Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:
Committee Room 1 – Senedd
Meeting date: 11 February 2019
Meeting time: 14.30

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11.5 **Letter from the Minister for Finance and Trefnydd regarding the Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019**

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Statutory Instruments with Clear Reports

11 February 2019

SL(5)315 – The National Health Service (Paramedic Independent Prescriber and Paramedic Supplementary Prescriber) (Wales) (Miscellaneous Amendments) Regulations 2019

Procedure: Negative

These Regulations amend the National Health Service (General Medical Services Contracts) (Wales) Regulations 2004, the National Health Service (Free Prescriptions and Charges for Drugs and Appliances) (Wales) Regulations 2007 and the National Health Service (Pharmaceutical Services) (Wales) Regulations 2013 to extend the definition of prescriber to include paramedic independent prescribers. They also amend the definition of supplementary prescriber in those Regulations to include paramedic supplementary prescribers.

These Regulations also amend the Single Use Carrier Bags Charge (Wales) Regulations 2010 by extending the exemption from the requirement to charge for single use carrier bags to include products prescribed by a paramedic independent prescriber and a paramedic supplementary prescriber.

These amendments are made as a result of the introduction of independent prescribing and supplementary prescribing for registered paramedics under amendments made to the Human Medicines Regulations 2012 by the Human Medicines (Amendment) Regulations 2018.

Parent Act: National Health Service (Wales) Act 2006; Climate Change Act 2008

Date Made: 29 January 2019

Date Laid: 31 January 2019

Coming into force date: 22 February 2019

Agenda Item 3

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

11 February 2019

The following instruments were previously considered for sifting in accordance 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)310 – The Radioactive Contaminated Land (Modification of Enactments) (Wales) (Amendment) (EU Exit) Regulations 2019

Procedure: Negative

The Radioactive Contaminated Land (Modification of Enactments) (Wales) (Amendment) (EU Exit) Regulations 2019 correct minor, technical deficiencies within The Radioactive Contaminated Land (Modification of Enactments) (Wales) Regulations 2006 as amended. The purpose of the corrections is to ensure that the legislative framework governing radioactive contaminated land is operable post EU-exit.

Parent Act: European Union (Withdrawal) Act 2018

Sift requirements satisfied: 14 January 2019

Date Made: 22 January 2019

Date Laid: 28 January 2019

Coming into force date:

SL(5)313 – The Equality Act 2010 (Statutory Duties) (Wales) (Amendment) (EU Exit) Regulations 2019 (See pNeg(5)04)

Procedure: Negative

These Regulations amend regulation 18 of the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 by removing a reference to the 'Public Sector Directive' as that reference will be deficient after exit day.

The instrument provides that the terms which are currently defined by reference to the Public Sector Directive will instead be defined by reference to the Public Contracts Regulations 2015, as of exit day.

Parent Act: European Union (Withdrawal) Act 2018

Sift requirements satisfied: 14 January 2019

Date Made: 28 January 2019

Date Laid: 30 January 2019

Coming into force date:

Government Response to draft CLAC Report on The Equine Identification (Wales) Regulations 2019

This response refers to the Technical point raised in the draft CLAC report on the Equine Identification (Wales) Regulations 2019, in respect of regulation 8 (in Part 2 of the Regulations). Regulation 8 requires an owner to ask the issuing body to modify or update an equine's ID, if the responsible person (the owner or keeper) believes that any identity details contained in the equine's ID require modification or updating. The point raised by CLAC relates to cases where the responsible person is the keeper (not the owner), where there may be potential for an owner to be unaware of the keeper's belief that the ID needs to be amended. 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, CLAC's concern is that there is potential for an owner to commit an offence, and to be punished for that offence, where the owner did not know, and perhaps could not have known, that the equine's ID needed to be amended.

We have carefully considered the technical point raised. When drafting regulation 8, reliance was placed on Article 3(3) of Commission Regulation (EU) 2015/262 (as regards the methods for the identification of equidae) which provides: '*Member States and the issuing bodies referred to in Article 5(1)(a) and Article 5(1)(b) may require that the application to an issuing body for obtaining an identification document as provided for in Article 11 or for modifying identification details in an existing identification document as provided for in Article 27 is to be submitted by the owner*'. This approach was taken so as to achieve consistency with the obligation on an owner to make the application for an equine ID. We recognise that regulation 8 of the Equine Identification (Wales) Regulations 2019 does not place an express responsibility on the responsible person – where that person is the keeper – to notify the owner if the keeper believes that any identity details contained in the equine's ID require modification or updating. We are of the view this is not strictly necessary, in light of the wording of Article 3(2) of Regulation 2015/262: '*where the keeper is not the owner or one of the owners of the equine animal, it shall act in accordance with this Regulation on behalf of and in agreement with the owner*'. In practice, the relationship between keeper and owner tends to be a strong one, in which information concerning the need to modify identity details within an equine ID would flow freely between the parties.

On reflection, and recognising that an owner is guilty of an offence where there is failure to comply with the requirement under regulation 8, we recognise that an amendment to regulation 8 would aid clarity. Having considered the issue in light of the point identified, we intend to make amending Regulations as soon as possible, so as to provide that where the owner 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. This will mirror the position adopted under the equivalent regulations for England, and remove

the potential for an owner to be unaware of the keeper's belief that the ID needs to be amended. It will involve drafting a short SI, which will substitute 'responsible person' in regulation 8 with 'owner', and can be made under the negative resolution procedure. We believe that this addresses the point raised in the draft CLAC report.

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.

Committee consideration

The Committee considered the instrument at its meeting on 4 February 2019 and reports to the Assembly in line with the technical point identified and also to highlight issues as a result of the UK exiting the EU.

SL(5)314 – The Plant Health (Wales) (Amendment) Order 2019

Background and Purpose

This Order amends article 19 of the Plant Health (Wales) Order 2018 (the 2018 Order) which applies to certain plants intended for planting, which have been grown or are suspected to have been grown in another Member State or in Switzerland. It requires the importer of any such plants to notify an authorised inspector in writing of their landing no later than four days after the date of their landing in Wales. The amendment extends these requirements to plants of *Olea europaea* L.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

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

Implications arising from exiting the European Union

This Order amends the 2018 Order. The 2018 Order implements various EU obligations in respect of plant health law. The 2018 Order, as amended, will form part of retained EU law after exit day.

Government Response

No government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
5 February 2019

Agenda Item 5.2

SL(5)312 – The Household Waste Duty of Care (Fixed Penalties) (Wales) Regulations 2019

Background and Purpose

These Regulations insert a new section 34ZB into Part II (waste on land) of the Environmental Protection Act 1990 ("the Act").

Section 34(2A) of the Act sets out the duty of care that applies to occupiers of domestic property in relation to household waste produced at their property. That duty requires occupiers of domestic property in Wales to take all measures available to them as are reasonable in the circumstances to secure that any transfer made by the occupier of their household waste is only to a person that is authorised to accept it. Section 34(6) of the Act provides that a failure to comply with the section 34(2A) duty is an offence.

The new section 34ZB confers a power on waste authorities in Wales to give a notice offering a person the opportunity of discharging any liability for the offence by payment of a fixed penalty. When issuing a notice, the authority may offer a discount for early payment of a fixed penalty.

Procedure

Affirmative.

Technical Scrutiny

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

Merits Scrutiny

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

Implications arising from exiting the European Union

These Regulations are made under section 2(2) of the European Communities Act 1972. As such, they will become part of retained EU law on exit day.

Government Response

No government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
6 February 2019

pN(5)018 – The Trade in Animals and Related Products (Amendment) (Wales) (EU Exit) Regulations 2019

Background and Purpose

The Regulations make amendments to the Bovine Semen (Wales) Regulations 2008 ("the 2008 Regulations) and the Trade in Animals and Related Products (Wales) Regulations 2011 ("the 2011 Regulations") which concern trade in animals and related products.

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

Committee Recommendation as to Appropriate Procedure

We have considered the criteria set out in Standing Order 21.3C.

We recommend that the appropriate procedure for these Regulations is the negative resolution procedure.

The Committee may however wish to be aware (for information purposes) that the UK Government accepted a recommendation by the House of Lords Secondary Legislation Scrutiny Committee to upgrade the procedure for the Trade in Animals and Related Products (Amendment) (EU Exit) Regulations 2018 from the negative to the affirmative procedure. The House of Commons European Statutory Instruments Committee however were of the view that the negative procedure was appropriate.

The Trade in Animals and Related Products (Amendment) (EU Exit) Regulations 2018 were considered by the House of Lords Secondary Legislation Scrutiny Committee on 10th December 2018. The Regulations amend a number of pieces of legislation to include instruments applying to England only which make similar provision to the 2008 Regulations and the 2011 Regulations which are amended by this instrument.

In its **10th Report** of session 2017-2019, the Committee stated that:-

This instrument only makes provisions for the movements of animals and animal-related products from the EU into the UK. We asked the Department about the impact of a 'no deal' scenario on the movement of animals and animal products from the UK into the EU. Defra told us that the UK would be treated as a third country and would face considerable additional administrative requirements and potential costs for the commercial movement of animals and animal-related products and the non-commercial movement of pets. Defra also emphasised, however, that any potential reciprocal agreements with the EU would be the outcome of negotiations with the EU and are therefore beyond the scope of these draft Regulations.

This instrument proposes to maintain the current arrangements for the import of animals and animal products from the EU into the UK in a possible 'no deal' scenario. As Defra says, the question of whether the EU would reciprocate these arrangements is subject to negotiations with the EU rather than this instrument. The Committee frequently considers instruments where the UK Government's decision to maintain current

arrangements may not be reciprocated by the EU in a 'no deal' scenario. In this instance, given the potential impact of a 'no deal' exit on the export of animals and animal products and the movement of pets from the UK to the EU, the possible lack of reciprocity may be of interest to the House, and the House may expect the opportunity to debate the Department's choice of unilateral recognition of current arrangements. The Committee therefore recommends that the instrument should be subject to the affirmative procedure.

Government Response

No Welsh Government explanation is required in accordance with Standing Order 27.9B.

Legal Advisers
Constitutional and Legislative Affairs Committee
4th February 2019

Proposed Negative Statutory Instruments with Clear Reports

11 February 2019

Pn(5)020 – The Food and Feed Regulated Products (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Procedure: Negative

The Food and Feed Regulated Products (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 ("this Instrument") amend the Statutory Instruments listed below relating to EU-derived domestic regulations applying in Wales on: a) genetically modified food; b) materials and articles in contact with food; c) food additives, flavourings and enzymes.

- The Genetically Modified Food (Wales) Regulations 2004
- Materials and Articles in Contact with Food (Wales) Regulations 2012
- The Food Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations 2013

This Instrument is being made using the powers conferred by paragraph 1(1) of the 2018 Act. Regulation 3(6) is being made in exercise of powers under section 16(2) of the Food Safety Act 1990.

Regulation 3(6), made in exercise of powers under the Food Safety Act 1990, amends the Materials and Articles in Contact with Food (Wales) Regulations 2012 to make provision about the criteria applicable to the method for determining the level of vinyl chloride in materials and articles in contact with food and of determining the level of vinyl chloride released by those materials and articles.

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

Pn(5)021 – The Food and Feed Hygiene and Safety (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Procedure: Negative

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

These Regulations make amendments to secondary legislation in the field of food and feed hygiene and safety.

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

Parent Act: European Union (Withdrawal) Act 2018

Sift Requirements Satisfied: Yes

Satisfied: Yes

pN(5)017 – The Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2019

Background and Purpose

These Regulations make amendments to the Regulation and Inspection of Social Care (Wales) Act 2016 ("the 2016 Act") relating to the regulation of social workers and social care managers in Wales. Amendments are also made to the 2016 Act relating to exclusions to the scope of regulated advocacy services, to amend references to European Lawyers, and to the Mental Health Act 1983.

These amendments are required in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union without an agreement.

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

Committee Recommendation as to Appropriate Procedure

We have considered the criteria set out in Standing Order 21.3C.

For the following reasons, we recommend that the appropriate procedure for these Regulations is the affirmative resolution procedure:

1. Significant amendment of primary legislation

These Regulations repeal and amend significant sections of the Regulation and Inspection of Social Care (Wales) Act 2016. Such a significant amendment of primary legislation is, by itself, enough to require that these Regulations be debated in Plenary under the affirmative resolution procedure.

2. Social care qualifications

The current EU law that facilitates free movement of social care workers (via a reciprocal framework of rules for the recognition of social care qualifications) will, in the event of no deal, no longer apply after exit.

These Regulations set out the rules that will apply to the recognition of social care qualifications of social care workers from the European Economic Area and Switzerland after exit.

Under these Regulations, after exit, social care workers with EEA and Switzerland qualifications will be able to seek recognition of their qualifications through the existing international registration system of Social Care Wales. As stated in paragraph 4.7 of the Explanatory Memorandum to the Regulations:

> "As is currently the case for international applicants, EEA and Swiss qualifications will be assessed against the equivalent UK qualification standards for social care professionals, and if they are found to be comparable, SCW will be required to recognise the qualification, with no additional tests to

an applicant's practical skills. SCW will still be able check an applicant's language skills and whether there are concerns about their fitness to be registered. In cases where a qualification is not comparable, SCW will have discretion as to how it proceeds with the recognition process. There will be no obligation to offer compensatory measures where a qualification is not comparable to the UK qualification standard, as was previously the case under [EU law]."

Therefore, the subject matter of these Regulations, and the unknown impact they may have on social care in Wales (we note that no Regulatory Impact Assessment and no public consultation has been carried out), clearly raise matters of public and political importance.

3. These are not technical amendments

We disagree with the assertion in paragraph 2.2 of the Explanatory Memorandum that the subject matter of this subordinate legislation is "technical in nature and the amendments it makes are minor."

We also disagree with the assertion in paragraph 5.1 of the Explanatory Memorandum that the amendments "involve no substantial policy change".

In our opinion, a move away from mutual recognition of social care qualifications under EU law is a substantive policy change and must not be dealt with under the guise of "technical amendments". Further, whether the Welsh Government has a choice as to what new arrangements should be put in place or not, these Regulations still involve a significant policy change in the crucial and sensitive area of social care.

Government Response

If the Welsh Government does not agree with the Committee's recommendation as to the appropriate procedure for these Regulations, the Welsh Government must explain why it disagrees with the Committee's recommendation in accordance with Standing Order 27.9B.

Legal Advisers
Constitutional and Legislative Affairs Committee
4 February 2019

WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

EXITING THE EUROPEAN UNION, WALES

SOCIAL CARE, WALES

PROFESSIONAL QUALIFICATIONS, WALES

The Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

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

These Regulations make amendments to the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2) relating to the regulation of social workers and social care managers in Wales and make savings and transitional provision in connection with those amendments.

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

WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

EXITING THE EUROPEAN UNION, WALES

SOCIAL CARE, WALES

PROFESSIONAL QUALIFICATIONS, WALES

The Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2019

Sift requirement satisfied	***
Made	***
Laid before the National Assembly for Wales	***
Coming into force in accordance with regulation 1(2) and (3)	

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

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

(**1**) 2018 c. 16.

Title, commencement, application and interpretation

1.—(1) The title of these Regulations is the Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2019.

(2) Subject to paragraph (3), these Regulations come into force on exit day.

(3) Regulation 14(2) comes into force at 11.00pm on 31 December 2020.

(4) These Regulations apply in relation to Wales.

(5) In these Regulations, "the 2016 Act" means the Regulation and Inspection of Social Care (Wales) Act 2016(**1**).

PART 1

Amendments to legislation

Amendments to the Regulation and Inspection of Social Care (Wales) Act 2016

2. The 2016 Act is amended as follows.

3. In section 66(1) (interpretation of Parts 3 to 8), omit the definitions of "exempt person", "the General Systems Regulations", "national", "relevant European State", "visiting European social care manager part" and "visiting European social worker part"(**2**).

4. In section 74 (rules: fees)(**3**), omit subsection (3).

5. In section 80 (the register)(**4**), omit subsections (1)(c) and (d), (2)(c) and (d), and (3)(c) and (d).

6. In section 84 ("appropriately qualified")(**5**), omit paragraph (aa)(ii).

7. In section 85 (qualifications gained outside Wales – social workers)(**6**), omit subsection (1).

8. Omit section 85A (qualifications gained outside Wales – social care managers)(**7**).

(**1**) 2016 anaw 2.
(**2**) The definitions "visiting European social care manager part" and "visiting European social worker part" were inserted by S.I. 2016/1030, regulation 120(2).
(**3**) "European social worker part or visiting European social care manager part" was substituted by S.I. 2016/1030, regulation 122.
(**4**) Relevant amendments were made by S.I. 2016/1030, regulation 126(2), (3) and (4).
(**5**) Relevant amendments were made by S.I. 2016/1030, regulation 128(2) and (3).
(**6**) "- social workers" was inserted into the section heading by S.I. 2016/1030, regulation 130(2).
(**7**) Inserted by S.I. 2016/1030, regulation 132.

9. Omit section 90 (visiting social workers from relevant European States)(**1**).

10. Omit section 90A (visiting social care managers from relevant European States)(**2**).

11. Omit section 105 (other appeals: decisions made under the General Systems Regulations)(**3**).

12. In section 113 (continuing professional development), omit subsections (3) to (5)(**4**).

13. In section 164 (meaning of "registered person" in Part 6)(**5**)—

(a) for "the social worker part, an added part" substitute "the social worker part or an added part";

(b) omit "or the visiting European social worker part or visiting European social care manager part".

14.—(1) In Schedule 1 (regulated services: definitions), in paragraph 7 (advocacy services)—

(a) for sub-paragraph (4)(b) substitute—

"(b) an individual to whom—

(i) regulation 5(1)(a) of the Services of Lawyers and Lawyer's Practice (Revocation etc.) (EU Exit) Regulations 2019 (S.I. 2019/ XXX) applies,

(ii) regulation 5(1)(b) of those Regulations applied and who becomes a registered European lawyer (by virtue of a decision on the individual's application or on appeal),

(iii) regulation 5(1)(c) of those Regulations applied and whose suspension is terminated (whether on appeal or otherwise), or

(iv) regulation 5(1)(d) of those Regulations applied and whose registration as a registered European lawyer has been reinstated.";

(b) after sub-paragraph (4) insert—

(**1**) Relevant amendments were made by S.I. 2016/1030, regulation 134.
(**2**) Inserted by S.I. 2016/1030, regulation 136.
(**3**) Relevant amendments made by S.I. 2016/1030, regulation 138.
(**4**) Relevant amendments made by S.I. 2016/1030, regulation 140.
(**5**) "European social worker part or visiting European social care manager part" was substituted by S.I. 2016/1030, regulation 142(2).

"(4A) In sub-paragraph (4)(b), "registered European lawyer" has the same meaning as in regulation 2(1) of the European Communities (Lawyer's Practice) Regulations 2000 (S.I. 2000/1119) as it had effect immediately before exit day."

(2) In Schedule 1, in paragraph 7, omit sub-paragraph (4)(b) (and the preceding "or") and sub-paragraph (4A) (as substituted and inserted by paragraph (1) of this regulation).

Consequential amendment to the Mental Health Act 1983

15. In section 130H(7)(b) (independent mental health advocates for Wales: supplementary powers and duties) of the Mental Health Act 1983(**1**), omit "or the visiting European part".

PART 2

Savings and transitional provision

Pending applications

16.—(1) Where a relevant application is received before exit day, the 2016 Act continues to apply in relation to the application (including in relation to any appeal arising from it) on and after exit day as if the amendments made by Part 1 had not been made.

(2) In paragraph (1), "relevant application" means an application for—

(a) admission to the visiting European social worker part or the visiting European social care manager part of the register kept under section 80 of the 2016 Act,

(b) renewal of registration in those parts of the register under section 86(2) of the 2016 Act,

(c) readmission to those parts of the register under section 80 of the 2016 Act following lapse of registration, or

(d) restoration to those parts of the register under section 96(2) or 97(2) of the 2016 Act.

Visiting social workers and visiting social care managers: saving of old law

17.—(1) This regulation applies where—

(a) immediately before exit day—

(**1**) 1983 c. 20; section 130H was inserted by the Mental Health (Wales) Measure 2010 (nawm 7), section 34. Subsection (7)(b) of section 130H was amended by the 2016 Act, Schedule 3, paragraph 39.

(i) a person had the benefit of regulation 12 of the European Union (Recognition of Professional Qualifications) Regulations 2015(**1**) in respect of the provision by that person of services as a social worker or a social care manager, and

(ii) section 90(3) or 90A(3) of the 2016 Act applied to the person, and

(b) the person continues to have that benefit on or after exit day.

(2) Despite the amendments made by Part 1, the following provisions of the 2016 Act continue to apply in relation to the provision of those services by that person on and after exit day, as they applied before that day, subject to the modifications specified in regulation 18 (interpretation of saved provisions)—

(a) in section 66(1) (interpretation of Parts 3 to 8), the definitions of "exempt person", "the General Systems Regulations", "national", "relevant European State", "visiting European social care manager part" and "visiting European social worker part";

(b) section 74(3) (rules: fees);

(c) in section 80, subsections (1)(c) and (d), (2)(c) and (d) and (3)(c) and (d) (the register);

(d) section 90 (visiting social workers from relevant European States);

(e) section 90A (visiting social care managers from relevant European States);

(f) section 113(3) to (5) (continuing professional development).

(3) Paragraph (2) has effect until—

(a) in the case of a person who is registered in accordance with section 90(3) or 90A(3) of the 2016 Act, the day on which the person's name is removed from the register under section 90(6) or 90A(6) of that Act as the case may be;

(b) in the case of a person who is treated as being registered under section 90(4) or 90A(4) of that Act, the day on which the person's entitlement to be registered under section 90(3) or 90A(3) of the 2016 Act ceases by virtue of section 90(5) or 90A(5) of that Act as the case may be.

(**1**) S.I. 2015/2059.

Interpretation of provisions saved by regulation 17(2)

18. In so far as the following provisions of the 2016 Act continue to apply by virtue of regulation 17(2), they apply with the following modifications—

(a) in section 90 (visiting social workers from relevant European States)—

(i) subsection (1) is to be read as if "other than the United Kingdom" was omitted;

(ii) subsection (8) is to be read as if, for the definitions of "exempt person" and "the General Systems Regulations", there were substituted—

""exempt person" ("*person esempt*") means—

(a) a person who, immediately before exit day, was a national of a relevant European State,

(b) a person who, immediately before exit day, was a national of the United Kingdom and, at that time, was seeking access to, or pursuing, by virtue of an enforceable EU right, social work, or work as a social care manager, or

(c) a person who, immediately before exit day, was not a national of a relevant European State, but at that time was, by virtue of an enforceable EU right, entitled to be treated, for the purposes of access to and pursuit of social work or work as a social care manager, no less favourably than a national of a relevant European State,

and for the purposes of this definition, "enforceable EU right" ("*hawl UE orfodadwy*") means a right recognised and available in domestic law, immediately before exit day, by virtue of section 2(1) of the European Communities Act 1972 (c. 68);";

""the General Systems Regulations" ("*y Rheoliadau Systemau Cyffredinol*") means the European Union (Recognition of Professional Qualifications) Regulations 2015 (S.I. 2015/2059)—

(a) in relation to anything done before exit day, as they had effect at that time;

(b) otherwise, as (and only to the extent that) they have effect, on or after exit day, in relation to an entitlement which arose before exit day or arises as a result of something done before exit day;";

(b) in section 90A (visiting social care managers from relevant European States), subsection (1) is to be read as if "other than the United Kingdom" was omitted.

Internal Market Information System (IMI) Alerts

19.—(1) This regulation applies where—

(a) before exit day, a person is given notice of a decision made under regulation 67 of the European Union (Recognition of Professional Qualifications) Regulations 2015 to send an alert about the person, and

(b) either—

(i) the time limit for appeal against the decision under section 105(1)(c) of the 2016 Act expires on or after exit day, or

(ii) an appeal against the decision under that section is made, but not finally determined, before exit day.

(2) Despite the amendments made by Part 1, the following provisions of the 2016 Act continue to apply in relation to the decision on and after exit day as they applied before exit day—

(a) in section 66(1), the definition of "the General Systems Regulations";

(b) in section 90(8), the definition of "the General Systems Regulations";

(c) section 105(1) (but not paragraphs (a) and (b) of that subsection and subject to the modification specified in paragraph (3) of this regulation).

(3) For the purposes of paragraph (2)(c), section 105(1)(c) of the 2016 Act is to be read as if for "those Regulations" there were substituted "the General Systems Regulations (as they had effect at the time SCW's(**1**) decision was made)".

(4) In disposing of an appeal against the decision on or after exit day, the tribunal has (instead of the powers specified in section 105(5) of the 2016 Act) the power—

(a) to confirm the decision, or

(b) if the tribunal considers that the alert should be withdrawn or amended, to direct that Social Care Wales take such steps as the tribunal thinks fit to notify the European Commission of the tribunal's decision.

(**1**) *See* section 67(3) of the 2016 Act for the definition of Social Care Wales ("SCW").

Julie Morgan
Deputy Minister for Health and Social Services, under authority of the Minister for Health and Social Services, one of the Welsh Ministers
Date

Explanatory Memorandum to The Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2019

This Explanatory Memorandum has been prepared by Social Services and Integration Directorate 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/Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2019

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

Julie Morgan
Deputy Minister for Health and Social Services
29 January 2019

PART 1

1. Description

1.1 These Regulations make amendments to the Regulation and Inspection of Social Care (Wales) Act 2016 ("the 2016 Act") relating to the regulation of social workers and social care managers in Wales. Minor amendments are also made to the 2016 Act relating to exclusions to the scope of regulated advocacy services, to amend references to European Lawyers, and to the Mental Health Act 1983.

1.2 These amendments are required in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union without an agreement.

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

2.1 This instrument is being made under the EU (Withdrawal) Act 2018 and is required to be laid for sifting by the Constitutional and Legislative Affairs Committee under that Act.

2.2 The negative procedure is appropriate for this instrument as the subject-matter of the subordinate legislation is technical in nature and the amendments it makes are minor.

3. Legislative background

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

3.2 In accordance with the requirements of that Act the Deputy Minister for Health and Social Services has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

3.3 These Regulations are being made under the negative resolution procedure.

4. Purpose and intended effect of the legislation

What did any relevant EU law do before exit day?

4.1 The European Union Directive 2005/36/EC ("the 2005 Directive") facilitates the free movement of prescribed professionals across the European Economic Area (EEA) and Switzerland by setting out a reciprocal framework of rules for the recognition of professional qualifications. This enables European Economic Area (EEA) and Swiss nationals to have their

professional qualifications recognised and gain access in an EEA State or Switzerland to the regulated profession in which they are qualified in another EEA State or Switzerland, in order to work on a permanent or temporary basis.

4.2 The 2005 Directive is currently implemented via a main set of the regulations which set out the general approach, namely, the European Union (Recognition of Professional Qualifications) Regulations 2015 ("the 2015 Regulations") and then sectoral specific regulations. For the social care professions, the sectoral specific legislation is the European Qualifications (Health and Social Care Professions) Regulations 2016, which introduced a range of amendments relating to EEA and Swiss social workers and social care managers into the 2016 Act.

4.3 Lawyers of EU states are permitted to practice in the UK in certain circumstances under the Establishment of Lawyers Directive 98/5/EC. The UK Government implemented the Directive through the European Communities (Lawyer's Practice) Regulations 2000 (S.I. 2000 No. 1119). A lawyer of an Establishment Directive state also has the right to provide services in the UK on a temporary or visiting basis, under the Services of Lawyers Directive 77/249/EEC and the European Communities (Services of Lawyers) Order 1978. Both orders give effect to European Directives designed to facilitate the free movement of workers and mutual recognition of professional legal qualifications.

4.4 This instrument makes amendments to the 2016 Act relating to the regulation of EEA and Swiss social workers and social care managers in Wales, and to exclusions affecting the scope of regulated advocacy services, so that it operates effectively after exit date and corrects deficiencies which have arisen as a consequence of the UK leaving the EU.

Why is it being changed?

4.5 Following the UK's exit from the EU, the 2005 Directives will no longer apply to social workers and social care managers in the UK. The domestic legislation implementing the Directive will therefore not operate effectively after exit day.

4.6 In the event of no deal, after exit day, individuals with EEA and Swiss qualifications may seek recognition of their qualifications through the existing international registration system of Social Care Wales (SCW), the social care workforce regulator in Wales.

4.7 As is currently the case for international applicants, EEA and Swiss qualifications will be assessed against the equivalent UK qualification standards for social care professionals, and if they are found to be comparable, SCW will be required to recognise the qualification, with no additional tests to an applicant's practical skills. SCW will still be able check an applicant's language skills and whether there are concerns about their fitness to be registered. In cases where a qualification is not comparable,

SCW will have discretion as to how it proceeds with the recognition process. There will be no obligation to offer compensatory measures where a qualification is not comparable to the UK qualification standard, as was previously the case under the 2005 Directive.

What will it now do?

4.8 The purpose of these Regulations is to ensure that the provisions of the 2016 Act which relate to the regulation of social workers and social care managers will continue to be operable in Wales after the UK leaves the EU.

4.9 Regulations 4 -13 of these Regulations revoke the sections in the 2016 Act which relate to temporary and occasional service provision in Wales by social care professionals, as they rely on reciprocal arrangements with the EEA designed to facilitate free movement of persons and services which will no longer apply once the UK leaves the EU. The 2005 Directive sets out rules which facilitate the temporary and occasional provision of services, which allow EEA and Swiss professionals to practise across the EEA and Switzerland without the need for full registration with the relevant regulator. Providing temporary and occasional service allows the professional to remain established in their home state while practising in another state. Currently regulators can require professionals to issue a declaration of their intention to provide temporary services in advance.

4.10 The 2016 Act does not define what advocacy services are but gives power to Welsh Ministers to do this in regulations. However the 2016 Act does provide some parameters within which the definition in regulations must fall. The 2016 Act excludes from the scope of regulation a service provided by a person in the course of a legal activity (within the meaning of the Legal Services Act 2007) and this includes where the person is a European lawyer within the meaning of the European Communities (Services of Lawyers) Order 1978. The preferential rights for European lawyers to practise in the UK after exit day are being revoked but a transitional period is being provided for European Lawyers who registered before exit day to continue to practise in England, Wales and Northern Ireland until 31 December 2020. Regulation 14 of these Regulations makes minor consequential amendments to the exclusions from the scope of regulated advocacy services, to reflect that for the transitional period (to 31 December 2020) the exclusion will extend to cover services provided by a European Lawyer in the course of a legal activity (within the meaning of the Legal Services Act 2007).

4.11 Regulations 16 and 17 contain transitional and savings provisions relating to temporary and occasional service provision. Regulation 16 allows applications which have been made before exit day to provide services as a social worker or a social care manager in Wales on a temporary or occasional basis to be concluded under current arrangements as far as possible. Regulation 17 allows individuals already practising under temporary and occasional status in Wales to continue do so for up to one year. Under regulation 15 of the 2005 Directive, individuals seeking to

provide temporary or occasional services in the UK had to make a declaration of their intention to do so to Social Care Wales every 12 months. Regulation 17 allows those individuals who made such a declaration before exit day to continue to provide temporary and occasional services until the expiry of the declaration.

4.12 The Internal Market Information system (IMI) is an online tool used by regulators to share information. The 2005 Directive allows regulators within the EEA and Switzerland to share details about applicants and qualifications. It also provides an Alert Mechanism which makes EEA and Swiss regulators aware of a professional's compromised fitness to practise or restrictions on their practice. The UK will no longer have access to IMI when it exits the EU. Regulation 19 provides that where before exit day an alert was issued in respect of a person, that person will still be able to bring an appeal against the decision to issue the alert in certain circumstances.

5. Consultation

5.1 As these amendments are technical in nature and involve no substantial policy change, no public consultation was undertaken. The purpose of the instrument is solely to enable the current legislative and policy framework to remain unchanged by the withdrawal of the United Kingdom from the European Union.

5.2 Technical discussions concerning the proposed amendments to the provisions of the 2016 Act under these Regulations were held with Social Care Wales to ensure the amended recognition procedures are operable.

6. Regulatory Impact Assessment (RIA)

6.1 No RIA has been undertaken as there is no significant impact on business, charities, voluntary bodies or the public sector resulting from this instrument. The changes are technical in nature and ensure that a system of recognition of professional qualifications continues so that individuals with EEA and Swiss qualifications will have a means to seek recognition of their qualifications after exit day.

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

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

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

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

Part 2

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

1. Sifting statements

1.1 The Deputy Minister for Health and Social Services, Julie Morgan has made the following statement regarding the use of legislative powers in the European Union (Withdrawal) Act 2018:

1.2 “In my view the Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of the National Assembly for Wales (i.e. the negative procedure)”.

1.3 This is the case because the amendments being made are technical in nature and they are required to correct deficiencies in domestic legislation arising from the United Kingdom’s withdrawal from the European Union without an agreement.

2. Appropriateness statement

2.1 The Deputy Minister for Health and Social Services, Julie Morgan, has made the following statement regarding the use of legislative powers in the European Union (Withdrawal) Act 2018:

2.2 “In my view The Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2018 do no more than is appropriate”.

2.3 This is the case because the instrument only makes changes required to correct the deficiencies arising from the United Kingdom’s withdrawal from the European Union without an agreement.

3. Good reasons

3.1 The Deputy Minister for Health and Social Services, Julie Morgan, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

3.2 “In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

3.3 These are: The instrument makes amendments to domestic legislation relating to the recognition of qualifications of social care professionals. These amendments correct deficiencies arising from the United

Kingdom's withdrawal from the European Union without a withdrawal agreement and ensure an operable system for recognition at exit.

4. Equalities

4.1 The Deputy Minister for Health and Social Services, Julie Morgan, has made the following statements.

4.2 "This statutory instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

4.3 In relation to the statutory instrument, I, Julie Morgan, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010."

5. Explanations

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

6. Criminal offences

6.1 No criminal offences are being created in these Regulations. No criminal offences statements are therefore necessary.

7. Legislative sub-delegation

7.1 No new sub-delegation powers are being created by these amendments. No legislative sub-delegation statement is therefore required

8. Urgency

8.1 This statutory instrument is not being made urgently. No urgency statement is therefore required.

Rebecca Evans AC/AM
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref MA - L/CG/0052/19

29 January 2019

Dear Mick,

This letter is to inform you that I have laid a Statutory Instrument Consent Memorandum in the National Assembly for Wales in respect of the UK Statistics (Amendment etc) (EU Exit) Regulations 2019, as required by Standing Order 30A (SO30A).

I am also writing to inform you that I am not minded to table a motion for a debate about this SI in this instance. I have reached this decision on the basis that this SI is restricted to making corrections to the deficiencies in law that will arise as a result of the UK leaving the EU. The provisions of the SI are technical in nature, and there is no divergence in policy between the Welsh Government and the UK Government in this case.

SO30A provides that any Member may table a motion for a debate on this SI. Given the volume of legislation that the Assembly is considering, I do not believe that a debate on this SI would be a productive use of valuable Plenary time and I will not myself be seeking to initiate such a debate.

Yours sincerely,

Rebecca Evans.

Rebecca Evans AC/AM
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

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Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The UK Statistics (Amendment etc.) (EU Exit) Regulations 2019**
DATE	**29 January 2019**
BY	**Rebecca Evans AM, Minister for Finance and Trefnydd**

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

The UK Statistics (Amendment etc.) (EU Exit) Regulations 2019.

The Law which is being amended

- The Statistics and Registration Service Act 2007.
- A set of numerous retained EU laws, as detailed in the schedule to the S.I, that impose obligations on the UK to provide specific statistical data to Eurostat, the statistical office of the European Commission, for the purpose of producing European statistics
- A set of numerous retained EU laws, as detailed in the schedule to the S.I, that set out statistical standards and classifications that statistical data must meet for the purpose of producing European statistics
- The Data Protection Act 2018
- The Public Contract Regulations 2015
- The Concession Contracts Regulations 2016
- The Utilities Contracts Regulations 2016
- The Electricity Supplier Obligations (Amendment and Excluded Electricity) Regulations 2015.

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

The SI has no impact on the National Assembly's legislative competence or the Welsh Minister's executive competence as it is purely technical in nature.

The purpose of the amendments

The purpose of the amendments is to correct deficiencies in legislation arising from the UK leaving the European Union in relation to the provision of statistical information.

The regulations will update references to “EU obligations” and “EU legislation” in the Statistics and Registration Service Act 2007 to their retained equivalents. The regulations make one equivalent change in the Data Protection Act 2018.

The regulations will also amend the Public Contract Regulations 2015, the Concession Contracts Regulations 2016, the Utilities Contracts Regulations 2016 and the Electricity Supplier Obligations (Amendment and Excluded Electricity) Regulations 2015 to enable continued reference to a classification of economic activity.

Finally, the regulations will revoke a large amount of existing EU law (Regulations and Decisions) in relation to the provision and collation of statistics at an EU level.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-uk-statistics-amendment-etc-eu-exit-regulations-2019

A Statutory Instrument Consent Memorandum has also been laid in the National Assembly in respect of the amendments to the Statistics and Registration Service Act 2007.

Why consent was given

There is no divergence between the Welsh Government and the UK Government on the policy for the correction. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting to a UK wide SI ensures that there is a coherent approach wherever possible in preparing the statute book to function properly after the UK has left the EU. This approach will promote the clarity and accessibility of legislation across the UK. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The UK Statistics (Amendment etc) (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 ("the 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 UK Statistics (Amendment etc) (EU Exit) Regulations 2019 ("the Regulations") was laid before Parliament on 24th January 2019 and is now being laid before the Assembly. The order can be found at: https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-uk-statistics-amendment-etc-eu-exit-regulations-2019

Summary of the Statutory Instrument and its objective

3. The purpose of the Regulations is to correct deficiencies in legislation arising from the UK leaving the European Union in relation to the provision of statistical information.

4. The Regulations will update references to "EU obligations" and "EU legislation" from the Statistics and Registration Services Act 2007 by replacing them with their retained equivalents. The Regulations also make an equivalent amendment to the Data Protection Act 2018.

5. The Regulations will also amend the Public Contract Regulations 2015, the Concession Contracts Regulations 2016, the Utilities Contracts Regulations 2016 and the Electricity Supplier Obligations (Amendment and Excluded Electricity) Regulations 2015 to enable the retention of references to a classification of economic activity. The latter of those is outside devolved competence.

6. The Regulations also revoke retained EU law that requires the UK to provide statistical information to the European Commission, but since these amendments could not be made by the Welsh Ministers (as they are outside devolved competence) they do not require approval.

Relevant provision to be made by the SI

7. The Regulations amends sections 29, 39, 45A, 45B and 45C of the Statistics and Registration Service Act 2007to update references to EU law and EU obligations to their retained EU law equivalents. This will ensure that those references continue to operate effectively post exit. For example, where the 2007 Act prohibits the release of information which

would be contrary to EU law that bar to release will continue to be effective post exit.

8. It is the view of the Welsh Government that the provisions described in paragraph 7 above fall within the legislative competence of the National Assembly for Wales in so far as they relate to the provision of statistical information.

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 for the correction. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting to a UK wide SI ensures that there is a single legislative framework across the UK 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.

Rebecca Evans AM
Minister for Finance and Trefnydd
January 2019

STATUTORY INSTRUMENTS

2019 No.0000

EXITING THE EUROPEAN UNION

UK STATISTICS

The UK Statistics (Amendment etc.) (EU Exit) Regulations 2019

Sift requirements satisfied	*0000*
Made - - - -	*0000*
Laid before Parliament	*0000*
Coming into force in accordance with regulation 1	

The Minister for the Cabinet Office makes these Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(**a**).

The requirements of paragraph 3(2) of Schedule 7 to that Act (relating to the appropriate Parliamentary procedure for these regulations) have been satisfied.

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the UK Statistics (Amendment etc.) (EU Exit) Regulations 2019 and come into force on exit day.

PART 2

Amendments to primary legislation

Amendment of the Statistics and Registration Service Act 2007

2.—(1) The Statistics and Registration Service Act 2007(**b**) is amended as follows.

(2) In section 29(5) for "EU obligation" substitute "retained EU obligation".

(**a**) 2018 c.16.
(**b**) 2007 c.18. Sections 29(5) and 39(4)(b) were amended by S.I. 2011/1043.

(3) In section 39(4)(b) for "an EU obligation" substitute "a retained EU obligation".

(4) In section 45A(12)(c)(**a**)—

(a) for "directly applicable EU legislation" substitute "retained direct EU legislation"; and

(b) for "any enactment to the extent that it implements EU legislation" substitute "anything that is EU-derived domestic legislation by virtue of section 2(2)(a) or (b) of the European Union (Withdrawal) Act 2018".

(5) In section 45B(3)(c)(**b**)—

(a) for "directly applicable EU legislation" substitute "retained direct EU legislation"; and

(b) for "any enactment to the extent that it implements EU legislation" substitute "anything that is EU-derived domestic legislation by virtue of section 2(2)(a) or (b) of the European Union (Withdrawal) Act 2018".

(6) In section 45C(13)(d)—

(a) for "directly applicable EU legislation" substitute "retained direct EU legislation"; and

(b) for "any enactment to the extent that it implements EU legislation" substitute "anything that is EU-derived domestic legislation by virtue of section 2(2)(a) or (b) of the European Union (Withdrawal) Act 2018".

Amendment of the Data Protection Act 2018

3. In paragraph 1(3) of Schedule 1 to the Data Protection Act 2018(**c**), in the definition of "social protection", for "(as amended from time to time)" substitute "as it had effect in EU law immediately before exit day".

PART 3

Amendments to subordinate legislation

Amendment of the Public Contracts Regulations 2015

4. In Schedule 2 to the Public Contracts Regulations 2015(**d**) (activities constituting works), after "Council Regulation (EEC) No 3037/90 on the classification of economic activities in the European Community" insert "as that Regulation had effect in EU law immediately before exit day".

Amendment of the Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015

5. In regulation 2(1) of the Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015 (interpretation)(**e**), in the definition of "NACE Rev 2", after "Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 (relating to the statistical classification of economic activities)(3)" insert "as that Regulation had effect in EU law immediately before exit day".

(**a**) Section 45A was inserted by section 79 of the Digital Economy Act 2017 (c. 30). Subsection (12)(c) was amended by section 211 of, and Schedule 19 to, the Data Protection Act 2018 (c. 12).

(**b**) Sections 45B and 45C were inserted by section 80 of the Digital Economy Act 2017 (c. 30). Sections 45B(3)(c) and 45C(13)(d) were amended by section 211 of, and Schedule 19 to, the Data Protection Act 2018 (c. 12).

(**c**) 2018 c12.

(**d**) S.I. 2015/102.

(**e**) S.I. 2015/721.

Amendment of the Concession Contracts Regulations 2016

6. In Schedule 1 to the Concession Contracts Regulations 2016(**a**) (activities constituting works), after "Council Regulation (EEC) No 3037/90 on the classification of economic activities in the European Community" insert "as that Regulation had effect in EU law immediately before exit day".

Amendment of the Utilities Contracts Regulations 2016

7. In Schedule 1 to the Utilities Contracts Regulations 2016(**b**) (activities constituting works), after "Council Regulation (EEC) No 3037/90 on the classification of economic activities in the European Community" insert "as that Regulation had effect in EU law immediately before exit day".

