of State powers to set a UK quota—or quotas, I should say, or quotae if you're particularly concerned about Latin correctness. But that quota would be a UK quota. Is it then the intention that it would be subdivided into four different quotas for each of the UK nations? Now, on the face of clause 18, there's no provision—it's silent on it; there's no provision on it—but, from your perspective, would you want there to be a Welsh quota for all species, rather than there being a UK quota, within which we'd have to operate?83

Lesley Griffiths AM 15:01:12

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Video

We've been having those discussions, because I think one of the things we've been looking at is: if we get additional quota, would it then be for the Secretary of State to top-slice it? And certainly the initial discussions that we've been having—. From our perspective, I think we would prefer that to Scotland and Northern Ireland sort of pushing out those—you know, having fixed quotas or for them just to go to the largest vessels, for instance. So, those are discussions that we are currently thinking about.84

Carwyn Jones AM 15:01:46

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Video

Just on another point, this conflict between the implementation of international obligations and their agreement, which is a problem we know exists, presumably, if the UK Government had an agreement with another state or entity that a certain number of boats should be able to fish in UK waters, how would that be allocated within the four nations? I suppose there isn't an answer to that yet—85

Lesley Griffiths AM 15:02:19

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Video

There isn't.86

Carwyn Jones AM15:02:19

Video

—but that's one of the problems. And secondly, again the Bill is silent on this, but I suspect this is something for further discussion: even if, for example, the Welsh Government was obliged to let a certain number of foreign-owned vessels fish in Welsh waters, it would actually be possible to prevent boats from elsewhere in the UK from fishing in Welsh waters. Now, I'm not saying that we would do that, because our fisheries are very small, as you know. But certainly, in Scotland, which has a maritime area I think bigger than England, there is the possibility, I suppose, that Welsh fishing boats could be stopped from fishing in Scottish waters if the Scottish Government decided to take that view.87

Lesley Griffiths AM15:03:01

Video

Taking the first part of your question, we haven't got an answer to that yet, but obviously we are bringing forward a joint fisheries statement. We are also looking at getting some sort of inter-ministerial agreement in the way that we've had on the agricultural side for a long time. So, these are part of the discussions that we are having, but you're quite right that Scotland are very vociferous in these parts of the discussions, as you can imagine.88

Mick Antoniw AM15:03:29

Video

Can I pursue that particular point? On the international treaties point, what the Supreme Court said was that, 'Well, of course, it is a reserved matter for UK Government in terms of the treaties,

but the implementation of that in devolved areas remains a matter for the devolved Government.' Now, that's a very clear statement of that. It's very interesting to note that it was English MPs, I think during the Committee Stage, who were actually saying, 'We need a disputes procedure because Wales could just walk away et cetera,' and I was very interested to see the boot on the other foot, because for how many years have we been arguing for a disputes procedure? I'm just wondering, is that the issue of a specific—you referred to a memorandum—? I get very uneasy about the use of memoranda because of their weakness. But here, clearly, the law is on our side, the constitution is on our side. Isn't this an opportunity where we should actually be setting the precedent for a disputes procedure now in respect of this?89

Lesley Griffiths AM 15:04:28

Video

I agree. I noticed the former First Minister throw his hands up in the air, because you're absolutely right—we've been pushing for this for a while, and this is why I think we will have an agreement on this, and that's why, whilst it's a red line, I am confident that I will be able to recommend the Bill—90

Mick Antoniw AM 15:04:44

Video

Will it be one that should go into the legislation itself?91

Lesley Griffiths AM 15:04:48

Video

Certainly that's a discussion that we can have, and I'd be very happy to update the committee following the meeting this week, if that would be helpful.92

Mick Antoniw AM15:04:55

Video

Suzy, you want to come in.93

Suzy Davies AM15:04:56

Video

That was my question: do you foresee, or do you have something that you've got in mind as a draft amendment to pass on to parliamentary colleagues about what you want to see happen to clause 18, because I tend to agree that it needs a statutory 'what happens next' built in somehow?94

15:05

Graham Rees15:05:13

Video

There haven't been any discussions about following a legislative approach for—. We have discussed dispute resolution in a fisheries context, but it's sort of wrapped up in the work of the joint fisheries statement, because the joint fisheries statement is how we come together, how we negotiate, how we respect the fact that Wales has the Well-being of Future Generations (Wales) Act 2015. So, our definition of sustainability is enshrined in legislation. So, the joint fisheries statement is to create that vehicle to respect both devolution and to enable us to bind ourselves together around some of these things. 95

Suzy Davies AM15:05:47

Video

Okay, so it's not a case where you can just simply put in a clause along the lines of, in this case, 'The UK Government commits to doing the divvying up via a particular mechanism'. 96

Graham Rees15:06:00

Video

It would be more appropriate for the joint fisheries statement, I would believe, largely because it needs to be fit for purpose in the future as well, and we're in an evolving position. 97