PART 4

Amendment and revocation of retained direct EU legislation

Amendment and revocation of retained direct EU legislation

8.—(1) The retained EU regulations and EU decisions set out in Schedule 1 are revoked.

(2) The points in Annex XXI to the EEA agreement, as it forms part of domestic law, set out in Schedule 2 are omitted.

Name
Minister for the Constitution
Cabinet Office

Date

SCHEDULE 1

Regulation 8(1)

Retained EU regulations and EU decisions to be revoked

1. Council Decision 72/279/EEC of 31 July 1972 setting up a Standing Committee for Agricultural Statistics.

2. Council Regulation (EEC) No 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community.

3. Council Regulation (EEC) No 696/93 of 15 March 1993 on the statistical units for the observation and analysis of the production system in the Community.

4. Council Decision 93/704/EC of 30 November 1993 on the creation of a Community database on road accidents.

5. Council Regulation (EC) No 2744/95 of 27 November 1995 on statistics on the structure and distribution of earnings.

6. Council Regulation (EC) No 577/98 of 9 March 1998 on the organisation of a labour force sample survey in the Community.

7. Council Regulation (EC) No 1165/98 of 19 May 1998 concerning short-term statistics.

8. Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank.

(**a**) S.I. 2016/273.
(**b**) S.I. 2016/274.

9. Council Regulation (EC) No 530/1999 of 9 March 1999 concerning structural statistics on earnings and on labour costs.

10. Commission Regulation (EC) No 1225/1999 of 27 May 1999 concerning the definitions of characteristics for insurance services statistics.

11. Commission Regulation (EC) No 1227/1999 of 28 May 1999 concerning the technical format for the transmission of insurance services statistics.

12. Commission Regulation (EC) No 1228/1999 of 28 May 1999 concerning the series of data to be produced for insurance services statistics.

13. Commission Regulation (EC) No 1618/1999 of 23 July 1999 concerning the criteria for the evaluation of quality of structural business statistics.

14. Commission Regulation (EC) No 1726/1999 of 27 July 1999 implementing Council Regulation (EC) No 530/1999 concerning structural statistics on earnings and on labour costs as regards the definition and transmission of information on labour costs.

15. Commission Regulation (EC) No 1924/1999 of 8 September 1999 implementing Council Regulation (EC) No 577/98 on the organisation of a labour force sample survey in the Community as regards the 2000 to 2002 programme of ad hoc modules to the labour force survey.

16. Commission Regulation (EC) No 1925/1999 of 8 September 1999 implementing Council Regulation (EC) No 577/98 on the organisation of a labour force sample survey in the Community concerning the specification of the 2000 ad hoc module on transition from school to working life.

17. Commission Regulation (EC) No 1575/2000 of 19 July 2000 implementing Council Regulation (EC) No 577/98 on the organisation of a labour force sample survey in the Community concerning the codification to be used for data transmission from 2001 onwards.

18. Commission Regulation (EC) No 1578/2000 of 19 July 2000 implementing Council Regulation (EC) No 577/98 on the organisation of a labour force sample survey in the Community concerning the specification of the 2001 ad hoc module on length and patterns of working time.

19. Commission Regulation (EC) No 1626/2000 of 24 July 2000 implementing Council Regulation (EC) No 577/98 on the organisation of a labour force sample survey in the Community as regards the 2001 to 2004 programme of ad hoc modules to the labour force survey.

20. Commission Regulation (EC) No 1897/2000 of 7 September 2000 implementing Council Regulation (EC) No 577/98 on the organisation of a labour force sample survey in the Community concerning the operational definition of unemployment.

21. Commission Regulation (EC) No 1916/2000 of 8 September 2000 on implementing Council Regulation (EC) No 530/1999 concerning structural statistics on earnings and on labour costs as regards the definition and transmission of information on structure of earnings.

22. Commission Regulation (EC) No 586/2001 of 26 March 2001 on implementing Council Regulation (EC) No 1165/98 concerning short-term statistics as regards the definition of Main Industrial Groupings (MIGS).

23. Commission Regulation (EC) No 606/2001 of 23 March 2001 on implementing Council Regulation (EC) No 1165/98 concerning short-term statistics as regards derogations of Member States.

24. Commission Regulation (EC) No 1566/2001 of 12 July 2001 implementing Council Regulation (EC) No 577/98 on the organisation of a labour force sample survey in the Community concerning the specification of the 2002 ad hoc module on employment of disabled people.

25. Commission Regulation (EC) No 2163/2001 of 7 November 2001 concerning the technical arrangements for data transmission for statistics on the carriage of goods by road.

26. Commission Regulation (EC) No 29/2002 of 19 December 2001 amending Council Regulation (EEC) No 3037/90 on the statistical classification of economic activities in the European Community.

27. Regulation (EC) No 1221/2002 of the European Parliament and of the Council of 10 June 2002 on quarterly non-financial accounts for general government.

28. Commission Regulation (EC) No 1313/2002 of 19 July 2002 implementing Council Regulation (EC) No 577/98 on the organisation of a labour force sample survey in the Community concerning the specification of the 2003 ad hoc module on lifelong learning.

29. Regulation (EC) No 1991/2002 of the European Parliament and of the Council of 8 October 2002 amending Council Regulation (EC) No 577/98 on the organisation of a labour force sample survey in the Community.

30. Commission Regulation (EC) No 2104/2002 of 28 November 2002 adapting Council Regulation (EC) No 577/98 on the organisation of a labour force sample survey in the Community and Commission Regulation (EC) No 1575/2000 implementing Council Regulation (EC) No 577/98 as far as the list of education and training variables and their codification to be used for data transmission from 2003 onwards are concerned.

31. Regulation (EC) No 2150/2002 of the European Parliament and of the Council of 25 November 2002 on waste statistics.

32. Commission Regulation (EC) No 6/2003 of 30 December 2002 concerning the dissemination of statistics on the carriage of goods by road.

33. Regulation (EC) No 450/2003 of the European Parliament and of the Council of 27 February 2003 concerning the labour cost index.

34. Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS).

35. Regulation (EC) No 1177/2003 of the European Parliament and of the Council of 16 June 2003 concerning Community statistics on income and living conditions (EU-SILC).

36. Council Regulation (EC) No 1216/2003 of 7 July 2003 implementing Regulation (EC) No 450/2003 of the European Parliament and of the Council concerning the labour cost index.

37. Council Regulation (EC, Euratom) No 1287/2003 of 15 July 2003 on the harmonisation of gross national income at market prices (GNI Regulation).

38. Decision No 1608/2003/EC of the European Parliament and of the Council of 22 July 2003 concerning the production and development of Community statistics on science and technology.

39. Commission Regulation (EC) No 1980/2003 of 21 October 2003 implementing Regulation (EC) No 1177/2003 of the European Parliament and of the Council concerning Community statistics on income and living conditions (EU-SILC) as regards definitions and updated definitions.

40. Commission Regulation (EC) No 1981/2003 of 21 October 2003 implementing Regulation (EC) No 1177/2003 of the European Parliament and of the Council concerning Community statistics on income and living conditions (EU-SILC) as regards the fieldwork aspects and the imputation procedures.

41. Commission Regulation (EC) No 1982/2003 of 21 October 2003 implementing Regulation (EC) No 1177/2003 of the European Parliament and of the Council concerning Community statistics on income and living conditions (EU-SILC) as regards the sampling and tracing rules.

42. Commission Regulation (EC) No 1983/2003 of 7 November 2003 implementing Regulation (EC) No 1177/2003 of the European Parliament and of the Council concerning Community statistics on income and living conditions (EU-SILC) as regards the list of target primary variables.

43. Regulation (EC) No 2257/2003 of the European Parliament and of the Council of 25 November 2003 amending Council Regulation (EC) No 577/98 on the organisation of a labour force sample survey in the Community to adapt the list of survey characteristics.

44. Commission Regulation (EC) No 16/2004 of 6 January 2004 implementing Regulation (EC) No 1177/2003 of the European Parliament and of the Council concerning Community statistics on income and living conditions (EU-SILC) as regards the list of target secondary variables relating to the 'intergenerational transmission of poverty'.

45. Commission Regulation (EC) No 28/2004 of 5 January 2004 implementing Regulation (EC) No 1177/2003 of the European Parliament and of the Council concerning Community statistics on income and living conditions (EU-SILC) as regards the detailed content of intermediate and final quality reports.

46. Commission Regulation (EC) No 29/2004 of 8 January 2004 adopting the specifications of the 2005 ad hoc module on reconciliation between work and family life provided for by Council Regulation (EC) No 577/98.

47. Regulation (EC) No 48/2004 of the European Parliament and of the Council of 5 December 2003 on the production of annual Community statistics on the steel industry for the reference years 2003-2009.

48. Regulation (EC) No 138/2004 of the European Parliament and of the Council of 5 December 2003 on the economic accounts for agriculture in the Community.

49. Commission Regulation (EC) No 317/2004 of 23 February 2004 on adopting derogations from the provisions of Regulation (EC) No 2150/2002 of the European Parliament and of the Council on waste statistics as regards Austria, France and Luxembourg.

50. Commission Decision 2004/452/EC of 29 April 2004 laying down a list of bodies whose researchers may access confidential data for scientific purposes (notified under document number C(2004) 1664).

51. Regulation (EC) No 501/2004 of the European Parliament and of the Council of 10 March 2004 on quarterly financial accounts for general government.

52. Commission Regulation (EC) No 574/2004 of 23 February 2004 amending Annexes I and III to Regulation (EC) No 2150/2002 of the European Parliament and of the Council on waste statistics.

53. Commission Regulation (EC) No 642/2004 of 6 April 2004 on precision requirements for data collected in accordance with Council Regulation (EC) No 1172/98 on statistical returns in respect of the carriage of goods by road.

54. Regulation (EC) No 808/2004 of the European Parliament and of the Council of 21 April 2004 concerning Community statistics on the information society.

55. Council Regulation (EC) No 1222/2004 of 28 June 2004 concerning the compilation and transmission of data on the quarterly government debt.

56. Commission Regulation (EC) No 1829/2004 of 21 October 2004 adopting derogations from the provisions of Regulation (EC) No 2150/2002 of the European Parliament and of the Council on waste statistics with regard to Belgium, Portugal, Greece and Cyprus.

57. Commission Regulation (EC) No 13/2005 of 6 January 2005 implementing Regulation (EC) No 1177/2003 of the European Parliament and of the Council concerning Community statistics on income and living conditions (EU-SILC) as regards the list of target secondary variables relating to 'social participation'.

58. Commission Regulation (EC) No 109/2005 of 24 January 2005 on the definition of the economic territory of Member States for the purposes of Council Regulation (EC, Euratom) No 1287/2003 on the harmonisation of gross national income at market prices.

59. Commission Regulation (EC, Euratom) No 116/2005 of 26 January 2005 on the treatment of repayments of VAT to non-taxable persons and to taxable persons for their exempt activities, for the purposes of Council Regulation (EC, Euratom) No 1287/2003 on the harmonisation of gross national income at market prices.

60. Regulation (EC) No 184/2005 of the European Parliament and of the Council of 12 January 2005 on Community statistics concerning balance of payments, international trade in services and foreign direct investment.

61. Commission Regulation (EC) No 306/2005 of 24 February 2005 amending Annex I to Regulation (EC) No 138/2004 of the European Parliament and of the Council on the economic accounts for agriculture in the Community.

62. Commission Regulation (EC) No 384/2005 of 7 March 2005 adopting the programme of ad hoc modules, covering the years 2007 to 2009, for the labour force sample survey provided for by Council Regulation (EC) No 577/98.

63. Commission Decision 2005/686/EC of 22 July 2005 granting derogations to certain Member States with respect to the statistics to be compiled for the reference years 2003, 2004 and 2005 pursuant to Regulation (EC) No 753/2004 (notified under document number C(2005) 2773).

64. Commission Decision 2005/746/EC of 20 October 2005 amending Decision 2004/452/EC concerning the list of bodies whose researchers may access confidential data for scientific purposes (notified under document number C(2005) 4026).

65. Commission Regulation (EC) No 772/2005 of 20 May 2005 concerning the specifications for the coverage of the characteristics and the definition of the technical format for the production of annual Community statistics on steel for the reference years 2003 to 2009.

66. Commission Regulation (EC) No 782/2005 of 24 May 2005 setting out the format for the transmission of results on waste statistics.

67. Commission Regulation (EC) No 783/2005 of 24 May 2005 amending Annex II to Regulation (EC) No 2150/2002 of the European Parliament and of the Council on waste statistics.

68. Commission Regulation (EC) No 784/2005 of 24 May 2005 adopting derogations from the provisions of Regulation (EC) No 2150/2002 of the European Parliament and of the Council on waste statistics as regards Lithuania, Poland and Sweden.

69. Commission Regulation (EC) No 1099/2005 of 13 July 2005 implementing Regulation (EC) No 808/2004 of the European Parliament and of the Council concerning Community statistics on the information society.

70. Regulation (EC) No 1158/2005 of the European Parliament and of the Council of 6 July 2005 amending Council Regulation (EC) No 1165/98 concerning short-term statistics.

71. Regulation (EC) No 1161/2005 of the European Parliament and of the Council of 6 July 2005 on the compilation of quarterly non-financial accounts by institutional sector.

72. Commission Regulation (EC) No 1445/2005 of 5 September 2005 defining the proper quality evaluation criteria and the contents of the quality reports for waste statistics for the purposes of Regulation (EC) No 2150/2002 of the European Parliament and of the Council.

73. Commission Regulation (EC) No 1446/2005 of 5 September 2005 adopting derogations from the provisions of Regulation (EC) No 2150/2002 of the European Parliament and of the Council on waste statistics as regards the United Kingdom and Austria.

74. Regulation (EC) No 1552/2005 of the European Parliament and of the Council of 7 September 2005 on statistics relating to vocational training in enterprises.

75. Regulation (EC) No 1553/2005 of the European Parliament and of the Council of 7 September 2005 amending Regulation (EC) No 1177/2003 concerning Community statistics on income and living conditions (EU-SILC).

76. Commission Regulation (EC) No 1722/2005 of 20 October 2005 on the principles for estimating dwelling services for the purpose of Council Regulation (EC, Euratom) No 1287/2003 on the harmonisation of gross national income at market prices.

77. Commission Regulation (EC) No 1737/2005 of 21 October 2005 amending Regulation (EC) No 1726/1999 as regards the definition and transmission of information on labour costs.

78. Commission Regulation (EC) No 1738/2005 of 21 October 2005 amending Regulation (EC) No 1916/2000 as regards the definition and transmission of information on the structure of earnings.

79. Regulation (EC) No 1888/2005 of the European Parliament and of the Council of 26 October 2005 amending Regulation (EC) No 1059/2003 on the establishment of a common classification of territorial units for statistics (NUTS) by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia to the European Union.

80. Commission Regulation (EC) No 198/2006 of 3 February 2006 implementing Regulation (EC) No 1552/2005 of the European Parliament and of the Council on statistics relating to vocational training in enterprises.

81. Commission Decision 2006/209/EC of 9 March 2006 granting derogations to bring Member States' statistical systems into conformity with Regulation (EC) 1161/2005 of the European Parliament and of the Council (notified under document number C(2006) 706).

82. Commission Regulation (EC) No 315/2006 of 22 February 2006 implementing Regulation (EC) No 1177/2003 of the European Parliament and of the Council concerning Community statistics on income and living conditions (EU-SILC) as regards the list of target secondary variables relating to housing conditions.

83. Commission Regulation (EC) No 341/2006 of 24 February 2006 adopting the specifications of the 2007 ad hoc module on accidents at work and work-related health problems provided for by Council Regulation (EC) No 577/98 and amending Regulation (EC) 384/2005.

84. Commission Regulation (EC) No 601/2006 of 18 April 2006 implementing Regulation (EC) No 184/2005 of the European Parliament and of the Council as regards the format and the procedure for the transmission of data.

85. Commission Regulation (EC) No 602/2006 of 18 April 2006 adapting Regulation (EC) No 184/2005 of the European Parliament and of the Council through the updating of data requirements.

86. Commission Regulation (EC) No 676/2006 of 2 May 2006 amending Regulation (EC) No 1980/2003 implementing Regulation (EC) No 1177/2003 of the European Parliament and of the Council concerning Community statistics on income and living conditions (EU-SILC) as regards definitions and updated definitions.

87. Commission Regulation (EC) No 698/2006 of 5 May 2006 implementing Council Regulation (EC) No 530/1999 as regards quality evaluation of structural statistics on labour costs and earnings.

88. Commission Regulation (EC) No 909/2006 of 20 June 2006 amending Annexes I and II to Regulation (EC) No 138/2004 of the European Parliament and of the Council on the economic accounts for agriculture in the Community.

89. Commission Regulation (EC) No 1031/2006 of 4 July 2006 implementing Regulation (EC) No 808/2004 of the European Parliament and of the Council concerning Community statistics on the information society.

90. Commission Regulation (EC) No 1502/2006 of 28 September 2006 implementing Council Regulation (EC) No 1165/98 concerning short-term statistics as regards derogations to be granted to Member States.

91. Commission Regulation (EC) No 1503/2006 of 28 September 2006 implementing and amending Council Regulation (EC) No 1165/98 concerning short-term statistics as regards definitions of variables, list of variables and frequency of data compilation.

92. Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) 3037/90 as well as certain EC Regulations on specific statistical domains.

93. Regulation (EC) 1921/2006 of the European Parliament and of the Council of 18 December 2006 on the submission of statistical data on landings of fishery products in Member States and repealing Council Regulation (EEC) No 1382/91.

94. Commission Regulation (EC) No 105/2007 of 1 February 2007 amending the annexes to Regulation (EC) No 1059/2003 of the European Parliament and of the Council on the establishment of a common classification of territorial units for statistics (NUTS).

95. Commission Regulation (EC) No 215/2007 of 28 February 2007 on implementing Regulation (EC) No 1177/2003 of the European Parliament and of the Council concerning Community statistics on income and living conditions (EU-SILC) as regards the list of target secondary variables relating to over-indebtedness and financial exclusion.

96. Commission Regulation (EC) No 224/2007 of 1 March 2007 amending Regulation (EC) No 1216/2003 as regards the economic activities covered by the labour cost index.

97. Commission Regulation (EC) No 332/2007 of 27 March 2007 on the technical arrangements for the transmission of railway transport statistics.

98. Commission Regulation (EC) No 425/2007 of 19 April 2007 implementing Regulation (EC) No 1365/2006 of the European Parliament and of the Council on statistics of goods transport by inland waterways.

99. Commission Decision 2007/439/EC of 25 June 2007 amending Decision 2004/452/EC laying down a list of bodies whose researchers may access confidential data for scientific purposes (notified under document number C(2007) 2565).

100. Regulation (EC) No 458/2007 of the European Parliament and of the Council of 25 April 2007 on the European system of integrated social protection statistics (ESSPROS).

101. Commission Regulation (EC) No 656/2007 of 14 June 2007 amending Regulation (EC) No 586/2001 on implementing Council Regulation (EC) No 1165/98 concerning short-term statistics as regards the definition of Main Industrial Groupings (MIGS).

102. Commission Regulation (EC) No 657/2007 of 14 June 2007 implementing Council Regulation (EC) No 1165/98 concerning short-term statistics as regards the establishment of European sample schemes.

103. Commission Decision 2007/678/EC of 16 October 2007 amending Decision 2004/452/EC laying down a list of bodies whose researchers may access confidential data for scientific purposes (notified under document C(2007) 4672).

104. Regulation (EC) No 716/2007 of the European Parliament and of the Council of 20 June 2007 on Community statistics on the structure and activity of foreign affiliates.

105. Commission Regulation (EC) No 833/2007 of 16 July 2007 ending the transitional period provided for in Council Regulation (EC) No 1172/98 on statistical returns in respect of the carriage of goods by road.

106. Commission Regulation (EC) No 847/2007 of 18 July 2007 implementing Regulation (EC) No 808/2004 of the European Parliament and of the Council concerning Community statistics on the information society.

107. Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers.

108. Commission Regulation (EC) No 1304/2007 of 7 November 2007 amending Council Directive 95/64/EC, Council Regulation (EC) No 1172/98, Regulations (EC) No 91/2003 and (EC) No 1365/2006 of the European Parliament and of the Council with respect to the establishment of NST 2007 as the unique classification for transported goods in certain transport modes.

109. Commission Regulation (EC) No 1322/2007 of 12 November 2007 implementing Regulation (EC) No 458/2007 of the European Parliament and of the Council of the European system of integrated social protection statistics (ESSPROS) as regards the appropriate formats for transmission, results to be transmitted and criteria for measuring quality for the ESSPROS core system and the module on pension beneficiaries.

110. Regulation (EC) No 1372/2007 of the European Parliament and of the Council of 23 October 2007 amending Council Regulation (EC) No 577/98 on the organisation of a labour force sample survey in the Community.

111. Regulation (EC) No 1445/2007 of the European Parliament and of the Council of 11 December 2007 establishing common rules for the provision of basic information on Purchasing Power Parities and for their calculation and dissemination.

112. Commission Regulation (EC) No 10/2008 of 8 January 2008 implementing Regulation (EC) No 458/2007 of the European Parliament and of the Council on the European system of integrated social protection statistics (ESSPROS) as regards the definitions, detailed classifications and updating of the rules for dissemination for the ESSPROS core system and the module on pension beneficiaries.

113. Commission Regulation (EC) No 11/2008 of 8 January 2008 implementing Regulation (EC) No 1059/2003 of the European Parliament and of the Council on the establishment of a common classification of territorial units for statistics (NUTS) on the transmission of the time series for the new regional breakdown.

114. Regulation (EC) No 176/2008 of the European Parliament and of the Council of 20 February 2008 amending Regulation (EC) No 1059/2003 on the establishment of a common classification of territorial units for statistics (NUTS) by reason of the accession of Bulgaria and Romania to the European Union.

115. Commission Regulation (EC) No 207/2008 of 5 March 2008 adopting the specifications of the 2009 ad hoc module on the entry of young people into the labour market provided for by Council Regulation (EC) No 577/98.

116. Commission Regulation (EC) No 212/2008 of 7 March 2008 amending Annex I to Regulation (EC) No 138/2004 of the European Parliament and of the Council on the economic accounts for agriculture in the Community.

117. Decision No 234/2008/EC of the European Parliament and of the Council of 11 March 2008 establishing the European Statistical Advisory Committee and repealing Council Decision 91/116/EEC.

118. Decision No 235/2008/EC of the European Parliament and of the Council of 11 March 2008 establishing the European Statistical Governance Advisory Board.

119. Commission Decision 2008/291/EC of 18 March 2008 amending Decision 2004/452/EC laying down a list of bodies whose researchers may access confidential data for scientific purposes (notified under document number C(2008) 1005).

120. Regulation (EC) No 295/2008 of the European Parliament and of the Council of 11 March 2008 concerning structural business statistics (recast).

121. Council Regulation (EC) No 362/2008 of 14 April 2008 implementing Regulation (EC) No 1177/2003 of the European Parliament and of the Council concerning Community statistics on income and living conditions (EU-SILC) as regards the 2009 list of target secondary variables on material deprivation.

122. Commission Regulation (EC) No 364/2008 of 23 April 2008 implementing Regulation (EC) No 716/2007 of the European Parliament and of the Council, as regards the technical format for the transmission of foreign affiliates statistics and derogations to be granted to Member States.

123. Commission Regulation (EC) No 365/2008 of 23 April 2008 adopting the programme of ad hoc modules, covering the years 2010, 2011 and 2012, for the labour force sample survey provided for by Council Regulation (EC) No 577/98.

124. Commission Regulation (EC) No 377/2008 of 25 April 2008 implementing Council Regulation (EC) No 577/98 on the organisation of a labour force sample survey in the Community as regards the codification to be used for data transmission from 2009 onwards, the use of a sub-sample for the collection of data on structural variables and the definition of the reference quarters.

125. Commission Regulation (EC) No 391/2008 of 30 April 2008 amending Regulation (EC) No 102/2007 adopting the specifications of the 2008 ad hoc module on the labour market situation of migrants and their immediate descendants.

126. Regulation (EC) No 451/2008 of the European Parliament and of the Council of 23 April 2008 establishing a new statistical classification of products by activity (CPA) and repealing Council Regulation (EEC) No 3696/93.

127. Regulation (EC) No 452/2008 of the European Parliament and of the Council of 23 April 2008 concerning the production and development of statistics on education and lifelong learning.

128. Regulation (EC) No 453/2008 of the European Parliament and of the Council of 23 April 2008 on quarterly statistics on Community job vacancies.

129. Commission Regulation (EC) No 472/2008 of 29 May 2008 implementing Council Regulation (EC) No 1165/98 concerning short-term statistics as regards the first base year to be applied for time series in NACE Revision 2 and, for time series prior to 2009 to be transmitted according to NACE Revision 2, the level of detail, the form, the first reference period, and the reference period.

130. Commission Decision 2008/595/EC of 25 June 2008 amending Decision 2004/452/EC laying down a list of bodies whose researchers may access confidential data for scientific purposes (notified under document number C(2008) 3019).

131. Commission Regulation (EC) No 747/2008 of 30 July 2008 amending Regulation (EC) No 716/2007 of the European Parliament and of the Council on Community statistics on the structure and activity of foreign affiliates, as regards the definitions of characteristics and the implementation of NACE Rev. 2.

132. Regulation (EC) No 762/2008 of the European Parliament and of the Council of 9 July 2008 on the submission by Member States of statistics on aquaculture and repealing Council Regulation (EC) No 788/96.

133. Regulation (EC) No 763/2008 of the European Parliament and of the Council of 9 July 2008 on population and housing censuses.

134. Commission Decision 2008/876/EC of 6 November 2008 amending Decision 2004/452/EC laying down a list of bodies whose researchers may access confidential data for scientific purposes (notified under document number C(2008) 6431).

135. Commission Regulation (EC) No 960/2008 of 30 September 2008 implementing Regulation (EC) No 808/2004 of the European Parliament and of the Council concerning Community statistics on the information society.

136. Commission Regulation (EC) No 1055/2008 of 27 October 2008 implementing Regulation (EC) No 184/2005 of the European Parliament and of the Council, as regards quality criteria and quality reporting for balance of payments statistics.

137. Commission Regulation (EC) No 1062/2008 of 28 October 2008 implementing Regulation (EC) No 453/2008 of the European Parliament and of the Council on quarterly statistics on Community job vacancies, as regards seasonal adjustment procedures and quality reports.

138. Regulation (EC) No 1099/2008 of the European Parliament and of the Council of 22 October 2008 on energy statistics.

139. Regulation (EC) No 1165/2008 of the European Parliament and of the Council of 19 November 2008 concerning livestock and meat statistics and repealing Council Directives 93/23/EEC and 93/25/EEC.

140. Commission Regulation (EC) No 1178/2008 of 28 November 2008 amending Council Regulation (EC) No 1165/98 concerning short-term statistics and Commission Regulations (EC) No 1503/2006 and (EC) No 657/2007 as regards adaptations following the revision of statistical classifications NACE and CPA.

141. Decision No 1297/2008/EC of the European Parliament and of the Council of 16 December 2008 on a Programme for the Modernisation of European Enterprise and Trade Statistics (MEETS).

142. Regulation (EC) No 1338/2008 of the European Parliament and of the Council of 16 December 2008 on Community statistics on public health and health and safety at work.

143. Commission Regulation (EC) No 19/2009 of 13 January 2009 implementing Regulation (EC) No 453/2008 of the European Parliament and of the Council on quarterly statistics on Community job vacancies, as regards the definition of a job vacancy, the reference dates for data collection, data transmission specifications and feasibility studies.

144. Commission Regulation (EC) No 20/2009 of 13 January 2009 adopting the specifications of the 2010 ad hoc module on reconciliation between work and family life provided for by Council Regulation (EC) No 577/98.

145. Commission Regulation (EC) No 97/2009 of 2 February 2009 implementing Regulation (EC) No 295/2008 of the European Parliament and of the Council concerning structural business statistics, as regards the use of the flexible module.

146. Regulation (EC) No 216/2009 of the European Parliament and of the Council of 11 March 2009 on the submission of nominal catch statistics by Member States fishing in certain areas other than those of the North Atlantic (recast).

147. Regulation (EC) No 217/2009 of the European Parliament and of the Council of 11 March 2009 on the submission of catch and activity statistics by Member States fishing in the north-west Atlantic (recast).

148. Regulation (EC) No 221/2009 of the European Parliament and of the Council of 11 March 2009 amending Regulation (EC) No 2150/2002 on waste statistics, as regards the implementing powers conferred on the Commission.

149. Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom, establishing a Committee on the Statistical Programmes of the European Communities.

150. Commission Regulation (EC) No 250/2009 of 11 March 2009 implementing Regulation (EC) No 295/2008 of the European Parliament and of the Council as regards the definitions of characteristics, the technical format for the transmission of data, the double reporting requirements

for NACE Rev.1.1 and NACE Rev.2 and derogations to be granted for structural business statistics.

151. Commission Regulation (EC) No 251/2009 of 11 March 2009 implementing and amending Regulation (EC) No 295/2008 of the European Parliament and of the Council as regards the series of data to be produced for structural business statistics and the adaptations necessary after the revision of the statistical classification of products by activity (CPA).

152. Commission Regulation (EC) No 329/2009 of 22 April 2009 amending Council Regulation (EC) No 1165/98 concerning short-term statistics as regards the updating of the list of variables, the frequency of compilation of the statistics and the levels of breakdown and aggregation to be applied to the variables.

153. Commission Decision 2009/411/EC of 25 May 2009 amending Decision 2004/452/EC laying down a list of bodies whose researchers may access confidential data for scientific purposes (notified under document number C(2009) 3934).

154. Council Regulation (EC) No 479/2009 of 25 May 2009 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community (Codified version).

155. Regulation (EC) No 543/2009 of the European Parliament and of the Council of 18 June 2009 concerning crop statistics and repealing Council Regulations (EEC) No 837/90 and (EEC) No 959/93.

156. Commission Regulation (EC) No 646/2009 of 23 July 2009 implementing Regulation (EC) No 1177/2003 of the European Parliament and of the Council concerning Community statistics on income and living conditions (EU-SILC) as regards the 2010 list of target secondary variables on intra-household sharing of resources.

157. Commission Regulation (EC) No 707/2009 of 5 August 2009 amending Regulation (EC) No 184/2005 of the European Parliament and of the Council on Community statistics concerning balance of payments, international trade in services and foreign direct investment, as regards the update of data requirements.

158. Council Regulation (EC) No 951/2009 of 9 October 2009 amending Regulation (EC) No 2533/98 concerning the collection of statistical information by the European Central Bank.

159. Regulation (EC) No 1006/2009 of the European Parliament and of the Council of 16 September 2009 amending Regulation (EC) No 808/2004 concerning Community statistics on the information society.

160. Commission Regulation (EC) No 1022/2009 of 29 October 2009 amending Regulations (EC) No 1738/2005, (EC) No 698/2006 and (EC) No 377/2008 as regards the International Standard Classification of Occupations (ISCO).

161. Commission Regulation (EC) No 1023/2009 of 29 October 2009 implementing Regulation (EC) No 808/2004 of the European Parliament and of the Council concerning Community statistics on the information society.

162. Regulation (EC) No 1185/2009 of the European Parliament and of the Council of 25 November 2009 concerning statistics on pesticides.

163. Commission Regulation (EC) No 1200/2009 of 30 November 2009 implementing Regulation (EC) No 1166/2008 of the European Parliament and of the Council on farm structure surveys and the survey on agricultural production methods, as regards livestock unit coefficients and definitions of the characteristics.

164. Commission Regulation (EC) No 1201/2009 of 30 November 2009 implementing Regulation (EC) No 763/2008 of the European Parliament and of the Council on population and housing censuses as regards the technical specifications of the topics and of their breakdowns.

165. Council Regulation (EC) No 1217/2009 of 30 November 2009 setting up a network for the collection of accountancy data on the incomes and business operation of agricultural holdings in the European Community.

166. Commission Regulation (EU) No 202/2010 of 10 March 2010 amending Regulation (EC) No 6/2003 concerning the dissemination of statistics on the carriage of goods by road.

167. Commission Regulation (EU) No 216/2010 of 15 March 2010 implementing Regulation (EC) No 862/2007 of the European Parliament and of the Council on Community statistics on migration and international protection, as regards definitions of categories of the reasons for the residence permits.

168. Commission Regulation (EU) No 220/2010 of 16 March 2010 adopting the programme of ad-hoc modules, covering years 2013 to 2015, for the labour force sample survey provided for by Council Regulation (EC) No 577/98.

169. Commission Regulation (EU) No 275/2010 of 30 March 2010 implementing Regulation (EC) No 295/2008 of the European Parliament and of the Council, as regards the criteria for the evaluation of the quality of structural business statistics.

170. Commission Regulation (EU) No 317/2010 of 16 April 2010 adopting the specifications of the 2011 ad hoc module on employment of disabled people for the labour force sample survey provided for by Council Regulation (EC) No 577/98.

171. Commission Regulation (EU) No 351/2010 of 23 April 2010 implementing Regulation (EC) No 862/2007 of the European Parliament and of the Council on Community statistics on migration and international protection as regards the definitions of the categories of the groups of country of birth, groups of country of previous usual residence, groups of country of next usual residence and groups of citizenship.

172. Commission Decision 2010/373/EU of 1 July 2010 amending Decision 2004/452/EC laying down a list of bodies whose researchers may access confidential data for scientific purposes (notified under document C(2010) 4385).

173. Commission Regulation (EU) No 481/2010 of 1 June 2010 implementing Regulation (EC) No 1177/2003 of the European Parliament and of the Council concerning Community statistics on income and living conditions (EU-SILC) as regards the 2011 list of target secondary variables on intergenerational transmission of disadvantages.

174. Commission Regulation (EU) No 519/2010 of 16 June 2010 adopting the programme of the statistical data and of the metadata for population and housing censuses provided for by Regulation (EC) No 763/2008 of the European Parliament and of the Council.

175. Council Regulation (EU) No 679/2010 of 26 July 2010 amending Regulation (EC) No 479/2009 as regards the quality of statistical data in the context of the excessive deficit procedure.

176. Commission Regulation (EU) No 821/2010 of 17 September 2010 implementing Regulation (EC) No 808/2004 of the European Parliament and of the Council concerning Community statistics on the information society.

177. Commission Regulation (EU) No 822/2010 of 17 September 2010 amending Regulation (EC) No 198/2006 implementing Regulation (EC) No 1552/2005 of the European Parliament and of the Council on statistics relating to vocational training in enterprises, as regards the data to be collected, the sampling, precision and quality requirements.

178. Commission Regulation (EU) No 849/2010 of 27 September 2010 amending Regulation (EC) No 2150/2002 of the European Parliament and of the Council on waste statistics.

179. Commission Regulation (EU) No 1151/2010 of 8 December 2010 implementing Regulation (EC) No 763/2008 of the European Parliament and of the Council on population and housing censuses, as regards the modalities and structure of the quality reports and the technical format for data transmission.

180. Commission Regulation (EU) No 1157/2010 of 9 December 2010 implementing Regulation (EC) No 1177/2003 of the European Parliament and of the Council concerning Community statistics on income and living conditions (EU-SILC), as regards the 2012 list of target secondary variables on housing conditions.

181. Commission Regulation (EU) No 1227/2010 of 20 December 2010 amending Regulation (EC) No 1055/2008 implementing Regulation (EC) No 184/2005 of the European Parliament and of the Council, as regards quality criteria and quality reporting for balance of payments statistics.

182. Commission Regulation (EU) No 31/2011 of 17 January 2011 amending annexes to Regulation (EC) No 1059/2003 of the European Parliament and of the Council on the establishment of a common classification of territorial units for statistics (NUTS).

183. Commission Regulation (EU) No 110/2011 of 8 February 2011 implementing Regulation (EC) No 458/2007 of the European Parliament and of the Council on the European system of integrated social protection statistics (ESSPROS) as regards the appropriate formats for the transmission of data, the results to be transmitted and the criteria for measuring quality for the ESSPROS module on net social protection benefits.

184. Commission Regulation (EU) No 193/2011 of 28 February 2011 implementing Regulation (EC) No 1445/2007 of the European Parliament and of the Council as regards the system of quality control used for Purchasing Power Parities.

185. Commission Decision 2011/231/EU of 11 April 2011 granting derogations to certain Member States with respect to the transmission of statistics pursuant to Regulation (EC) No 1338/2008 of the European Parliament and of the Council on Community statistics on public health and health and safety at work, as regards statistics on accidents at work (notified under document C(2011) 2403).

186. Commission Regulation (EU) No 249/2011 of 14 March 2011 adopting the specifications of the 2012 ad hoc module on transition from work to retirement provided for by Council Regulation (EC) No 577/98.

187. Commission Regulation (EU) No 263/2011 of 17 March 2011 implementing Regulation (EC) No 458/2007 of the European Parliament and of the Council on the European system of integrated social protection statistics (ESSPROS) as regards the launch of full data collection for the ESSPROS module on net social protection benefits.

188. Commission Regulation (EU) No 328/2011 of 5 April 2011 implementing Regulation (EC) No 1338/2008 of the European Parliament and of the Council on Community statistics on public health and health and safety at work, as regards statistics on causes of death.

189. Commission Regulation (EU) No 349/2011 of 11 April 2011 implementing Regulation (EC) No 1338/2008 of the European Parliament and of the Council on Community statistics on public health and health and safety at work, as regards statistics on accidents at work.

190. Commission Regulation (EU) No 408/2011 of 27 April 2011 implementing Regulation (EC) No 1185/2009 of the European Parliament and of the Council concerning statistics on pesticides, as regards transmission format.

191. Commission Decision 2011/511/EU of 17 August 2011 amending Decision 2004/452/EC laying down a list of bodies whose researchers may access confidential data for scientific purposes (notified under document C(2011) 5777).

192. Commission Regulation (EU) No 656/2011 of 7 July 2011 implementing Regulation (EC) No 1185/2009 of the European Parliament and of the Council concerning statistics on pesticides, as regards definitions and list of active substances.

193. Regulation (EU) No 691/2011 of the European Parliament and of the Council of 6 July 2011 on European environmental economic accounts.

194. Regulation (EU) No 692/2011 of the European Parliament and of the Council of 6 July 2011 concerning European statistics on tourism and repealing Council Directive 95/57/EC.

195. Commission Implementing Regulation (EU) No 737/2011 of 26 July 2011 amending Annex I to Council Regulation (EC) No 1217/2009 as regards the list of divisions.

196. Commission Regulation (EU) No 937/2011 of 21 September 2011 implementing Regulation (EC) No 808/2004 of the European Parliament and of the Council concerning Community statistics on the information society.

197. Commission Implementing Regulation (EU) No 1051/2011 of 20 October 2011 implementing Regulation (EU) No 692/2011 of the European Parliament and of the Council concerning European statistics on tourism, as regards the structure of the quality reports and the transmission of the data.

198. Regulation (EU) No 1337/2011 of the European Parliament and of the Council of 13 December 2011 concerning European statistics on permanent crops and repealing Council Regulation (EEC) No 357/79 and Directive 2001/109/EC of the European Parliament and of the Council.

199. Commission Decision 2012/20/EU of 6 January laying down the rules and procedures related to experts in national accounting assisting the Commission in accordance with Council Regulation (EC) No 479/2009 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community (notified under document C(2011) 9973).

200. Commission Regulation (EU) No 62/2012 of 24 January 2012 implementing Regulation (EC) No 1177/2003 of the European Parliament and of the Council concerning Community statistics on income and living conditions (EU-SILC) as regards the 2013 list of target secondary variables on well-being.

201. Regulation (EU) No 70/2012 of the European Parliament and of the Council of 18 January 2012 on statistical returns in respect of the carriage of goods by road (recast).

202. Commission Decision 2012/200/EU of 18 April 2012 amending Decision 2004/452/EC laying down a list of bodies whose researchers may access confidential data for scientific purposes (notified under document C(2012) 2291).

203. Commission Regulation (EU) No 461/2012 of 31 May 2012 amending Council Regulation (EC) No 1165/98 concerning short-term statistics and Commission Regulations (EC) No 1503/2006, (EC) No 657/2007 and (EC) No 1178/2008 as regards adaptations related to the removal of the industrial new orders variables.

204. Commission Decision 2012/504/EU of 17 September 2012 on Eurostat.

205. Commission Regulation (EU) No 555/2012 of 22 June 2012 amending Regulation (EC) No 184/2005 of the European Parliament and of the Council on Community statistics concerning balance of payments, international trade in services and foreign direct investment, as regards the update of data requirements and definitions.

206. Commission Implementing Regulation (EU) No 995/2012 of 26 October 2012 laying down detailed rules for the implementation of Decision No 1608/2003/EC of the European Parliament and of the Council concerning the production and development of Community statistics on science and technology.

207. Commission Regulation (EU) No 1046/2012 of 8 November 2012 implementing Regulation (EC) No 1059/2003 of the European Parliament and of the Council on the establishment of a common classification of territorial units for statistics (NUTS), as regards the transmission of the time series for the new regional breakdown.

208. Commission Regulation (EU) No 1083/2012 of 19 November 2012 implementing Regulation (EC) No 808/2004 of the European Parliament and of the Council concerning Community statistics on the information society.

209. Commission Implementing Regulation (EU) No 81/2013 of 29 January 2013 amending Implementing Regulation (EU) No 1051/2011 as regards the micro-data files for the transmission of data.

210. Commission Implementing Decision 2013/97/EU of 19 February 2013 granting derogations to certain Member States with respect to the transmission of statistics pursuant to Regulation (EC) No 1338/2008 of the European Parliament and of the Council on Community statistics on public health and health and safety at work, as regards statistics based on the European Health Interview Survey (EHIS) (notified under document C(2013) 784).

211. Regulation (EU) No 99/2013 of the European Parliament and of the Council of 15 January 2013 on the European statistical programme 2013-17.

212. Commission Regulation (EU) No 112/2013 of 7 February 2013 implementing Regulation (EC) No 1177/2003 of the European Parliament and of the Council concerning Community statistics on income and living conditions (EU-SILC) as regards the 2014 list of target secondary variables on material deprivation.

213. Commission Regulation (EU) No 141/2013 of 19 February 2013 implementing Regulation (EC) No 1338/2008 of the European Parliament and of the Council on Community Statistics on public health and health and safety at work, as regards statistics based on the European Health Interview Survey (EHIS).

214. Commission Regulation (EU) No 147/2013 of 13 February 2013 amending Regulation (EC) No 1099/2008 of the European Parliament and of the Council on energy statistics, as regards the implementation of updates for the monthly and annual energy statistics.

215. Commission Delegated Regulation (EU) No 253/2013 of 15 January 2013 amending Annex II to Regulation (EU) No 692/2011 of the European Parliament and of the Council, as regards adaptations following the revision of the International Standard Classification of Education (ISCED) in relation to the variables and breakdowns to be submitted.

216. Commission Regulation (EU) No 317/2013 of 8 April 2013 amending the Annexes to Regulations (EC) No 1983/2003, (EC) No 1738/2005, (EC) No 698/2006, (EC) No 377/2008 and (EU) No 823/2010 as regards the International Standard Classification of Education.

217. Commission Regulation (EU) No 318/2013 of 8 April 2013 adopting the programme of ad-hoc modules, covering the years 2016 to 2018, for the labour force sample survey provided for by Council Regulation (EC) No 577/98.

218. Commission Regulation (EU) No 557/2013 of 17 June 2013 implementing Regulation (EC) No 223/2009 of the European Parliament and of the Council on European Statistics as regards access to confidential data for scientific purposes and repealing Commission Regulation (EC) No 831/2002.

219. Commission Implementing Regulation (EU) No 592/2013 of 21 June 2013 concerning the technical format for the transmission of European statistics on permanent crops pursuant to Regulation (EU) No 1337/2011 of the European Parliament and of the Council.

220. Commission Regulation (EU) No 859/2013 of 5 September 2013 implementing Regulation (EC) No 808/2004 of the European Parliament and of the Council concerning Community statistics on the information society.

221. Commission Regulation (EU) No 912/2013 of 23 September 2013 implementing Regulation (EC) No 452/2008 of the European Parliament and of the Council concerning the production and development of statistics on education and lifelong learning, as regards statistics on education and training systems.

222. Regulation (EU) No 1260/2013 of the European Parliament and of the Council of 20 November 2013 on European demographic statistics.

223. Regulation (EU) No 1318/2013 of the European Parliament and of the Council of 22 October 2013 amending Council Regulation (EC) No 1217/2009 setting up a network for the collection of accountancy data on the incomes and business operation of agricultural holdings in the European Community.

224. Commission Regulation (EU) No 1319/2013 of 9 December 2013 amending annexes to Regulation (EC) No 1059/2003 of the European Parliament and of the Council on the establishment of a common classification of territorial units for statistics (NUTS).

225. Regulation (EU) No 1383/2013 of the European Parliament and of the Council of 17 December 2013 amending Regulation (EU) No 99/2013 on the European statistical programme 2013-17.

226. Commission Regulation (EU) No 67/2014 of 27 January 2014 implementing Regulation (EC) No 1177/2003 of the European Parliament and of the Council concerning Community statistics on income and living conditions (EU-SILC) as regards the 2015 list of target secondary variables on social and cultural participation and material deprivation.

227. Commission Regulation (EU) No 68/2014 of 27 January 2014 amending Regulation (EU) No 141/2013 implementing Regulation (EC) No 1338/2008 of the European Parliament and of the Council on Community statistics on public health and health and safety at work, as regards statistics based on the European Health Interview Survey (EHIS) by reason of accession of Croatia to the European Union.

228. Commission Implementing Regulation (EU) No 205/2014 of 4 March 2014 laying down uniformed conditions for the implementation of Regulation (EU) No 1260/2013 of the European Parliament and the Council on European demographic statistics, as regards breakdowns of data, deadlines and data revisions.

229. Commission Regulation (EU) No 220/2014 of 7 March 2014 amending Council Regulation (EC) No 479/2009 as regards references to the European system of national and regional accounts in the European Union.

230. Commission Implementing Regulation (EU) No 228/2014 of 10 March 2014 amending Regulation (EC) No 601/2006 implementing Regulation (EC) No 184/2005 of the European Parliament and of the Council on statistics concerning balance of payments, international trade in services and foreign direct investment, as regards the format and the procedure for the transmission of data.

231. Commission Regulation (EU) No 431/2014 of 24 April 2014 amending Regulation (EC) No 1099/2008 of the European Parliament and of the Council on energy statistics, as regards the implementation of annual statistics on energy consumption in households.

232. Commission Implementing Regulation (EU) No 439/2014 of 29 April 2014 amending Regulation (EC) No 250/2009 implementing Regulation (EC) No 295/2008 of the European Parliament and of the Council concerning structural business statistics, as regards the definitions of characteristics and the technical format for the transmission of data.

233. Commission Regulation (EU) No 446/2014 of 2 May 2014 amending Regulation (EC) No 295/2008 of the European Parliament and of the Council concerning structural business statistics, and Commission Regulations (EC) No 251/2009 and (EU) No 275/2010, as regards the series of data to be produced and the criteria for evaluation of the quality of structural business statistics.

234. Regulation (EU) No 538/2014 of the European Parliament and of the Council of 16 April 2014 amending Regulation (EU) No 691/2011 on European environmental economic accounts.

235. Regulation (EU) No 545/2014 of the European Parliament and of the Council of 15 May 2014 amending Council Regulation (EC) No 577/98 on the organisation of a labour force sample survey in the Community.

236. Commission Regulation (EU) No 868/2014 of 8 August 2014 amending the annexes to Regulation (EC) No 1059/2003 of the European Parliament and of the Council on the establishment of a common classification of territorial units for statistics (NUTS).

237. Commission Implementing Regulation (EU) No 887/2014 of 14 August 2014 concerning the technical format for the transmission of European statistics on vineyards pursuant to Regulation (EU) No 1337/2011 of the European Parliament and of the Council.

238. Commission Regulation (EU) No 1153/2014 of 29 October 2014 amending Regulation (EC) No 198/2006 as regards the data to be collected, and the sampling, precision and quality requirements.

239. Commission Regulation (EU) No 1175/2014 of 30 October 2014 implementing Regulation (EC) No 452/2008 of the European Parliament and of the Council concerning the production and development of statistics on education and lifelong learning, as regards statistics on the participation of adults in lifelong learning and repealing Commission Regulation (EU) No 823/2010.

240. Commission Regulation (EU) No 1196/2014 of 30 October 2014 implementing Regulation (EC) No 808/2004 of the European Parliament and of the Council concerning Community statistics on the information society.

241. Commission Delegated Regulation (EU) No 1198/2014 of 1 August 2014 supplementing Council Regulation (EC) No 1217/2009 setting up a network for the collection of accountancy data on the incomes and business operation of agricultural holdings in the European Union.

242. Commission Regulation (EU) No 1209/2014 of 29 October 2014 amending Regulation (EC) No 451/2008 of the European Parliament and of the Council establishing a new statistical classification of products by activity (CPA) and repealing Council Regulation (EEC) No 3696/93.

243. Commission Implementing Regulation (EU) No 1264/2014 of 26 November 2014 amending Regulation (EU) No 408/2011 implementing Regulation (EC) No 1185/2009 of the European Parliament and of the Council concerning statistics on pesticides, as regards transmission format.

244. Commission Delegated Regulation (EU) No 1397/2014 of 22 October 2014 amending Regulation (EU) No 318/2013 adopting the programme of ad hoc modules, covering the years 2016 to 2018 for the labour force sample survey provided for by Council Regulation (EC) No 577/98.

245. Commission Implementing Regulation (EU) 2015/220 of 3 February 2015 laying down rules for the application of Council Regulation (EC) No 1217/2009 setting up a network for the collection of accountancy data on the incomes and business operation of agricultural holdings in the European Union.

246. Commission Regulation (EU) 2015/245 of 16 February 2015 implementing Regulation (EC) No 1177/2003 of the European Parliament and of the Council concerning Community statistics on income and living conditions (EU-SILC) as regards the 2016 list of target secondary variables on access to services.

247. Commission Regulation (EU) 2015/359 of 4 March 2015 implementing Regulation (EC) No 1338/2008 of the European Parliament and of the Council as regards statistics on healthcare expenditure and financing.

248. Commission Implementing Decision (EU) 2015/365 of 4 March 2015 granting derogations to certain Member States with respect to the transmission of statistics pursuant to Regulation (EC) No 1338/2008 of the European Parliament and of the Council, as regards statistics on healthcare expenditure and financing (notified under document C(2015) 1377).

249. Council Regulation (EU) 2015/373 of 5 March 2015 amending Regulation (EC) No 2533/98 concerning the collection of statistical information by the European Central Bank.

250. Commission Regulation (EU) 2015/458 of 19 March 2015 amending Regulation (EC) No 657/2007 implementing Council Regulation (EC) No 1165/98 concerning short-term statistics as regards the establishment of European sample schemes.

251. Commission Implementing Regulation (EU) 2015/459 of 19 March 2015 specifying the technical characteristics of the 2016 ad hoc module on young people on the labour market provided for by Council Regulation (EC) No 577/98.

252. Regulation (EU) 2015/759 of the European Parliament and of the Council of 29 April 2015 amending Regulation (EC) No 223/2009 on European statistics.

253. Commission Implementing Regulation (EU) 2015/1042 of 30 June 2015 amending Annex II to Regulation (EC) No 250/2009 implementing Regulation (EC) No 295/2008 of the European Parliament and of the Council concerning structural business statistics, as regards the adaptation of the technical format following the revision of the classification of products by activity (CPA).

254. Commission Regulation (EU) 2015/1163 of 15 July 2015 implementing Regulation (EC) No 1445/2007 of the European Parliament and of the Council as regards the list of basic headings used for Purchasing Power Parities.

255. Commission Regulation (EU) 2015/1391 of 13 August 2015 amending Regulation (EC) No 1200/2009 implementing Regulation (EC) No 1166/2008 of the European Parliament and of the Council on farm structure surveys and the survey on agricultural production methods, as regards livestock unit coefficients and definitions of the characteristics.

256. Commission Delegated Regulation (EU) 2015/1557 of 13 July 2015 amending Regulation (EC) No 543/2009 of the European Parliament and of the Council concerning crop statistics.

257. Commission Regulation (EU) 2015/2003 of 10 November 2015 implementing Regulation (EC) No 808/2004 of the European Parliament and of the Council concerning Community statistics on the information society.

258. Commission Regulation (EU) 2015/2112 of 23 November 2015 amending Annex I to Regulation (EC) No 251/2009 implementing Regulation (EC) No 295/2008 of the European Parliament and of the Council concerning structural business statistics, as regards the adaptation of the series of data following the revision of the classification of products by activity (CPA).

259. Commission Implementing Regulation (EU) 2015/2174 of 24 November 2015 on the indicative compendium of environmental goods and services, the format for data transmission for European environmental economic accounts and modalities, structure and periodicity of the quality reports pursuant to Regulation (EU) No 691/2011 of the European Parliament and of the Council on European environmental economic accounts.

260. Commission Regulation (EU) 2015/2256 of 4 December 2015 amending Regulation (EC) No 1983/2003 implementing Regulation (EC) No 1177/2003 of the European Parliament and of the Council concerning Community statistics on income and living conditions (EU-SILC) as regards the list of target primary variables.

261. Commission Implementing Regulation (EU) 2015/2323 of 11 December 2015 amending Implementing Regulation (EU) 2015/220 laying down rules for the application of Council Regulation (EC) No 1217/2009.

262. Commission Regulation (EU) 2015/2381 of 17 December 2015 implementing Regulation (EC) No 1059/2003 of the European Parliament and of the Council on the establishment of a common classification of territorial units for statistics (NUTS), as regards the transmission of the time series for the new regional breakdown.

263. Commission Implementing Regulation (EU) 2016/8 of 5 January 2016 specifying the technical characteristics of the 2017 ad hoc module on self-employment.

264. Commission Regulation (EU) 2016/114 of 28 January 2016 implementing Regulation (EC) No 1177/2003 of the European Parliament and of the Council concerning Community statistics on

income and living conditions (EU-SILC) as regards the 2017 list of target secondary variables on health and children's health.

265. Commission Delegated Regulation (EU) 2016/172 of 24 November 2015 supplementing Regulation (EU) No 691/2011 of the European Parliament and of the Council as regards specification of the energy products.

266. Regulation (EU) 2016/1013 of the European Parliament and of the Council of 8 June 2016 amending Regulation (EC) No 184/2005 on Community statistics concerning balance of payments, international trade in services and foreign direct investment.

267. Commission Delegated Regulation (EU) 2016/1851 of 14 June 2016 adopting the programme of ad hoc modules, covering the years 2019, 2020 and 2021, for the labour force sample survey provided for by Council Regulation (EC) No 577/98.

268. Regulation (EU) 2016/1952 of the European Parliament and of the Council of 26 October 2016 on European statistics on natural gas and electricity prices and repealing Directive 2008/92/EC.

269. Commission Regulation (EU) 2016/2015 of 17 November 2016 implementing Regulation (EC) No 808/2004 of the European Parliament and of the Council concerning Community statistics on the information society.

270. Commission Regulation (EU) 2016/2066 of 21 November 2016 amending the annexes to Regulation (EC) No 1059/2003 of the European Parliament and of the Council on the establishment of a common classification of territorial units for statistics (NUTS).

271. Commission Implementing Regulation (EU) 2016/2129 of 5 December 2016 amending Implementing Regulation (EU) 2015/220 laying down rules for the application of Council Regulation (EC) No 1217/2009 setting up a network for the collection of accountancy data on the incomes and business operation of agricultural holdings in the European Union.

272. Commission Implementing Regulation (EU) 2016/2236 of 12 December 2016 specifying the technical characteristics of the 2018 ad hoc module on reconciliation between work and family life.

273. Commission Regulation (EU) 2017/269 of 16 February 2017 amending Regulation (EC) No 1185/2009 of the European Parliament and of the Council concerning statistics on pesticides, as regards the list of active substances.

274. Commission Regulation (EU) 2017/310 of 22 February 2017 implementing Regulation (EC) No 1177/2003 of the European Parliament and of the Council concerning Community statistics on income and living conditions (EU-SILC) as regards the list of target secondary variables on material deprivation, well-being and housing difficulties for 2018.

275. Commission Implementing Regulation (EU) 2017/543 of 22 March 2017 laying down rules for the application of Regulation (EC) No 763/2008 of the European Parliament and of the Council on population and housing censuses as regards the technical specifications of the topics and of their breakdowns.

276. Commission Regulation (EU) 2017/712 of 20 April 2017 establishing the reference year and the programme of the statistical data and metadata for population and housing censuses provided for by Regulation (EC) No 763/2008 of the European Parliament and of the Council.

277. Commission Implementing Regulation (EU) 2017/881 of 23 May 2017 implementing Regulation (EC) No 763/2008 of the European Parliament and of the Council on population and housing censuses, as regards the modalities and structure of the quality reports and the technical format for data transmission, and amending Regulation (EU) No 1151/2010.

278. Commission Regulation (EU) 2017/1515 of 31 August 2017 implementing Regulation (EC) No 808/2004 of the European Parliament and of the Council concerning Community statistics on the information society for the reference year 2018.

279. Regulation (EU) 2017/1951 of the European Parliament and of the Council of 25 October 2017 amending Regulation (EU) No 99/2013 on the European statistical programme 2013-17, by extending it to 2020.

280. Commission Regulation (EU) 2017/2010 of 9 November 2017 amending Regulation (EC) No 1099/2008 of the European Parliament and of the Council on energy statistics, as regards the updates for the annual and monthly energy statistics.

281. Commission Implementing Regulation (EU) 2017/2169 of 21 November 2017 concerning the format and arrangements for the transmission of European Statistics on natural gas and electricity prices pursuant to Regulation (EU) 2016/1952 of the European Parliament and of the Council.

282. Commission Delegated Regulation (EU) 2017/2278 of 4 September 2017 amending Annex I to Council Regulation (EC) No 1217/2009 setting up a network for the collection of accountancy data on the incomes and business operation of agricultural holdings in the European Union.

283. Commission Implementing Regulation (EU) 2017/2280 of 11 December 2017 amending Implementing Regulation (EU) 2015/220 laying down rules for the application of Council Regulation (EC) No 1217/2009 setting up a network for the collection of accountancy data on the incomes and business operation of agricultural holdings in the European Union.

284. Commission Implementing Regulation (EU) 2017/2384 of 19 December 2017 specifying the technical characteristics of the 2019 ad hoc module on work organisation and working time arrangements as regards the labour force sample survey pursuant to Council Regulation (EC) No 577/98.

285. Regulation (EU) No 2017/2391 of the European Parliament and of the Council of 12 December 2017 amending Regulation (EC) No 1059/2003 as regards the territorial typologies (Tercet).

286. Commission Regulation (EU) 2018/174 of 2 February 2018 implementing Regulation (EC) No 1177/2003 of the European Parliament and of the Council concerning Community statistics on income and living conditions (EU-SILC) as regards the list of target secondary variables on intergenerational transmission of disadvantages, household composition and evolution of income for 2019.

287. Commission Regulation (EU) 2018/255 of 19 February 2018 implementing Regulation (EC) No 1338/2008 of the European Parliament and of the Council as regards statistics based on the European Health Interview Survey (EHIS).

288. Commission Implementing Decision (EU) 2018/257 of 19 February 2018 granting derogations to certain Member States with respect to the transmission of statistics pursuant to Regulation (EC) No 1338/2008 of the European Parliament and of the Council, as regards statistics based on the European Health Interview Survey (EHIS) (notified under document C(2018) 832).

289. Regulation (EU) 2018/643 of the European Parliament and of the Council of 18 April 2018 on rail transport statistics.

290. Regulation (EU) 2018/974 of the European Parliament and of the Council of 4 July 2018 on statistics of goods transport by inland waterways.

291. Commission Delegated Decision (EU) 2018/1007 of 25 April 2018 supplementing Directive 2009/42/EC of the European Parliament and of the Council as regards the list of ports and repealing Commission Decision 2008/861/EC.

292. Regulation (EU) 2018/1091 of the European Parliament and of the Council of 18 July 2018 on integrated farm statistics and repealing Regulations (EC) No 1166/2008 and (EU) No 1337/2011.

293. Commission Implementing Regulation (EU) 2018/1794 of 20 November 2018 amending Implementing Regulation (EU) 2015/220 laying down rules for the application of Council Regulation (EC) No 1217/2009 setting up a network for the collection of accountancy data on the incomes and business operation of agricultural holdings in the European Union.

SCHEDULE 2

Regulation 8(2)

Points in Annex XXI to the EEA agreement to be omitted

1. Point 1 (Regulation (EC) No 295/2008 of the European Parliament and of the Council).

2. Point 1d (Commission Regulation (EC) 1618/1999).

3. Point 1e (Commission Regulation (EC) 1225/1999).

4. Point 1f (Commission Regulation (EC) 1227/1999).

5. Point 1g (Commission Regulation (EC) 1228/1999).

6. Point 1k (Commission Regulation (EC) No 250/2009).

7. Point 1l (Commission Regulation (EC) No 251/2009).

8. Point 1m (Commission Regulation (EU) No 275/2010).

9. Point 2 (Commission Regulation (EC) No 1165/98).

10. Point 2a (Commission Regulation (EC) No 586/2001).

11. Point 2c (Commission Regulation (EC) No 1503/2006).

12. Point 4c (Regulation (EC) No 48/2004).

13. Point 4ca (Commission Regulation (EC) No 772/2005).

14. Point 7a (Council Decision (EC) No 93/704/EC).

15. Point 7c (Regulation (EU) No 692/2011 of the European Parliament and of the Council).

16. Point 7ca (Commission Implementing Regulation (EU) No 1051/2011).

17. Point 7e. (Commission Regulation (EC) No 2163/2001).

18. Point 7f (Regulation (EU) No 70/2012 of the European Parliament and of the Council).

19. Point 7fa (Commission Regulation (EC) No 642/2004).

20. Point 7fb (Commission Regulation (EC) No 833/2007).

21. Point 7g (Commission Regulation (EC) No 6/2003).

22. Point 7k (Commission Regulation (EC) No 332/2007).

23. Point 17 (Commission Regulation (EC) No 223/2009).

24. Point 17b (Commission Regulation (EU) No 557/2013).

25. Point 17ba (Decision No 235/2008/EC).

26. Point 18 (Regulation (EC) No 862/2007 of the European Parliament and of the Council).

27. Point 18a (Council Regulation (EC) No 577/98).

28. Point 18aa (Commission Regulation (EC) No 1575/2000).

29. Point 18ab (Commission Regulation (EC) No 1897/2000).

30. Point 18ac (Commission Regulation (EC) No 2104/2002).

31. Point 18af (Commission Regulation (EC) No 29/2004).

32. Point 18ag (Commission Regulation (EC) No 384/2005).

33. Point 18aj (Commission Regulation (EC) No 341/2006).

34. Point 18al (Commission Regulation (EC) No 207/2008).

35. Point 18am (Commission Regulation (EC) No 365/2008).

36. Point 18an (Commission Regulation (EC) No 377/2008).

37. Point 18ao (Commission Regulation (EC) No 20/2009).

38. Point 18ap (Commission Regulation (EU) No 220/2010).

39. Point 18aq (Commission Regulation (EU) No 351/2010).

40. Point 18ar (Commission Regulation (EU) No 317/2010).

41. Point 18as (Commission Regulation (EU) No 216/2010).

42. Point 18at (Commission Regulation (EU) No 318/2013).

43. Point 18au (Commission Implementing Regulation (EU) 2015/459).

44. Point 18av (Commission Implementing Regulation (EU) 2016/8).

45. Point 18aw (Commission Implementing Regulation (EU) 2016/2236).

46. Point 18ax (Commission Delegated Regulation (EU) 2016/1851).

47. Point 18ay (Commission Implementing Regulation (EU) 2017/2384).

48. Point 18b (Council Regulation (EC) No 2744/95).

49. Point 18d (Commission Regulation (EC) No 530/1999).

50. Point 18db (Commission Regulation (EC) No 1916/2000).

51. Point 18e (Commission Regulation (EC) No 1726/1999).

52. Point 18f (Commission Regulation (EC) No 698/2006).

53. Point 18g (Regulation (EC) No 450/2003 of the European Parliament and of the Council).

54. Point 18h (Commission Regulation (EC) No 1216/2003).

55. Point 18i (Regulation (EC) No 1177/2003 of the European Parliament and of the Council).

56. Point 18ia (Commission Regulation (EU) No 481/2010).

57. Point 18ib (Commission Regulation (EU) No 1157/2010).

58. Point 18ic (Commission Regulation (EU) No 62/2012).

59. Point 18id (Commission Regulation (EU) No 112/2013).

60. Point 18ie (Commission Regulation (EU) 2015/245).

61. Point 18if (Commission Regulation (EU) 2016/114).

62. Point 18ig (Commission Regulation (EU) 2018/174).

63. Point 18ih (Commission Regulation (EU) 2017/310).

64. Point 18j (Commission Regulation (EC) No 1980/2003).

65. Point 18k (Commission Regulation (EC) No 1981/2003).

66. Point 18l (Commission Regulation (EC) No 1982/2003).

67. Point 18m (Commission Regulation (EC) No 1983/2003).

68. Point 18n (Commission Regulation (EC) No 16/2004).

69. Point 18o (Commission Regulation (EC) No 28/2004).

70. Point 18p (Commission Regulation (EC) No 13/2005).

71. Point 18q (Regulation (EC) No 1552/2005 of the European Parliament and of the Council).

72. Point 18r (Commission Regulation (EC) No 198/2006).

73. Point 18s (Commission Regulation (EC) No 315/2006).

74. Point 18t (Commission Regulation (EC) No 215/2007).

75. Point 18u (Regulation (EC) No 458/2007 of the European Parliament and of the Council).

76. Point 18ua (Commission Regulation (EC) No 1322/2007).

77. Point 18ub (Commission Regulation (EC) No 10/2008).

78. Point 18uc (Commission Regulation (EU) No 110/2011).

79. Point 18ud (Commission Regulation (EU) No 263/2011).

80. Point 18v (Regulation (EC) No 452/2008 of the European Parliament and of the Council).

81. Point 18va (Commission Regulation (EC) No 1062/2008).

82. Point 18vb (Commission Regulation (EC) No 19/2009).

83. Point 18w (Regulation (EC) No 453/2008 of the European Parliament and of the Council).

84. Point 18wa (Commission Regulation (EU) No 1175/2014).

85. Point 18wb (Commission Regulation (EU) No 912/2013).

86. Point 18x (Commission Regulation (EC) No 362/2008).

87. Point 18xa (Commission Regulation (EC) No 646/2009).

88. Point 18xb (Commission Regulation (EU) No 67/2014).

89. Point 18y (Regulation (EC) No 763/2008 of the European Parliament and of the Council).

90. Point 18ya (Commission Regulation (EU) No 519/2010).

91. Point 18yb (Commission Regulation (EC) No 1201/2009).

92. Point 18yc (Commission Regulation (EU) No 1151/2010).

93. Point 18yd (Commission Implementing Regulation (EU) 2017/543).

94. Point 18ye (Commission Regulation (EU) 2017/712).

95. Point 18z (Regulation (EC) No 1338/2008 of the European Parliament and of the Council).

96. Point 18z1 (Commission Regulation (EU) No 328/2011).

97. Point 18z2 (Commission Regulation (EU) No 349/2011).

98. Point 18z3 (Regulation (EU) No 1260/2013 of the European Parliament and of the Council).

99. Point 18z4 (Commission Regulation (EU) No 141/2013).

100. Point 18z5 (Commission Implementing Regulation (EU) No 205/2014).

101. Point 18z6 (Commission Regulation (EU) 2015/359).

102. Point 18z7 (Commission Regulation (EU) 2018/255).

103. Point 19dc (Regulation (EC) No 1221/2002 of the European Parliament and of the Council).

104. Point 19o (Regulation (EC) No 501/2004 of the European Parliament and of the Council).

105. Point 19p (Commission Regulation (EC, Euratom) No 1287/2003).

106. Point 19q (Council Regulation (EC) No 1222/2004).

107. Point 19r (Commission Regulation (EC, Euratom) No 116/2005).

108. Point 19s (Regulation (EC) No 184/2005 of the European Parliament and of the Council).

109. Point 19sa (Commission Regulation (EC) No 601/2006).

110. Point 19sb (Commission Regulation (EC) No 1055/2008).

111. Point 19t (Regulation (EC) No 1161/2005 of the European Parliament and of the Council).

112. Point 19u (Commission Regulation (EC) No 1722/2005).

113. Point 19x (Regulation (EC) No 716/2007 of the European Parliament and of the Council).

114. Point 19xa (Commission Regulation (EC) No 364/2008).

115. Point 19y (Regulation (EC) No 1445/2007 of the European Parliament and of the Council).

116. Point 19ya (Commission Regulation (EU) No 193/2011).

117. Point 20 (Commission Regulation (EEC) No 3037/90).

118. Point 20a (Commission Regulation (EEC) No 696/93).

119. Point 20b (Regulation (EC) No 451/2008 of the European Parliament and of the Council).

120. Point 20c (Regulation (EC) No 1893/2006 of the European Parliament and of the Council).

121. Point 20d (Commission Regulation (EC) No 472/2008).

122. Point 23a (Commission Regulation (EC) No 1200/2009).

123. Point 24 (Regulation (EC) No 543/2009 of the European Parliament and of the Council).

124. Point 24c (Regulation (EC) No 138/2004 of the European Parliament and of the Council).

125. Point 24d (Regulation (EC) No 1185/2009 of the European Parliament and of the Council).

126. Point 24da (Commission Regulation (EU) No 408/2011).

127. Point 24db (Commission Regulation (EU) No 656/2011).

128. Point 25 (Regulation (EC) No 1921/2006 of the European Parliament and of the Council).

129. Point 25b (Regulation (EC) No 217/2009 of the European Parliament and of the Council).

130. Point 25c (Regulation (EC) No 216/2009 of the European Parliament and of the Council).

131. Point 25d (Regulation (EC) No 762/2008 of the European Parliament and of the Council).

132. Point 26a (Regulation (EC) No 1099/2008 of the European Parliament and of the Council).

133. Point 27 (Regulation (EC) No 2150/2002 of the European Parliament and of the Council).

134. Point 27a (Commission Regulation (EC) No 782/2005).

135. Point 27b (Commission Regulation (EC) No 1445/2005).

136. Point 27c (Regulation (EU) No 691/2011 of the European Parliament and of the Council).

137. Point 27ca (Commission Implementing Regulation (EU) 2015/2174).

138. Point 27cb (Commission Delegated Regulation (EU) 2016/172).

139. Point 28 (Regulation (EC) No 808/2004 of the European Parliament and of the Council).

140. Point 28a (Commission Regulation (EC) No 1099/2005).

141. Point 28b (Commission Regulation (EC) No 1031/2006).

142. Point 28c (Commission Regulation (EC) No 847/2007).

143. Point 28d (Commission Regulation (EC) No 960/2008).

144. Point 28e (Commission Regulation (EC) No 1023/2009).

145. Point 28f (Commission Regulation (EU) No 821/2010).

146. Point 28g (Commission Regulation (EU) No 937/2011).

147. Point 28h (Commission Regulation (EU) No 1083/2012).

148. Point 28i (Commission Regulation (EU) No 859/2013).

149. Point 28j (Commission Regulation (EU) No 1196/2014).

150. Point 28k (Commission Regulation (EU) 2015/2003).

151. Point 28l (Commission Regulation (EU) 2016/2015).

152. Point 28m (Commission Regulation (EU) 2017/1515).

153. Point 29 (Decision No 1608/2003/EC of the European Parliament and of the Council).

154. Point 30 (Commission Implementing Regulation (EU) No 995/2012).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (c.16) ("the Act") in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the European Union. In particular, these Regulations address deficiencies under paragraphs (a), (b), (c), (d) and (g) of section 8(2) of the Act.

These Regulations make amendments to legislation in the field of statistics. Part 2 amends primary legislation and Part 3 amends subordinate legislation. Part 4 revokes the EU regulations and EU decisions which are set out in Schedule 1 and amends Annex XXI to the EEA Agreement.

EXPLANATORY MEMORANDUM TO

THE UK STATISTICS (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019

2019 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Statistics Board, known as the UK Statistics Authority, and is laid before Parliament by the Cabinet Office by Act.

1.2 This memorandum contains information for the Sifting Committees.

2. Purpose of the instrument

2.1 This instrument addresses deficiencies in retained EU law relating to statistics arising from the withdrawal of the United Kingdom from the European Union. It is made under section 8 of the European Union (Withdrawal) Act 2018 ("the 2018 Act"), the majority of the law it addresses having been retained under section 3 of the same Act. In particular, this instrument:

- Amends the Statistics and Registration Service Act 2007 to replace references to EU law with references to the appropriate equivalent retained EU law;
- Amends one Act and four statutory instruments so that their references to certain European standards continue to refer to the EU, rather than the retained EU law, version of those standards; and
- Revokes the majority of the retained direct EU legislation that (a) sets out the EU architecture for the production by Member States, and transmission to Eurostat of statistical data and (b) establishes standards and technical classifications with respect to certain statistical data (together, "EU statistics law"), together with relevant equivalent law in the retained EEA agreement.

Explanations

What did any relevant EU law do before exit day?

2.2 Three sets of law are affected by this instrument.

2.3 First, the Statistics and Registration Service Act 2007 ("the 2007 Act") sets out the overall framework for the production and supervision of UK statistics, including by establishing the Statistics Board (known as the UK Statistics Authority ("UKSA")). A number of provisions include references to EU law. In particular, s.29(5) of the 2007 Act allows the Minister for the Cabinet Office to give directions to the Statistics Board for the purpose of implementing any EU obligation; s.39(4)(b) dis-applies the bar on disclosure of the UKSA's information where disclosure is required by an EU obligation; and ss.45A(12)(c) and (13), 45B(3)(c) and (4), and 45C(13)(d) and (14) provides that information may not be shared with the UKSA pursuant to those sections where disclosure would breach certain EU or EU-derived law.

2.4 Second, one Act (the Data Protection Act 2018) and four statutory instruments (the Public Contracts Regulations 2015, Concession Contracts Regulations 2016, Utilities

Contracts Regulations 2016 and Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015) establish frameworks relating to various areas of law. The provisions concerned by this instrument are ones that anchor certain non-statistical classifications set out in that law to certain EU statistics law. For instance, Schedule 2 to the Public Contracts Regulations 2015 sets out what activities constitute 'works' for the purpose of that procurement law, and establishes the link between these definitions and EU classifications of those activities. Similarly, paragraph 1(3) of Schedule 1 to the Data Protection Act 2018 provides for the processing of certain data in certain circumstances relating to "social protection", and provides that "social protection" is defined as set out in an EU law (Regulation (EC) 458/2007).

2.5 The third set consists of EU statistics law. This law does not currently form part of the domestic legal framework: it consists of a framework of EU Regulations and Decisions which apply in the UK via the European Communities Act 1972. However, on exit day, s.3 of the 2018 Act will preserve this law as part of domestic law. It will also preserve relevant versions of such law contained in Annex XXI to the EEA agreement. In this section, we briefly summarise what this law currently does at EU level. (The system described below also extends to the EEA states and Switzerland. However, for simplicity, the following text is confined to the system's operation within the EU).

2.6 These laws set out an overarching framework and specific measures for the production of European statistics. European statistics are those "necessary for the performance of the activities of the Union" (Article 1 of Regulation (EC) 223/2009 and Article 338 TFEU).

2.7 European statistics are produced through a federalised system: the European Statistical System ("ESS"). The central authority is Eurostat, the independent statistical office of the European Commission. The decentralised bodies are the "national statistical institutes", and other national authorities for the development, production and dissemination of European statistics, in each Member State. The UKSA is the UK's national statistics institute. The overarching framework of both the ESS and of Eurostat is set out in two laws (Regulation (EC) 223/2009, as notably amended by Regulation (EU) 2015/759; and Commission Decision 2012/504/EU). Under that framework is a wide range of specific laws, many of which are sector-specific ("the specific law").

2.8 Within this system, the UKSA is responsible for coordinating all activities within the UK for the development, production and dissemination of European statistics, including in particular coordinating statistical programming and reporting, quality monitoring, methodology, data transmission and communication on the ESS's actions.

2.9 In this respect, the first key effect of this law within the UK concerns production, coordination and transmission. In particular, the specific law requires Member States to produce and send certain data to Eurostat so that Eurostat can produce European statistics. The law varies, with some requiring the information to be produced under particular classifications, in particular ways and at particular times (e.g. Regulation (EC) 1165/2008) and others imposing looser, broader requirements (e.g. Regulation (EC) 1221/2002). Those laws are in turn typically supplemented by implementing and delegated acts, made by the Commission, setting out technical detail (as to particular data requirements and the associated methodology) or amending the base law (to reflect changing standards and needs).

2.10 This law spans a wide range of topics across the span of EU competence, including statistics on agriculture and fisheries; trade; economy and finance; energy; environment; industry, services and tourism; population and social conditions; transport; research and development and information society.

2.11 The second key effect concerns quality, coding systems and classification. In particular, some of the specific law sets classifications and standards that certain European statistics must meet: for instance, standard classifications on territorial units (Regulation (EC) 1059/2003) or economic activities (Regulation (EC) 1893/2006). Those classifications and standards often reflect international standards.

2.12 Annexed to this EM is a table setting out in more detail what the principal instruments did before exit day, including a note as to which of the two aforementioned categories of effect the instrument falls within (Annex 2). The instruments not listed in the Annex are all either implementing or delegated acts made under the listed instruments (see paragraph 2.9 above) or legislation amending those listed instruments (e.g. Regulation (EC) 2257/2003). A complete list is included in the information paper that accompanies this EM.

2.13 It is important to emphasise (and see further below) that this third set of law exists independently of, and does not override, the UK's independent domestic statistical system. European statistics are only those necessary for the performance of the EU's activities, and Member States retain sole competence to produce statistics as they see fit for national purposes, including where those statistics overlap with EU statistics law. The production, dissemination and regulation of UK statistics operates under the UK's existing statistical framework, the basis of which lies in the Statistics and Registration Service Act 2007. As noted above, this Act established the UKSA, whose objective is to promote and safeguard the production and publication of official statistics that serve the public good. That law includes provision for the UKSA to establish and monitor proper statistical practices (ss.8, 10-16), standards and classifications (s.9) and to publish statistics (ss.20-22). It does so in accordance with international guidance as appropriate (see EN 56 to the 2007 Act, and Q2.1 of the Code of Practice for Statistics, edition 2.0, February 2018). In addition to this overarching framework, a small number of specific statutory obligations exist for the Secretary of State and other bodies to collect and publish certain statistics (see e.g. the Marine and Coastal Access Act 2009, s.175; see also the Statistics of Trade Act 1947, Census Act 1920, Population Statistics Act 1960 and the Agricultural Statistics Act 1979).

Why is it being changed?

2.14 The **first** change is straightforward. As of exit day, no EU obligations or EU legislation will have effect in UK law. This will make the 2007 Act's references to those concepts deficient. These references are being amended to refer to their retained EU law equivalents. This ensures that the provisions continue to operate effectively and avoids a conflict between retained EU law and the 2007 Act.

2.15 The **second** change is similarly straightforward. As of exit day, the references in this law to EU standards will refer to those standards' retained EU law versions: see paragraph 1 of Schedule 8 to the 2018 Act in the case of the ambulatory reference, and regulation 2 of the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations, laid in draft on 20 December 2018 in the case of non-ambulatory ones. However, this instrument will

revoke those retained EU law versions (see below). This second set of law will therefore be deficient. It is appropriate to amend these references so that they refer to the EU law versions of those standards. It is moreover appropriate that these references do not track future changes to those standards, so the references are amended to refer to EU law as it stood immediately before exit day.

2.16 The **third** change is more complex. All of the EU statistics law that becomes retained EU law will be deficient. The overarching law – namely the law establishing the European Statistical System (see paragraph 2.7 above) – is plainly redundant within the UK and should be revoked. The specific law is deficient because, amongst other things, it makes provision for, or in connection with, arrangements which involve the EU and which are no longer appropriate (s.8(2)(d) of the 2018 Act). In particular, this law will not operate effectively because the great majority of its obligations attach to Member States (which will no longer include the UK).

2.17 There are four reasons why the Minister considers that the arrangements set out in this law are no longer appropriate, and that revocation is the appropriate approach.

2.17.1 First, the great majority of this law requires transmission of statistics by the UKSA to Eurostat. Should the UK leave the EU without a deal to include the UK in European Statistics it would no longer form a part of the European Statistics System. It would clearly be inappropriate and redundant for the UKSA to continue to be obliged to send information to Eurostat, even assuming that it remained technically and legally possible for Eurostat to receive it.

2.17.2 Second, where this law expressly or implicitly requires the UK to collect or produce certain statistics to certain standards and classifications, this requirement is inextricable from those transmission requirements. Eurostat operates under a federal system: it relies on the national statistical institutes to coordinate collection of data on its behalf so that it may produce statistics relevant to the EU. That in turn requires harmonised standards as to what, when and how national statistical institutes collect the data they send to Eurostat. Only in this way can Eurostat obtain consistent data that it can compile to produce meaningful, comparable results. These standards are therefore rooted in the nature of the European Statistical System; they are the only way that twenty-eight diverse statistical systems can work together. Once the UK leaves that European system, and is no longer obliged to send data to Eurostat, it is appropriate to remove them.

2.17.3 Third, this approach is the most consistent with our domestic statutory framework for statistics. Parliament established the framework set out at paragraph 2.13 above for the production, dissemination and regulation of UK statistics. This provides for relevant standards and classifications to be set and monitored by the UKSA. In particular, the Code of Practice sets practices that are binding with respect to the producers of National Statistics. It also places an overarching duty on the UKSA to ensure that official statistics are sufficiently comprehensive (s.7(3)(c) of the 2007 Act), rather than imposing the highly specific, prescriptive requirements needed under EU law for the European Statistical System to function. It is notable and consistent with this that domestic law rarely places specific obligations on public authorities as to what, when and how to collect statistics. Revoking the EU statistics law therefore leaves in place that domestic framework, ensuring that the appropriate statistics are still collected, regulated and published under domestic powers.

2.17.4 Fourth, this is more appropriate than alternative options. In particular, in principle it would be possible to revoke the transmission obligations; retain the obligations concerning collection, standards and classification; and amend the law to sub-delegate to Ministers the power currently exercised by the Commission (to amend those laws in light of changes in the context or international standards). However, three objections make this an inappropriate course to follow. First, this is not consistent with the domestic statistics framework established by Parliament. As noted above, that framework consists of specific powers for the UKSA independently to establish and monitor standards and classifications, together with monitoring of the what, when and how. That power lies with that independent body and is not done by law. Second, retaining and amending EU statistics law in this way would be extremely onerous and risk harming the independence of statistics. Amending the law to impose the right obligations on the right bodies would be highly burdensome, and requiring this law to be amended whenever standards change would – in addition to being incompatible with the principle-based statistics system Parliament established in domestic law – be highly onerous and risk standards becoming out-of-date pending legislative amendment. In requiring such legislation, it would also risk undermining the independent, de-politicised status of the standards currently set by the UKSA. Third, this would not further the substantive aim of the retained EU law in question. As set out above at paragraph 2.17.2, these standards are set out in law because this is the way a federal system must function and because these statistics served the particular needs of the EU bodies. The substantive aim of those statistics (to ensure policy-makers and the public are informed) is robustly protected by the existing UK framework. Even if the law were preserved, it would in any event need to be amendable by Ministers as noted above. For these reasons, fossilising the EU statistics standards in law is significantly less appropriate than the approach taken in this instrument.

What will it now do?

2.18 The first change means that the 2007 Act's references to EU law will continue to operate effectively, referring instead to equivalent retained EU law concepts. For instance, where release of information to the UKSA would have been prohibited by an EU law that is now contained in retained EU law, that bar will continue to be effective. In particular, regulations 2(4)(b), (5)(b) and (6)(b) amend references to "any enactment to the extent that it implements EU legislation" so it refers to the first two paragraphs (but not the second two paragraphs) of s.2(2) of the 2018 Act. This approach is considered to provide the closest approximation to the current effect of the law, where including the second two paragraphs would have risked inappropriately widening this bar to disclosure.

2.19 The second change means that these domestic law references to EU law statistical definitions will continue to operate effectively despite the revocation of the relevant retained EU law. They will refer to the version of the relevant EU law as it existed on the day before exit day.

2.20 The third change means that the retained EU statistics law in question will be revoked in its entirety. The UKSA and other public authorities will continue to collect, regulate and disseminate statistics under the UK's domestic statistics framework as described above. Where appropriate, this will include continuing to collect statistics precisely as currently required for sending to Eurostat; where this is inappropriate and as circumstances or international obligations change, it will mean changing this. It

should be noted that the Code of Practice for Official Statistics safeguards the continuity of statistics by requiring producers to consider the impact of changes in the circumstances and context of a data source and ensure that any change should be clearly explained to users (see in particular Q2.5, V1, V4.5 and V5.6). Moreover, alongside the laying of this instrument for sifting, the National Statistician will publish a commitment to the continued alignment between UK official statistics and international standards, emphasising the importance of comparability to users of statistics, both over time and internationally.

2.21 Two further contextual points should be made. First, this instrument does not revoke the entirety of retained EU statistics law. In particular, there are a small number of retained regulations concerning trade, aviation and fisheries which include data collection powers or standards not replicated in domestic law and which it is appropriate to retain and amend. Separate Exit SIs, laid and to be laid by the relevant departments, address this law: see, for instance, the Statistics of Trade (Amendment etc.) (EU Exit) Regulations 2019. Similarly, some retained EU law which primarily concerns substantive policy also includes ancillary obligations relating to statistics. This law is not dealt with by this instrument: again, separate Exit SIs will address these. The UKSA has worked carefully with departments across government to ensure a consistent approach is taken in this respect.