Suzy Davies AM15:06:10

Video

Okay, that's fine. Thank you. 98

Mick Antoniw AM15:06:12

Video

Just an add-on comment, of course, this has quite significant implications in other areas of international treaties—the trade Bill, for example, and others. So, I just make that point now. Dawn Bowden. 99

Dawn Bowden AM15:06:26

Video

Just on Schedule 6, which contains provision-conferring powers on Welsh Ministers, and conferred on the Secretary of State, by clauses 31 and 32. So, are those broad powers—? How is it your intention to use those particular powers, if that's not already been covered by Suzy's questions earlier? 100

Lesley Griffiths AM15:06:47

Video

These are very important powers. They're very powerful. I think this is probably a level of power that we haven't had before. They're really important so that we can amend and change the EU legislation that's retained without seeking primary legislation. As I said, we may need to deviate from EU legislation, so this would allow us to do so. It may help with implementing new international obligations. We'll need to keep pace with EU legislation, because they could—. Well, I won't say they could—legislation is always evolving, obviously, within the EU also.101 You'll be aware of the significant level of statutory instruments that are being made by Welsh Ministers at the moment; we had a very interesting debate in the Chamber last week with Suzy's motion. But also, the powers are necessary for us to be able to manage fish stocks and, obviously, the marine environment in the way that we want to in Wales. Graham just referred to, obviously, the FG Act. And I go back to what I was saying, I think it was in answer to Suzy before, in that we may need to make changes as early as the first week of April. So, we need to make sure that we've got these powers. 102

Dawn Bowden AM 15:08:01

Video

Of course, similar powers are conferred on Northern Ireland and Scotland as well, so that will give the opportunity for discussions nation by nation, presumably, in that sense. 103

Lesley Griffiths AM 15:08:09

Video

Yes. 104

Dawn Bowden AM 15:08:10

Video

Right, that's fine. Just a final question from me, Chair, if I might. It's just around the Marine and Coastal Access Act 2009 and whether there's been any progress on the discussions there around the—if I can find it; what was it you were talking to them about? So, it allows you to manage fisheries in a much more flexible way.105

Lesley Griffiths AM 15:08:32

Video

The permits. So, I think this has been a long-standing issue and, certainly since I've been in post, it's something that stakeholders have wanted to see—so, that ability to be able to reissue a permit without having to have legislation, so having that flexibility to be able to do that. Again, we've had some significant dialogue, really, with the UK Government around this issue, and I do expect to see further amendments coming forward. 106

Dawn Bowden AM15:09:00

Video

So, they're accepting of the point, are they? 107

Lesley Griffiths AM15:09:01

Video

Yes, absolutely, they're accepting of this point, and I think these further amendments are something that Graham will be discussing on Wednesday at the officials' meeting. But, yes, I think they absolutely accept that this is an area that we will have, and if we do get these further amendments, obviously, Chair, I will lay a further supplementary LCM. 108

Mick Antoniw AM15:09:22

Video

Okay. Carwyn Jones. 109

Carwyn Jones AM15:09:24

Video

Much of what I wanted to raise has been dealt with. In terms of clause 39 of the Bill, I very much welcome that to get the legislative and executive competence aligned. That's hugely important. As far as—. We've mentioned clause 18, but is there anything else in the Bill that causes you concern? If, for example, clause 18 was to be resolved satisfactorily, do you think then you'd be in a position to recommend an LCM to the Assembly? 110

Lesley Griffiths AM 15:09:56

Video

Yes. My big red line—and I think that was following discussions with you, really—was about Wales and the Welsh zone. I think that was really important, and for the Assembly as well, because it is really important that the National Assembly's powers were recognised in the way they were. So, I think once clause 18 is sorted, that will be all the red lines ticked off, and I will then be able to recommend. But obviously we've got the amendments coming through, we've got the Lords Committee Stage. I understand from a discussion I had with Michael Gove last Monday they are working to a much more accelerated timetable now, particularly with the threat of no deal. So, I'm very hopeful that will—that the Lords Committee Stage will be in the not-too-distant future and I'll be able to bring forward the supplementary LCM and then ask for the Assembly's approval. 111

15:10

Mick Antoniw AM 15:10:47

Video

Okay. Mandy Jones. 112

Mandy Jones AM15:10:49

Video

I think one of my questions has already been covered, but how will you ensure that the provisions in the Bill and the subordinate legislation under it are accessible to stakeholders and the wider public?113

Lesley Griffiths AM15:11:03

Video

Obviously, all UK Government legislation is widely available on their website, and in regard to subordinate legislation, we will make sure that any regulations that we bring forward will be accessible and transparent in the way we always do.114

Mandy Jones AM15:11:16

Video

Thank you.115

Mick Antoniw AM15:11:19

Video

Okay. Can I come back just to one area? I think there was something I wanted to cover in respect of questions. The Bill permits the Secretary of State to act in devolved areas with the consent of the devolved administrations, and I was just wondering if you could explain why this is the case, and the rationale for the approach, which doesn't seem to be completely clear from the legislative consent memorandum or the supplementary. What plans do you have for notifying the Assembly of any circumstances where consent is given?116