2.22 Second, the Cabinet Office has laid this instrument, prepared by the UK Statistics Authority, on behalf of all government departments, in preference to each department laying an instrument for the statistical obligations for which it is responsible. This approach ensures consistency and saves considerable Parliamentary time.

3. Matters of special interest to Parliament

Matters of special interest to the Sifting Committees

3.1 This instrument is being laid for sifting under the 2018 Act.

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 As the instrument is subject to the negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 The Minister for the Constitution has made the following statement regarding Human Rights:

"In my view the provisions of the UK Statistics (Amendment etc.) (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 The legislative context with respect to UK and EU statistics law is set out in paragraph 2, above.

6.2 The legislative context with respect to retained EU law, and the power under which this instrument is made, may be found in the 2018 Act. In particular, section 2 of the Act provides that legislation made under section 2(2) of the European Communities Act 1972, and certain law relating to the EU, is "EU-derived domestic legislation"; section 3 incorporates certain EU regulations and decisions, including all those included in the Schedule to this instrument, into domestic law as "direct EU legislation"; section 6(7) defines "retained EU law" to include both EU-derived domestic legislation and direct EU legislation; and section 8 provides that a Minister of the Crown may by regulations make such provision as the Minister considers appropriate to prevent, remedy or mitigate any failure of retained EU law to operate effectively or any other deficiency in retained EU law arising from the withdrawal of the United Kingdom from the EU.

7. Policy background

What is being done and why?

7.1 The policy background, together with what is being done and why, is set out in full above in paragraph 2.

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 United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of Annex 1.

9. Consolidation

9.1 As this instrument makes targeted amendments to particular domestic laws and revokes relevant retained EU law, consolidation is not appropriate.

10. Consultation outcome

10.1 For the reasons set out in paragraph 12 below, this instrument will not materially affect business, charity or voluntary bodies, nor public authorities' powers to collect statistics. As a result, a full public consultation has not been undertaken.

10.2 The UK Statistics Authority has consulted government departments on the scope of this instrument and how the repeal of these retained EU laws will affect the Government Statistical Service, the cross-government network led by the National Statistician that seeks to provide high quality statistics, analysis and advice to help Britain make better decisions. As outlined above, in the vast majority of cases departments agreed that existing powers under statute and common law, and supervision and standard-setting by the UKSA under the 2007 Act, would ensure the same statistical service could continue to be provided. In a small number of cases, amendments to domestic and retained EU law were necessary (see paragraphs 2.15

and 2.21 above), and UKSA have worked closely with departments to support them in bringing forward their own legislation in this respect.

10.3 This instrument partly falls within Welsh, Scottish and Northern Ireland devolved competence. Throughout the planning and drafting of this instrument, officials from the UKSA have maintained a regular dialogue with the Chief Statisticians in the devolved administrations to consult them on the instrument. As part of this consultation, complete lists of the retained EU law to be revoked were shared with officials in each devolved administration, along with policy advice regarding the scope of the proposed changes. The Minister for the Constitution has written to the devolved administrations. Northern Irish officials have confirmed their agreement with this instrument. The Welsh Minister for Finance and trefnydd and the Scottish Cabinet Secretary for Finance, Economy and Fair Work have confirmed the Welsh and Scottish Government's consent to this SI respectively.

11. Guidance

11.1 There is no guidance associated with this instrument. UKSA publish extensive guidance on statistical standards and classifications in accordance with their statutory role.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies. The first and second parts of this instrument (see above, paragraphs 2.2 and onward) maintain the status quo as far as possible. The third only affects the technical framework within which public authorities operate and has no direct impact on business, charities or voluntary bodies. In this respect, it is the domestic statistics framework (paragraphs 2.13 above) that grants public authorities power to require information from persons, including businesses, in certain circumstances (subject to certain exceptions outside the scope of this instrument: paragraph 2.21 above). That domestic framework is unaffected by this instrument. The information public authorities decide to require (and therefore the burden on businesses) is determined by a number of factors with respect to use, demand and statistical and legal requirements. It is true that one of those factors is whether information is required for sending to Eurostat, and so it is theoretically possible that removing such obligations could indirectly impact on certain businesses (by leading to a reduction in certain burdens). However, any such effects would arise from those public authorities' decisions, not from this instrument. Moreover, for the reasons set out at paragraph 2.20 above, a high degree of continuity is expected such that any change in burden would be negligible.

12.2 There is no, or no significant, impact on the public sector. Such impact as can be expected from the third part of the instrument is the removal of now redundant burdens (notably the need to collect and prepare data for transmission to Eurostat, together with the transmission itself). For the reasons set out in the previous paragraph, we assess the change in burden for collection and preparation to be indirect and minimal. We assess the change resulting from ceasing to transmit data to Eurostat to be minimal, partly for the same reasons and partly because the increased need for public authorities to send data to certain international organisations (which Eurostat presently does on the EU's behalf) is expected to balance out any burden reduction.

12.3 An impact assessment has accordingly not been prepared for this instrument.

13. Regulating small business

13.1 The instrument does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 No specific monitoring arrangements are needed,

14.2 As this instrument is made under the 2018 Act, no review clause is required.

15. Contact

15.1 Matt McKeown at the UK Statistics Authority, telephone: 01329 44 7668 or email: matt.mckeown@statistics.gov.uk can be contacted with any queries regarding the instrument.

15.2 Robert Bumpstead at the UK Statistics Authority can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Minister for the Constitution can confirm that this Explanatory Memorandum meets the required standard.

Annex 1

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	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
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. Sifting statement(s)

1.1 The Minister for the Constitution has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the UK Statistics (Amendment etc.) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)".

1.2 This is the case because the instrument consists of (1) minimal textual amendments to one piece of primary legislation, seeking to maintain the status quo; (2) minimal textual amendments to one further Act and four statutory instruments which again maintain the status quo; and (3) the revocation of deficient retained EU law that fundamentally – including in its provisions on standards and production – concerns transmission of data to Eurostat. This third category is essentially a removal of redundant EU institutional law that it is clearly inappropriate to retain post-Exit and, accordingly, the negative procedure is appropriate.

2. Appropriateness statement

2.1 The Minister for the Constitution has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the UK Statistics (Amendment etc.) (EU Exit) Regulations 2019 does no more than is appropriate".

2.2 With respect to the changes to domestic law, this is the case because it consists of technical changes that seek to maintain the status quo. With respect to the revocation of retained EU law, this is the case because it revokes law that provides for, or is inextricably linked to, the transmission of data to Eurostat; because this is the approach most consistent with the domestic UK statistics framework; and because it is more appropriate than retention and correction of that law, something that would entail a highly onerous process for maintaining the law, risk undermining the role of the UKSA, and not substantially serve any public interest.

3. Good reasons

3.1 The Minister for the Constitution 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".

3.2 With respect to the changes to domestic law, this is the case because it consists of technical changes that seek to maintain the status quo. With respect to the revocation of retained EU law, the reasons are that in the event that the UK leaves the EU without an agreement to continue to participate in the European Statistical System, it is reasonable to revoke retained EU legislation which would impose unnecessary and

deficient obligations on the UK to transmit statistics to Eurostat, together with the collection, standard and classification obligations entailed by those transmission obligations. Revocation would remove these obligations, maintaining the integrity of the UK's domestic statistics collection framework and the position of the UKSA.

4. Equalities

4.1 The Minister for the Constitution has made the following statement:

"The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts."

4.2 The Minister for the Cabinet Office has made the following statement regarding the use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the draft instrument, I 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."

4.3 Little or no impact on equalities is expected.

5. Explanations

5.1 The explanations statement has been made in paragraph 2 of the main body of this explanatory memorandum.

Annex 2

Table on the main retained EU law this instrument revokes

SI Ref.	Title of EU Regulation	Summary of base legislation
2	Council Regulation (EEC) No 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community	Sets out a classification of economic activities to be used across the EU to ensure that statistics gathered are comparable. It has been amended several times. The main amendment was Regulation (EC) No 1893/2006 establishing NACE Revision 2, which currently applies. This instrument relates to the quality, coding systems and classification of statistics. Please see paragraph 2.11 above.
3	Council Regulation (EEC) No 696/93 of 15 March 1993 on the statistical units for the observation and analysis of the production system in the Community	Defines statistical units used for collecting, transmitting, publishing and analysing data on the production system in the EU. These definitions of statistical units are necessary so that Eurostat can provide reliable, detailed harmonised statistics with the necessary speed and flexibility to businesses, financial institutions, governments and others across the EU. The choice of statistical unit to be used for particular enquiries or analyses is determined in specific texts. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.
4	93/704/EC: Council Decision of 30 November 1993 on the creation of a Community database on road accidents	This decision obliges Member States to compile statistics on road accidents that result in injury or death and then to transmit these to the EU via a computer database which is also established by this decision. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.
5	Council Regulation (EC) No 2744/95 of 27 November 1995 on statistics on the structure and distribution of earnings	Regulation 2744/95 places an obligation on Member States to provide statistical data on the structure and distribution of all employees' earnings across a series of economic activities. It defines quality criteria that these data will meet and a timetable for when such data shall be transmitted to the EU. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.
6	Council Regulation 577/98 on the organisation of a labour force sample survey in the Community	It sets up a harmonised methodology for collecting national statistics on labour participation of people aged 15 and over, as well as on persons outside the labour force. It lays down rules and guidelines on various aspects, such as the survey's design, characteristics, methods and decision-making, so as to ensure comparable results. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.
7	Council Regulation 1165/98 concerning Short-Term Statistics	Establishes a common framework for the production of short-term Community statistics on the business cycle. The overall aim is to provide a uniform basis for the analysis of short-term evolution supply and demand, production factors and prices. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.

8	Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank	Regulation 2533/98 provides powers to the European Central Bank to collect statistical data from various institutions within Member States. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.
9	Council Regulation 530/1999 concerning the structural statistics on earnings and on labour costs	It aims to help the EU to formulate its policies, on the basis of reliable and comparable statistics from across the EU, in all regions and for all social and economic fields. To this end, Regulation (EC) No 530/1999 sets out what type of data statistical authorities across the EU should collect, and how they should do it. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.
13	Commission Regulation 1618/1999 concerning the criteria for the evaluation of quality of structural business statistics	Establishes a common framework for measuring yearly, at European Community level, the quality of structural business statistics compiled in the framework of Regulation (EC) No 58/97 concerning structural business statistics. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.
25	Commission Regulation (EC) No 2163/2001 of 7 November 2001 concerning the technical arrangements for data transmission for statistics on the carriage of goods by road	Specifies the format in which the data is to be transmitted to Eurostat in sufficient detail to ensure that the data can be processed rapidly and in a cost-effective way. This instrument relates to the quality, coding systems and classification of statistics. Please see paragraph 2.11 above.
27	Regulation 1221/2002 on quarterly non-financial accounts for general government	It defines the main categories of public non-financial accounts, as set out in ESA 95, whose details EU countries' statistical offices must communicate to the European Commission (Eurostat) every 3 months. It sets out the categories of general government expenditure and revenue to be transmitted to the Commission on a quarterly basis. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.
31	Regulation (EC) No 2150/2002 of the European Parliament and of the Council of 25 November 2002 on waste statistics	This regulation permits the gathering of regular and comparable data on waste in EU countries and their transmission to Eurostat, the EU's statistics office. The statistics collected allow EU waste policy implementation to be monitored and evaluated. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.
32	Commission Regulation (EC) No 6/2003 of 30 December 2002 concerning the dissemination of statistics on the carriage of goods by road	Dissemination of statistics on the carriage of goods by road. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.
33	Regulation 450/2003 concerning the labour cost index	Establishes common rules for the production, transmission and evaluation of comparable labour cost indices (LCIs) in the EU. LCIs measure the cost of labour as a factor in production. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.
34	Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS)	It sets out the rules for the Nomenclature of Territorial Units for Statistics (NUTS), a system used mainly to assess levels of eligibility for European Union (EU) Structural Funds and gives NUTS legal status. It also contains rules for future amendments to the classification. This is to ensure that the data refers to the same regional unit for a certain period of time. This is important especially for statistical time series.

		This instrument relates to the quality, coding systems and classification of statistics. Please see paragraph 2.11 above.
35	Regulation 1177/2003 concerning Community statistics on income and living conditions (EU-SILC)	It sets up a system for the gathering and compilation of statistics on income and living conditions in the EU, known as EU-SILC. This data serves to monitor the progress of the Europe 2020 strategy and more particularly its target of poverty reduction, hence the importance of ensuring that data collected is comparable by ensuring the rules on their collection and compilation are harmonised. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.
37	Council Regulation 1287/2003 on the harmonisation of gross national income at market prices	Harmonisation of gross national income at market prices (GNI) for purposes of sharing with Commission. Each year, Member States are required to provide Eurostat with figures for aggregate GNI and its components. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.
38	Decision No 1608/2003/EC of the European Parliament and of the Council of 22 July 2003 concerning the production and development of Community statistics on science and technology (Text with EEA relevance)	It sets up a statistical information system to support the management of science and technology policies in the EU. This allows the research and development (R&D), as well as innovation capability, of the EU's regions to be assessed, taking into account support from the Structural Funds. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.
47	Regulation (EC) No 48/2004 of the European Parliament and of the Council of 5 December 2003 on the production of annual Community statistics on the steel industry for the reference years 2003-2009	Regulation 48/2004 obliges Member States to provide statistical data on the production of steel between 2003 and 2009. It provides definitions for steel production and the wider industry, sets quality criteria and a timeline for transmission of these data to the EU. This instrument relates to the production, coordination and transmission of statistics and also to the quality, coding systems and classification of statistics. Please see paragraphs 2.9, 2.10 and 2.11 above.
48	Regulation (EC) No 138/2004 of the European Parliament and of the Council of 5 December 2003 on the economic accounts for agriculture in the Community (Text with EEA relevance)	Regulation 138/2004 sets up the economic accounts for agriculture in the EU by providing common standards, definitions, classifications and accounting rules for compiling accounts and for the transmission of data including time limits to provide data. This instrument relates to the quality, coding systems and classification of statistics. Please see paragraph 2.11 above.
51	Regulation 501/2004 on quarterly financial accounts for general government	It lists and defines the main categories of public sector financial transactions and financial assets and liabilities whose details EU countries must communicate to the European Commission (Eurostat) every 3 months. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.

54	Regulation (EC) No 808/2004 of the European Parliament and of the Council of 21 April 2004 concerning Community statistics on the information society	It seeks to establish a common EU-wide system for the collection of statistics on the digital economy and society. The statistics collected serve as a basis for EU policy and strategy on the development of the European information society. This instrument relates to the production, coordination and transmission of statistics and also to the quality, coding systems and classification of statistics. Please see paragraphs 2.9, 2.10 and 2.11 above.
55	Council Regulation 1222/2004 concerning the compilation and transmission of data on the quarterly government debt	Sets out Member State obligation to compile and transmit to the European Commission data on quarterly government debt by certain time periods. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.
60	Regulation (EC) No 184/2005 of the European Parliament and of the Council of 12 January 2005 on Community statistics concerning balance of payments, international trade in services and foreign direct investment	It establishes a common framework for regularly producing European Union statistics on balance of payments, international trade in services and foreign direct investment (FDI). This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.
66	Commission Regulation (EC) No 782/2005 of 24 May 2005 setting out the format for the transmission of results on waste statistics	Transmission of results on waste statistics to the Commission. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.
71	Regulation (EC) No 1161/2005 of the European Parliament and of the Council of 6 July 2005 on the compilation of quarterly non-financial accounts by institutional sector	This Regulation provides a common framework for the contributions of the Member States to the compilation of quarterly European non-financial accounts by institutional sector. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.
74	Regulation 1552/2005 on statistics relating to vocational training in enterprises	It lays down the rules and methods for collecting European statistics on vocational training in enterprises. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.
92	Regulation 1893/2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) 3037/90 as well as certain EC Regulations on specific statistical domains	Establishes a common statistical classification, covering all economic activities in the EU. This is known as NACE Rev. 2 and ensures compatibility between global, EU and national systems, and statistics. This instrument relates to the quality, coding systems and classification of statistics. Please see paragraph 2.11 above.
93	Regulation 1921/2006 on the submission of statistical data on landings of fishery products in Member States and repealing the Council Regulation	This regulation requires Member States to submit to the Commission statistical data in respect of the fishery products landed on its territory by Community and European Free Trade Agreement (EFTA) fishing vessels. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.
97	Commission Regulation (EC) No 332/2007 of 27 March 2007 on the technical arrangements for the transmission of railway transport statistics	Sets out the technical format for the transmission of data to the Commission (Eurostat) regarding railway transport. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.
100	Regulation 458/2007 on the European system of integrated social protection statistics (ESSPROS)	Establishes the European system of integrated social protection statistics (ESSPROS). This system provides a legal framework intended to improve the usefulness of current data collections in terms of timeliness, coverage and comparability. This instrument relates to the quality, coding systems and classification

		of statistics. Please see paragraph 2.11 above.
104	Regulation 716/2007 on Community Statistics on the structure and activity of foreign affiliates	Aims to create common statistical standards for the systematic production of comparable statistics on the structure and activity of foreign affiliates. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.
107	Regulation 862/2007 on Community statistics on migration and international protection and repealing Council Regulation 311/76 on compilation of statistics on foreign workers	Sets out EU rules for the collection and compilation of statistics on migration (emigration and immigration), international protection (asylum), regular and irregular migration and returns by EU and EFTA countries. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.
111	Regulation (EC) No 1445/2007 of the European Parliament and of the Council of 11 December 2007 establishing common rules for the provision of basic information on Purchasing Power Parities and for their calculation and dissemination	Establishes common rules for the provision of basic information on purchasing power parities and for their calculation and dissemination. Purchasing Power Parities (PPPs) are a way of measuring price differences between countries. The EU has agreed on rules for their calculation within the national statistical institutes and Eurostat, the EU's statistical office. These rules aim to improve the quality and comparability of the data collected and calculated. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.
120	Regulation 295/2008 concerning structural business statistics (recast)	It seeks to ensure that high-quality structural business statistics (SBSs) are collected, compiled and transmitted by EU countries to Eurostat according to agreed standards and formats. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.
126	Regulation (EC) No 451/2008 of the European Parliament and of the Council of 23 April 2008 establishing a new statistical classification of products by activity (CPA) and repealing Council Regulation (EEC) No 3696/93	Introduces a new statistical classification of products (both goods and services) by activity (CPA) in the EU, replacing and repealing a previous classification from 1993. This instrument relates to the quality, coding systems and classification of statistics. Please see paragraph 2.11 above.
127	Regulation 452/2008 concerning the production and development of statistics on education and lifelong learning	Establishes a common framework on statistical standards for the production of harmonised data in the area of education and lifelong learning. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.
128	Regulation 453/2008 on quarterly statistics on Community job vacancies	Lays down the requirements for the regular quarterly production of statistics on job vacancies in the EU. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.
132	Regulation 762/2008 on the submission by Member States of statistics on aquaculture and repealing Council Regulation 788/96	Member States shall submit to the Commission statistics on all the aquaculture activities conducted in freshwater and saltwater on their territory. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.

133	Regulation 763/2008 on population and housing censuses	It sets out common rules for the provision of census statistics on population and housing in the EU. It aims to achieve comprehensive and flexible dissemination of census data as well as transparency regarding their quality. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.
138	Regulation (EC) No 1099/2008 of the European Parliament and of the Council of 22 October 2008 on energy statistics	It sets up a system to produce EU-wide statistics on energy products and their aggregates. It covers the entire process of collecting, transmitting, evaluating and disseminating the data. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.
139	Regulation 1165/2008 concerning livestock and meat statistics and repealing directives 93/23/EEC and 93/25/EEC	Sets up a system for the compilation and production of statistics on livestock and meat in the EU. These statistics are used to manage and evaluate the EU's common agricultural policy. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.
141	Decision No 1297/2008/EC of the European Parliament and of the Council of 16 December 2008 on a Programme for the Modernisation of European Enterprise and Trade Statistics (MEETS) (Text with EEA relevance)	A decision that relates to things that are no longer of concern to the UK after EU exit This instrument relates to the quality, coding systems and classification of statistics. Please see paragraph 2.11 above.
142	Regulation 1338/2008 on Community statistics on public health and safety at work	It sets rules for how statistics on public health and health & safety at work should be collected and presented - to provide comparable data across all EU countries. This helps the EU produce effective public health policy and support national strategies in this field. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.
146	Regulation 216/2009 on the submission of nominal catch statistics by member states fishing in certain areas other than those of the North Atlantic	Establishes that Member States shall submit to the Commission data on the nominal catches by vessels registered in or flying the flag of that Member State fishing in certain areas other than those of the North Atlantic. This instrument relates to the quality, coding systems and classification of statistics. Please see paragraph 2.11 above.
147	Regulation 217/2009 on the submission of catch and activity statistics by Member States fishing in the North-West Atlantic	Concerns the submission by EU countries to the European Commission (Eurostat) of accurate and timely statistics on fishing vessel catches. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.
149	Regulation (EC) No 223/2009 of the European Parliament and of the Council - European statistics - New legal framework	Aims to establish a legal framework for the development, production and dissemination of European statistics. This instrument establishes the overarching framework for the ESS and Eurostat also relates to the quality, coding systems and classification of statistics. Please see paragraphs 2.7 and 2.11 above.
154	Council Regulation 479/2009 on the application of the Protocol on the excessive deficit procedure annexed to the treaty establishing the European Community (codified version)	It sets out the procedures under which EU governments provide the European Commission with information on their national deficit and debt. This instrument relates to the quality, coding systems and classification of statistics. Please see paragraph 2.11 above.

155	Regulation 543/2009 concerning crop statistics and repealing Council Regulations 837/90 and 959/93	Establishes a common framework for the systematic production of Community statistics on agricultural land use and crop production. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.
162	Regulation 1185/2009 concerning statistics on pesticides	It sets up rules and procedures for the collection and dissemination of statistics on the sale and use of pesticides. These statistics, together with other relevant data, will allow the EU countries to draw up the national action plans with quantitative objectives, targets, measures and timetables, envisaged in Directive 2009/128/EC and aimed at reducing the risks and impacts of pesticide use on human health and the environment. They are also necessary for assessing EU policies on sustainable development and for calculating relevant indicators on the risks for health and the environment related to pesticide use. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.
165	Council Regulation (EC) No 1217/2009 of 30 November 2009 setting up a network for the collection of accountancy data on the incomes and business operation of agricultural holdings in the European Community	The Farm Accountancy Data Network (FADN) enables the European Commission to collect data on the incomes and economic activities of agricultural holdings in the EU in order to take informed decisions to shape the future common agricultural policy. It sets up a network for the collection of accountancy data on the incomes and business operation of agricultural holdings in the European Community. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.
193	Regulation (EU) No 691/2011 of the European Parliament and of the Council of 6 July 2011 on European environmental economic accounts	The objective of this regulation is to make it easier to compare environmental economic accounts across EU countries, calling on environment-related data that is understandable and accessible. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.
194	Regulation 692/2011 concerning European statistics on tourism and repealing Council Directive 95/57/EC	Establishes EU rules and methods for the development, production and dissemination of statistics on tourism. It is closely related to Regulation (EC) No 223/2009 on European statistics. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.
198	Regulation 1337/2011 concerning European statistics on permanent crops and repealing council Regulation 357/79 and Directive 2001/109/EC	It introduces rules on the production of European statistics on permanent crops. Examples of these include vines, olives and fruits grown on trees or shrubs. It repeals Regulation (EEC) No 357/79 on statistical surveys of vines and Directive 2001/109/EC on statistics relating to the production potential of fruit trees — both sectors whose production and market conditions have evolved significantly since these acts came into force. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.
201	Regulation (EU) No 70/2012 of the European Parliament and of the Council of 18 January 2012 on statistical returns in respect of the carriage of goods by road (Recast)	It sets out the rules for the production of comparable EU-wide statistics on goods transport by road. It revises and repeals Regulation (EC) No 1172/98, which had been amended several times, and aligns the regulation with the Lisbon treaty with regard to the delegation of powers to the European Commission to adopt supplementary legislation. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.

211	Regulation (EU) No 99/2013 of the European Parliament and of the Council of 15 January 2013 on the European statistical programme 2013-17	Regulation (EU) No 99/2013 establishes a European statistical programme for the period 2013 to 2017. It was amended by Regulation (EU) 2017/1951 which extends the programme until 2020, when the current multiannual financial framework comes to an end. This instrument relates to the quality, coding systems and classification of statistics. Please see paragraph 2.11 above.
222	Regulation 1260/2013 on European demographic statistics	It seeks to regulate the harmonisation and provision of data on population and on vital events (i.e. births and deaths) linked to the population. It lays down common definitions, subjects covered and characteristics of the required information, coverage, quality criteria and reporting deadlines and results although EU countries will compile the data using their own national sources and practices. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.
268	Regulation (EU) 2016/1952 of the European Parliament and of the Council of 26 October 2016 on European statistics on natural gas and electricity prices and repealing Directive 2008/92/EC	Establishes a common framework for the development, production and dissemination of comparable European statistics on natural gas and electricity prices for household and final non-household customers in the Union. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.
289	Regulation (EU) 2018/643 of the European Parliament and of the Council of 18 April 2018 on rail transport statistics	Regulation (EU) No 2018/643 establishes a European statistical programme related to rail transport statistics and compels member states to provide related statistical data sets to Eurostat. This instrument relates to the production, coordination and transmission of statistics. Please see paragraphs 2.9 and 2.10 above.

UK MINISTERS ACTING IN DEVOLVED AREAS

The UK Statistics (Amendment etc.) (EU Exit) Regulations 2019
Laid in the UK Parliament: 24 January 2019

Sifting	
Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	5 February 2019
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	w/c
Date sifting period ends in UK Parliament	12 February 2019
Written statement under SO 30C:	Paper 11
SICM under SO 30A (because amends primary legislation)	Paper 12
Scrutiny procedure	
Outcome of sifting	Not known
Procedure	Negative or Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

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

These Regulations correct deficiencies in legislation arising from the UK leaving the European Union in relation to the provision of statistical information. In particular, this instrument:

- Amend the Statistic and Registration Service Act 2007 to r4eplace references to EU law with references to the appropriate equivalent retained EU law;
- Amends one Act and four statutory instruments so that their references to certain European standards continue to refer to the EU, rather than the retained EU las, version of those standards; and
- Revokes the majority of retained direct EU legislation that:
  (a) sets out the EU architecture for the production by Member States, and transmission to Eurostat of statistical data; and

(b) establishes standards and technical classifications with respect to certain statistical data, together with relevant equivalent law in the retained EEA agreement.

Legal Advisers agree with the statement laid by the Welsh Government dated 29 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.

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The European Structural and Investment Funds Common Provisions and Common Provision Rules etc. (Amendment) (EU Exit) Regulations 2019**
DATE	**31 January 2019**
BY	**Rebecca Evans AM, Minister for Finance and Trefnydd**

Title of the SI
The European Structural and Investment Funds Common Provisions and Common Provision Rules etc. (Amendment) (EU Exit) Regulations 2019

Policy Overview of the SI
The SI maintains the operability of the structural fund programmes in the event of a 'no-deal' exit scenario. It creates the necessary provisions to ensure that European Regional Development Fund (ERDF) and European Social Fund (ESF) projects started before exit can continue to operate under a domestic framework that mirrors pre-exit structures, allowing payments to be made to the relevant beneficiaries. It also ensures that all projects started before exit will continue to comply with EU Regulations, mitigating against the risk of non-compliance with any survivable obligations.

The SI creates the payment powers necessary for all Devolved Administrations to administer the UK Government Treasury Guarantee for European Territorial Cooperation (ETC) Programmes.

The SI also preserves Welsh Ministers' powers and the designation of WEFO as a Managing and Certifying Authority, and of the Welsh Government as an Audit Authority, for structural funds.

The [retained EU] Law which is being amended
- Commission Regulation (EU) No 1303/ 2013 of the European Parliament and of the Council of 17 December 2013
- Commission Delegated Regulation (EU) No 240/ 2014 of 7 January 2014
- Commission Delegated Regulation (EU) No 480/ 2014 of 3 March 2014
- Commission Delegated Regulation (EU) 2015/ 616 of 13 February 2015
- Commission Delegated Regulation (EU) 2015/1076 of 28.4.2015

- Commission Delegated Regulation (EU) 2015/1516 of 10 June 2015
- Commission Delegated Regulation (EU) 2015/ 1970 of 8 July 2015
- Commission Delegated Regulation (EU) 2016/ 568 of 29 January 2016
- Commission Implementing Regulation (EU) No 184/ 2014 of 25 February 2014
- Commission Implementing Regulation (EU) No 288/ 2014 of 25 February 2014
- Commission Implementing Regulation (EU) No 215/ 2014 of 7 March 2014
- Commission Implementing Regulation (EU) No 1011/ 2014 of 22 September 2014
- Commission Implementing Regulation (EU) No 1232/ 2014 of 18 November 2014
- Commission Implementing Regulation (EU) 2015/ 207 of 20 January 2015
- Commission Implementing Regulation (EU) 2015/ 1974 of 8 July 2015
- 2014/190/EU: Commission Implementing Decision of 3 April 2014
- 2014/660/EU: Commission Implementing Decision of 11 September 2014
- Commission Regulation (EU) No 1299/2 013 of the European Parliament and of the Council of 17 December 2013
- Commission Regulation (EU) No 1301/ 2013 of the European Parliament and of the Council of 17 December 2013
- Commission Regulation (EU) No 1302/ 2013 of the European Parliament and of the Council of 17 December 2013
- Commission Delegated Regulation (EU) No 481/ 2014 of 4 March 2014
- Commission Delegated Regulation (EU) No 522/ 2014 of 11 March 2014
- Commission Delegated Regulation (EU) 2015/ 2195 of 9 July 2015
- 2014/266/EU: Commission Implementing Decision of 16 June 2014
- 2014/805/EU: Commission Implementing Decision of 17 November 2014
- 2014/388/EU: Commission Implementing Decision of 16 June 2014

The purpose of the amendments
The purpose of the amendments is to correct deficiencies in legislation arising from the UK leaving the European Union relating to the common and fund-specific regulations governing the European Regional Development Fund, European Territorial Cooperation, the European Social Fund and the Cohesion Fund.

The SI intends to:

- Repeal the Structural Funds regulations listed in Schedule 1 and Schedule 2 of the Regulations, either in whole or in part, given that they will be inoperable upon exit day
- Preserve and retain all references to the Structural Funds regulations in existing offers of funding, so that the regulations will continue to apply to survivable obligations created pre EU Exit
- For ETC, create the necessary payment powers for a Secretary of State or Devolved Authority to pay beneficiaries or Managing Authorities involved in ETC, or the European Commission, the appropriate funds from the guarantee.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: https://beta.parliament.uk/work-packages/OY5198LA

Any impact the SI may have on the Welsh Ministers' executive competence
There is no effect on the Welsh Minister's executive competence

Any impact the SI may have on the legislative competence of the National Assembly for Wales
The SI has no impact on the National Assembly for Wales' legislative competence.

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

UK MINISTERS ACTING IN DEVOLVED AREAS

85 - The European Structural and Investment Funds Common Provisions and Common Provisions Rules etc. (Amendment) (EU Exit) Regulations 2019

Laid in the UK Parliament: 28 January 2019

Sifting	
Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 16
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(a)(ii) and (b) of Schedule 7, to the European Union (Withdrawal) Act 2018.
Various EU Regulations establish funds designed to reduce social and economic disparities across the EU. The funds relevant to this instrument are:-

(i) the European Regional Development Fund (ERDF), the European Social Fund (ESF) and European Territorial Cooperation (ETC). These are collectively known as “Structural Funds”; and
(ii) the Cohesion Fund (CF).

In the event of a non-negotiated withdrawal from the EU, the EU Regulations governing the Structural Funds and the Cohesion Fund will no longer operate.

The policy intention of both the UK Government and of the Welsh Government is that projects already funded will continue, where necessary, with domestic funding.

Regulations 3 and 4 of this instrument revoke and/or disapply the relevant EU Regulations. Regulation 6 gives to the Secretary of State and to the Welsh Ministers powers to provide financial assistance to continue to support those projects from domestic funds.

This instrument will not protect Structural Funds projects or Cohesion Funds projects started after exit day.
Legal Advisers make the following comments in relation to the Welsh Government's statement of 31 January 2019 regarding the effect of these Regulations:
The Statement identifies EU instruments which are being amended or revoked. The list of instruments is correct, save as follows-

(i) The Statement references two instruments which are not included in the scope of these Regulations. They are:

a. Commission Delegated Regulation (EU) 2015/616 of 13 February 2015; and
b. Commission Implementing Regulation (EU) 2016/207 of 20 January 2015.

(ii) Conversely, the Statement omits to reference several instruments which do fall within the scope these Regulations. Those instruments are listed at paragraphs 14, 15, 16 and 17 of Schedule 1 to the Regulations and at paragraphs 2, 4, 8, 9 and 10 of Schedule 2 to the Regulations.

(iii) The Statement refers to 2014/266/EU: Commission Implementing Decision of 16 June 2014. We believe this is a typographical error and should refer to '2014/366/EU'.

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.

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The General Food Law (Amendment etc.) (EU Exit) Regulations 2019**
DATE	**4 February 2019**
BY	**Rebecca Evans AM, Minister for Finance and Trefnydd**

The General Food Law (Amendment etc.) (EU Exit) Regulations 2019

The retained EU law which is being amended

- Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety ("General Food Law Regulation")
- Commission Implementing Regulation (EU) No. 931/2011 on the traceability requirements set by Regulation (EC) No. 178/2002 of the European Parliament and of the Council for food of animal origin

The retained EU law which is being revoked

- Commission Regulation (EU) No. 16/2011 laying down implementing measures for the Rapid alert system for food and feed

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

This SI will enhance the Welsh Ministers' executive powers. It will transfer the European Commission's current legislative powers under the General Food Law Regulation to the Welsh Ministers in relation to Wales. This will enable the Welsh Ministers to make regulations, subject to annulment by resolution of the National Assembly, to apply food traceability requirements to specific sectors. The SI will not have any impact on the Assembly's legislative competence.

The purpose of the amendments

The purpose of the amendments is to correct deficiencies in legislation arising from the UK leaving the European Union relating to the general food and feed safety and hygiene. The Regulations will make minimal, technical amendments to the retained direct EU law without making any material change in the level of protection given to human health or to the high

standard of food and feed that consumers expect from both domestically produced and imported products.
The Regulations will make technical fixes such as removing references to EU institutions and other Member States and will define 'third countries' as any country outside of the UK.

The main corrections proposed by these Regulations involve removing the legislative provisions that establish the European Food Safety Authority ("EFSA"). EFSA is the EU institution currently responsible for undertaking the risk/safety assessment of particular foods (e.g. new types of food additive) and wider scientific opinions. In the event of no deal being agreed with the EU, the UK will not be a member country of EFSA so the provisions providing for its establishment will be redundant. Corrections to other retained direct EU law relating to food and feed safety and hygiene will confer EFSA's current risk assessment functions on an appropriate authority operating in the UK.

The corrections to the General Food Law Regulation will also confer a duty on the Welsh Ministers, in relation to Wales, to promote the development of international technical standards for food and feed, including recognition of equivalent measures and a focus on developing countries' needs.

The Regulations will also make minor technical amendments to Regulation 931/2011 on the traceability of food of animal origin and will revoke Regulation (EU) No 16/2011 which lays down implementing measures for the Rapid alert system for food and feed ("RASFF"). In the event of no deal being agreed with the EU, the UK will not be a member country of RASFF so the implementing measures will be redundant.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: https://beta.parliament.uk/work-packages/zXs1Fosv

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

UK MINISTERS ACTING IN DEVOLVED AREAS

The General Food Law (Amendment etc.) (EU Exit) Regulations 2019
Laid in the UK Parliament: 31 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	
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 the European Union (Withdrawal) Act 2018.

These Regulations, which apply to the whole of the UK, make a series of amendments to European Union legislation relating to food safety. The amendments address failures in retained EU law to operate effectively following the UK's exit from the EU and ensure that a legislative framework is maintained in the event of an EU Exit with no Withdrawal Agreement.

The Regulations:

1. amend Regulation (EC) No. 178/2002, which lays down high-level principles governing food and feed safety and definitions that are referenced across food and feed sectoral legislation (and implementing Regulation 931/2011);

2. revoke Regulation (EU) No. 16/2011 which concerns EU Member State responsibilities under the Rapid Alert System for Food and Feed (a system which will not apply to the UK following EU Exit unless negotiated); and
3. amend the Food Safety and Hygiene (England) Regulations 2013, which apply to England only.

Specifically in relation to Wales, the Regulations designate responsibilities currently incumbent on the European Food Safety Authority (the body that provides scientific advice on food to the European Commission, the European Parliament and EU Member States) to the Food Standards Agency, and designate responsibilities incumbent on the European Commission to the Welsh Ministers.

Legal Advisers agree with the statement laid by the Welsh Government dated 4 February 2019 regarding the effect of these Regulations.

The committee welcomes the clarity of the Welsh Government's statement regarding the impact of these Regulations on the Welsh Ministers' executive competence, and its helpfulness for the committee's scrutiny.

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.

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The Specific Food Hygiene (Amendment etc.) (EU Exit) Regulations 2019**
DATE	**4 February 2019**
BY	**Rebecca Evans AM, Minister for Finance and Trefnydd**

The Specific Food Hygiene (Amendment etc.) (EU Exit) Regulations 2019

The retained EU law which is being amended

- Regulation (EC) No. 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin
- 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
- Commission Regulation (EU) No. 101/2013 concerning the use of lactic acid to reduce microbiological surface contamination on bovine carcases
- Commission Regulation (EU) 2015/1474 concerning the use of recycled hot water to remove microbiological surface contamination from carcases

The retained EU law which is being amended

- Commission Implementing Regulation (EU) No. 636/2014 on a model certificate for the trade of unskinned large wild game

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

This SI will enhance the Welsh Ministers' executive powers. It will transfer the European Commission's current legislative powers under EU Regulations 853/2004 and 854/2004 to the Welsh Ministers in relation to Wales. This will enable the Welsh Ministers to make regulations, subject to annulment by resolution of the National Assembly, to amend Annexes II and III to Regulation 853/2004 and Annexes I to VI to Regulation 854/2004.

In relation to Regulation 853/2004, Annex II sets requirements that apply to several products of animal origin ("POAO"), including on health identification marking. Annex III sets specific rules for each type of POAO.

In relation to Regulation 854/2004, Annexes I to VI set the detailed rules for the carrying out of official controls to check that different types of food products (fresh meat of various types, live bivalve molluscs, fishery products, raw milk products) and for the certificates accompanying imports.

The SI will not have any impact on the Assembly's legislative competence.

The purpose of the amendments
The purpose of the amendments is to correct deficiencies arising from the UK leaving the European Union in the retained direct EU legislation relating to POAO. Among other things, they will make minor technical amendments and repeals to EU Regulations 101/2013, 2015/1474 and 636/2014.

The Regulations will also make technical and substantive amendments to the retained direct EU legislation which provides specific hygiene rules for establishments' handling of certain POAO (Regulation (EC) No. 853/2004), and to the retained direct EU law which sets the rules for the carrying out of official controls on POAO (Regulation (EC) No. 854/2004). The SI will not make any material change in the level of protection given to human (or animal) health, or to the high standard of food and feed that consumers expect from both domestically produced and imported products.

The technical corrections involved include removing references to EU institutions and, in relation to Regulation 853/2004, include amending provisions on the health identification mark. This is the identification mark that must be applied to POAO placed on the market in order to assist with traceability, and to denote that these high-risk products are produced safely and under the control of the competent authority.

The EU legislation to be retained describes the form of the identification mark, which must be oval in shape and contain information reflecting:

- that the establishment is in the EU by means of the designation "EC";
- the Member State in which the establishment lies; and
- the unique approval number of the establishment.

When the UK ceases to be a Member State of the EU, UK businesses will not be entitled to use the "EC" designation in their identification mark. The SI will remove this requirement from the retained EU legislation to ensure that the law remains operable and enforceable after EU exit and that food safety is maintained in respect of POAO.

The technical corrections to Regulation 853/2004 also include amending a provision that currently requires the registration document that must accompany a batch of bivalve molluscs to be in at least one official language of the Member State in which the receiving establishment is located. The Regulations will amend the provision to set out that the document must be in English, or in English and Welsh. A similar change is being made to the provision on the language of certificates that must accompany imported POAO.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: https://beta.parliament.uk/work-packages/U7eheF57

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

UK MINISTERS ACTING IN DEVOLVED AREAS

The Specific Food Hygiene (Amendment etc.) (EU Exit) Regulations 2019
Laid in the UK Parliament: 31 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	
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 20
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 draft Affirmative Regulations are proposed to be made by the UK Government pursuant to section 8 of the European Union (Withdrawal) Act 2018.

This statutory instrument is being made to fix the inoperabilities of retained EU legislation which arise because of the UK's exit from the European Union.

For food safety to be maintained after the UK's exit, it is necessary that existing EU Regulations are retained in an operable form in UK law. This instrument delivers this principally for Regulation (EC) No. 853/2004 but also for some related Regulations.

Regulation (EC) No. 853/2004 lays down specific requirements for food business operators ("FBOs") manufacturing and handling certain products of animal origin ("POAO"). In order to operate, such FBOs must be

approved by the 'competent authority' or CA (this is the FSA in slaughterhouses and cutting plants and local authorities in other establishments) and as part of this, each establishment is provided with a unique number. In the UK, altogether this could impact on the 6,4531 approved food business establishments.

The retained legislation as amended by this instrument ensures that this is maintained in the event of a "no-deal" scenario. Any agreements reached during exit negotiations that impact the food regulatory regime will be factored in to any future amendments to this instrument
Legal Advisers agree with the statement laid by the Welsh Government dated 4 February 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.

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The General Food Hygiene (Amendment) (EU Exit) Regulations 2019**
DATE	**4 February 2019**
BY	**Rebecca Evans AM, Minister for Finance and Trefnydd**

The General Food Hygiene (Amendment) (EU Exit) Regulations 2019

The retained EU law which is being amended

- Regulation (EC) No. 852/2004 of the European Parliament and of the Council on the hygiene of foodstuffs ("General Hygiene Regulation")
- Commission Regulation (EU) No. 579/2014 granting derogation from certain provisions of Annex II to Regulation (EC) No. 852/2004 of the European Parliament and of the Council as regards the transport of liquid oils and fats by sea
- Commission Regulation (EC) No. 2073/2005 on microbiological criteria for foodstuffs
- Commission Regulation (EU) No. 2017/2158 establishing mitigation measures and benchmark levels for the reduction of the presence of acrylamide in food

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

This SI will enhance the Welsh Ministers' executive powers. It will transfer the European Commission's current legislative powers under the General Hygiene Regulation to the Welsh Ministers in relation to Wales. This will enable the Welsh Ministers to make regulations, subject to annulment by resolution of the National Assembly, to amend Annexes I and II to the retained General Hygiene Regulation, which contain, respectively, hygiene provisions for primary producers of food and the principles for hygiene control in food businesses other than in primary production. The SI will not have any impact on the Assembly's legislative competence.

The purpose of the amendments

The purpose of the amendments is to correct deficiencies in legislation arising from the UK leaving the European Union relating to the general principles for the hygienic production of foodstuffs and the effective and proportionate controls which must be applied. The Regulations will also make minor technical corrections to three further EU Regulations on food hygiene (EU Regulations 579/2014, 2073/2005, 2017/2158).

The corrections to the General Hygiene Regulation include technical fixes to ensure the ongoing operability of the statute book post EU exit. The retained EU law will continue to be the legislative cornerstone for food hygiene in the UK after EU Exit to ensure food safety throughout the food chain, starting with primary production.

These technical corrections include amending a provision which currently requires containers/tankers carrying particular foodstuffs to be marked in one or more community languages to show that they are used for the transport of foodstuffs, or are to be marked “for foodstuffs only”. The Regulations will amend the provision to set out that the containers/tankers are to be marked with “for foodstuffs only” in English, or in English and Welsh.

The Regulations will not make any material change in the level of protection given to human (or animal) health, or to the high standard of food and feed that consumers expect from both domestically produced and imported products.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: https://beta.parliament.uk/work-packages/qJO2B1F5

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

UK MINISTERS ACTING IN DEVOLVED AREAS

The General Food Hygiene (Amendment) (EU Exit) Regulations 2019
Laid in the UK Parliament: 31 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	
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 22
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 of the European Union (Withdrawal) Act 2018.

These Regulations amend four separate pieces of retained EU legislation. The changes are being made principally to fix inoperabilities of this legislation after Brexit. These are intended to enable the retained law to operate effectively within the UK after exit, allowing for a smooth transition for business, the voluntary sector and for consumers.

The Regulations amend:

- Regulation (EC) No. 852/2004 of the European Parliament and of the Council on the hygiene of foodstuffs (the "General Hygiene Regulation");
- Commission Regulation (EU) No. 579/2014 granting derogation from certain provisions of Annex II to Regulation (EC) No. 852/2004 of the

European Parliament and of the Council as regards the transport of liquid oils and fats by sea;
- Commission Regulation (EC) No. 2073/2005 on microbiological criteria for foodstuffs;
- Commission Regulation (EU) No. 2017/2158 establishing mitigation measures and benchmark levels for the reduction of the presence of acrylamide in food.

These Regulations will enhance the Welsh Ministers' executive powers, as they transfer the European Commission's current legislative powers under the General Hygiene Regulation to the Welsh Ministers in relation to Wales.

Legal Advisers agree with the statement laid by the Welsh Government dated 4 February 2019 regarding the effect of these Regulations. We particularly welcome the clarity of this statement, and the clear explanations provided as to the impact upon the Welsh Ministers' executive powers.

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.

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The Contaminants in Food (Amendment) (EU Exit) Regulations 2019**
DATE	**4 February 2019**
BY	**Rebecca Evans AM, Minister for Finance and Trefnydd**

The Contaminants in Food (Amendment) (EU Exit) Regulations 2019

The retained EU law which is being amended in relation to Wales

- Council Regulation (EEC) No. 315/93 laying down Community procedures on contaminants in foods
- Commission Regulation (EC) No. 401/2006 laying down the methods of sampling and analysis for the official control of the levels of mycotoxins in foodstuffs
- Commission Regulation (EC) No. 1881/2006 setting maximum levels for certain contaminants in foodstuffs
- Commission Regulation (EC) No. 1882/2006 laying down methods of sampling and analysis for the official control of the levels of nitrates in certain foodstuffs
- Commission Regulation (EC) No. 333/2007 laying down the methods of sampling and analysis for the control of the levels of trace elements and processing contaminants in foodstuffs
- Commission Regulation (EC) No. 124/2009 setting maximum levels for the presence of coccidiostats or histomonostats in food resulting from the unavoidable carry-over of these substances in non-target feed
- Commission Regulation (EU) No. 2017/644 laying down methods of sampling and analysis for the control of levels of dioxins, dioxin-like PCBs and non-dioxin-like PCBs in certain foodstuffs and repealing Regulation (EU) No. 589/2014
- Commission Regulation (EU) 2015/705 laying down methods of sampling and performance criteria for the methods of analysis for the official control of the levels of erucic acid in foodstuffs and repealing Commission Directive 80/891/EEC

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

This SI will enhance the Welsh Ministers' executive powers. It will transfer the European Commission's current legislative power under EU Regulation 315/93 to the Welsh Ministers in relation to Wales. This will enable the Welsh Ministers to make regulations, subject to

annulment by resolution of the National Assembly, to amend EU Regulation 1881/2006 to set the maximum tolerances for specific contaminants. The SI will not have any impact on the Assembly's legislative competence.

The purpose of the amendments
The purpose of the amendments is to correct deficiencies in legislation arising from the UK leaving the European regulating certain contaminants in food, including nitrate, mycotoxins, metal and veterinary medicines. It will make minimal, technical amendments to the retained direct EU law, which will ensure that the current protection against contamination in food is retained for UK consumers and food business operators, and that the monitoring and enforcement of the rules is done in a consistent and effective manner.

The Regulations will not make any material change in the level of protection given to human (or animal) health, or to the high standard of food and feed that consumers expect from both domestically produced and imported products.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here; https://beta.parliament.uk/work-packages/6cpPiCQr

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

UK MINISTERS ACTING IN DEVOLVED AREAS

The Contaminants in Food (Amendment) (EU Exit) Regulations 2019

Laid in the UK Parliament: 31 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	
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 24
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 the European Union (Withdrawal) Act 2018.

Currently, the contaminants in food legislation is set by the EU and is implemented in the UK by statutory instruments.

These Regulations transfer the European Commission's current legislative power to the Welsh Ministers in relation to Wales, to enable the Welsh Ministers to make regulations setting the maximum tolerances for specific contaminants.

Legal Advisers agree with the statement laid by the Welsh Government dated 4 February 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.

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The Quick-frozen Foodstuffs (Amendment) (EU Exit) Regulations 2019**
DATE	**4 February 2019**
BY	**Rebecca Evans AM, Minister for Finance and Trefnydd**

The Quick-frozen Foodstuffs (Amendment) (EU Exit) Regulations 2019

The retained EU law which is being amended

- Commission Regulation (EC) No. 37/2005 on the monitoring of temperatures in the means of transport, warehousing and storage of quick-frozen foodstuffs intended for human consumption.

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

The SI only makes one minor technical amendment to the retained direct EU law and involves no transfer of European Commission functions. Consequently, there is no impact on the Welsh Ministers' executive competence or the National Assembly's legislative competence.

The purpose of the amendments

The purpose of the amendments is to correct deficiencies in legislation arising from the UK leaving the European which concerns the monitoring of the temperature in the means of transport, warehousing and storage used for quick-frozen foodstuffs.

The Regulations will make minimal, technical amendments only in order to make clear that the retained direct EU law only applies in the UK (and not in EU member States). It will not make any material change in the level of protection given to human (or animal) health or to the high standard of food and feed that consumers expect from both domestically produced and imported products.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-quick-frozen-foodstuffs-amendment-eu-exit-regulations-2019

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

UK MINISTERS ACTING IN DEVOLVED AREAS

The Quick-frozen Foodstuffs (Amendment) (EU Exit) Regulations 2019

Laid in the UK Parliament: 31 January 2018

Sifting	
Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known
Date sifting period ends in UK Parliament	19 January 2019
Written statement under SO 30C:	Paper 26
SICM under SO 30A (because amends primary legislation)	Not required
Scrutiny procedure	
Outcome of sifting	Not known
Procedure	Negative or Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

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

These Regulations make a minor amendment to retained direct EU legislation in relation to quick-frozen foodstuffs. The amendment clarifies that the retained EU law applies only in the UK and not in EU Member States.

Legal Advisers agree with the statement laid by the Welsh Government dated 4 February 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.

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Bil deddfwriaeth (Cymru)

Chwefror 2019

National Assembly for Wales
Constitutional and Legislative Affairs Committee

Legislation (Wales) Bill

February 2019

* Ar gael yn Saesneg yn ynig | *Available in English only
** Ar gael yn Gymraeg yn ynig | **Available in Welsh only

Rhif | Number	Sefydliad	Organisation
LW 01*	Yr Arglwydd Hope	Lord Hope
LW 02*	Clinig y Gyfraith Abertawe	Swansea Law Clinic
LW 03*	Yr Athro Thomas Glyn Watkin	Professor Thomas Glyn Watkin
LW 04	Cymdeithas y Cyfreithwyr (Cyflwyniad Saesneg yn unig ond gydag atodiad Cymraeg)	The Law Society (Annex in Welsh only)
LW 05	Keith Bush CF	Keith Bush QC
LW 06*	Capital Law	Capital Law
LW 07**	Dr Catrin Fflûr Huws	Dr Catrin Fflûr Huws
LW 08	Comisiynydd y Gymraeg	Welsh Language Commissioner
LW 09	Comisiynydd Pobl Hŷn	Older People's Commissioner
LW 10*	Huw Williams – Geldards	Huw Williams – Geldards
LW 11*	Y Comisiwn Penodiadau Barnwrol	Judicial Appointments Commission
LW 12*	Cyfraith Gyhoeddus Cymru	Public Law Wales

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Bil deddfwriaeth (Cymru)

National Assembly for Wales
Constitutional and Legislative Affairs Committee
Legislation (Wales) Bill

CLA(5) LW 01
Ymateb gan Arglwydd Lord Hope

Evidence from Lord Hope

I was very grateful to have been given the opportunity of commenting on this draft Bill.

As you may know, I sat on two of the early cases which came before the Privy Council under the devolution legislation and was, I think, the first UK Judge to use the expression “Welsh law”. So I was particularly interested to see what you are proposing. It should go a long way towards strengthening, and improving the accessibility of, Welsh law. I welcome the fact that it will provide your law with a sound basis for its future development.

The Bill is so well drafted that I have only one comment to make. It relates to the definition of the words “Privy Council” in Table 1 of Schedule 1 as introduced by clause 5. As far as I can see, these words are not used anywhere in the draft Bill itself. I understand, of course, that they are being defined here for their easier use in some other Assembly Act or in Welsh subordinate legislation. But I wonder whether you have got the definition quite right. It all depends on what the Privy Council is expected to do. The body on which I sat, which is the judicial arm of the Privy Council, is usually referred to as the Judicial Committee of the Privy Council: see, for example, sections 32 and 33 of the Scotland Act 1998, c 46, as originally enacted. The devolution functions have now been transferred to the UK Supreme Court, but you may have other functions of that kind in mind in which case you might like to follow that example. For other purposes the broader definition you have used may be the right one. I suggest that it might be best to check whether you have the right definition with the Privy Council itself before the Bill is finalised.

Cynulliad Cenedlaethol Cymru Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol Bil deddfwriaeth (Cymru)	National Assembly for Wales Constitutional and Legislative Affairs Committee Legislation (Wales) Bill
CLA(5) LW02 Ymateb gan Clinig y Gyfraith Abertawe	Evidence from Swansea Law Clinic

This submission is being made by the Swansea Law Clinic, which is part of the Hillary Rodham Clinton School of Law at Swansea University.

The Clinic is a *pro bono* service and has been operating year-round since March 2017 when a Miscarriage of Justice Project was established. Since then we have been running projects in prison law, legal aid exceptional case funding, a Litigant Helpdesk in Swansea Civil Justice Centre, and, since November 2017, we have been providing an initial advice and assistance service. The latter involves face to face client interviews mainly, but not exclusively, in the following areas of law: housing, relationship breakdown, employment, equality, and consumer issues. Our model uses undergraduate and postgraduate law students as Student Advisers. They work under supervision and following ethical training they advise our clients. We aim to complement and not replace existing legal advice services as well as complementing provision that is eligible for legal aid.

We are also involved in public legal education which involves a range of activities but mainly involves informing school students as to their legal rights and responsibilities and, from time to time, journalism on access to justice matters.

Since the Clinic was founded almost two years ago, we have assisted through our legal advice and public legal education programmes over 500 people. It is our intention to use new technologies to scale our service further. Although most of our clients are members of the public our service is also available to small businesses.

A number of our projects work in association with a number of other organisations. The Miscarriage of Justice Project works with a charity, Inside Justice, and a solicitors' regulated practice and charity, the Centre for Criminal Appeals. The Prison Law Clinic works with the charity, the Prisoners' Advice Service and PACT. The Exceptional Case Funding Clinic receives support from the charity, the Public Law Project. We have run an outreach clinic at Maggie's Swansea, Singleton Hospital. The charity, Travelling Ahead, has referred cases to us, and we have referred cases to Advocate (formerly known as the Free Representation Unit). We also receive assistance from LawWorks Cymru and the Equality and Human Rights Commission Wales's Advisers' Helpline.

Our interest in this consultation is that we find that many of our clients are either finding it difficult to afford legal services and/or find the legal system complex. As a result, we are interested in all aspects of access to justice and public understanding of the law.

Executive Summary

We fully support the imposition of a statutory obligation on future governments in Wales to improve the accessibility of Welsh law under Part 1 of the Bill.

In our experience, our clients are not always aware of their rights and obligations under Welsh law and we believe this duty will enhance their awareness.

There is evidence that individuals, small businesses and the voluntary sector find Welsh law difficult to access and navigate. We think organising legislation by subject matter will assist them, as will the publication of up to date legislation online.

We hope that the accessibility programmes under section 2 of the Bill will take a broad approach to accessibility and it will not be confined to moving all legislation on a topic to legislative Codes. The accessibility programmes should also think about clarity of language, the removal of overlapping and inconsistent provisions, computational law principles, as well as new approaches to law making. We are also concerned to see the development of Codes being accompanied by explanatory texts.

The Housing (Wales) Act 2014 is an example of legislation that we use in our casework where the statutory language is clear, and is an example that could be followed in Codes.

The Bill, if enacted, will enhance access to justice in the Welsh language.

A broad and successful approach to accessibility programmes will be world-leading with economic as well as citizenship benefits.

Duty to keep accessibility under review

1. We would like to see a statutory obligation on future governments in Wales to keep the accessibility of Welsh law under review. This will create a discipline to ensure that the subject is periodically revisited, as a result, we feel the duty in section 1 of the Legislation (Wales) Bill (the Bill) has the potential to bring about behaviour change so that all actors involved in the law-making process will think of accessibility when making laws.

2. We know of few international precedents for a duty on government to keep the accessibility of law under review. Section 3 of New Zealand's Legislation Act 2012 contains an analogous duty, but we are not aware of any others. Therefore, we think that Part 1 of the Bill affords the potential not only to make the law more accessible for individuals in Wales but also to make Wales more economically competitive by making it easier for businesses to know their legal rights and obligations thereby reducing compliance costs. According to the University of Cumbria's Centre for Regional Economic Development (CRED), SMEs often do not have the expertise or resources to

keep track of legislation and this increases their apprehension about having to deal with legal requirements.[1]

3. Lord Lloyd Jones, a senior jurist and UK Supreme Court judge, has said that 'the complexity of [Welsh law] is now a huge problem'.[2] The complexity will only get worse: more primary and secondary legislation will be passed, laws will have to be domesticated following Brexit, and the current practice of passing amendments to legislation without accompanying text adds to the accretion of the problem. As a result, action needs to start to be taken at the earliest possible opportunity.

4. In our experience, our clients are not always aware of the rights and obligations which arise out of Welsh law and that are increasingly relevant to their day to day lives. In part, this could be to do with the difficulties inherent in accessing Welsh law with its different sources and confusing differences in terminology such as Measures and Acts, etc. Codes will have a tidying up effect, which will make it easier for them.

5. There have been reports that the voluntary sector finds the current system of accessing Welsh law burdensome.[3]

6. From our casework we have found that there could be more awareness of important Welsh legislation such as the Housing (Wales) Act 2014. In particular, our clients do not seem aware of when landlords need to be registered and licensed under the Act. Equally, they do not seem to be aware when agents need to be licensed under the Act. In addition, we have heard from other practitioners specialising in the area that there is a lack of awareness of the Social Services and Well-being (Act) 2014.

7. There are other indicators that there is a specific Welsh dimension to access to justice issues. A report by Dr Nason of Bangor Law School found that:

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1 CRED, *Business Perception of Regulatory Burden*, May 2012

2 Lord Lloyd Jones, 'Codification of Welsh Law' Lecture delivered to the Association of London Welsh Lawyers on 8 March 2018, <https://docs.wixstatic.com/ugd/ab7491_8c924cda0b7e4312b1e10fe9b8e7d501.pdf> accessed on 16 January 2019

3 BBC Radio 4, *Law in Action,* (10 March 2011)

"Based on claims we know to be Welsh, there were 1.8 civil judicial review claims per 100,000 Welsh residents in both 2013/14 and 2014/15. On the other hand the number of claims per head of population in other locations has been consistently substantially higher, but has been falling in recent years."[4]

8. The lack of judicial review claims in Wales relative to England is even more surprising when it is taken into account that: 'The Welsh approach to regulation of public governance is distinctive; introducing new and unique duties on Welsh Ministers and public bodies...Social rights have been woven to the framework of public governance, with potential to ensure good governance, fairness and accountability'.[5]

Clarity

9. Making the law accessible is not just about finding it all in the same place, important though that will be. Using clear language is also important, and we commend the Housing (Wales) Act 2014 for its use of user-friendly language.

10. We hope that Codes will go beyond putting all legislation on a particular subject matter in one place, but also inconsistent and overlapping provisions will be removed when legislation is moved to Codes.

Availability of and changes to legal services

11. Our advice model aims to empower clients to resolve their problems by themselves, as much as possible. Similar models are followed by other advice agencies. Codification of laws by subject matter will assist them in this empowerment as they will find it easier to research the law themselves.

12. There is evidence that many families are being priced out of justice, so increasingly more people will have to research law themselves. A report produced by Professor Donald Hirsch of Loughborough University, commissioned by the Law Society of Wales and England, found that those that people on incomes already 10 per cent to 30 per cent below the

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[4] Sarah Nason, *Understanding Administrative Justice in Wales* (Bangor University: 2015 p.107)

[5] Submission to the Commission on Justice In Wales from Dr Simon Hoffman (Swansea University) at para. 3 https://beta.gov.wales/submission-justice-commission-dr-simon-hoffman-swansea-university accessed on 16 January 2019

minimum income standard are being excluded from legal aid.[6] The situation is getting progressively worse as the means test threshold for legal aid has been frozen since 2010. So, in addition to cuts in the scope of legal aid since 2013 those who are eligible for legal aid are still, in some cases, unlikely to be able afford it and maintain a minimum acceptable standard of living.

13. This means that individuals are being forced to navigate the legal system by themselves on such potentially life changing issues as eviction and severe housing disrepairs. There is evidence that the public read legislation with the National Archives recording 2 million visitors per month to their legislation.gov.uk website.[7] This further increases the need to make the process of finding the law as simple as possible in order for people in such situations to better enforce their rights.

14. New business models for delivering legal services which are emerging such as limited retainers, also known as unbundling, mean that individuals and small businesses are doing more of their own legal work in order to make the cost of legal services affordable. As the Court of Appeal in *Minkin v Lesley Landsberg* (2015) has approved unbundling then it is reasonable to assume that they will form part of the landscape for legal services for the foreseeable future, and that members of the public and small businesses will be navigating legislation without legal advisers.

15. There is a good economic case for imposing the obligation under s1 of the Bill. There has been research that has found that small businesses are a hard to reach group for lawyers.[8] There is further evidence that small businesses have a tendency to ignore legal problems or try to resolve them by themselves. The proposed obligation would assist small businesses in finding the law and assessing their legal rights and obligations which will assist in making their operations more efficient.

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6 Donald Hirsch, *Priced out of Justice? Means testing legal aid and making ends meet* (Centre for Research in Social Policy Loughborough University, March 2018)

7 Office of the Parliamentary Counsel, *When laws become too complex* (March 2013).

8 Legal Services Board, *The legal needs of small businesses 2013 – 17* Available at: https://research.legalservicesboard.org.uk/news/latest-research-18/ Accessed on 4 June 2018

16. The obligation addresses the unavailability of many laws which apply only in Wales passed by the UK Parliament in the Welsh language. It therefore has the potential to significantly enhance accessibility of laws for those who wish to access them in the Welsh language.

Publication of legislation

17. We want to see all Welsh law being available online. Section 9 of New Zealand's Legislation Act 2012 places a duty on the Chief Legislative Counsel to be accessible and, as far as is reasonably practicable, downloadable from the Internet. Up to date versions of current law which are available electronically free of charge ought to be available to members of the public. At the moment, UK legislation, including Welsh law, on the legislation.gov.uk website hosted by the National Archives is not always up to date. Although there are warning notices on the website there is no information which assists members of the public in making sure that they can find up to date information.

18. In order to aid understanding of the law as it applies to members of the public in their circumstances, we want to see a situation where they can easily identify currently in force legislation or even tailor searches of legislative databases to their own legal needs. We would like to see accessibility programmes under section 2 of the Bill explore whether computational law principles could be applied to achieve this.

Cross cutting legislation

19. There is legislation which potentially affects the public's legal position which cannot be incorporated into Codes because it is cross cutting and cannot be limited by subject matter such as the Human Rights Act 1998. In addition, there is specifically Wales-only legislation which creates duties which are cross cutting and could also potentially affect the legitimacy of legislation. Welsh Ministers must have 'due regard' to the UN Convention on the Rights of the Child (UNCRC) in 'all their functions' when 'exercising any of their functions' under section 1 of the Children and Young Persons (Wales) Measure 2011. In addition, public bodies must contribute to well-being goals in accordance with the sustainable development principle under section 3 of the Well-being of Future Generations Act (Wales) Act 2015.

20. We accept that the purpose of Codes is to find all applicable law in one place. It would not be the best place to engage in 'how to use' legislation discussions particularly as Law Wales already exists as a forum for such discussion. However, we would like to see brief reference to cross cutting legislation in explanatory memoranda to Codes themselves so that members of the public were at least alerted to the need, on occasion, to read Codes in conjunction with other legislation.

Explanatory material

21. Similarly, we support the idea of including primary and secondary legislation, as well as soft law, within Codes but are concerned that members of the public are not always aware of the hierarchy of legal norms. We would like to see some brief explanation of hierarchy of legal norms in explanatory memoranda to all Codes with cross reference to more detailed explanation on the Law Wales website.

22. We would like to see thought given not just to using text in explanatory material but also other ways of presenting information such as visualisations. At present, legislation and accompanying explanatory material only uses text and we feel it is time to be more innovative.

Accessibility programmes

23. The Bill does not define accessibility, which we see as a potential strength of the legislation. New Zealand's Legislation (Act) 2012 defines accessibility narrowly and we think the accessibility programmes under s.2 of the Bill could be more wide ranging, flexible and innovative than the New Zealand model by looking at public legal education, computational law principles, participative law-making and setting standards for clear and simple legislation.

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Bil deddfwriaeth (Cymru)

National Assembly for Wales
Constitutional and Legislative Affairs Committee
Legislation (Wales) Bill

CLA(5) LW03
Ymateb gan Yr Athro Thomas Glyn Watkin

Evidence from Professor Thomas Glyn Watkin

1. I am grateful to the Constitutional and Legislative Affairs Committee for the invitation to make a written submission and participate in an oral evidence session in relation to this inquiry. The opinions expressed in this paper are entirely my own and do not represent the views of any body or institution with which I am or have been associated.

2. The Inquiry's terms of reference state it will address:

   - the general principles of the Legislation (Wales) Bill and whether there is a need for legislation to deliver the Bill's stated policy objectives;
   - any potential barriers to the implementation of the provisions and whether the Bill takes account of them;
   - whether there are any unintended consequences arising from the Bill;
   - the financial implications of the Bill (as set out in Part 4 of the Explanatory Memorandum);
   - the appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Part 3 of the Explanatory Memorandum).

The General Principles

3. The bill seeks to promote the accessibility of Welsh law, as defined in section 1(2). This it seeks to achieve by placing a duty upon the Counsel General to keep the accessibility of Welsh law under review (section 1(1)), and requiring the Welsh Ministers and the Counsel General to prepare programmes setting out what they intend to do to improve such accessibility (section 2(1)). Each programme must include proposals which are intended to contribute to an ongoing process of consolidating and codifying Welsh law, maintaining Welsh law in that form and facilitating the use of the Welsh language (section 2(3)). These purposes build upon recommendations made by this Assembly Committee in its report *Making Laws in Wales* (October 2015) and by the Law Commission in its report on the *Form and Accessibility of the Law Applicable in Wales* (Law Comm. No. 336, June 2016).

4. What is envisaged may be achieved is a highly laudable objective. Citizens of the United Kingdom, including those in Wales, suffer from having their lives regulated by laws which are not easy to access. This is, in part, the

consequence of how relevant legislation has been drafted and accumulated. Bills are rightly drafted to allow those who legislate on behalf of the citizen to scrutinize legislative proposals prior to deciding whether the proposals should become law. The structure of bills reflects their use in that context. They set out the changes which it is proposed should be made to the law in order to achieve a particular policy objective. Likewise, if the bill is enacted, the resulting Act or Statute records the changes to the law which it has been decided should be made. Neither a bill nor an Act is structured to set out for the benefit of the citizen what the resulting state of the law is on a particular topic. Nor does the so-called statute book do that. The statute book merely records in chronological order the various changes which have been made to the law over the centuries. It is not so much that it is not designed to be a statement of the law, but rather that is not really designed at all. It is just a chronological collection.

5. Since at least the nineteenth century, serious attempts have been made to try to impose some order upon the accumulated mass of enactments, by for instance publishing editions, such as *The Statutes Revised*, which remove spent or repealed enactments and edit into the texts later amendments to them. The development of electronic sources of such texts is the latest most effective version of that endeavour. They do not however alter the basic problem which is that the collection remains chronological and is not designed to make the law – as opposed to individual pieces of law-making – accessible.

6. Over much the same period, attempts have also been made to restructure the accumulated mass of legislation based on its subject matter, in works such as *Halsbury's Statutes* and *Halsbury's Statutory Instruments*. In addition, *Halsbury's Laws of England* is a more ambitious, encyclopaedic work which sets out the relevant law on each subject and not simply legislation. Together, these works regroup the relevant legislation or law under appropriate subject headings arranged alphabetically. These works require continual updating as new laws are made, again a task which can be more effectively performed in a digital age.

7. Neither of these approaches delivers for the benefit of citizens a text which is an official, accessible statement of what the law is. In truth, the target audience for these works is mainly the legal professions, and access to them reflects that fact in terms of their cost. Their structure has led to the jibe that the English lawyer's idea of order is either chronological or alphabetical, in contrast to the rational order of the law codes of many other countries. However, even in those countries, the comprehensive nature of their codes of law is often compromised by the enactment of what is termed 'complementary legislation', that is free-standing enactments which are not inserted into the codes themselves. Such enactments, when frequent, undermine the accessibility which the codes are meant to achieve. Their existence highlights the importance of a sustained political will to maintain

a codified structure once adopted if accessibility is to be permanently achieved.

Consolidating and codifying Welsh law, and maintaining it in that form

8. The importance of maintenance is recognized in the Explanatory Memorandum to the Bill which states that:

> only a sustained effort over the long term can solve the problems. What is required is a permanent change to our law making processes (¶ 14).
>
> Crucial to the success of consolidating and codifying the law is that both continue over the long term and become an accepted part of the culture of law making in Wales. This means accepting that the law is constantly evolving and must, even after it has first been consolidated, be revisited periodically to ensure that it remains well ordered and accessible. It also means maintaining the overall structure – not the content, which will always change in accordance with policy and political wishes – of the statute book. Once the law is consolidated and codified we should only move away from the new structure in exceptional circumstances (¶ 31).

9. However, the Explanatory Notes which accompany the Bill are less clear in this regard. They state that:

> Codifying the law is intended to bring order to the statute book. This involves organising and publishing the law by reference to its content (and not merely when it was made), and maintaining a system under which that law retains its structure rather than proliferating (¶ 17),

but then appears to roll back on the broader vision of the EM :

> a Code would not (generally) be one legislative instrument but rather a collection of enactments under a unifying overarching title. Those enactments which make up the Code on any particular subject would be made available together. Similarly these enactments will remain the means by which the law is formally articulated. The Code is not intended to be a legal instrument in its own right but rather a means of collating and publishing the law more effectively (¶ 17).

10. The technical document on the Draft Taxonomy for Codes of Welsh Law repeats the latter two paragraphs (¶¶ 3 & 4), and the Annexes anticipate the collection of existing legislative sources under Proposed Codes and Topics. The approach is not dissimilar to that adopted in constructing the alphabetical, encyclopaedic works mentioned above (¶¶ 5–7), although it is

clearly intended that both primary and secondary legislation should be incorporated within each code, together with other relevant sources, such as guidance. It will also be the case that the sources will have been officially consolidated and will constitute an official statement of the legislation contained in each code. Nevertheless, if, as is stated, "The Code is not intended to be a legal instrument in its own right but rather a means of collating and publishing the law more effectively (EN ¶17)", it is difficult to see how this can effect "a permanent change to our law making processes" (EM ¶14).

11. If the codes merely collate and publish primary and secondary legislation which continues to be enacted and made as at present, the only change to existing law-making processes that may be required may be the addition of an opportunity for the legislature to scrutinize how such legislation is being incorporated into the codes. Without such a stage, the exercise will be entirely the preserve of the executive and will be conducted, albeit more thoroughly and more regularly, in much the same way as legislation.gov.uk is currently revised and updated. However, unless some rôle is accorded to the legislature in this process, it is difficult to see how the content of non-government bills could be fairly accommodated. At the very least, an expedited legislative process might need to be introduced to deal with post-enactment revision of the codes. It might also be asked where the drafters producing those revisions should be located – in the government, the legislature or at arms length to both.

12. If, on the other hand, the code becomes the principal legal instrument in its field, the changes required to the existing law-making processes are likely to be much more extensive. Bills and draft statutory instruments (other than in exceptional circumstances – see EM ¶31) could be drafted so as to amend the text of the code. The legislature could control the structure of the statute book by ensuring that – other than in exceptional circumstances – bills and instruments conformed to the new requirements. Standing Orders and requirements as to Proper Form might reflect this.

13. Questions also arise regarding the amendment of the code by secondary legislation. Would all such amendments attract the affirmative resolution procedure, or could some amendments to the codes still be made by the negative procedure? With the advent of codes, might the existing procedures themselves need to be reconsidered and possibly even replaced?

14. Greater clarity is needed with regard to these issues. However, seeking greater clarity regarding the long-term vision should not hinder the essential first steps which are proposed in this bill. Almost certainly, the ongoing process of consolidation and codification will encounter fresh challenges in its path. Given the relative youth of its devolved legislature and the still manageable quantity of its statutory output, Wales is well-placed to take bold, first steps towards codifying its legislation as proposed by the bill's provisions.

Potential barriers to Implementation and Unintended Consequences

Consolidation and the Equal Standing of Welsh and English Versions

15. As stated in the Explanatory Notes,

> Section 2(3) also requires each programme to include activities intended to facilitate use of the Welsh language... A key aspect of this will be consolidating the law bilingually so that much more of the law for which the National Assembly and Welsh Government are responsible is made in Welsh (¶ 20).

Both the Explanatory Notes and the Draft Taxonomy state that:

> Consolidating the law generally involves bringing all legislation on a particular topic together, better incorporating amendments made to legislation after it has been enacted and modernising the language, drafting style and structure. This involves no or only minor amendments to the substance of the law consolidated. In Wales consolidation of the law will involve for the most part re-enacting laws previously made by the UK Parliament, and doing so bilingually (EN ¶16; DT ¶2).

16. There is a clear intention, therefore, in producing the codes to 'repatriate' laws currently to be found in UK legislation and to express them bilingually in the resulting codifications. This raises a question concerning the status of the two language versions in such circumstances. The Government of Wales Act 2006 provides that "The English and Welsh texts... [of Assembly Measures, Acts and any subordinate legislation] are to be treated for all purposes as being of equal standing" (GoWA 2006, s. 156(1)). Such equal standing, however, only applies to legislation "which is in both English and Welsh when it is enacted, or... when it is made". Given that, as quoted above, consolidation "involves no or only minor amendments to the substance of the law consolidated", the question arises as to when provisions which have been consolidated are to be treated as having been enacted or made. This is particularly important if, as the Law Commission stated in its report on the *Form and Accessibility of the Law Applicable in Wales*:

> In order for the equal status of both versions of legislation under s. 156 of GoWA 2006 to have any meaning, it is necessary for the interpretation of bilingual legislation to take account of both language versions. We endorse the approach... [which] recognizes that the exact meaning to be given to legislation depends on the meaning of both language texts (¶¶ 12.17–12.18).

17. It would be convenient and preferable for the consolidated law to be treated as having been enacted or made when the consolidation was accomplished, but it could be argued that, if there was no intention to change the meaning of the provisions when consolidating, the Welsh version could not therefore be treated as of equal standing. In passing, one assumes that the English text would undergo such minor amendment as was appropriate to bring it into line with the Welsh interpretation provisions.

18. If the approach taken to the question of the relevance of the Welsh version to the interpretation of consolidated legislation was to deny its relevance, then there would be portions of a Code in which the two language versions were of equal standing and other portions in which they were not. This would be a potential pitfall when using the Welsh version and could discourage its use.

Section 8 and Grammatical Variations

19. Section 8 of the Bill introduces a provision of a kind which is not in the Interpretation Act 1978, but can be found, as noted in Annex A to the Explanatory Memorandum, in the interpretation provisions of other jurisdictions, citing Canada and Hong Kong as examples.

20. The Explanatory Notes state that the proposed section:

> makes clear that, where an Assembly Act or Welsh subordinate instrument defines a word or expression, parts of speech relating to the word or expression also carry the definition. For example, if the word *"walk"* is defined, then the parts of speech relating to *"walk"*, such as *"walking"* and *"walker"*, are to be interpreted in the light of that definition (¶ 59).

21. They go on to say that:

> It often goes without saying that a definition applies in these circumstances. In some cases though this needs to be put beyond doubt... Section 8 of the Bill makes general provision about the application of definitions, to avoid ambiguity and remove the need to make separate provision in individual Acts and instruments (¶ 60).

22. In his Gray Lectures, delivered at the University of Cambridge in 1966, the late Professor David Daube drew attention to the fact that agent nouns in particular, but also on occasion action nouns, have a narrower meaning than the verbs which correspond to them. Thus, while a *baker* undoubtedly bakes, not everyone who bakes is a *baker* (David Daube, *Roman Law: Linguistic, Social and Philosophical Aspects*, Edinburgh, 1969, pp.1–63, example cited at p.2). Agent nouns and action nouns are often more than a modification or a grammatical form of a verb; they are frequently words with a different, more restricted even if connected, meaning.

23. Care needs to be taken regarding this provision, and it should not be assumed that any correspondence, for example, of verb and agent noun in one language will necessarily be replicated in another. As this provision is disapplied where 'the context requires otherwise', the problem may be resolved by interpretation, but it would be better avoided rather than resolved.

24. The usefulness of the provision with regard to dealing with mutational and other like changes in Welsh is not questioned.

Choice of Proposed Codes and Topics

25. Somewhat inevitably, the proposed codes and topics anticipated in the Draft Taxonomy reflect the subjects in relation to which the Assembly enjoyed legislative competence under the previous devolution settlements. While it is unavoidable that Welsh law to date will relate to those fields and headings, there is perhaps a danger that their conversion into Codes could, almost inadvertently, confine Welsh law-making within its former limits. To borrow and adapt F.W. Maitland's famous aphorism (*Equity*, p. 296), having buried the conferred powers model, we should not let it rule us from its grave.

Cynulliad Cenedlaethol Cymru Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol Bil deddfwriaeth (Cymru)	National Assembly for Wales Constitutional and Legislative Affairs Committee Legislation (Wales) Bill
CLA(5) LW04 Ymateb gan Cymdeithas y Cyfreithwyr	Evidence from The Law Society

Introduction

The Law Society of England and Wales ("the Law Society") is the professional body for solicitors, representing over 160,000 registered legal practitioners. The Law Society represents the profession to parliament, governments and regulatory bodies and has a public interest in the reform of the law.

The Law Society Wales Office delivers the Law Society's aims in Wales, working with Welsh institutions; influencing and responding to the devolution of law-making; and promoting and supporting the legal community in Wales. This response has been informed by members of the Law Society's Wales Committee which includes solicitors, academics and lay members.

The Bill

The landscape of legislation in Wales is complex and the divergence of Welsh legislation from England only legislation is accelerating. Given this backdrop so as far as it is possible to draw together the current law to improve accessibility the aim of the legislation is supported and to be encouraged.

Part 1 Accessibility of Welsh Legislation

The arguments for a duty to be included in legislation are clearly made in the Explanatory Memorandum. Whilst ‘consolidating and codifying Welsh law’ is the aim of the Bill the interpretation of the duty is left to the government of the day. It is a particular concern that the timing and progress of codification is a matter for the government of the day.

Codification and Codes of Law

The Bill refers to ‘codification’ and the Explanatory Memorandum to Codes of Welsh law but as we know from the Law Commission’s report on the Form and Accessibility of the Law Applicable in Wales[1] there are versions of codification and what is proposed for Welsh law does not create a ‘Code’ in the civil law tradition. Viewed from a wider perspective the proposals could lead to confusion. It is proposed, therefore, that the codes which result from this activity of ‘consolidating

[1] https://www.lawcom.gov.uk/project/the-form-and-accessibility-of-the-law-applicable-in-wales/

and codifying Welsh law' be referred to as 'Welsh Law Codes' to identify them as specific, novel and unique.

Having a new term to describe the way Welsh law is being 'ordered' will assist those learning about and using Welsh law in the future. The main aim of the Bill is to improve accessibility and the resulting activity will establish a new approach to statute law in Wales.

We would hope to see an open, inclusive approach to the preparation of the draft codes. Planning law is an early candidate which is benefitting from the involvement of the Law Commission another area which would benefit from being codified early in the process is local government law given its significant divergence from the law in England. We propose that the Welsh Government adopts a protocol to include factors such as early engagement with stakeholders, as these will differ with the varying topics, and whether the government can proceed to develop a new code without first seeking a Law Commission project on the relevant law.

Further, in response to the Law Commission project on the Form and Accessibility of the Law Applicable in Wales we said:

> *The Constitutional and Legislative Affairs Committee could include an additional scrutiny function regarding the form of new law applicable in Wales with a protocol to introduce draft Bills for pre-legislative scrutiny and engage expert advisers (voluntarily, by committee or otherwise).* [2]

We would welcome more information on how the National Assembly will accommodate the making of new Welsh Law Codes.

Part 2 Interpretation and operation of Welsh legislation

In 2016 in response to the Law Commission's consultation to inform its project on the Accessibility of the Law Applicable in Wales, our members agreed an Interpretation Act was necessary for Welsh law but at the time did not feel the time had come. This provision for interpretation, however is supported and welcomed.

We note that there was significant input to some of the detailed proposals for interpretation in the Counsel General's consultation on the draft Bill. However, it is clear from the Bill as laid that some of the concerns raised then have not been reflected in the redraft as introduced to the Assembly.

On Section 13 we raised specific concerns on the issue of deemed service of documents by electronic means. This refers to documents deemed to have been served on the day on which an electronic communication is sent. However, practitioners will note that in some parts of rural Wales in particular, internet

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[2] ibid.

connection is very poor, bandwidth of provision limited and transfer rates very slow. We question, therefore, whether a deemed service on the day of transmission is reasonable or achievable.

Whilst the Bill relates to Welsh legislation Sections 12 and 13 should be read in a wider context and in relation to the Civil Procedure Rules. Practice direction 6A at para 4.2 deals with the question of prior agreement to electronic service and file sizes etc.

> ***4.2*** *Where a party intends to serve a document by electronic means (other than by fax) that party must first ask the party who is to be served whether there are any limitations to the recipient's agreement to accept service by such means (for example, the format in which documents are to be sent and the maximum size of attachments that may be received).*[3]

Furthermore, in the Schedule of definitions we raised a query whether it may not be appropriate to include a definition of community councils as these are unique to Wales albeit similar to Parish Councils in England.

Finally, in the Counsel General's summary of responses to his consultation on the draft Bill, he notes that there was little support for what is now Section 25 regarding duplicate offences, but although slightly amended it remains in the Bill as introduced.

Having said the above, we are broadly supportive of the majority of the suggested interpretations. Indeed there are some very welcome additions such as Section 26 which determines that unless expressed otherwise, Welsh law shall bind the Crown.

In force dates

In our response to the Law Commission's project we noted:

There is a particular concern regarding 'in force' dates. Whereas amendments produce complicated legislation knowing when particular provisions came into force is a further, greater concern. Even where legislation is annotated reliable 'in force' information remains elusive. This issue becomes further complicated where there are amendments, and further and divergent amendments, to subordinate legislation.[4]

The inclusion of these provisions in Part 2 are also to be welcomed.

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[3] https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part06/pd_part06a

[4] Ibid.

Post Legislative Scrutiny

Whilst the Bill is concerned with the ordering of legislation there is a further element of good law making which forms part of a robust system and that is post-legislative scrutiny. The regular analysis and evaluation of the implementation of Welsh legislation is not apparent on the face of the Bill and should be encouraged.

Time and Capacity

It will take many years for the aims of this legislation to be achieved. During that period of time it will be vitally important for the programme to be adequately resourced in terms of financial and human resources and for successive governments to respond positively to their new duty if the full benefits of this piece of legislation are to be realised. If they are then the profession and public in Wales will have much better, more reliable access to the legislative sources of the laws of Wales.

Bil Deddfwriaeth (Cymru) - Sylwadau

Cynnwys

Penawd 1 a 2 – newid *hygyrchedd* i **mynediad**

Penawd 15 – ***Gweithredu*** yn lle *arfer*

Penawd 20 – ***rhannau*** yn lle *rhaniadau*

*Penawd 36 – **newid** yn lle disodli*

*Rhan 1 – newid hygyrchedd i **mynediad i***

Is adran 2 (3)

(a) ***Gyfrannu***
(b) ***Gynnal***
(c) ***Hwyluso y defnydd o'r Gymraeg***

(4) **Gall y** rhaglen.....

Rhan 2

3 *(1) Mae'r Rhan hon yn gymwys **i'r***
(a) ***Ddeddf** Hon*
(b) ***I Ddeddfau**.....*

*(2) (b) (i) a wneir o dan.....uniongyrchol UE a **gedwir***

4 *(1) (a) y mae darpariaeth **penodol***

(2) Nid yw'r eithriad yn is adran (1) ***yn weithredol***

(b) adran 26 **(gweithredu** deddfwriaeth....

9 Mae cyfeiriad.....oni wneir darpariaeth **benodol**

12 (1) Pan fo Deddf.....yn cyfeirio'n **gywir**

(2) (a) os yw A yn cyfeirio'n **gywir**

(3) Mae'r adran hon yn **weithredol**

13 (a) **Mewn** achos

(b) **Mewn** achos

14 (1) **Gall** pwer.....Cymreig **ei arfer** ar fwy.....

15 **Gweithredu** pwer.....

(2) Caniateir **gweithredu**.....