Lesley Griffiths AM15:11:53

Video

So, I thought it was quite clear in the LCM and the supplementary LCM, but, obviously, we're laying down all the SIs, and I know there were some concerns from Members around that, but as I tried to say to Suzy last week, I'm doing the work, the team are doing the work, it's just a matter of Assembly time. I think we worked out that if we brought forward every SI, it would take six months of Tuesdays and Wednesdays, and doing nothing else, but I am aware that, obviously, there are concerns around scrutiny, but we're laying statements as soon as we're—I mean, I've done two SIs in the last 24 hours, but I think it is—. I do understand the concerns around affirmative and negative, but I will make sure that where there are areas where we do have concerns, Members are aware of them.117

Mick Antoniw AM15:12:46

Video

Carwyn.118

Carwyn Jones AM15:12:48

Video

Yes, just an issue, really, just to confirm something. Much has been made of what is claimed to be a 200-mile exclusive economic zone around the UK, which doesn't, by and large, exist. As I understand it, there is a line that goes out towards Rockall in the north-west of Scotland, where it does exist, and an arrow that goes out from the Isles of Scilly into the Bay of Biscay, where it also exists. But if we could just confirm that the exclusive economic zone only exists out to 200 miles if there is no other country in the way.119

Lesley Griffiths AM15:13:23

Video

Yes. That's correct.120

Mick Antoniw AM15:13:28

Video

Okay, I think those are the questions we wanted to go—. We very much appreciate your attendance today. You will get, of course, a transcript of the evidence, and obviously there'll be other considerations by other committees, which have already taken place in this respect, and we look forward to any further information as this Bill proceeds. Thank you for you attendance.121

Lesley Griffiths AM15:13:49

Video

Thank you, Chair.

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

Agenda Item 11

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LEGISLATIVE CONSENT MEMORANDUM

Animal Welfare (Service Animals) Bill

1. This Legislative Consent Memorandum is laid under Standing Order ("SO") 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the National Assembly*.*

2. The Animal Welfare (Service Animals) Bill (the "Bill") was introduced in the House of Commons on 13th June 2018*.* The Bill can be found at: https://services.parliament.uk/bills/2017-19/animalwelfareserviceanimals.html.

Policy Objective(s)

3. The UK Government's stated policy objectives are for increased protection for service animals by amending section 4 of the Animal Welfare Act 2006 ("the 2006 Act"). It addresses public concerns about the application of section 4(3)(C)(ii) of the 2006 Act to attacks on service animals, where a defendant accused of causing unnecessary suffering to an animal could claim they were protecting themselves and are justified in using physical force against a service animal, causing it, effectively, necessary suffering.

Summary of the Bill

4. The Bill is sponsored by Sir Oliver Heald QC MP.

5. The Bill amends section 4 of the 2006 Act to require a court to disregard the consideration at section 4(3)(c)(ii) of the 2006 Act in certain circumstances when assessing whether suffering was unnecessary in the context of causing suffering to a service animal.

Provisions in the Bill for which consent is required

6. Clause 1: Harming a Service Animal
   This clause provides that the consideration should be disregarded if the animal was under the control of a relevant officer at the time of the conduct, and was being used by that officer at that time in the course of the officer's duties, in a way that was reasonable in all the circumstances and that the officer is not the defendant accused of causing the unnecessary suffering.

7. The clause defines relevant officer as a constable; a person (other than a constable) who has the powers of a constable or is otherwise employed for police purposes or is engaged to provide services for police purposes; or a prison custody officer within the meaning of Part 4 of the Criminal Justice

Act 1991. A prison officer is an example of a person "who has the powers of a constable" and who would be covered by the new section 3B(b).

8. The clause provides a power for the Secretary of State by regulations subject to the affirmative procedure to amend the definition of "relevant officer" and that only a person in the public service of the Crown may be specified in the definition by virtue of any regulations under the clause.

9. Clause 2: Extent, commencement and short title
   This clause provides for the Bill to extend to England and Wales and that the Bill will come into force two months after Royal Assent. The clause also specifies the short title of the Bill.

10. Consent is required for this because it falls within the legislative competence of the National Assembly for Wales in so far as it relates to Animal Health and Welfare under paragraph 1 of Part 1, Schedule 7 to the Government of Wales Act 2006.

Reasons for making these provisions for Wales in the Animal Welfare (Service Animals) Bill

11. Animal welfare is a priority of the Welsh Government and it is the view of the Government that it is appropriate to deal with these provisions in this UK Bill for reasons of timing and coherence. The provisions of the Bill align with the Welsh Government policy objectives regarding the promotion of animal welfare. Taking them forward in this UK Bill will mean that service animals in Wales will be afforded the same level of protection at the same time as those in England.

Financial implications

12. The Bill has little or no impact on costs to the criminal justice system.

Conclusion

13. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill as it represents the most practical and proportionate legislative vehicle to enable the provisions to apply in Wales.

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

Agenda Item 12

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

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