(3) Ond yn ystod.....ni chaniateir **gweithredu**

(4) Yn gysylltiedig.....ddyletswydd, **a weithredir** yn unol a'r adran hon, **ac**

(5) Mae **gweithredu**

16 (1) Caniateir **gweithredu**

(5) Caniateir **gweithredu**

17 (1) Caniateir **gweithredu**

19 (1) Caniateir **gweithredu (hefyd newid y gair gyfarwyddydau am gyfarwyddiadau dwy waith + hefyd yn is adran 2 is law)**

20 Newid rhaniadau am **rannau** (4 lle)

23 Mae'r adran hon yn **weithredol**

24 Mae'r adran hon yn **weithredol**

(2) Mae'r cyfeiriad.....y'i diwygiwyd, y'i **ymhestynnwyd**

25 (2) Nid yw is adran (1) yn **weithredol**

26 (1) a (2) **yn ymrwymo** yn hytrach na rhwymo (mewn pedwar lle)

(3) Newid y gair atebol am gyfrifol

(4) Mae'r adran hon.....i'r graddau **y bo'r** Ddeddf....darpariaeth **benodol**

30 (1) a (2) newid y gair amnewid am **gyfnewid**

(3) newid y gair ddargediwr am **gedwir**

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Cyflwyniad

1. Mae'r Bil wedi'i rannu'n ddwy brif ran (Rhannau 1 a 2) sy'n ymdrin ag agweddau penodol ar ddeddfwriaeth, sef:

   - Hygyrchedd cyfraith Cymru, gan gynnwys meithrin proses o gydgrynhoi a chodeiddio;
   - Dehongli cyfraith Cymru trwy ddeddfu, mewn gwirionedd, Deddf Ddehongli sy'n gymwys i ddeddfwriaeth Gymreig.

2. O ystyried cymeriadau gwahanol y ddwy Ran hyn bydd pob Rhan (gyda, yn achos Rhan 2, darpariaethau perthnasol Rhannau 3 a 4, sy'n ymdrin â materion sy'n atodol i'r Rhan honno) yn cael ei thrafod ar wahân.

Hygyrchedd cyfraith Cymru (Rhan 1)

3. Mae rhan 1 o'r Bil yn rhoi effaith i ymateb Llywodraeth Cymru i gynigion Comisiwn y gyfraith "Ffurf ac Hygyrchedd y Gyfraith sy'n Gymwys yng Nghymru "(2016)[2] trwy:

   - Osod dyletswydd statudol ar y Cwnsler Cyffredinol i adolygu hygyrchedd cyfraith Cymru;
   - Gosod dyletswydd statudol ar y Cwnsler Cyffredinol a Llywodraeth Cymru i baratoi, ar gyfer pob un o dymhorau'r Cynulliad Cenedlaethol, raglen sy'n nodi'r hyn y maent yn bwriadu ei wneud i wella hygyrchedd cyfraith Cymru, gan gynnwys eu gweithgareddau arfaethedig sydd wed'u bwriadu i gyfrannu at broses barhaus o gygrynhoi a chodeiddio cyfraith Cymru, i gynnal ei ffurf, ac i hwyluso'r defnydd o'r Gymraeg.

[1] Gweler yr Atodiad ar gyfer cv yr awdur.

[2] https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2016/10/lc366_form_accessibility_wales_Welsh.pdf

4. O ystyried natur y darpariaethau hyn, nid oes angen i'r awdur fanylu yn ei ymateb. Ymddengys iddo eu bod yn gam bach ond un arwyddocaol iawn wrth ymateb yn gadarnhaol i argymhellion Comisiwn y Gyfraith. Maent yn debygol o arwain at welliant hynod ddymunol o ran hygyrchedd ac effeithiolrwydd cyfraith Cymru. Yr unig *caveat* y dymunai'r awdur ei nodi yw na fydd y dyletswyddau a osodir gan Ran 1 yn ystyrlon ini bai fod y gwaith o godeiddio, cydgrynhoi a gwella'n gyffredinol hygyrchedd cyfraith Cymru yn derbyn adnoddau digonol. Os na wneir hynny, yna naill ai bydd y rhaglen sy'n ofynnol o dan adran 2 yn ddigon anuchelgeisiol ac aneffeithiol neu (rhywbeth a fyddai'n waeth byth) byddant yn troi allan i fod yn oruchelgeisiol ac yn amhosibl i'w chyflawni.

Dehongli a Gweithredu Deddfwriaeth Gymreig (Rhan 2)

Egwyddorion cyffredinol

5. Mae'r ffaith fod corff cynyddol o ddeddfwriaeth Gymreig wedi'i lunio gan y Cynulliad (a chan Weinidogion Cymru o dan bwerau dirprwyedig) yn golygu bod angen clir am ddeddfwriaeth sy'n ymdrin â'i dehongli. Mae allbwn deddfwriaethol y Cynulliad eisoes yn amlygu ffurf a chynnwys neilltuol yn ogystal, fel cwrs, a bod yn unigryw o fewn y Deyrnas Unedig am ei fod yn cymrud ffurf ddwyieithog. Er ei fod yn adeiladu ar sail traddodiad drafftio deddfwriaethol San Steffan, mae'n anochel, wrth iddo ddatblygu, y bydd Deddf Ddehongli 1978, a luniwyd fel cymorth i ddehongli deddfwriaeth a ddrafftiwyd ar gyfer ac a gynhyrchwyd gan y ddeddfwrfa benodol honno, yn dod yn gynyddol annigonol fel modd i gyflawni'r swyddogaeth honno mewn perthynas â deddfwrfa wahanol.

6. Mae'r cynsail o gael statudau dehongli ar wahân ar gyfer deddfwrfeydd datganoledig o fewn y DU wedi'i hen sefydlu. Mae'r Interpretation (Northern Ireland) Act 1954 yn dyddio'n ôl i ddyddiau'r Senedd Gogledd Iwerddon a sefydlwyd o dan Ddeddf Llywodraeth Iwerddon 1920 ond erbyn hyn mae'n gymwys i ddehongli Deddfau Cynulliad Gogledd Iwerddon ac is-ddeddfwriaeth a wneir oddi tanynt. Yr un sy'n cyfateb yn yr Alban yw'r Interpretation and Legislative Reform (Scotland) Act 2010. Ar hyn o bryd, mae Cymru'n eithriad ac nid oes rheswm resymegol nac ymarferol pam y dylai hyn barhau. I'r gwrthwyneb, am y rhesymau y cyfeiriwyd atynt yn y paragraff olaf, mae'r angen am gymhwyster cyfatebol Cymreig i'r statudau dehongli datganoledig eraill yn amlwg.

Rhwystrau posibl i weithredu

7. Pan ddaw'n fater o godeiddio'r modd y dehonglir statudau, mae'r tair deddfwrfa ddatganoledig yn wynebu her gyffredin y berthynas rhwng y statud dehongli datganoledig ac un y DU.

8. Mae deddfwriaeth y DU a deddfwriaeth ddatganoledig yn bodoli'n gyfochrog â'i gilydd, gyda deddfwrfa'r DU a'r rhai datganoledig yn cynhyrchu deddfwriaeth, pob o fewn eu cymwyseddau deddfwriaethol perthnasol, ar yr un pryd. Felly, mae'r gyfraith statud sy'n gymwys ym mhob tiriogaeth ddatganoledig yn cynnwys deddfwriaeth y DU a'r ddeddfwriaeth ddatganoledig.

9. Yn ogystal, hyd yn oed pan fydd pwnc deddfwriaeth wedi'i ddatganoli, mae llawer o ddeddfwriaeth y DU, sy'n dyddio o'r cyfnod cyn datganoli, yn parhau yn weithredol. Mae hyn yn ffactor lleiaf arwyddocaol yn achos Gogledd Iwerddon, gan fod datganoli wedi dechrau mor bell yn ôl â 1921 (er ei fod, wrth gwrs, wedi'i atal am gyfnodau sylweddol ers hynny). Yn achos yr Alban, roedd pob deddfwriaeth cyn 1999, p'un a oedd yn ymwneud â phynciau datganoledig ai peidio, yn ddeddfwriaeth Senedd y DU er ei bod yn aml ar ffurf Deddfau Seneddol ar gyfer yr Alban yn unig ac wedi'i drafftio gan gyfreithwyr drafftio o'r Alban.

10. Yn achos Cymru, mae effaith deddfwriaeth y DU ar Gymru hyd yn oed yn fwy, o ganlyniad i dri ffactor:

    - Cyn 2007 (dyddiad diweddarach nag yn achos y deddfwrfeydd datganoledig eraill) bu'r holl ddeddfwriaeth a oedd yn gymwys i Gymru yn ddeddfwriaeth Senedd y DU;
    - Oherwydd y cwmpas mwy cyfyngedig sydd i ddatganoli yng Nghymru – yn bennaf gan fod plismona, y gyfraith droseddol a sifil gyffredinol ac awdurdodaeth gyfreithiol sengl Cymru a Lloegr wedi'u cadw yn ôl gan y DU - mae cwmpas y deddfwriaeth barhaus y DU sy'n gymwys i Gymru yn fwy eang nag yn achos yr Alban neu Ogledd Iwerddon;
    - Mae'r ffaith fod y ddeddfwriaeth a oedd yn gymwys i Gymru, cyn datganoli deddfwriaethol, yn ddeddfwriaeth Cymru a Lloegr (yn hytrach na deddfwriaeth a oedd yn benodol i Gymru) wedi golygu bod deddfwriaeth y Cynulliad, yn y gorffennol, wedi gweithredu, yn aml iawn, trwy ddiwygio deddfwriaeth Cymru a Lloegr sydd eisoes yn bod yn hytrach na thrwy greu

statudau cynhwysfawr newydd hunan-gynhwysol sy'n gymwys i Gymru yn unig.

11. O ganlyniad, mae'r rhyng-gysylltiadau rhwng Deddf Ddehongli'r DU ac unrhyw Ddeddf Ddehongli newydd ddatganoledig (fel y Bil presennol) yn fwy agos a chymhleth nag yn achos y tiriogaethau datganoledig eraill. Er mwyn cyflawni'r nod o wella eglurder a hygyrchedd deddfwriaeth Cymru, mae angen, felly, rhoi sylw penodol i'r diffiniad o'r ffin rhwng maes y statud dehongli newydd yng Nghymru ac un Deddf Ddehongli 1978.

12. Mae'r Bil yn cynnig[3] y dylai ei ddarpariaethau fod yn gymwys i:

(a) Deddfau'r Cynulliad sy'n derbyn y Cydsyniad Brenhinol ar neu ar ôl y diwrnod pan ddaw Rhan 2 o'r Bil i'w llawn rym, ac i

(b) Is-offerynnau Cymraeg a wnaed ar y diwrnod hwnnw neu wedi hynny, ac eithrio'r rhai a wneir o dan ddeddfau'r DU (neu ddeddfwriaeth uniongyrchol yr UE a gedwir) oni bai eu bod yn cael eu gwneud gan Weinidogion Cymru neu awdurdodau datganoledig Cymru yn unig ac yn gymwys i Gymru yn unig.

Bwriad Llywodraeth Cymru yw cychwyn Rhan 2 ar 1 Ionawr 2020, er mwyn ei gwneud mor hawdd â phosibl i ddweud a yw Deddf Cynulliad (neu ddarn o is-ddeddfwriaeth) yn dod o dan y Ddeddf newydd neu o dan Ddeddf Ddehongli 1978.

13. O ran Deddfau'r Cynulliad, ni dyma'r unig ffordd bosibl o fynd o gwmpas pethau. Mae'n unol â'r sefyllfa mewn perthynas â'r Alban[4] ond cymhwyswyd ddeddfwriaeth gyfatebol ar gyfer Gogledd Iwerddon[5] i holl ddeddfau Senedd Gogledd Iwerddon, p'un a gawsant eu pasio cyn i'r ddeddf ddehongli ddatganoledig ddod i rym neu ar ôl hynny. Canlyniad mabwysiadu'r dull cyntaf o'r rhain, yn y Bil, yn hytrach na'r ail un, byddai y bydd dosbarth o statudau'r Cynulliad (22 o Fesurau a thua 40 o Ddeddfau) a fydd, nes iddynt gael eu diddymu'n llawn[6] yn cael ei ddehongli o dan Ddeddf Dehongli 1978

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[3] adran 3

[4] Interpretation and Legislative Reform (Scotland) Act 2010 adran 1 (1)

[5] Interpretation (Northern Ireland) Act 1954 adran 2 (1)

[6] Bydd diwygiad testunol, yn y dyfodol, i Ddeddf o'r fath (adran 30 (1)) "yn cael effaith fel rhan o'r Ddeddf honno". Felly, bydd deddfwriaeth sylfaenol y Cynulliad sydd eisoes yn bod, a hyd yn oed

yn hytrach nag o dan Ddeddf deddfwriaeth (Cymru) 2019. Mae'r Memorandwm Esboniadol[7] yn trafod manteision ac anfanteision cymhwyso'r Bil i holl Fesurau a Deddfau'r Cynulliad pa bryd bynnag y'i gwnaethpwyd. Y fantais fyddai creu rheol glir a chynhwysfawr y byddai pob deddfwriaeth Gymreig yn cael ei dehongli o dan un cod dehongli dwyieithog. Mae'r Memorandwm Esboniadol yn nodi'r anfanteision, sydd yn bennaf yn rhai ymarferolal ond sy'n cynnwys un anhawster cyfreithiol, sef bod deddfwriaeth y Cynulliad sydd eisoes yn bod wedi'i drafftio gyda'r bwriad y byddai rheolau a diffiniadau Deddf 1978 yn gymwys iddi. Gallai cymhwyso, yn ôl-weithredol, reolau dehongli gwahanol, a allai fod yn faterol wahanol, i ddeddfwriaeth sydd eisoes yn bod yn gallu arwain at ganlyniadau annisgwyl pe bai anghydfod yn codi ynglŷn â dehongli'r ddeddfwriaeth dan sylw.

14. Gan fod ystyriaeth ofalus wedi'i rhoi i'r cwestiwn, gan ddod i benderfyniad rhesymedig, gellid bod wedi disgwyl y byddai'r ateb a fabwysiadwyd mewn perthynas â dehongli deddfwriaeth sylfaenol, gan osgoi unrhyw elfen o ôl-weithredu wrth gymhwyso rheolau dehongli 'r Bil, hefyd yn cael ei gymhwyso, ar ôl ei addasu, i is-ddeddfwriaeth. Mae'r ymagwedd a gymerwyd mewn perthynas ag is-ddeddfwriaeth newydd a wneir o dan ddeddfwriaeth sylfaenol sydd eisoes yn bod, ym marn yr awdur, yn un sy'n newid y dull o ddehongli'r is-ddeddfwriaeth honno mewn ffordd sydd mewn perygl o greu gwahaniaeth dryslyd rhwng y rheolau ar gyfer dehongli corff mawr o ddeddfwriaeth sylfaenol sy'n gymwys i Gymru a'r rhai ar gyfer dehongli is-ddeddfwriaeth a wnaed oddi tano.

Y broblem o ddod o hyd i reol syml a chyson ar gyfer dehongli is-ddeddfwriaeth Gymreig

15. Gwneir llawer o is-ddeddfwriaeth yng Nghymru o dan bwerau a roddir i Weinidogion Cymru gan Ddeddfau Seneddol y DU. Mae'r rhain fel arfer (ond nid bob amser, gan fod San Steffan yn parhau i ddeddfu o bryd i'w gilydd ar faterion datganoledig o dan Gonfensiwn Sewel) yn ddeddfau cyn-datganoli Cymru a Lloegr y trosglwyddwyd pwerau i wneud is-ddeddfwriaeth oddi tanynt i Weinidogion Cymru mewn perthynas â Chymru.

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diwygiadau iddi yn y dyfodol, yn parhau i fod yn ddarostyngedig i Ddeddf Dehongli 1978. Gweler, pellach, paragraff 21(ii) isod

[7] Paragraff 67- 69

16. Gellir cael syniad o raddfa'r arfer hwn drwy ddadansoddi'r 259 o Offerynnau Statudol Cymru a gyhoeddwyd gan *legislation.gov.uk* ar gyfer 2018. O'r rhain, roedd 134 yn orchmynion priffyrdd lleol arferol. Mae'r rhain yn defnyddio terminoleg safonol gyfyngedig ac maent yn annhebygol iawn o godi cwestiynau dehongli. O'r 125 offeryn sy'n weddill, dim ond 45 a wnaed o dan bwerau a roddwyd i Weinidogion Cymru gan ddeddfwriaeth sylfaenol Gymreig (Deddfau neu Fesurau), tra bod 22 wedi'u gwneud, yn bennaf, o dan adran 2 (2) o Ddeddf y Cymunedau Ewropeaidd 1972, gan roi effaith i gyfarwyddebau'r UE. Mae hynny'n gadael 58 a wnaed o dan Ddeddfau Seneddol.

17. Felly, o'r offerynnau statudol Cymreig cyffredinol (h.y. rhai sydd heb fod yn rhai lleol) a wnaed yn 2018 o dan naill ai Ddeddfau Seneddol neu Ddeddfau (neu Fesurau) y Cynulliad, gwnaed 56% o dan Ddeddfau Seneddol a 44% o dan Ddeddfau neu Fesurau'r Cynulliad. Dros amser, bydd y gyfran o offerynnau statudol Cymru a wneir o dan Ddeddfau Seneddol yn tueddu i ostwng, ond yn y dyfodol rhagweladwy byddant, yn anochel, yn ffurfio cyfran sylweddol o is-offerynnau Cymreig fel y'u diffinnir gan adran 3(2) o'r Bil.

18. Effaith arfaethedig adran 3(1) o'r Bil yw y bydd y rheolau dehongli a geir ynddo, o'r dyddiad y daw'r Ddeddf i rym, yn gymwys i holl is-ddeddfwriaeth Gymreig, boed a fyddai'r is-ddeddfwriaeth wedi'i gwneud o dan Ddeddf Seneddol neu o dan Ddeddf Cynulliad. Y rhesymeg dros y rheol hon yw y bydd pob deddfwriaeth a "wnaed yng Nghymru" o hynny ymlaen i gael ei dehongli o dan ddarpariaethau Deddf Ddeddfwriaeth (Cymru) yn hytrach na rhai Deddf Dehongli 1978 y DU.

19. Er bod y dyhead o greu un cod dehongli ar gyfer holl ddeddfwriaeth Cymru, rhai sylfaenol a rhai eilaidd, yn ganmoladwy, rhaid cofio na fydd y Bil, mewn gwirionedd, yn cyflawni hyn. Bydd deddfwriaeth sylfaenol Gymreig a ddeddfwyd cyn i'r Bil ddod i'w lawn rym yn parhau i fod yn ddarostyngedig i Ddeddf Dehongli 1978. A bydd is-ddeddfwriaeth Gymreig a wneir ar y cyd â Gweinidogion y DU (er enghraifft er mwyn gweithredu deddfwriaeth uniongyrchol yr UE ar raddfa Cymru a Lloegr, Prydain Fawr neu'r Deyrnas Unedig) hefyd yn parhau i gael ei dehongli o dan Ddeddf 1978. Felly ni fydd y fantais o greu un set neu reolau dehongli ar gyfer holl ddeddfwriaeth Cymru yn cael ei chyflawni, mewn gwirionedd, gan adran 3(1)(c). Bydd rhai is-ddeddfau Gymreig yn parhau i fod yn ddarostyngedig i reolau gwahanol.

20. Mae'r ffaith y bydd y Mesur, fel y mae, yn dal i olygu y bydd dwy set o reolau ar gyfer dehongli is-ddeddfwriaeth Gymreig yn parhau mewn bodolaeth yn

agor y posibilrwydd y gallai fod dull deuol amgen dull deuol (ond wedi'i fframio'n wahanol) sydd, er y byddai'n rhannu'r anfantais na fyddai'n cynnwys holl is-ddeddfwriaeth Cymru, yn rhydd o gymhlethdodau penodol eraill sy'n gynhenid i'r cynnig presennol. Y dull amgen byddai cymhwyso'r Bil dim ond i is-ddeddfwriaeth a wneir o dan ddeddfwriaeth sylfaenol y mae'r Bil yn gymwys iddi. Byddai is-ddeddfwriaeth Gymreig a wnaed o dan Ddeddfau Seneddol yn parhau i fod yn ddarostyngedig i Ddeddf Dehongli 1978 (fel y byddai'r ddeddfwriaeth a wnaed o dan deddfwriaeth sylfaenol Gymreig cyn i'r Bil ddod i rym yn llawn).

21. Mae tair dadl o blaid parhau i gymhwyso Deddf Ddehongli 1978 i is-ddeddfwriaeth Gymreig a wnaed o dan Ddeddfau Seneddol (pryd bynnag y'u deddfir):

i) Dylai is-ddeddfwriaeth gael ei dehongli'n gyson â'r ddeddfwriaeth sylfaenol y mae'n rhoi effaith iddi. Adlewyrchir hyn yn adran 11 o Ddeddf 1978 sy'n darparu "Where an Act confers power to make subordinate legislation, expressions used in that legislation have, unless the contrary intention appears, the meaning which they bear in the Act." Yn ogystal â sicrhau cysondeb o ran dehongli rhwng deddfwriaeth sylfaenol ac is-ddeddfwriaeth mae i hyn hefyd, gyda llaw, y fantais ymarferol o osgoi gorfod naill ai atgynhyrchu'r diffiniadau yn y Ddeddf mewn unrhyw is-ddeddfwriaeth a wneir oddi tani neu'n gorfodi cynnwys, dro ar ôl tro, ym mhob is-offeryn, ddarpariaeth sy'n datgan bod i unrhyw fynegiant a ddefnyddir yn yr offeryn hwnnw yr un ystyr ag yn y rhiant Ddeddf.

Mae'r Bil yn hepgor y rheol hon. Ond bydd Deddfau Seneddol yn dal yn ddarostyngedig iddi a byddant wedi'u drafftio ar y ddealltwriaeth y bydd yn weithredol. Felly, os bydd darpariaeth bresennol adran 3 yn cael ei chadw, bydd yn ofynnol i is-ddeddfwriaeth Cymru gael ei dehongli'n aml yn ôl rheol wahanol i'r un y bydd y rhai a ddrafftiodd y ddeddfwriaeth sylfaenol wedi tybio y bydd yn gymwys. Mae'n ymddangos bod hwn yn rheol sylfaenol simsan. Dylid drafftio deddfwriaeth sylfaenol ac is-ddeddfwriaeth yn unol â chyfres gyffredin o reolau. Yn y dyfodol gall y rhain fod yn rheolau sy'n berthnasol i ddeddfwriaeth Gymreig neu'r rheolau sy'n berthnasol i ddeddfwriaeth y DU. Ond byddai cymysgu'r ddau fel y cynigir yn debygol o greu dryswch.

ii) Mae is-ddeddfwriaeth yn aml yn diwygio offerynnau cynharach. Os bydd is-offeryn Cymreig a wneir ar ôl i'r Bil ddod i'w lawn rym yn diwygio offeryn cynharach, beth yw'r sefyllfa? Mae adran 30 (2) yn darparu, pan fo deddfiad presennol yn cael ei ddiwygio gan offeryn eilaidd Cymreig drwy fewnosod geiriau neu eu hamnewid, bod y geiriau hynny'n "cael effaith fel rhan o'r deddfiad hwnnw". Mae'r ymddangos bod hyn yn golygu y bydd pa reolau dehongli bynnag sy'n gymwys i'r offeryn fel mae'n sefyll hefyd yn gymwys i'r geiriau a fewnosodwyd. Felly, fel sy'n digwydd yn aml, mae is-offeryn yn cynnwys darpariaethau newydd annibynnol a hefyd rhai sy'n diwygio offeryn sy'n bodoli eisoes a wnaed o dan Ddeddf Seneddol (neu ddeddfwriaeth sylfaenol Gymreig) cyn i'r Bil ddod i'w lawn rym, bydd y rheol ar gyfer dehongli rhai o ddarpariaethau'r offeryn yn wahanol i'r rhai sy'n gymwys i rai eraill – ffynhonnell amlwg o ddryswch ac ansicrwydd.

Yn anffodus bydd y broblem hon yn codi'n anochel mewn perthynas ag offerynnau a wneir o dan ddeddfwriaeth sylfaenol Gymreig a ddeddfir cyn i'r Bil ddod i rym ond mae'r risg fod offeryn o'r fath yn cynnwys darpariaethau sy'n anghyson â'r Mesur yn gyfyngedig ac yn debyg o fedru cael ei gadw dan reolaeth. Yn achos y corff mawr iawn o is-ddeddfwriaeth sy'n gymwys i Gymru ond a wnaed o dan Ddeddfau Seneddol, mae'r risg o anghysonderau o bwys rhwng yr ystyr y mae'n ofynnol ei rhoi i wahanol ddarpariaethau o fewn yr un offeryn yn debygol o fod yn fwy o lawer.

iii) Lle mae pwerau i wneud is-ddeddfwriaeth Gymreig yn codi o dan Ddeddfau Seneddol maen, fel arfer wedi'u rhoi i'r "Ysgrifennydd Gwladol" ac wedyn wedi'u trosglwyddo i Weinidogion Cymru o ran Cymru. Bydd pwerau o'r fath bron bob amser yn bodoli'n gyfochrog â phwerau i wneud is-ddeddfwriaeth ar y materion perthnasol a gyflwynir i Weinidog yn y DU mewn perthynas â Lloegr. Mae effaith adran 11 o Ddeddf Dehongli 1978 yn golygu, ar hyn o bryd, bod is-ddeddfwriaeth a wneir ar fater penodol mewn perthynas â phob tiriogaeth i'w dehongli, gan lysoedd sy'n gweithredu o fewn awdurdodaeth gyffredin Cymru a Lloegr, yn ôl yr un rheolau. Effaith adran 3 fyddai tanseilio'r arfer cyffredin hwn, nid o ganlyniad i unrhyw wahaniaeth polisi ond oherwydd gwahaniaethau posibl yn y rheolau dehongli sy'n berthnasol i eiriad a fydd yn aml yn union yr un fath. I'r rhai sy'n gorfod deall a chymhwyso is-ddeddfwriaeth, er enghraifft

mewn diwydiant neu'r proffesiwn cyfreithiol, mae'n bosibl iawn y bydd hyn yn arwain at ansicrwydd diangen wrth gymhwyso'r un geiriad ar y naill ochr a'r llall i'r ffin.

Casgliad

22. Er mwyn, felly, ddiogelu'r egwyddor o hybu sicrwydd a chysondeb wrth ddehonglia chymhwyso deddfwriaeth Gymreig, mae'r awdur yn cynnig na ddylai'r Bil fod yn gymwys i is-offerynnau a wnaed o dan Ddeddfau Senedd y DU, ac felly y bydd y rhain yn parhau i gael eu dehongli yn unol â Deddf Dehongli 1978.

Keith Bush CF

21 Ionawr 2019

ATODIAD

Mae Keith Bush CF LLM (Llundain) yn fargyfreithiwr ac yn Athro Anrhydeddus yn ysgol gyfraith Hillary Rodham Clinton ym Mhrifysgol Abertawe. Mae hefyd yn Llywydd Tribiwnlys y Gymraeg, yn aelod o Bwyllgor Ymgynghorol Comisiwn y Gyfraith ar gyfer Cymru ac yn Drysorydd Sefydliad Cymru'r Gyfraith.

Ar ôl gweithio fel Bargyfreithiwr yng Nghaerdydd am dros 20 mlynedd, ymunodd â gwasanaeth cyfreithiol Llywodraeth Cymru yn 1999, lle daeth yn Gwnsler Deddfwriaethol, gan arwain y tîm cyfreithiol a weithiodd ar nifer o Filiau'n ymwneud â Chymru, gan gynnwys yr un a ddaeth yn Ddeddf Llywodraeth Cymru 2006. O 2007 tan 2012, ef oedd prif gynghorydd cyfreithiol Cynulliad Cenedlaethol Cymru.

Mae ef wedi cyfrannu at y *Statute Law Review*, y *Cambrian Law Review*, *Wales Legal Journal*, *Journal of the Welsh Legal History Society* a'r *New Law Journal* ac mae'n darlithio'n aml ar faterion cyfraith gyhoeddus yn y Gymraeg a'r Saesneg. Mae'n Gyfarwyddwr Modiwl ar gyfer dau fodiwl israddedig arloesol ym Mhrifysgol Abertawe ar Ddeddfwriaeth a'r Gyfraith Llywodraethiant Aml-lefel yn ogystal â chyfrannu at addysgu cyfraith gyhoeddus yn Gymraeg ac yn Saesneg. Mae'n awdur gwaith iaith Gymraeg ar gyfraith gyhoeddus- *'Sylfeini'r Gyfraith Gyhoeddus'* a gomisiynwyd gan Brifysgol Bangor a'r *Coleg Cymraeg Cenedlaethol*. Mae ei ddiddordebau addysgu ac ymchwil yn cynnwys cyfraith datganoli, gwladwriaethau ffederal a lled-ffederal a strwythurau cyfansoddiadol annhiriogaethol a hawliau cyfreithiol grwpiau ieithyddol a diwylliannol

Cynulliad Cenedlaethol Cymru Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol Bil deddfwriaeth (Cymru)	National Assembly for Wales Constitutional and Legislative Affairs Committee Legislation (Wales) Bill
CLA(5) LW05 Ymateb gan Keith Bush QC[1]	Evidence from Keith Bush QC

Introductory

1. The Bill is divided into two substantive parts (Parts 1 and 2) which deal with distinct aspects of legislation, namely:

   - The accessibility of Welsh law, including the fostering of a process of consolidation and codification;
   - The interpretation of Welsh law by the enactment, in effect, of an Interpretation Act applying to Welsh legislation.

2. Given the distinct character of these two Parts each Part (together, in the case of Part 2, with the relevant provisions of Parts 3 and 4, which deal with matters ancillary to that Part) will be discussed separately.

Accessibility of Welsh law (Part 1)

3. Part 1 of the Bill gives effect to the Welsh Government's response to the Law Commission's proposals "Form and Accessibility of the Law Applicable in Wales" (2016)[2] by:

   - Placing a statutory duty on the Counsel General to keep the accessibility of Welsh law under review;
   - Placing a statutory duty on the Counsel General and the Welsh Government to prepare, for each term of the National Assembly, a programme setting out what they intend to do to improve the accessibiity of Welsh law, including their proposed activities intended to contribute to an ongoing process of consolidating and codifying Welsh law, maintaining its form and facilitating the use of the Welsh language.

[1] See Appendix for the author's cv.

[2] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/560239/57148_Law_Comm_366_V1_Eng_Web.pdf

4. Given the nature of these provisions, the author need not go into detail in his response. They seem to him to be a small but highly significant step in responding positively to the Law Commission's recommendations. They are likely to lead to a highly desirable improvement in the accessibility and effectiveness of Welsh law. The only caveat which the author would wish to enter is that the duties to be imposed by Part 1 will only be meaningful if the work of codifying, consolidating and generally improving the accessibility of Welsh law is adequately resourced. If that is not done then either the programme required by section 2 will be unambitious and ineffective or (which would be even worse) will turn out to have been overambitious and incapable of achievement.

Interpretation and Operation of Welsh legislation (Part 2)

General Principles

5. The fact that there is a growing body of Welsh legislation produced by the Assembly (and by Welsh Ministers under delegated powers) means that there is a clear need for legislation which deals with its interpretation. The Assembly's legislative output is already manifesting distinctive form and content as well, as course, as being unique within the United Kingdom in that it takes bilingual form. Although it builds on the foundation of the Westminster tradition of legislative drafting, it is inevitable that, as it develops, the Intepretation Act 1978, which was conceived as an aid to the interpretation of legislation drafted for and produced by that specific legislature, will become increasingly inadequate as a means of discharging that function in relation to a different legislature.

6. The precedent of having separate interpretation statutes for devolved legislatures within the UK is well-established. The Interpretation Act (Northern Ireland) 1954 dates back to the days of the Northern Ireland Parliament establshed under the Government of Ireland Act 1920 but now applies to the interpretation of Acts of the Northern Ireland Assembly and subordinate legislation made under them. The Scottish equivalent is the Interpretation and Legislative Reform (Scotland) Act 2010. Wales is currently the odd one out and there is no logical or practical reason why this should continue to be the case. On the contrary, for the reasons referred to in the last paragraph, the need for a Welsh equivalent to the other devolved interpretation statutes is obvious.

Potential Barriers to Implementation

7. When it comes to codifying the interpretation of statutes, all three devolved legislatures face the common challenge of the relationship between the devolved interpretation statute and the UK equivalent.

8. UK and devolved legislation exist alongside one another, with both the UK and devolved legislatures producing legislation, each within their respective legislative competences, at the same time. The statute law that applies in each devolved territory therefore comprises both UK and devolved legislation.

9. In addition, even where the subject-matter of legislation is devolved, much UK legislation, dating from the time prior to devolution, continues to operate. This is least significant a factor in the case of Northern Ireland, since devolution began as long ago as 1921 (although it has of course been suspended for substantial periods since then). In the case of Scotland, all legislation prior to 1999, whether relating to devolved subjects or not, was UK Parliament legislation although often in the form of Scotland-only Acts of Parliament drafted by Scots drafting lawyers.

10. In the case of Wales the impact of UK legislation on Wales is even greater, as a result of three factors:

    - Prior to 2007 (a later date than in the case of the other devolved legislatures) all legislation applicable to Wales was UK Parliament legislation;
    - Because of the more limited scope of Welsh devolution – primarily the reservation to the UK of policing, the general criminal and civil law and the single England and Wales legal jurisdiction, the scope of continuing UK legislation applicable to Wales is greater than in the case of Scotland or Northern Ireland;
    - The fact that almost without exception legislation applying to Wales was, prior to legislative devolution, England and Wales legislation (rather than legislation specific to Wales) has meant that Assembly legislation, in the past, has very often proceeded by amending existing England and Wales legislation rather than by creating comprehensive self-contained new statutes applicable only to Wales.

11. As a result, the interrelation between the UK Interpretation Act and any new devolved interpretation act (such as the current Bill) is more close and

complex than in the case of the other devolved territories. In order to deliver the aim of improving the clarity and accessibility of Welsh legislation particular attention threfore needs to be given to the definition of the boundary between the province of the new Welsh interpretation statute and that of the Interpretation Act 1978.

12. The Bill proposes[3] that its provisions should apply to:

(a) Assembly Acts which receive the Royal Assent on or after the day when Part 2 of the Bill comes fully into force and

(b) Welsh subordinate instruments made on or after that day, except those made under UK Acts (or retained direct EU legislation) unless they are made only by Welsh Ministers or devolved Welsh authorities and apply only in relation to Wales.

The Welsh Government's intention is to commence Part 2 on 1 January 2020, so as to make it as easy as possible to tell whether an Act of the Assembly (or a piece of subordinate legislation) is governed by the new Act or by the Interpretation Act 1978.

13. As far as Assembly Acts are concerned, this is not the only possible approach. It accords with that which applies in relation to Scotland[4] but the corresponding Northern Ireland[5] legislation was applied to all Acts of the Northern Ireland Parliament whether passed before or after the devolved interpretation act came into force. The consequence of the adoption, in the Bill, of the former rather than the latter approach will be that there will be a class of Assembly statutes (22 Measures and approximately 40 Acts) which, until repealed in full[6] will fall to be interpreted under the Interpretation Act 1978 rather than under the Legislation (Wales) Act 2019. The Explanatory Memorandum[7] considers the advantages and disadvantages of applying the Bill to all Assembly Measures and Acts whenever made. The advantage would

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[3] Section 3

[4] Interpretation and Legislative Reform (Scotland) Act 2010 section 1(1)

[5] Interpretation Act (Northern Ireland) 1954 section 2(1)

[6] A future textual amendment to such an Act will (section 30(1)) "have effect as part of that Act". So existing Assembly primary legislation, and even future amendments to it, will continue to be subject to the Interpretation Act 1978. See, further, paragraph 21(ii) below

[7] Paragraph 67 - 69

be the achievement of a clear and comprehensive rule that all Welsh legislation would be interpreted under a single, bilingual, code of interpretation. The Explanatory Memorandum sets out the disadvantages, which are primarily practical but include one legal difficulty, namely that existing Assembly legislation will have been drafted with the intention that the rules and definitions in the 1978 Act apply to it. Applying distinct and possibly materially different rules of interpretation to existing legislation retrospectively could give rise to unexpected consequences if a dispute arose as to the interpretation of the legislation in question.

14. Careful thought having been given to the issue and a reasoned decision made, it might have been expected that the approach adopted in relation to the interpretation of primary legislation, avoding any element of retrospectivity in the application of the rules of interpretation in the Bill would also be applied, in modified form, to subordinate legislation. The approach taken in relation to new subordinate legislation made under existing primary legislation is, in the view of the author, one which alters the approach to interpreting that subordinate legislation in a way that is in danger of creating a confusing divergence between the rules for interpreting a large body of existing primary legislation applicable to Wales and that for interpreting subordinate legislation made under it.

The problem of identifying a simple and consistent rule for interpreting Welsh subordinate legislation

15. Much Welsh subordinate legislation is made under powers conferred on Welsh Ministers by UK Acts of Parliament. These are usually (but not always, since Westminster continues to legislate occasionally on devolved matters under the Sewel Convention) pre-devolution England and Wales Acts whose powers to make subordinate legislation have been transferred to Welsh Ministers in relation to Wales.

16. An idea of the scale of this practice can be gained by analysing the 259 Wales Statutory Instruments published by legislation.gov.uk for 2018. Of these, 134 were routine local highways orders. These use limited standardised terminology and are very unlikely to give rise to issues of interpretation. Of the remaining 125 instruments, only 45 were made under powers conferred on Welsh Ministers by Welsh primary legislation (Acts of Measures), whilst 22 were made primarily under section 2(2) of the European Communities Act

1972, giving effect to EU directives. That leaves 58 made under Acts of Parliament.

17. So, of the general (ie non-local) Welsh statutory instruments made in 2018 under either Acts of Parliament or under Acts (or Measures) of the Assembly, 56% were made under Acts of Parliament and 44% under Assembly Acts or Measures. Over time, the proportion of Welsh statutory instruments made under Acts of Parliament will tend to decrease but for the foreseeable future they will inevitably form a substantial proportion of Welsh subordinate instruments as defined by section 3(2) of the Bill.

18. The proposed effect of section 3(1) of the Bill is that from the date when the Act comes into force the rules of interpretation contained in it will apply to all Welsh subordinate legislation, irrespective or whether that subordinate legislation was made under an Act of Parliament or an Act of the Assembly. The rationale for this rule is that henceforward all "made in Wales" legislation will be subject to interpretation under the provisions of the Legislation (Wales) Act rather than those of the UK Interpretation Act 1978.

19. Whilst the aspiration of creating a single code of interpretation for all Welsh legislation, primary and secondary, is laudable, it must be remembered that the Bill will not, in fact, achieve this. Welsh primary legislation enacted prior to the coming into full force of the Bill will continue to be subject to the Interpretation Act 1978. And Welsh subordinate legislation made jointly with UK Ministers (for example in order to give effect to retained direct EU legislation on an England and Wales, Great Britain or United Kingdom basis) will also continue to be interpreted under the 1978 Act. So the advantage of creating a single set or rules of interpretation for all Welsh legislation will not, in fact, be achieved by section 3(1)(c). Some Welsh subordinate legislation will, continue to be subject to different rules.

20. The fact that the Bill, as it stands, will still mean that two sets of rules for interpreting Welsh subordinate legislation will continue in existence opens up the possibility that there may be an alternative approach dual approach (but differntly framed) which, whilst sharing the disadvantage that it would not embrace all Welsh subordinate legislation may be free of certain other complexities inherent in the current proposal. The alternativw would be to apply the Bill only to subordinate legislation made under primary legislation to which, itself, the Bill is to apply. Welsh subordinate legislation made under Acts of Parliament would continue to be subject to the Interpretation Act

1978 (as would that made under Welsh primary legislation prior to the Bill coming fully into force).

21. There are three arguments in favour of continuing to apply the Interpretation Act 1978 to Welsh subordinate legislation made under Acts of Parliament (whenever enacted):

i) Subordinate legislation should be interpreted consistently with the primary legislation to which it gives effect. This is reflected in section 11 of the 1978 Act which provides that "Where an Act confers power to make subordinate legislation, expressions used in that legislation have, unless the contrary intention appears, the meaning which they bear in the Act." As well as ensuring consistency of interpretation between primary and subordinate legislation this also, incidentally, has the practical benefit of avoiding having to either reproduce the definitions in an Act in any subordinate legislation made under it or having to repeatedly include in each subordinate instrument a provision stating that any expression used in that instrument has the same meaning as in the parent Act.

1. The Bill dispenses with this rule. But Acts of Parliament will still be subject to it and will have been drafted on the understanding that it applies. So Welsh subordinate legislation will, if the current approach of section 3 is maintained, often be required to be interpreted according to a different rule from that which those who drafted the primary legislation will have assumed would apply. This seems to be a fundamentally unsound approach. Primary and secondary legislation should be drafted according to a common set of rules. These may in future either be the rules applicable to Welsh legislation or the rules applicable to UK legislation. But to mix the two as is proposed is likely to generate confusion.

ii) Subordinate legislation often amends earlier instruments. If a Welsh subordinate instrument which is made after the Bill comes fully into force amends an earlier instrument, what is the situation? Section 30(2) provides that where an existing enactment is amended by a Welsh subordinate instrument by inserting or substituting words, those words "have effect as part of that enactment". This appears to mean that whatever rules of interpretation apply to the existing instrument also apply to the words inserted. So, as is often the case, a subordinate

instrument contains both new free-standing provisions and ones amending an existing instrument made under an Act of Parliament (or Welsh primary legislation) before the Bill comes fully into force, the rule for interpreting some provisions of the instrument will be different from those which apply to others – an obvious source of confusion and uncertainty.

2. This problem will unfortunately arise inevitably in relation to instruments made under Welsh primary legislation enacted before the Bill takes effect but the risk of such an instrument containing provisions inconsistent with the Bill is limited and is probably manageable. In the case of the very large body of existing subordinate legislation applicable to Wales which has been made under Acts of Parliament the risk of material inconsistencies between the meaning required to be given to different provisions within the same instrument is likely to be much larger.

iii) Where powers to make Welsh subordinate legislation arise under Acts of Parliament these have usually been conferred on "the Secretary of State" and transferred to Welsh Ministers in relation to Wales. Such powers will almost always exist in parallel with identical powers to make subordinate legislation on the relevant matters conferred on a UK minister in relation to England. The effect of section 11 of the Interpretation Act 1978 means, at present, that subordinate legislation made on a particular matter in relation to each territory falls to be interpreted, by courts operating within the common England and Wales jurisdiction, according to the same rules. The effect of 3 would be to undermine this common approach not as a result of any policy divergence but because of possibly unforeseen distinctions in the rules of interpretation which apply to what will often be identical wording. For those having to understand and apply subordinate legislation, for example in industry or the legal profession, this may well give rise to an unnecessary uncertainty in applying identical wording on either side of the border.

Conclusion

22. In the interests, therefore, of safeguarding the principle of promoting certainty and consistency when interpreting and applying Welsh legislation, the author proposes that the Bill should not apply to

subordinate instruments made under Acts of the UK Parliament, so that these will continue to be interpreted in accordance with the Interpretation Act 1978.

APPENDIX

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Having practised at the Bar in Cardiff for over 20 years, he joined the Welsh Government's legal service in 1999, where he became Legislative Counsel, leading the legal team which worked on a number of bills relating to Wales, including the one that became the Government of Wales Act 2006. From 2007 until 2012 he was Chief Legal Adviser to the National Assembly for Wales.

He has contributed to the *Statute Law Review*, the *Cambrian Law Review*, the *Wales Legal Journal*, the *Journal of the Welsh Legal History Society* and the *New Law Journal* and he frequently lectures on public law issues in both English and Welsh. He is Module Director for two innovative undergraduate modules at Swansea University on Legislation and the Law of Multi-Level Governance as well as contributing to Public Law teaching in both English and Welsh. He is the author of a Welsh language work on Public Law - *'Sylfeini'r Gyfraith Gyhoeddus'* ('Foundations of Public Law') commissioned by Bangor University and the *Coleg Cymraeg Cenedlaethol* (the National Welsh Language College). His teaching and research interests include the law of devolution, federal and quasi-federal states and non-territorial constitutional structures and the legal rights of linguistic and cultural groups

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Bil deddfwriaeth (Cymru)

National Assembly for Wales
Constitutional and Legislative Affairs Committee
Legislation (Wales) Bill

CLA(5) LW06
Ymateb gan Capital Law

Evidence from Capital Law

1) The general principles of the Bill and whether there is a need for legislation to deliver the Bill's stated policy objectives

The policy objectives of the Bill – i.e. to make Welsh Law more accessible, clear and straightforward in its use and application – are long overdue. We discussed the general principles of the Bill in far more detail in our response[1] to the Welsh Government's ("**Government"**) initial Consultation on the Bill – we'll refrain from repeating our responses here, though note that our views remain the same.

In summary, however, we see a clear need to legislate in this area to fully achieve the desired effect of the Bill's objectives. In the Bill's current form, there is an entrenched (and in our view necessary) *duty* on successive Counsel Generals and Welsh Ministers to undertake reviews of the codification/ consolidation of Welsh Laws. Were it a *discretionary* programme in comparison, there'd clearly be less pressure, incentive and appetite to fully implement the policy objectives.

Equally, requiring Ministers, during each Assembly term, to set out how they intend to improve the accessibility and the interpretation of Welsh Law will inject momentum into the project – given the expected timescale of implementation (which, in theory, could be an infinite task), this ongoing duty is a neat way of keeping the project on track.

2) Any potential barriers to the implementation of the provisions and whether the Bill takes account of them

Naturally, implementation of the Bill will result in considerable time, cost and resource implications (see more in sections 3 and 4 below) – a balance must be struck between ensuring that "*consolidation and codification exercises, which may not be political priorities, are carried into law without competing for Assembly time with other Bills*."[2]

But, despite it being a long-term project, the Bill does make room for efficiency. To preserve political motivation, the Government's intention is that the Counsel General will present a codification programme and regularly report on its progress

[1] https://beta.gov.wales/sites/default/files/consultations/2018-08/full-responses-legislation-bill.zip.
[2] http://www.lawcom.gov.uk/app/uploads/2016/06/lc366_form_accessibility_wales_English.pdf (at para 3.6).

to the National Assembly.[3] In our view, this will maintain focus, introduce flexibility where required, and minimise diversion from the objectives of the Bill.

Determining the correct procedures is also fundamental to ensuring a successful and within-limits implementation.[4] For example, lawmakers should clearly avoid exposing existing laws to *substantive* reconsideration[5] – but again, these potential barriers have been considered in our opinion, and the right balance has been struck between reform and consolidation.[6]

3) **Whether there are any unintended consequences arising from the Bill**

4) **The financial implications of the Bill (as set out in Part 4 of the Explanatory Memorandum)**

We see a cross-over between questions 3 and 4, and so will respond to both together.

At first glance, we don't foresee any notable unintended consequences – at least none which are detrimental.

From a regulatory perspective (and in line with the Government's impact assessment[6] on the topic), we foresee no substantially negative impact of the Bill.

That being said, some potential consequences which initially came to mind include:

1. **Cost, time and resource**:

   Codification and consolidation is naturally a mammoth task – the costs involved and financial implications are likely to be huge. As a rough and illustrative figure, the Government[7] has estimated that the cost of preparing and delivering a programme of improving accessibility would be in excess of £500k per annum.

   The question of allocation and extent of resource is a further key concern of the Bill – should there be, for example, a dedicated team for preserving Welsh Law codes and maintaining the Cyfraith Cymru/ Law Wales website? It's worth noting, however, that the Government does intend to use existing resources to cover some of the associated costs.[8]

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[3] See footnote 2 above (at para 1.58).
[4] See footnote 2 above (at para 3.22).
[5] See footnote 2 above (at para 3.23). [6] See footnote 4 above.
[6] https://beta.gov.wales/sites/default/files/consultations/2018-03/Regulatory%20Impact%20Assessment.pdf.
[7] See footnote 7 above (at para 17).
[8] See footnote 7 above (at paras 16-20).

Timing of implementing the Bill is another focal point. The Law Commission's June 2016 recommendation paper[9] rightly stressed the need to maintain the impetus of a programme and to provide sufficient resources for the complex work involved, without hampering the rest of the Welsh legislative programme. The Government[10] predicts, for example, that the goal of the ongoing programmes could take over 20 years to achieve – with Brexit's priority status in the play, this could be an even longer timeframe.

2. Welsh language implications

We see no undesirable impact on the Welsh language, and note similar findings in the

Government's impact assessment.[11]

In fact, as well as the obvious/ intended consequences of the Bill for the use and status of the Welsh language, we're likely to see an increased need for Welsh-medium drafters, jurilinguists and translators – a clear positive by-product of this mission, and one which supports the *2050*

Cymraeg[13] strategy as well as the general tenet of the Welsh Language Standards[12] and Government of Wales Act 2006.[13]

Equally, logic dictates that the more the law is made available and more clearly in Welsh, the more likely people will find it easier to take up and provide Welsh-medium services – particularly in the legal sector, which is worst hit by the current complexity.[16] At Capital Law, we often advise

in Welsh, and anticipate that the lingual benefits of the Bill alone will have a clear positive impact on many of our clients.

3. Other impact assessments considered by the Government

No immediate issues surrounding equality come to mind[14] – if anything, the Bill encourages the parity of Welsh and English being treated equally favourable.[15]

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[9] See footnote 2 above (at para 6.17).
[10] See footnote 7 above (at para 13).
[11] https://beta.gov.wales/sites/default/files/consultations/2018-03/Welsh%20Language%20Impact%20Assessment.pdf [13] https://gov.wales/docs/dcells/publications/170711-welsh-language-strategy-eng.pdf.
[12] http://www.legislation.gov.uk/wsi/2018/441/made.
[13] https://www.legislation.gov.uk/ukpga/2006/32/section/78. [16] See footnote 12 above (at page 5).
[14] And none are highlighted by the Government's Equality Impact Assessment - https://beta.gov.wales/sites/default/files/consultations/2018-03/Equality%20Impact%20Assessment.pdf.
[15] http://www.legislation.gov.uk/mwa/2011/1/enacted.

We also have no comments to make on the Government's assessments on children's rights,[16] and on competition and the justice system.[17]

4. **Inconsistency/ conflict with English law**:

There's some inherent risk of conflict with English law – for example, both the Interpretation Act 1978 and the interpretation provisions in the Bill would operate side-by-side, which may give rise to confusion/ misapplication.

However, any confusion should be alleviated by the existence of:

(i) guidance for drafters of legislation on how/ when both Acts apply
(ii) Explanatory Notes to the relevant Act, which will assist the reader in understanding which Interpretation Act actually applies to the legislation they are reading, and
(iii) general information on interpretation, made available on the Cyfraith Cymru/Law Wales and other relevant websites.[18]

5) The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Part 3 of the Explanatory Memorandum)

Whilst subordinate legislation to amend the Bill (when enacted) will sometimes be more appropriate than seeking to bring forward primary legislation,[19] we urge caution on the possible overuse/ misuse of the power.

We only have to look at the recent controversies[20] surrounding the so-called Henry VIII powers to see the potential dangers of side-stepping primary law-making procedures. The issue with this power is clearly that, in contrast to primary law, a draft subordinate instrument will not benefit from full scrutiny.

Though, the relevant powers within this Bill are, in our view, primarily administrative in nature – they concern non-policy matters such as removing, adding or amending definitions, replacing descriptions of dates and times, and bringing the Act into force. Dealing with these clerical actions by primary means (as part of an already packed legislative agenda) would likely be disproportionate.

Equally, the absence of full scrutiny does not equate to a *lack* of scrutiny – many of the significant powers are still limited by the affirmative or negative Assembly procedures. As such, they key powers will either be subject to objection by the Assembly or, before Ministers can exercise their power to make subordinate

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[16] https://beta.gov.wales/sites/default/files/consultations/2018-03/Children%27s%20Rights%20Impact%20Assessment.pdf.
[17] http://www.assembly.wales/laid%20documents/pri-ld11927-em/pri-ld11927-em-e.pdf (at page 68).
[18] See footnote 7 above (at paras 72-74).
[19] See footnote 20 above (at para 108 onwards).
[20] https://www.bbc.co.uk/news/uk-politics-39266723.

legislation, the Assembly will need to pass a resolution approving a draft of that subordinate legislation.

So, provided they are used correctly, these flexible powers allow the Bill to be malleable to any necessary change, without the need to soak up the costs and time associated with enacting primary law. Any minor amendments following Brexit, for example, may be better dealt with by this secondary process.

On a final side-note, the proposed “statutory book” objective of the Bill should also ensure that any subordinate legislation wouldn’t add to the current patchwork law – in other words, any such legislation would be tidily categorised by subject matter along with its parent legislation.

Cynulliad Cenedlaethol Cymru Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol Bil deddfwriaeth (Cymru)	National Assembly for Wales Constitutional and Legislative Affairs Committee Legislation (Wales) Bill
CLA(5) LW07 Ymateb gan Dr Catrin Fflûr Huws	Evidence from Dr Catrin Fflûr Huws

Cylch gorchwyl

Wrth graffu ar egwyddorion cyffredinol y Bil yng Nghyfnod 1, bydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol yn trafod y canlynol:

- egwyddorion cyffredinol y Bil Deddfwriaeth (Cymru) ac a oes angen deddfwriaeth er mwyn cyflawni'r amcanion polisi a nodwyd ar gyfer y Bil;
- unrhyw rwystrau posibl i weithredu'r darpariaethau ac a yw'r Bil yn eu hystyried;
- a oes canlyniadau anfwriadol yn codi o'r Bil;
- goblygiadau ariannol y Bil (fel y nodir yn Rhan 4 o'r Memorandwm Esboniadol);
- priodoldeb y pwerau yn y Bil i Weinidogion Cymru wneud is-ddeddfwriaeth (fel y nodir yn Rhan 3 o'r Memorandwm Esboniadol).

Rhan 1

Rhaid ystyried yn gyntaf oll a yw elfennau rhan 1 un fater deddfwriaethol, ac felly yn fater ar gyfer deddf gwlad, ynteu yn fater o amodau gwaith y Cwnsler Cyffredinol, ac felly yn fater o ddyletswyddau gwaith yr unigolyn..

Un o'r anawsterau gyda'r cysyniad o Gyfraith Cymru yw pan daw elfennau o gyfraith Cymru a Lloegr yn gyfraith Cymru yn unig oherwydd bod deddfu newydd ar gyfer Lloegr wedi diddymu deddf neu ran o ddeddf fel mae'n berthnasol i Loegr, gan adael y ddeddf honno ond yn gymwys ar gyfer Cymru. Gan hynny er mwyn cyflawnrwydd rhaid i'r Cwnsler Cyffredinol hefyd oruchwylio'r newidiadau hynny. Fodd bynnag, mae angen eglurder hefyd ynghylch a'r bil hwn, pe doi yn ddeddf gwlad, ynteu yr Interpretation Act 1978.

Rhaid ystyried hefyd pa gam a unionir gan wella hygyrchedd y gyfraith– gall hygyrchedd olygu dwyieithrwydd, eglurder termau a chysyniadau, y gyfraith ar bwnc penodol mewn un ddeddf, argaeledd a chyfrededd deddfwriaeth mewn ffynhonellau masnachol e.e. LexisNexis a Westlaw, argaeledd a chyfrededd deddfwriaeth mewn ffynhonellau am ddim e.e. www.legislation.gov.uk, argaeledd mewn ffynhonellau eilaidd e.e. gwefannau cynghori, gwerslyfrau i fyfyrwyr. Y mae'r gwahanol agweddau hyn yn amrywiol o ran gallu'r Cwnsler Cyffredinol i'w rheoli, ac felly rhaid ystyried beth yw ystyr llwyddiant neu fethiant i gydlynu a'r dyletswydd hwn.

Rhan 2

Bydd rhai o'r materion hyn yn dyblygu materion sydd yn ymddangos yn yr Interpretation Act 1978. Beth yw perthynas y bil hwn a'r ddeddf honno, a phryd y defnyddir y naill a phryd y defnyddir y llall, neu beth byddai yn digwydd petai anghysondeb rhyngddynt – p'un sydd drechaf. Hefyd oherwydd bod y mater o ddehongli deddfwriaeth yn mwny i gael ei gynnwys o fewn dwy ddeddf pe doi'r Bil hwn yn ddeddf, rhaid ystyried a yw'n peri i'r gyfraith fel sydd yn berthnasol i Gymru fod yn llai hygyrch o'r herwydd. A fyddai modd creu ychwanegiad i'r Interpretation Act 1978 er mwyn cros gyfeirio at y ddedf hon, neu i gynnwys rhan newydd o'r Interpretation Act 1978 fyddai yn cynnwys y diwygiadau sydd yn berthnasol i Gymru?

Agwedd arall sydd yn berthnasol i'w ystyried yn y cyd-destun hwn yw sefyllfaoedd lle ceir anghysonder rhwng fersiwn Gymraeg a fersiwn Saesneg deddfwriaeth, a sut i unioni hynny. Nid yw hyn yn golygu pa fersiwn sydd drechaf, gan fod hynny yn tanseilio'r amcan o ddeddfu'n ddwyieithog, ond yn hytrach yr egwyddorion a allai lywio'r penderfyniad, megis dewis dehongliad a fyddai yn ffafrio yr unigolyn yn hytrach na'r wladwriaeth. Rhaid hefyd ystyried a oes angen rheolau penodol ynghylch yr hyn ddylai ddigwydd pan fo anghydfod rhwng fersiynau Cymaeg a Saesneg deddf – a ddylid bod datganiad o anghysondeb fel a geir yn Neddf Hawliau Dynol 1998 adran 4.

Gan bod cymal 3 y Bil yn cyfeirio at y ffaith mai dim ond i ddeddfau a ddaw yn ddedf glwad ar ôl i'r Bil Deddfwriaeth ddod yn gyfraith wlad, rhais ystyried yr anhwasterau a all godi pan bydd sefyllfa yn codi sydd yn cyfeirio at amryw o ddeddfau ac offerynau statudau, gyda rhai yn deillio o ddyddiad cyn pasio'r Bil hwn, ac eraill yn dyddio o ddyddiad wedi pasio'r Bil, gan y gall y rheolau dadansoddi fod yn wahanol.

O ran cymalau megis cymal 12, rhaid ystyried pa gyfraith sydd yn gymwys ar gyfer cyfathrebu oddi allan i Gymru – ai'r gyfraith gymwys yw'r gyfraith rhydd yn rhwymo'r anfonwr ynteu'r gyfraith sydd yn rhwymo'r derbyniwr.

Yn sgil y diffg ymwybyddiaeth a geir o bwerau deddfu Cynulliad Cenedlaethol Cymru, byddai hefyd yn fuddiol i nodi pa bryd nad yw'r Interpretation Act 1978 yn gymwys, pryd gellir defnyddio'r naill neu'r llall, a pryd dyid defnyddio'r Interpretation Act 1978.

Meri Huws
Comisiynydd y Gymraeg
Welsh Language Commissioner

Comisiynydd y Gymraeg
Welsh Language Commissioner

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Bil deddfwriaeth (Cymru)

CLA(5) LW08
Ymateb gan Comisiynydd y Gymraeg

Annwyl Bwyllgor,

Bil Deddfwriaeth (Cymru)

Diolch ichi am y cyfle i roi tystiolaeth ar egwyddorion cyffredinol Bil Deddfwriaeth (Cymru). Dylwn nodi fy mod wedi darparu tystiolaeth yn y maes hwn yn y gorffennol. Ymatebais i'r *Ddogfen Ymgynghori Dehongli deddfwriaeth Cymru: Ystyried Deddf ddehongli i Gymru* yn 2017.[1] Darparodd fy swyddogion hefyd sylwadau manwl i'r Prif Ieithydd Deddfwriaethol ar gyfieithiad drafft o Atodlen 1 i Ddeddf Dehongli 1978. Ymatebais yn ogystal i ddogfen ymgynghori Comisiwn y Gyfraith ar *Ffurf a Hygyrchedd y Gyfraith sy'n Gymwys yng Nghymru*[2] sy'n ymdrin â llawer o'r materion yr ymdrinnir â hwy yn y ddeddfwriaeth ddrafft. Yn olaf ymatebais i ymgynghoriad Cwnsler Cyffredinol Cymru ar y Bil Deddfwriaeth (Cymru) drafft yn 2018 sydd wedi'i atodi.[3] Mae'r ymateb i'r ymgynghoriad hwn yn ysbryd y dystiolaeth i'r ymgynghoriadau uchod a buaswn yn eich annog i ystyried yr ymatebion hynny ac yn arbennig yr ymateb i Brif Gwnsler Deddfwriaethol Cymru wrth ichi ystyried y Bil. Rwy'n ymateb i ddau o'r pwyntiau a gynhwyswyd yn y cylch gorchwyl sef:

1 http://www.comisiynyddygymraeg.cymru/Cymraeg/Rhestr%20Cyhoeddiadau/20170817%20LI%20C%20Ymateb%20i%27r%20ymgynghoriad%20Ystyried%20Deddf%20ddehongli%20i%20Gymru.pdf

2 http://www.comisiynyddygymraeg.cymru/Cymraeg/Rhestr%20Cyhoeddiadau/20151002%20C%20DG%20Ymateb%20Comisiynydd%20y%20Gymraeg%20i%20ddogfen%20ymgynghori%20Ffurf%20a%20Hygyrchedd%20y%20Gyfraith.pdf

3 http://www.comisiynyddygymraeg.cymru/Cymraeg/Rhestr%20Cyhoeddiadau/20180612%20CLI%20Llythyr%20Bil%20Deddfwriaeth%20(Cymru)%20Drafft.pdf

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Correspondence welcomed in Welsh and English

- Egwyddorion cyffredinol y Bil Deddfwriaeth (Cymru) ac a oes angen deddfwriaeth er mwyn cyflawni'r amcanion polisi a nodwyd ar gyfer y Bil
- Unrhyw rwystrau posibl i weithredu'r darpariaethau ac a yw'r Bil yn eu hystyried

Egwyddorion cyffredinol y Bil Deddfwriaeth (Cymru) ac a oes angen deddfwriaeth er mwyn cyflawni'r amcanion polisi a nodwyd ar gyfer y Bil

1. Mae Rhan 1 y ddeddf yn nodi'r ddyletswydd ar y Cwnsler Cyffredinol i gadw hygyrchedd cyfraith Cymru o dan adolygiad a bod rhaid i Weinidogion Cymru a'r Cwnsler Cyffredinol lunio rhaglen sy'n nodi'r hyn y maent yn bwriadu ei wneud i wella hygyrchedd cyfraith Cymru (2(1)). Mae'r Bil yn ei gwneud hi'n ofynnol i'r rhaglen gynnwys gweithgareddau yn ymwneud â chydgrynhoi a chodeiddio cyfraith Cymru; cynnal ffurf cyfraith Cymru wedi iddi gael ei chodeiddio a hwyluso'r defnydd o'r Gymraeg. Ar sail yr uchod, rwy'n croesawu gosod dyletswydd ar Weinidogion Cymru i adolygu cyfraith Cymru a bod unrhyw raglen adolygu yn gorfod cynnwys darpariaeth i hwyluso'r defnydd o'r Gymraeg. Mynegais yn fy ymateb i ddogfen ymgynghori Comisiwn y Gyfraith ar *Ffurf a Hygyrchedd y Gyfraith sy'n Gymwys yng Nghymru* fy mod yn gweld manteision i'r Gymraeg yn deillio o gydgrynhoi a chodeiddio deddfwriaeth. O'r herwydd rwyf hefyd yn croesawu bwriad y ddeddfwriaeth y byddai pob rhaglen i wella hygyrchedd cyfraith Cymru yn gwneud darpariaeth i gydgrynhoi a chodeiddio deddfwriaeth Cymru.

2. Rwyf, er hynny, yn nodi adrannau 15-18 o dystiolaeth yr Athro Thomas Glyn Watkin ichi[4] sy'n nodi codi amheuaeth ynghylch statws y ddwy iaith pan godeiddir deddfwriaeth nas deddfwyd yn wreiddiol yn ddwyieithog. Buaswn yn eich annog i ystyried y mater hwn ymhellach er mwyn sicrhau y bydd fersiynau Cymraeg a Saesneg o ddeddfwriaeth a gydgrynhoir ac a godeiddir â'r un statws.

Adrannau 5-8

3. Rhoddais sylwadau yn fy ymateb i Brif Gwnsler Deddfwriaethol Cymru ar adrannau 5-8. Rwy'n croesawu'r adrannau hyn ar y cyfan ac nid oes gennyf sylwadau pellach i'm sylwadau gwreiddiol.

4. Er hynny, hoffwn dynnu sylw penodol at fy sylwadau ynghylch Adran 7. Mae adran 7 yn nodi 'nid yw geiriau sy'n dynodi rhywedd yn gyfyngedig i'r rhywedd hwnnw'. Rwy'n deall bwriad yr adran hon. Nid oes darpariaeth yn y Ddeddf er hynny, sy'n ei gwneud yn eglur bod i enwau Cymraeg hefyd genedl nad yw'n gyfystyr â rhywedd. Mae i

[4] http://www.senedd.cynulliad.cymru/documents/s32900/CLA5-02-17%20-%20Papur%202%20Saesneg%20yn%20Unig.pdf

hynny oblygiadau gramadegol ac o ran ystyr a allasai fod yn berthnasol i'r adran hon. Cyfeiriwyd at fy sylwadau yn y crynodeb[5] o'r ymatebion i ymgynghoriad Cwnsler Cyffredinol Cymru ond buaswn yn croesawu ystyriaeth pellach i hyn unai yn y ddeddfwriaeth neu mewn canllawiau neu ddarpariaethau sy'n deillio o'r Bil.

5. Rhoddais sylwadau yn fy ymateb i ymgynghoriad Cwnsler Cyffredinol Cymru ar y materion canlynol sy'n codi yn y memorandwm esboniadol (ME) cysylltiedig â'r Bil:

- cyfieithiadau Cymraeg o ddeddfiadau a chyrff nad oes ganddynt enwau Cymraeg (82-87 y ME)
- dehongli is-ddeddfwriaeth ddwyieithog a'r berthynas rhwng testunau Cymraeg a Saesneg deddfwriaeth (76-77 y ME)
- y trefniadau ar gyfer cyhoeddi cyfraith Cymru a'r broses o wneud a threfnu offerynnau statudol (e.e. 79-81 y ME)

Mae'r Llywodraeth yn nodi ei bod yn bwriadu rhoi ystyriaeth bellach i'r materion hyn. Rwy'n nodi'r eglurhad hwn yn y memorandwm esboniadol ac yn croesawu'r ymrwymiad i roi rhagor o ystyriaeth i'r materion hyn .

Unrhyw rwystrau posibl i weithredu'r darpariaethau ac a yw'r Bil yn eu hystyried

6. Yn yr asesiad o effaith y Bil ar y Gymraeg mae'r memorandwm esboniadol yn nodi 'effaith gadarnhaol ar y rhai sydd am ddefnyddio'r Gymraeg fel iaith cyfraith, er enghraifft gweithwyr cyfreithiol proffesiynol, y farnwriaeth, academyddion a defnyddwyr llysoedd sydd am gynnal achosion llys drwy gyfrwng y Gymraeg.' Rwy'n croesawu hynny. Dylwn nodi er hynny fy mod yn rhagweld y byddai'r broses o weithredu rhaglen i wella hygyrchedd cyfraith Cymru yn y Gymraeg a'r Saesneg yn gofyn am ieithyddion a chyfreithwyr sydd â sgiliau o lefel uchel yn eu priod feysydd yn y Gymraeg a'r Saesneg. Buaswn yn annog Llywodraeth Cymru i drafod â phrifysgolion Cymru, y Coleg Cymraeg Cenedlaethol a chyrff perthnasol o faes y gyfraith megis Cymdeithas y Gyfraith a'r farnwriaeth i gynllunio er mwyn sicrhau bod ffynhonnell o ieithyddion, terminolegwyr a chyfreithwyr dwyieithog â sgiliau addas ar gael i weithredu'r rhaglen hon ac amcanion y Bil.

Gobeithio y bydd y sylwadau hyn o gymorth ichi wrth ichi graffu ar Fil Deddfwriaeth (Cymru). Mae croeso ichi gysylltu â mi os dymunwch eglurhad am rai o'r bwyntiau a godwyd.

[5] https://beta.llyw.cymru/sites/default/files/consultations/2018-08/crynodeb-or-ymatebion-bil-deddfwriaeth.pdf

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Comisiynydd y Gymraeg
Welsh Language Commissioner

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12/06/2018

Annwyl Jeremy Miles AC,

Bil Deddfwriaeth (Cymru) Drafft

Diolch ichi am y cyfle i ymateb i'ch ymgynghoriad ar Fil Deddfwriaeth (Cymru) Drafft. Ymatebais i'r *Ddogfen Ymgynghori Dehongli deddfwriaeth Cymru: Ystyried Deddf ddehongli i Gymru* yn 2017.[1] Mae f'ymateb i'r ymgynghoriad hwn yn cyd-fynd ag ysbryd yr ymateb hwnnw. Darparodd fy swyddogion hefyd sylwadau manwl i'r Prif Ieithydd Deddfwriaethol ar gyfieithiad drafft o Atodlen 1 i Ddeddf Dehongli 1978. Ymatebais yn ogystal i ddogfen ymgynghori Comisiwn y Gyfraith ar *Ffurf a Hygyrchedd y Gyfraith sy'n Gymwys yng Nghymru*[2] sy'n ymdrin â llawer o'r materion yr ymdrinnir â hwy yn y ddeddfwriaeth ddrafft.

Gyda f'ymatebion i'r dogfennau hynny mewn golwg, croesawaf y cam hwn o gyflwyno Bil a fydd yn hwyluso'r defnydd o'r Gymraeg yn neddfwriaeth Cymru. Bydd yn gam pwysig tuag ategu cydraddoldeb y Gymraeg a'r Saesneg mewn deddfwriaeth fel y nodir yn adran 156 Deddf Llywodraeth Cymru 2006. Ni fyddaf yn ymateb i bob cwestiwn o'r ymgynghoriad hwn ond yn hytrach yn canolbwyntio yn bennaf ar yr adrannau sydd fwyaf perthnasol i'r Gymraeg.

1. Comisiynydd y Gymraeg

1 http://www.comisiynyddygymraeg.cymru/Cymraeg/Rhestr%20Cyhoeddiadau/20170817%20LI%20C%20Ymateb%20i%27r%20ymgynghoriad%20Ystyried%20Deddf%20ddehongli%20i%20Gymru.pdf

2 http://www.comisiynyddygymraeg.cymru/Cymraeg/Rhestr%20Cyhoeddiadau/20151002%20C%20DG%20Ymateb%20Comisiynydd%20y%20Gymraeg%20i%20ddogfen%20ymgynghori%20Ffurf%20a%20Hygyrchedd%20y%20Gyfraith.pdf

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1.1 Prif nod y Comisiynydd wrth arfer ei swyddogaethau yw hybu a hwyluso defnyddio'r Gymraeg. Wrth wneud hynny bydd y Comisiynydd yn ceisio cynyddu'r defnydd o'r Gymraeg yng nghyswllt darparu gwasanaethau, a thrwy gyfleoedd eraill. Yn ogystal, bydd yn rhoi sylw i statws swyddogol y Gymraeg yng Nghymru, a thrwy osod safonau rhoddir dyletswyddau statudol ar sefydliadau i ddefnyddio'r Gymraeg. Un o amcanion strategol y Comisiynydd yn ogystal yw dylanwadu ar yr ystyriaeth a roddir i'r Gymraeg mewn deddfwriaeth a dyna a wneir yma. Ceir rhagor o wybodaeth am waith y Comisiynydd ar y wefan comisiynyddygymraeg.cymru.

2. Rhan 1 - Hygyrchedd Cyfraith Cymru - Cwestiynau 1 a 2

2.1 Mae Pennod 1 y ddogfen ymgynghori yn amlinellu bwriad y Llywodraeth i ddeddfu er mwyn gosod dyletswydd ar y Cwnsler Cyffredinol i adolygu cyfraith Cymru. Byddai'n gorfod gwneud hynny pan fydd Gweinidogion Cymru yn ystyried cynnig deddfwriaeth newydd. Yn ogystal, ar gyfer pob tymor Cynulliad byddai'n rhaid i Weinidogion Cymru a'r Cwnsler Cyffredinol ddatblygu a gweithredu rhaglen o weithgarwch wedi'i chynllunio i wella hygyrchedd cyfraith Cymru. Ymhellach, byddai'r Bil yn ei gwneud hi'n ofynnol i bob rhaglen wneud darpariaeth i gydgrynhoi a chodeiddio cyfraith Cymru; cadw cyfraith sydd wedi'i chodeiddio a hwyluso'r defnydd o'r Gymraeg. Byddai cydgrynhoi'r gyfraith, gwella trefniadau cyhoeddi a darparu mwy o sylwebaeth ar y gyfraith yn y ddwy iaith yn rhai elfennau a fyddai'n hwyluso defnyddio'r Gymraeg yn ôl y ddogfen ymgynghori. Elfennau eraill posibl fyddai llunio mwy o eirfaon cyfreithiol a datblygu terminoleg wedi'i safoni. Byddai'r cam hwn yn arbennig o gadarnhaol ac nid yn unig yn hwyluso'r gwaith o ddeddfu yn y Gymraeg ond hefyd o addysgu a gweinyddu'r gyfraith yn y Gymraeg. Gweler yn ogystal fy sylwadau manwl ar derminoleg yn fy ymateb i *Ffurf a Hygyrchedd y Gyfraith sy'n Gymwys yng Nghymru.*[3]

2.2 Ar sail yr uchod, rwy'n croesawu gosod dyletswydd ar Weinidogion Cymru i adolygu cyfraith Cymru a bod unrhyw raglen adolygu yn gorfod cynnwys darpariaeth i hwyluso'r defnydd o'r Gymraeg. Mynegais yn fy ymateb i ddogfen ymgynghori Comisiwn y Gyfraith ar *Ffurf a Hygyrchedd y Gyfraith sy'n Gymwys yng Nghymru* fy mod yn gweld manteision i'r Gymraeg yn deillio o gydgrynhoi a chodeiddio deddfwriaeth. Mae'r ddogfen ymgynghori yn mynegi yn ogystal y byddid yn cydgrynhoi ac yna yn codeiddio'r gyfraith yn ddwyieithog. O'r herwydd rwyf hefyd yn croesawu'r cynnig y byddai pob rhaglen i wella hygyrchedd cyfraith Cymru yn gwneud darpariaeth i gydgrynhoi a chodeiddio deddfwriaeth Cymru.

[3] Gweler adran 3 yn benodol yn hyn o beth.

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3. Rhan 2 – Dehongli Cyfraith Cymru yn Statudol

3.1 Cwestiwn 6

3.1.1 Gofynnwch yng nghwestiwn 6 a oes gennym sylwadau am yr hyn sydd wedi'i gynnwys, neu sydd heb ei gynnwys yn Atodlen 1 y Bil Drafft. Deallaf o'r ddogfen ymgynghori bod y Bil yn cynnwys nifer cyfyngedig o eiriau ac ymadroddion nad ydynt ond yn groesgyfeiriadau i Ddeddfau eraill. Dadleuwch mai dyma'r ffordd orau o ddiffinio gair neu ymadrodd ar adegau, er nad yw hynny'n ddelfrydol.

3.1.2 Deallaf bod adran 5 y ddeddfwriaeth ddrafft yn cyfateb yn gyffredinol i adran 5 Deddf Dehongli 1978 a bod Atodlen 1 y bil drafft yn cyfateb i Atodlen 1 Deddf 1978 ond yr hepgorwyd ac y cynhwyswyd rhai geiriau ac ymadroddion. Croesawaf y ffaith y bydd bellach fersiynau a diffiniadau Cymraeg o eiriau a gynhwyswyd yn Atodlen 1 Deddf 1978 wrth gwrs. Ar y cyfan, mae'r geiriau a'r ymadroddion yn rhai a bennir mewn deddfwriaeth nas deddfwyd gan y Cynulliad er eu bod wrth gwrs yn berthnasol i Gymru. Er fy mod yn deall yr awydd i gyfyngu'r termau a ddiffinnir i'r rhai mwyaf defnyddiol neu hanfodol yn unig, nid yw'n eglur imi er hynny, beth yw'r meini prawf ar gyfer cynnwys geiriau ac ymadroddion yn Atodlen 1 y Bil drafft. Tybed a oes lle er enghraifft i ystyried cynnwys diffiniadau mewn rhai deddfau sy'n benodol i Gymru? Yn hynny o beth, cyfeiriaf at y term 'llesiant' er enghraifft sy'n rhan annatod o Ddeddf Llesiant Cenedlaethau'r Dyfodol ac sydd wedi magu ystyr penodol iawn i Gymru o'r herwydd, ond ei fod hefyd yn cael ei ddefnyddio mewn mannau eraill yn ogystal.[4] Roedd y term hwn yn un o'r rhai y cyfeiriais atynt yn fy ymateb i'r *Ddogfen Ymgynghori Dehongli deddfwriaeth Cymru: Ystyried Deddf ddehongli i Gymru* fel rhai yr oedd eu dehongli wedi profi i fod yn allweddol er mwyn sicrhau eglurder, sicrwydd a chysondeb wrth weithredu Mesur y Gymraeg a'i reoliadau cysylltiedig.

3.2 Cwestiwn 7

3.2.1 Gofynnwch a ydym yn cytuno â'r dull gweithredu yn adran 7 sef 'nid yw geiriau sy'n dynodi rhywedd yn gyfyngedig i'r rhywedd hwnnw'. Nid wyf yn siŵr a yw'r geiriad fel y mae yn egluro'n ddiamwys bod i enwau Cymraeg hefyd genedl nad yw'n gyfystyr â rhywedd. Sylwaf y nodir yn yr asesiad effaith ar y Gymraeg ei bod hi'n fwriad gennych i wneud yn glir nad yw'r rheol yn gymwys i genedl enwau. Buasai'n ddefnyddiol derbyn rhagor o wybodaeth ac enghreifftiau am y penderfyniad hwn. Ystyrier y geiriau 'nyrs' sy'n fenywaidd ei genedl a 'doctor' sy'n wrywaidd ei genedl yn Gymraeg. Nid yw'r geiriau nyrs na doctor yn dynodi rhywedd fel y cyfryw eithr cenedl y geiriau. Er hynny, byddai angen ei gwneud yn glir nad yw cenedl y geiriau hyn yn gyfystyr â rhywedd y sawl fyddai'n ymgymryd â'r swyddi hyn. Yn yr un modd, yn achos yr enw

[4] Gweler rheoliadau safonau'r Gymraeg, e.e. http://www.legislation.gov.uk/wsi/2015/996/pdfs/wsi_20150996_mi.pdf

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'Comisiynydd', mae cenedl y gair yn wrywaidd ond ar hyn o bryd mae menywod yn ymgymryd â'r swyddogaeth o fod yn gomisiynwyr mewn nifer o sefydliadau cyhoeddus yng Nghymru. Mae materion eraill yn deillio o hynny hefyd y dylid eu ystyried megis bod rhagenwau ôl yn amrywio yn dibynnu ar genedl gair yn hytrach na rhywedd unigolyn, a bod geiriau yn cael eu treiglo yn dilyn rhagenw dibynnol blaen gan ddibynnu ar genedl y gair. Mae adran 8 y ddeddfwriaeth ddrafft yn mynd i'r afael â'r pwynt olaf hwn wrth gwrs.

3.3 Cwestiwn 8

3.3.1 Gofynnwch a ydym yn cytuno â'r dull gweithredu arfaethedig a ddefnyddir yn adran 8 o'r Bil Drafft. Ei fwriad fel yr eglurwch, yw dileu 'pob amheuaeth ynghylch cymhwyso'r diffiniad o air neu ystyr gair er mwyn osgoi amwysedd yn ymarferol, ac i hwyluso drafftio mwy naturiol yn y Gymraeg a'r Saesneg'. Nodwch fod hyn yn berthnasol i oleddfiadau ar air neu amrywiadau ar ymadrodd sy'n deillio o reolau ynghylch trefn geiriau a strwythur brawddegau'. Rwy'n croesawu'r dull gweithredu arfaethedig hwn gan ei fod yn cydnabod yr amrywiadau ar eiriau Cymraeg (megis treigladau) a bydd felly'n hwyluso drafftio a dehongli yn y Gymraeg.

4. Rhan 3: Materion eraill y gellid mynd i'r afael â nhw – Cwestiwn 23

4.1 Gofynnwch yng nghwestiwn 23 a oes gennym farn am rai materion eraill yr ydych wedi'u hystyried wrth ddatblygu'r Bil Drafft hwn y gellid ymdrin â hwy drwy ddeddfwriaeth. Cyfeiriaf isod at y materion sy'n berthnasol i'r Gymraeg yn hyn o beth.

4.1 Nodwch ichi ystyried dymunoldeb ailddatgan adran 156 Deddf Llywodraeth Cymru 2006 sy'n ymwneud â chydraddoldeb testunau Cymraeg a Saesneg o ddeddfwriaeth ddwyieithog. Buaswn yn cefnogi camau i ailddatgan y ddarpariaeth hon yn y ddeddfwriaeth gan ei fod yn cyd-fynd yn naturiol â natur y Bil a byddai'n tanlinellu pwysigrwydd cydraddoldeb y testunau. Deallaf yr anawsterau y cyfeiriwch atynt yn y ddogfen ymgynghori ac fe'ch anogaf i barhau i ymchwilio i fecanweithiau priodol i alluogi ailddatgan adran 156 Deddf Llywodraeth Cymru 2006 o fewn y ddeddfwriaeth ddrafft hon.

4.2 Nodwch eich bod yn rhoi ystyriaeth i'r trefniadau ar gyfer cyhoeddi'r gyfraith a bod legislation.gov.uk yn hyn o beth yn cael ei ddiweddaru, ond nad oes dull ar gyfer diweddaru testunau Cymraeg. Er mwyn sicrhau'r cydraddoldeb i ddeddfwriaeth Gymraeg a Saesneg y mae adran 156 Deddf Llywodraeth Cymru 206 yn ei osod rwy'n credu bod angen mynd i'r afael â'r mater hwn ar fyrder. Rwy'n falch y nodir bwriad Gweinidogion Cymru i asesu sut y gellid diweddaru'r trefniadau presennol i adlewyrchu anghenion Cymru a'r oes ddigidol. Dylid sicrhau fod y Gymraeg yn greiddiol i unrhyw ddatblygiadau digidol newydd. Mae bod â chorpws sylweddol o

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destunau dwyieithog cyfochrog megis codau yn rhan bwysig o ddatblygu technolegau iaith pellach. Dylid ystyried o'r herwydd y trwyddedau a ddefnyddir i ddatblygu technolegau newydd er mwyn hwyluso datblygu technolegau pellach. Er gwybodaeth ichi, rwyf wedi cyhoeddi dogfen gyngor *Technoleg, Gwefannau a Meddalwedd: Ystyried y Gymraeg* sy'n cynnig canllawiau ar gyfer llunio meddalwedd a datblygu gwasanaethau TG dwyieithog o ansawdd a buaswn yn eich annog i'w ystyried wrth ddatblygu technolegau newydd ar gyfer hwyluso mynediad at gyfraith Cymru yn y Gymraeg a'r Saesneg.[5]

4.3 Neilltuwch adran i'r berthynas rhwng testunau Cymraeg a Saesneg deddfwriaeth. Fel y nodwch y mae adroddiad Comisiwn y Gyfraith ar *Ffurf a Hygyrchedd y Gyfraith sy'n Gymwys yng Nghymru* yn ymdrin yn fanwl â'r mater hwn ac fe roddais innau fy safbwynt gerbron yn fy ymateb i'r ddogfen ymgynghori. Buasai gennyf ddiddordeb mewn deall rhagor am eich bwriadau o ran ystyried a ddylid gweithredu i egluro'r berthynas rhwng fersiynau'r ddwy iaith ymhellach wrth ddehongli deddfwriaeth.

4.4. Mae'r ddogfen ymgynghori yn trafod mewn manylder defnyddio cyfieithiadau Cymraeg o ddeddfiadau a chyrff sydd heb enwau Cymraeg ac yn trafod yr arfer presennol a'r newid diweddar i'r arfer presennol. Trafodir yn ogystal y defnydd o enwau cwrteisi ar gyfer cyrff a swyddfeydd nad ydynt wedi'u sefydlu drwy statud ac sydd heb enwau Cymraeg, a'r enwau sydd wedi'u cofrestru yn Nhŷ'r Cwmnïau a'r Comisiwn Elusennol ar gyfer cwmnïau preifat ac elusennau. Nid oes gennyf deimladau cryfion ynghylch y materion hyn ond gellid dadlau bod y newid diweddar i'r arfer presennol a ddisgrifir ym mharagraff 229 yn llai amwys yng nghyd-destun enwau deddfau. Pa bynnag drefn a ffefrir yn y pen draw mae sicrhau cysondeb yn yr arferion a fabwysiedir yn fanteisiol a byddai canllaw cyhoeddus yn ogystal yn ddefnyddiol – yn enwedig pe bai gofyn i chi amlygu ac egluro'r system gyfeirio. Croesawaf hefyd y cyfeiriad yn y ddogfen at y potensial i ddefnyddio technoleg er mwyn datrys yr anhawster hwn i'r rhai sy'n darllen ar-lein a charwn eich annog i ymchwilio ymhellach i'r posibilrwydd hwn.

4.5 Rwy'n cydnabod, fodd bynnag, ei bod hi'n fwy anodd sefydlu patrwm cyson yng nghyd-destun enwau cyrff. Mae'r arfer bresennol a ddisgrifir ym mharagraff 236 o safbwynt defnyddio enwau cwrteisi Cymraeg ar gyrff megis Senedd y Deyrnas y DU wedi ennill ei blwyf bellach a go brin bod arddel y ffurf Gymraeg yn mynd i beri dryswch. I'r gwrthwyneb, byddai mynnu defnyddio enw Saesneg technegol gywir yn lle'r enw Cymraeg ar ganol testun Cymraeg yn fwy tebygol o dynnu sylw'r darllenydd.

[5] Ar gael ar-lein yn http://www.comisiynyddygymraeg.cymru/Cymraeg/Adroddiadau/Pages/Technoleg,-Gwefannau-a-Meddalwedd-Ystyried-y-Gymraeg.aspx neu fel PDF yn . http://www.comisiynyddygymraeg.cymru/Cymraeg/Rhestr%20Cyhoeddiadau/Technoleg,%20Gwefannau%20a%20Meddalwedd%20-%20Technology,%20Websites%20and%20Software.pdf

Comisiynydd y Gymraeg
Welsh Language Commissioner

Dylwn bwysleisio yn hynny o beth yn ogystal fod yr arfer a osodir mewn deddfwriaeth yn rhwym o gael ei ddilyn gan gyfieithwyr ac awduron Cymraeg mewn cyd-destunau eraill.

Hyderaf y bydd y sylwadau hyn o gymorth ichi wrth ichi ddatblygu Bil Deddfwriaeth (Cymru) Drafft.

Yr eiddoch yn gywir,

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Bil deddfwriaeth (Cymru)

National Assembly for Wales
Constitutional and Legislative Affairs Committee
Legislation (Wales) Bill

CLA(5) LW08
Ymateb gan Comisiynydd y Gymraeg

Evidence from the Welsh Language Commissioner

Thank you for the opportunity give evidence on the general principles of the Legislation (Wales) Bill. I should note that I have previously provided evidence in this field. I responded to the *Interpreting Welsh legislation Consultation Document: Considering an interpretation Act for Wales* in 2017[1]. My officers also provided detailed comments to the Chief Jurilinguist on the draft translation of Schedule 1 of the Interpretation Act 1978. I also responded to the Law Commission's consultation document on the *Form and Accessibility of the Law Applicable in Wales*[2] which addresses many of the matters covered in the legislation. Finally,

I responded to the Counsel General for Wales' consultation on the Draft Legislation (Wales) Bill which is attached.[3] The response to this consultation is in the spirit of the consultations above and I would encourage you to consider those responses, in particular the response to the Counsel General for Wales when considering the Bill. I will respond to two of the points included in the terms of reference, namely:

- The general principles of the Legislation (Wales) Bill and whether there is a need for legislation to deliver the Bill's stated policy objectives;
- Any potential barriers to the implementation of the provisions and whether the Bill takes account of them.

General principles of the Legislation (Wales) Bill and whether there is a need for legislation to deliver the Bill's stated policy objectives

1. Part 1 of the Bill places the duty on the Counsel General to keep the accessibility of Welsh law under review and that Welsh Ministers and the

1 http://www.comisiynyddygymraeg.cymru/English/Publications%20List/20170817%20Ll%20S%20Ymateb%20i'r%20ymgynghoriad%20Ystyri ed%20Deddf%20ddehongli%20i%20Gymru.pdf

2 http://www.comisiynyddygymraeg.cymru/English/Publications%20List/20151002%20S%20DG%20Ymateb%20Comisiynydd%20y%20Gymr aeg%20i%20Ffurf%20a%20Hygyrchedd%20y%20Gyfraith.pdf

3 http://www.comisiynyddygymraeg.cymru/English/Publications%20List/20180612%20S%20Ll%20Llythyr%20Bil%20Deddfwriaeth%20(Cymr u)%20Drafft.pdf

Counsel General must prepare a programme setting out what they intend to do to improve the accessibility of Welsh law (2 (1)). The Bill requires for the programme to include activities relating to consolidating and codifying Welsh law; maintaining the form of Welsh law once codified and facilitating the use of the Welsh language. On the basis of the above I welcome the duty placed on Welsh Ministers to review Welsh legislation and that any programme includes provision to facilitate the use of the Welsh language. In my response to the Law Commission's consultation document on the *Form and Accessibility of the Law Applicable in Wales*, I expressed my view that consolidating and codifying legislation would benefit the Welsh language. Therefore, I also welcome the proposal that each programme to improve the accessibility of Welsh law would make provision to consolidate and codify Welsh legislation.

2. However, I also note sections 15-18 of Professor Thomas Glyn Watkin's[4] evidence which raises some doubt about the status of the two languages when legislation that was not legislated bilingually. I would encourage you to consider this matter further in order to ensure that Welsh and English versions of consolidated and codified legislation have the same status.

Sections 5-8

3. I provided comments in my response to the Counsel General on sections 5-8. I generally welcome these sections and I have no comments further to my original comments.

4. However, I would like to draw particular attention to my comments on Section 7.

   Section 7 states that 'words denoting a gender are not limited to that gender'. I understand the intention of this section. There is no provision in the legislation however, that makes it clear that Welsh nouns have different grammatical genders which are not equivalent to gender/*rhywedd* that the legislation provides for. This has both grammatical consequences and also in relation to meaning that could be relevant with regards to this section. Reference was made to my comments[5] in the summary of responses to the Counsel General's consultation but I would welcome that further

[4] http://www.senedd.cynulliad.cymru/documents/s82900/CLA5-02-19%20%20Papur%202%20Saesneg%20yn%20Unig.pdf
[5] https://beta.gov.wales/sites/default/files/consultations/2018-08/summary-of-responses-legislation-bill.pdf

consideration is given to this either in the legislation or in guidelines or provisions resulting from the Bill.

5. I provided evidence to the Counsel General's Consultation on the following matters that are raised in the Bill's Explanatory Memorandum (EM):

- use of Welsh translation of enactments and bodies which do not have Welsh language titles or names (82-87 of the EM)
- interpretation of bilingual legislation and the relationship between Welsh and English versions of legislation h (76-77 of the EM)
- arrangements for publishing Welsh law and the process of making and organising statutory instruments (e.g. 79-81 of the EM)

The Government states its intention to give further consideration to these matters. I note this explanation in the explanatory memorandum and welcome the intention to give further consideration to these matters.

Potential barriers to the implementation of the provisions and whether the Bill takes account of them

6. In the assessment of the effect of the Bill on the Welsh language the explanatory memorandum states that the Bill will have 'a positive impact on those wishing to use the Welsh language as a language of law, for example legal professionals, the judiciary, academics and court users wishing to conduct court proceedings in the medium of Welsh.' I welcome this. I should state however that I foresee that the process of implementing the programme to improve the accessibility of Welsh legislation in Welsh and English will require linguists and lawyers who have high level skills in their fields of work in both Welsh and English. I would encourage the Welsh Government to discuss with Welsh universities, the Coleg Cymraeg Cenedlaethol and relevant organisations from the field of law, such as the Law Society and the judiciary to plan in order to ensure that there is a source of bilingual linguists, terminologists and lawyers with the required skills to implement this programme and the aims of the Bill.

I hope that these comments will be of help as you scrutinize the Legislation (Wales) Bill. You are welcome to contact me if you require further explanation of the points raised.

12/06/2018

Dear Jeremy Miles AM,

Thank you for the opportunity to respond to your consultation on the Draft Legislation (Wales) Bill. I responded to the *Interpreting Welsh legislation Consultation Document: Considering an interpretation Act for Wales* in 2017[6]. My response to this consultation echoes the spirit of that response. My officers also provided detailed comments to the Chief Jurilinguist on the draft translation of Schedule 1 of the Interpretation Act 1978. I also responded to the Law Commission's consultation document on the *Form and Accessibility of the Law Applicable in Wales*[7] which addresses many of the matters covered in the draft legislation. In light of these responses, I welcome the introduction of this Bill that facilitates the use of the Welsh language in Welsh legislation. It represents an important step towards recognising the equal status of Welsh and English in legislation, as laid out in section 156 of the

Government of Wales Act 2006. I will not respond to every consultation question but will focus mainly on the sections that are most relevant to the Welsh language.

1. Welsh Language Commissioner

1.1 The principal aim of the Commissioner in exercising her functions is to promote and facilitate the use of the Welsh language. In doing so the Commissioner will seek to increase the use of the Welsh language with regard to the provision of services, and via other opportunities. In addition, she will also address the official status of the Welsh language in Wales and, by imposing standards, place statutory duties on organisations to use the Welsh language. One of the Commissioner's strategic aims is to influence the consideration given to the Welsh language in legislation, as is the case here. Further information on the Commissioner's work can be found on the website: comisiynyddygymraeg.cymru.

6 http://www.comisiynyddygymraeg.cymru/English/Publications%20List/20170817%20Ll%20S%20Ymateb%20i'r%20ymgynghoriad%20Ystyried% 20Deddf%20ddehongli%20i%20Gymru.pdf

7 http://www.comisiynyddygymraeg.cymru/English/Publications%20List/20151002%20S%20DG%20Ymateb%20Comisiynydd%20y%20Gymraeg %20i%20Ffurf%20a%20Hygyrchedd%20y%20Gyfraith.pdf

Part 1 – Accessibility of Welsh law – Questions 1 and 2

2.1 Chapter 1 of the consultation document outlines the Government's aim to legislate to impose a duty on the Counsel General to keep Welsh law under review. The Counsel General would be required to do this when the Welsh Ministers are considering whether to propose new legislation. Additionally, for each Assembly term, the Welsh Ministers and the Counsel General would be required to develop and implement a programme of activity designed to improve the accessibility of Welsh law. Furthermore, the Bill would require each programme to make provision to consolidate and codify Welsh law; maintain codified law and to facilitate the use of the Welsh language. Consolidating the law, improving publication arrangements and providing more commentary on the law in both languages are some of the elements which would facilitate use of the Welsh language according to the consultation document. Other possible elements include producing more legal glossaries and developing agreed terminology. This, in particular, would be a very positive development, not only in terms of facilitating the process of legislating in Welsh but also in terms of teaching and administrating the law through the medium of Welsh.More detailed commentary on terminology can be found in my response to the Law's Commission's consultation on the *Form and Accessibility of the Law Applicable in Wales.*[8]

2.2 Based on the above, I welcome the proposal to impose a duty on the Welsh Ministers to keep Welsh law under review and that any review programme must make provision to facilitate use of the Welsh language. In my response to the Law Commission's consultation document on the *Form and Accessibility of the Law Applicable in Wales*, I expressed my view that consolidating and codifying legislation would benefit the Welsh language. The consultation document also notes that the law will be consolidated and then codified in both languages. Therefore, I also welcome the proposal that

8 http://www.comisiynyddygymraeg.cymru/English/Publications%20List/20151002%20S%20DG%20Ymateb%20Comisiynydd%20y%20Gymraeg %20i%20Ffurf%20a%20Hygyrchedd%20y%20Gyfraith.pdf

each programme to improve the accessibility of Welsh law would make provision to consolidate and codify Welsh legislation.

2. Part 2 – Statutory interpretation of Welsh law

2.1 Question 6

3.1.1 Question 6 asks for comments on what has, or has not been, included in Schedule 1 to the Draft Bill. I understand from the consultation document that the Bill includes a limited number of words and expressions which are only cross-references to other Acts. You argue that this although not ideal can on occasion be the best way to define a word or expression .

3.1.2 I understand that section 5 of the draft legislation is generally equivalent to section 5 of the Interpretation Act 1978 and that Schedule 1 of the draft bill is equivalent to Schedule 1 to the 1978 Act but that some words and expressions have been omitted and included. I welcome the fact that there will now be Welsh language versions and definitions of words included in Schedule 1 to the 1978 Act, of course. On the whole, these words and expressions appear in legislation not enacted by the Assembly although they apply, of course, to Wales. Although I understand the desire to define only those terms which are essential or most useful, the criteria for including words and expressions in Schedule 1 to the draft Bill are unclear to me. For example, is there scope to consider including definitions in some acts that are specific to Wales? With respect to this, I refer to the term

'well-being', for example, which forms a crucial part of the Well-being of Future

Generations Act and has, as a result, developed a very specific meaning to Wales, but is also used elsewhere[9]. This was one of the terms I referred to in my response to the *Interpreting Welsh legislation Consultation Document: Considering an interpretation Act for Wales* as terms whose interpretation has proved to be crucial in order to ensure clarification, certainty and

[9] See the Welsh Language Standards Regulations, e.g. http://www.legislation.gov.uk/wsi/2015/996/pdfs/wsi_20150996_mi.pdf

consistency in implementing the Welsh Language Measure and associated regulations.

2.2 Question 7

3.2.1 You ask whether we agree with the approach in section 7 that 'words denoting a gender are not limited to that gender'. I am unclear whether the current wording explains clearly enough that Welshnouns also have a grammatical gender that is not equivalent to gender. I notice that in the Welsh language impact assessment you intend to make it clear that this rule does not apply to the gender of nouns. It would be useful to receive further information and examples with regards to this decision. For example, the Welsh word 'nyrs' (nurse) is feminine whilst the Welsh word 'meddyg' (doctor) is masculine. These Welsh words do not denote gender but rather the words themselves have a grammatical gender. However, there would be need to clarify that the grammatical gender of these words is not equivalent to the gender of those undertaking those roles. In much the same way, the gender of the noun ‘Comisiynydd’ is masculine, but currently many females fulfil the role of commissioner in a number of public bodies in Wales. Further considerations follow as well, the gender of the Welsh noun could influence the use of the suffixed pronoun, for example, and cause mutations following the prefixed pronoun depending on the gender of the noun. Section 8 of the draft legislation does consider this last point, however.

2.3 Question 8

3.3.1 You ask whether we agree with the proposed approach taken in section 8 of the Draft Bill. You explain that its intention is to 'put beyond doubt the application of the definition or meaning of the word... so as to avoid ambiguity in practice, and to facilitate more naturalistic drafting in both English and Welsh'. You explain that this applies to any mutations of a word or variations of an expression arising due to rules about word order and sentence structure. I welcome this proposed approach as it acknowledges variations of Welsh words (such as mutations) and would therefore facilitate Welsh language drafting and interpretation.

3. Part 3: Other matters which could be addressed – Question 23

4.1 You ask in question 23 whether we have any views on some of the other matters that you have considered during the development of this Draft Bill which could be addressed by way of future legislation. I refer below to matters which apply to the Welsh language.

4.1 You state that you considered the desirability of restating section 156 of the Government of Wales Act 2006 which concerns the equality of the Welsh

language and English language texts of bilingual legislation. I would endorse steps to restate this provision in the legislation as it naturally complements the nature of the Bill and would highlight the importance of equality between texts. I understand the difficulties outlined in the consultation document and I encourage you to continue to investigate appropriate mechanisms to enable the restatement of section 156 of the Government of Wales Act 2006 within this draft legislation.

4.2 You state that you are considering arrangements for publishing the law and that legislation.gov.uk is being updated in this respect, but that there is no mechanism in place to update Welsh language texts. In order to ensure equality for Welsh language and English language legislation as provided by section 156 of the Government of Wales Act 2006, I believe that this matter must be addressed promptly. I am pleased to note that the Welsh Ministers intend to assess how existing arrangements could be modernised to reflect the needs of Wales and the digital age. It is important to ensure that the Welsh language is given due consideration in any future technological developments. In order to facilitate such future development, it is important that there exists a substantial corpus of bilingual texts (for example codes). For your information, I have published an advice note *Technology, Websites and Software: Welsh Language Considerations* which provides guidelines for designing bilingual software and information technology of high quality. I would recommend that you consider these guidelines as you develop new technologies that will facilitate access to Welsh law through the medium of Welsh and English.[10]

4.3 You devote a section to the relationship between the Welsh language and English language text of legislation. As you note, the Law Commission's report on the *Form and Accessibility of the Law Applicable in Wales* covers this matter in detail and I expressed my views in my response to the consultation document. I would be interested in learning more about your intentions with regard to considering whether action should be taken to further clarify the relationship between Welsh language and English language versions when interpreting legislation.

4.4. The consultation document discusses in detail the use of Welsh translations of enactments and bodies which do not have Welsh language titles or names as well as current practice and the recent change to the current practice. It also discusses the use of courtesy names for bodies and offices which are not established by statute and which do not have Welsh language names, and the names registered at Companies House or the Charity Commission for private companies and charities. I do not have strong feelings on these matters but it could be argued that the recent change to current practice (described in paragraph 229) is clearer in terms of the name of acts. The key

[10] Available online at http://www.comisiynyddygymraeg.cymru/English/ReportsGuides/Pages/Technology,-Websitesand-Software-Welsh-Language-Considerations-.aspx

issue here is ensuring consistency, and providing further public guidance would be useful – especially if you were required to explain the citation system. I also welcome the reference to the potential of using technology to aid those who read online and I would encourage you to further consider this possibility.

4.5 I acknowledge, however, that it is more difficult to establish a consistent protocol in the context of naming bodies. As explained in paragraff 236, the current practice of using Welsh courtesy names for bodies such as the UK Parliament (known as "Senedd y DU" in Welsh) is well established, and it is unlikely that using the Welsh form would cause confusion. As a corollary, using technologically correct English names instead of the Welsh name in the middle of Welsh language text is more likely to disrupt the flow of the text. I should emphasise also that the practice established in legislation is bound to be adopted by solicitors and Welsh language authors in other contexts.

I trust these comments will be useful to you in developing the Draft Legislation (Wales) Bill.

CLA(5) LW09
Ymateb gan Comisiynydd Pobl Hŷn
Evidence from the Older People's Commissioner

Bill Deddfwriaeth (Cymru) - Tacsonomeg Ddrafft ar gyfer Codau Cyfraith Cymru

Yn y Dacsonomeg Ddrafft ar gyfer Codau Cyfraith Cymru a gyhoeddwyd yn ddiweddar gan Lywodraeth Cymru, mae'r ddeddfwriaeth a sefydlodd Gomisiynydd Plant Cymru a Chomisiynydd Pobl Hŷn Cymru wedi cael ei chategoreiddio dan y Cod 'Iechyd a Gofal Cymdeithasol'.

Fel y byddwch yn ymwybodol, mae pobl iau a phobl hŷn yn defnyddio ystod o wasanaethau cyhoeddus eraill y tu hwnt i iechyd a gofal cymdeithasol, gan gynnwys addysg, cyfiawnder, cyflogaeth a thai. Yn yr un modd, mae ein swyddfeydd yn gwneud swm sylweddol o waith y tu hwnt i iechyd a gofal cymdeithasol.

Rydym o'r farn y byddai'n fwy priodol ail-ddosbarthu'r ddeddfwriaeth a sefydlodd ein swyddi dan y Cod "Gweinyddiaeth Gyhoeddus" ochr yn ochr ag Ombwdsmon Gwasanaethau Cyhoeddus Cymru.

Er nad yw'r cod hwn yn effeithio ar ein gallu i gyflawni ein swyddogaethau statudol, mae'n bwysig dangos i'r rhai sy'n defnyddio'r Dacsonomeg, gan gynnwys y cyhoedd, bod ein gwaith yn ymestyn y tu hwnt i iechyd a gofal cymdeithasol.

Rydym yn gobeithio y byddwch yn ystyried ein barn wrth i chi ddatblygu'r Bil ymhellach ac edrychwn ymlaen at ei weld yn mynd drwy Gynulliad Cenedlaethol Cymru.

Gan i'r mater gael ei godi gan Suzy Davies AC ym Mhwyllgor Materion Cyfansoddiadol a Deddfwriaethol y Cynulliad, byddwn yn anfon copi o'r llythyr hwn at Gadeirydd y Pwyllgor er mwyn taflu goleuni wrth iddynt graffu ar y Bil.

Yn gywir,

Yr Athro Sally Holland
Comisiynydd Plant Cymru

Heléna Herklots CBE
Comisiynydd Pobl Hŷn Cymru

CC:

Mick Antoniw AC, Cadeirydd, Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol, Cynulliad Cenedlaethol Cymru

Sophie Howe, Comisiynydd Cenedlaethau'r Dyfodol Cymru

Meri Huws, Comisiynydd y Gymraeg

Legislation (Wales) Bill - Draft Taxonomy for Codes of Welsh Law

In the Welsh Government's recently published Draft Taxonomy for Codes of Welsh Law, the legislation that established both the Children's Commissioner for Wales and Older People's Commissioner for Wales has been categorised under the Code of 'Health and Social Care'.

As you will be aware, both younger and older people access a range of other public services beyond health and social care, including education, justice, employment and housing. Likewise, our offices conduct a significant amount of work beyond health and social care.

We believe that it would be more appropriate to reclassify the legislation that established our offices under the Code of "Public Administration" alongside the Public Services Ombudsman for Wales.

Whilst this codification does not affect our ability to discharge our statutory functions, it is important to show those that are making use of the Taxonomy, including the public, that our work extends beyond health and social care.

We hope that you will take our views into consideration when further developing the Bill and look forward to its progression through the National Assembly for Wales.

As the issue has been raised by Suzy Davies AM at the Assembly's Constitutional and Legislative Affairs Committee, we will be sending a copy of this letter to the Committee's Chair to inform their scrutiny of the Bill.

Yours sincerely,

Prof. Sally Holland
Children's Commissioner for Wales

Heléna Herklots CBE
Older People's Commissioner for Wales

CC:

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

Sophie Howe, Future Generations Commissioner for Wales

Meri Huws, Welsh Language Commissioner

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Bil deddfwriaeth (Cymru)

National Assembly for Wales
Constitutional and Legislative Affairs Committee
Legislation (Wales) Bill

CLA(5) LW10
Ymateb gan Huw Williams-Geldards

Evidence from Huw Williams-Geldards

This is a submission in response to the Constitutional and Legislative Affairs Committee's call for evidence on the Legislation (Wales) Bill. This response has been prepared by Huw Williams[1] of this firm and represents his personal views on the provisions of the Bill.

The Committee has asked respondents to consider:

- the general principles of the Legislation (Wales) Bill and whether there is a need for legislation to deliver the Bill's stated policy objectives;
- any potential barriers to the implementation of the provisions and whether the Bill takes account of them;
- whether there are any unintended consequences arising from the Bill;
- the financial implications of the Bill (as set out in Part 4 of the Explanatory Memorandum);
- the appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Part 3 of the Explanatory Memorandum)

This submission responds to these questions but focuses on four aspects of the Bill, namely (1) the activities to be included in programme to improve accessibility of Welsh law, (2) the form and status of the proposed codes, (3) the definition of "Wales" and (4) the powers proposed in Part 3 and particularly clauses 37 and 38 of the Bill relating to timing and the making of subordinate legislation and some aspects of the Regulatory Impact Assessment.

[1] Huw Williams is the Vice-chair of Geldards LLP and the Lead Partner, Public Law at Geldards. Prior to joining Edwards Geldard as it then was in 1987, he worked as an in-house lawyer in local government. His main areas of practice are planning, compulsory purchase and local government law and related subjects such as environmental law and highways. He has served on the Planning and Environment Committee of the Law Society from 2003 to 2016 and on the Wales Committee from 2003 to 2011 and from 2016 to date. He has served on the Board of the Legal Wales Foundation and the Legal Wales Conference Committee since 2002 becoming Chair in 2018. He was a member of the Welsh Minister's Independent Advisory Group on Planning in Wales 2011-12. He has served as a Trustee of the both the National Museum of Wales and the National Library of Wales and has been Company Secretary of the Wales Millennium Centre since 1998.

1. Programme to improve the accessibility of Welsh law

The provisions of Part 1 of the Bill and their legislative intent are to be welcomed and the commitment of the Government to pursue an active programme of consolidation and codification is to be applauded.

My only reservation that the nature of and ambition for, what might be encompassed within a codification or consolidation programme.

The Law Commission's Report on the Form and Accessibility of the Law Applicable in Wales[2] discussed the extent to which the type of streamlined legislative procedures recommended for consolidating bills could also encompass an element of reform. I note that at Westminster the availability of the special procedure for consolidation bill, which may include an element of reform, is expressly linked to bills linked to reports of the Law Commission and that the work of the Commission, in effect, determines the extent of reform thought suitable for the special procedure.

It isn't clear if similar considerations lie, at least in part, behind the inclusion of the permissive power in the Bill for a programme to include activities undertaken in collaboration with the Law Commission, on the basis that the Commission's work would then indicate and guide the extent of reform thought permissible within the overall purpose of consolidation and codification.

In view of this, I think it would be helpful if reforms to the law intended to further the purposes of accessibility through consolidation and codification were added to the activities listed in sub-section (4).

I also think that while it does not require a legislative provision, there is a strong case for a degree of co-ordination of the accessibility programme with the legislative programme, so that one could see a substantive reforming bill being passed and then immediately consolidated and codified with the reforms being commended at the same time as the Code is passed into law.

2. The Form and status of the proposed codes

While I do not underestimate the task involved in adopting a largely codified statute book for Wales, I share the concern voiced by Professor Thomas Watkin QC[3] that the Explanatory Memorandum "appears to roll back on the broader vision" by explicitly discounting in most cases n approach where the Code itself is a legal instrument.

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[2] See paragraphs 3.5 – 3.15 discussing Legislative Procedures

[3] See paragraph 9 of his written evidence

While I can now see that such an approach would explain the Welsh Government's response to the Recommendations 8 and 9 in the Law Commission's Report on the Form and Accessibility of the Law Applicable in Wales,[4] which stated that the Welsh Ministers envisaged secondary legislation and quasi legal material, such as statutory guidance should also stand as part of the Welsh Law Codes, I question whether such an approach will in the long term impose the degree of discipline required to maintain and orderly and thus accessible series of Codes.

The notion that a Code once assembled should enjoy a protected status that ensures that amendments to topic within the purview of a Code should be subject to a presumption that the law will only be changed through amendments to the Code, seems to me to be essential if codification is to be seen over the longer term to have been worth effort involved. Protecting the status of the Codes in this way requires the executive and legislature to collaborate and it is disappointing that the Bill is before your Committee for consideration, without any indication of the type of Standing Orders that might be adopted by the legislature to facilitate consolidation and to maintain the Codes, although I note that in its response to Law Commission the Government noted that the Business Committee of the Assembly's decision to develop standing orders for consolidation bills.

For example, in my consultation response to the Law Commission's Report on the Form and Accessibility of the Law Applicable in Wales I commented:

> *I would support a solution that was based on the Standing Orders of the National Assembly. I envisage the Assembly by resolution declaring an enactment to be a "Code". The consequence of this could be that if a future Bill was presented and it was declared by the Presiding Officer to fall within the ambit of the "Code" then the Bill could only proceed by way of amendment to the Code unless the Assembly resolves to the contrary – possibly by way of a super majority, say 60%. The principle should surely be that once a subject is codified changes to the law should only be by means of amendments to the Code and that this principle is protected through the Standing Orders of the Assembly.*[5]

To confine the projected codification to the bringing together of legislation and quasi legislation as a publication exercise and designating it as a Code seems to me to be of questionable value. For example, the legislation relating to compensation for the compulsory acquisition of land has, historically, been

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[4] See the Counsel General's final letter to the Law Commission https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2016/06/2017-07-19-Law-Commission-Final-Response.pdf

[5] Quoted at paragraph 4.16 of the Law Commission Report.

referred to as the "Land Compensation Code", but there is scarcely another more striking example of an unsatisfactory, not to say chaotic, group of statutes that make up this Code starting as it does with the Lands Clauses Act 1845 (parts of which remain in force) with the most recent legislative interventions and amendments to be found in the Neighbourhood Planning Act 2017.

Turning to the Draft Taxonomy, I would comment that it represents a useful starting point, but I sense the ghost of executive devolution within the structure. Rather than see the accessibility programme wedded to an overall taxonomy from the outset, I would prefer to see further experience accumulated following the planning law pilot codification followed through with another major codification – Education law is the obvious example to my mind and a reform leading codification project, of which local government law is the clearest potential example. With three substantial codes in place then an overall taxonomy might then being to suggest itself, with certain overarching and cross cutting topics such as administrative justice and lands powers sitting alongside but outside the major functional Codes.

Consequently, speaking from a practitioner's perspective, I would like to see a system of codification with two components:

(a) A "Code Act" for each of the major topic area with the individual Acts forming parts and chapters of the Code and "protected" by the legislature's standing orders.

(b) A co-ordinated publication process that would marshal the secondary legislation and the quasi legislative materials along the lines envisaged in the Government's response to the Law Commission.

I also believe that such an approach will create a more robust model of codification with consequent advantages to the accessibility of the codes for the ordinary citizen.

3. The definition of "Wales"

While I note that, perhaps understandably, the Bill has elected to maintain a definition of "Wales" by reference to the aggregate of the principal councils in the same way that "England" is defined, the Government's consultation on the proposals for the Bill invited ideas as to how "Wales" might otherwise be defined. The response prepared by me and my colleague, Clare Hardy made the following suggestion, which I draw to the attention of the Committee:

> *We do not consider it satisfactory any longer that the country of Wales should only exist in law by means of a definition that makes it an agglomeration of its local government units. We suggest that Wales should be defined by an official map which should be:*

(a) Prepared by and with the advice of the Ordnance Survey to a specified scale.

(b) Made in, say, three duplicates, each sealed with the Welsh Seal and deposited with the National Library of Wales, the National Assembly and the National Archives respectively.

(c) Made available digitally on the same basis as legislation.

In conjunction with this eek an amendment of the Interpretation Act 1978 to define "Wales" for the purposes of UK and England and Wales legislation by reference to the official map.

4. Part 3 Miscellaneous

I am extremely pleased to see the provisions of Part 3 of the Bill.

The power to add in the actual date of commencement in to the text of the primary legislation when a provision is commenced will result in material savings of time effort (and thus cost to the client) on the part of practitioners in establishing if provisions are in force. It will be of even greater help to ordinary citizens who will no longer have to grapple with commencement order to find out is a specific provision is in force.

We are also pleased that clauses 37 and 38 will mean that secondary legislation can be prepared in a co-ordinated fashion that reflect the subject rather than the method by which the provisions must be made. In our consultation response to the Government we commented:

> *"... we recall the Welsh Government's response to the Law Commission's recommendations on codification which set out an aspiration for future Welsh Codes to contain, in addition to the primary legislation, the secondary legislation and quasi-legislation in the form of policy statements and statutory guidance. This approach, which we welcome in principle, does raise the question in our minds of whether specific powers may be required to bring secondary legislation into a codified format. Our reason for saying this is our concern about the way the format of secondary legislation is dictated by the procedure for its making with the resultant proliferation of instruments, orders, directions and so forth.*
>
> *A striking example of this is the ten pieces of secondary legislation that were needed to introduce the system of nationally significant infrastructure permissions under the Planning (Wales) Act 2015 Part 5. The primary legislative provisions were framework powers and should, in our view, have given rise to a coherent secondary legislative code applying to these applications."*

5. Regulatory Impact Assessment

I note that a programme of consolidation and accessibility is estimated to cost approaching £3m pounds of an Assembly term. This is a not insubstantial sum and I recognise that the employment of additional lawyers to draft new versions of laws may not be viewed as a necessity especially when there so may other pressing calls on taxation income.

Nevertheless, the contribution that such accessibility programmes can make, over time, to the rule of law and the education of the citizen on the importance of clear well-drafted laws cannot be over-estimated and is literally beyond price.

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Bil deddfwriaeth (Cymru)

National Assembly for Wales
Constitutional and Legislative Affairs Committee
Legislation (Wales) Bill

CLA(5) LW11
Ymateb gan Y Comisiwn Penodiadau Barnwrol

Evidence from Judicial Appointments Commission

The National Assembly for Wales' Constitutional and Legislative Affairs Committee consultation on the general principles of the Legislation (Wales) Bill - Judicial Appointments Commission (JAC) response

I write on behalf of the Judicial Appointments Commission Board (JAC). The JAC is an independent body established in April 2006 to select candidates for judicial office in courts and tribunals in England and Wales and for some tribunals whose jurisdiction extends across the UK. We welcome the opportunity to respond to your consultation on the Legislation (Wales) Bill.

We do not feel that it is appropriate for us to respond to the consultation in detail, but we do wish to comment in general terms.

In JAC selection exercises for positions in Wales, we seek assurance that successful candidates can demonstrate an awareness of the distinctiveness of administration of justice in Wales, and either have an understanding of the particular requirements of Wales or have the ability to acquire it.

As a result, we are particularly aware of issues in relation to the divergence of the law pertaining in Wales from that applying in England (as noted in the Law Commission Report *Form and Accessibility of the Law Applicable in Wales)*. An accessible source describing the law applicable in Wales is important for potential users of the courts and tribunals, those representing them and, indeed, for the judiciary. Currently the law in some areas is found in a wide range of National Assembly legislation, Westminster legislation and statutory instruments.

We therefore support any attempt to improve the accessibility of Welsh law and to organise it effectively. It seems reasonable to require this to be a statutory responsibility on the Welsh Government.

We also believe that the proposed measures would facilitate a more constructive assessment of the knowledge of Welsh law of candidates for judicial positions in Wales and be helpful to them in their preparation for selection exercises. It would also support those in judicial roles in Wales and ultimately benefit the quality of justice in Wales.

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Bil deddfwriaeth (Cymru)

National Assembly for Wales
Constitutional and Legislative Affairs Committee
Legislation (Wales) Bill

CLA(5) LW12
Ymateb gan Cyfraith Gyhoeddus Cymru

Evidence from Public Law Wales

1. Public Law Wales (previously the Wales Public Law and Human Rights Association) is an organisation promoting, in Wales, discussion, education and research relating to public law and human rights and promoting expertise amongst lawyers practising in Wales in the fields of public law and human rights. This submission focuses on the general principles of the Legislation (Wales) Bill from the perspective of public administrative law and the administrative justice system in Wales.

2. As the significant body of evidence to the Law Commission's initial consultation on the *Form and Accessibility of Welsh Law*, published responses to the current *Commission on Justice in Wales* and the *Counsel General's Consultation on the Draft Legislation (Wales) Bill* demonstrate, there is no question that people in Wales can find it difficult to access the law applicable to Wales, and to understand their rights (and also in some cases, their obligations) under it.

3. The body of evidence in essence speaks for itself as to the need to make Welsh law 'more accessible, clear and straightforward to use' and we therefore support this general purpose of the Bill. In particular we highlight some examples from public administrative law research showing that at present people in Wales appear less likely to utilise statutory and common law rights to seek appeal and/or review of public body decision-making, when compared to their English counterparts, and that over time people from both Wales and England have been increasingly less likely to be legally represented when they do issue challenges:

    a. The *Public Law Project and Dr Sarah Nason's submission to the Commission on Justice in Wales* provides evidence that rates of judicial review challenge originating in Wales per-head of population are consistently lower than in England (including across various English regions). The research also found that only 15% of litigants in judicial review cases in the Administrative Court in Wales who instruct Counsel are represented by Counsel based at chambers located in Wales. This research also found that 'regionalising' the Administrative Court has had no significant long-term impact on the involvement of solicitors

based in Wales in Administrative Court litigation.[1] The proportion of people representing themselves in civil (non asylum and immigration) judicial review claims in the Administrative Court (across England and Wales) has increased from 20% in 2007/08 to 37% in 2017/18. It should be noted here in particular that many (likely the majority) of judicial review claims are issued on the basis that a public body has failed to properly apply relevant law (these cases generally do not involve reconsideration of facts).

b. Recent research by Shelter Cymru,[2] and by Salford University[3] discloses that there are only two to four appeals to the County Court per-annum on a point of law relating to homelessness duties under the Housing (Wales) Act 2014. Judicial interpretation of the law here is limited to *obiter dicta* statements in English cases in the England and Wales Court of Appeal.

c. In various workshops involving a range of 'stakeholders' in the administrative justice system, the view has been expressed that people in Wales (especially the most vulnerable, and most likely to come into regular contact with administrative justice) are not aware of their rights, and most specifically not aware of their rights under Welsh law. There are particular difficulties in the field of education law. The research (which is still in its comparatively early stages) has found examples of statutory rights to redress (e.g., under housing law applicable to Wales) that are barely ever used.[4]

4. This is from the perspective of individuals, but there are also problems of accessibility, clarity and simplicity from the perspective of public bodies in Wales. The 2014 *Williams Commission Report on Public Service Governance and Delivery in Wales*, recommended that the Assembly: 'Review existing legislation to ensure that it simplifies and streamlines public-sector decision-making rather than imposing undue constraints on it or creating complexity;

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[1] https://beta.gov.wales/sites/default/files/publications/2018-11/submission-to-the-justice-commission-from-public-law-project-sarah-nason.pdf

[2] As yet unpublished presented to Wales Housing Research Conference 10 January 2019:

[3] A. Ahmed, M. Wilding, A. Gibbons, K. Jones, M. Rogers, I. Madoc-Jones (2018). Cardiff: Welsh Government, GSR report number

46/2018.

Available at: https://gov.wales/statistics-and-research/evaluation-homelessness- legislation/?lang=en

[4] From research workshops under Nuffield Foundation funded research: Paths to Administrative Justice in Wales (Sept 2018 to Feb 2020): http://www.nuffieldfoundation.org/paths-administrative-justice-wales and see Sarah Nason, *Administrative Justice: Wales' First Devolved Justice System* (December 2018) http://adminjustice.bangor.ac.uk/research-report.php.en

and either repeal such provisions or clarify their meaning and interaction'.[5] Welsh public administrative law can be difficult to navigate, both for individuals and for public bodies.

5. Public administrative law is often seen as a Cinderella area of law (and often barely seen as a system of justice at all) despite affecting more people, more regularly, than criminal justice.[6] Administrative justice is also significantly devolved to Wales, in light of this the proposed taxonomy of Codes of Welsh Law, is significantly a taxonomy of Welsh public administrative law.

6. We submit that a statutory duty to keep Welsh law under review is especially important here, as areas of administrative law and administrative justice are particularly susceptible to political short-termism (and so-called 'ad hocery'), to the detriment of articulating a principled and clear approach to public administration (and consequentially to social justice).[7]

Codification - the first step towards accessibility

7. There is great value to legal professionals in having a collection of legislative sources, and this could over time begin to compensate for the difficulties of having few academic and practitioner texts across the topics of Welsh law. However, based on our collective research into the experiences of 'users' of the administrative justice system in Wales, this would not on its own render the law more accessible to many groups of non-professionals – especially for example homeless persons and some social housing tenants, or parents of children with additional learning needs and healthcare needs. One reason for this is legislative language, another is that users of the administrative justice system tend to have multiple problems that could easily cut across for example, Codes of Education, Health, Housing and Public Administration.

8. The Bill does not impose a duty to seek simplification of the law in terms of drafting styles, and indeed such a duty would likely be unrealistic given that legislation which has the most impact on ordinary people's lives (entailing a balance say between individual rights/interests and the broader public

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[5] Para [2.37] online at: https://www.lgcplus.com/Journals/2014/01/21/d/r/x/Commission-on-Public- Service-Governance-and-Delivery-Wales.pdf

[6] See e.g., Nason (n 4) and Committee for Administrative Justice and Tribunals in Wales (CAJTW) in its 2016 *Legacy Report: Administrative Justice, A Cornerstone of Social Justice in Wales: Reform priorities for the Fifth Assembly* https://gov.wales/docs/cabinetstatements/2016/160729cornerstoneofsocialjustice.pdf

[7] Michael Adler, 'The rise and fall of administrative justice: A cautionary tale' 8(2) *Socio-Legal Review* (2012) and Tom Mullen, 'Access to Justice in Administrative Law and Administrative Justice' in Palmer, Cornford, Marique and Guinchard (eds), *Access to Justice: Beyond the Policies and Politics of Austerity* (Hart Publishing 2016).

interest) may be necessarily complex. Likewise, as has been recognised by other evidence submissions, the Codes are not primarily directed at ordinary people, but at legal and other professionals.

9. Our concern here is that, again from research workshops/user feedback, attempts to simplify Welsh law (especially in the areas of housing and homelessness, and additional learning needs) have been used, or are proposed to be used, as justification for cutting advice and advocacy services. In the area of public administrative law, where there can already be a significant power imbalance between individuals and public bodies (to some extent actual, to some extent perceived), reduction in the availability of publicly funded suitably independent advice/advocacy services is especially detrimental. In many cases the system for seeking redress against public body decision-making only functions effectively because of access to independent intermediaries. Various evidence draws a correlation between access to affordable legal advice, the incidence of public law challenges and resultant improvements to public administration.[8] There is potential for codification to reduce costs by making the law more accessible to professionals, but for individual people the need for assistance, advice and advocacy will still be very real.

Codes, cases and commentary

10. There is a notable dearth of academic and practitioner commentary on Welsh law. As Bargenda and Wilson-Stark have put it: 'Welsh lawyers have a dearth of textbooks to look to for guidance when the law is unclear. Having "so many excellent textbooks" has been cited as a reason why codification is not needed in Scotland. The best textbooks provide accessible digests of the law which cut down the time needed to wade through all the primary sources.'[9] Whilst a Code itself may not be particularly accessible to ordinary people, a modern clearly worded textbook (with the addition of online resources as is nowadays common) can prove crucial. However, the lack of incentive (and indeed the significant disincentive) for academics to develop

[8] See e.g., L. Platt, M. Sunkin and K. Calvo, 'Judicial Review Litigation as an Incentive to Change in Local Authority Public Services in England and Wales' (2010) 20 (supp 2) *Journal of Public Administration Research and Theory* 243 and C. Hunter, D.S. Cowan, A. Dymond and S. Halliday, Reconsidering Mandatory Reconsideration [2017] *Public Law* 215.

[9] A. Bargenda and S. Wilson Stark, 'The Legal Holy Grail? German lessons on codification for a fragmented Britain' (2018) 22(2) *Edinburgh Law Review* 183.

textbooks on Welsh law, and to write commentaries for platforms such as the 'Law Wales' website has already been well-discussed.

11. On balance it may be that codification could catalyse an increase in academic commentary (less wading through primary sources is needed prior to developing an accessible commentary/critique). On the other hand, the presence of Welsh Codes 'might' be postulated as yet another disincentive for academics to devote time to analysing Welsh law (a possible reverse of Bargenda and Wilson-Stark's view of the Scottish position).

12. The lack of academic, and to an extent also practitioner, commentary is compounded by a dearth of case law where public administrative law duties under Welsh legislation are given clear, authoritative, independent and impartial judicial interpretation. Again, research is beginning to uncover an informal approach to public law dispute resolution in Wales, whilst this can reduce costs and lead to early and satisfactory resolution of issues for individuals and public bodies, a side-effect can be lack of transparency and binding future precedents.[10]

13. In the area of public administrative law, the main body of generally applicable legal principles are still to be found in the common law of England and Wales. *The Public Law Project and Dr Sarah Nason's submission to the Commission on Justice in Wales* (looking specifically at judicial review claims) notes:

> '...any attempt to categorise [judicial review] claims precisely as turning on matters of Welsh law and/or devolved Welsh policy, was fraught with difficulties. This is significantly due to the nature of public administrative law, where the general principles - that public body decisions must be lawful, procedurally fair, and reasonable - stem from the common law of England and Wales. Whilst these common law principles have often been described as generalised principles of statutory interpretation, the precise significance of the relevant statutory provisions to the case at hand varies greatly. Judicial review claims rarely ever include just one ground, more often than not multiple common law grounds are argued (including illegality, procedural impropriety and irrationality), regularly accompanied by particular forms of statutory illegality – breach of the UK wide Human Rights Act 1998 or Equality Act 2010, or of a particular piece of EU law.' [11]

[10] See references at (n 4).

[11] See (n 1).

14. The issue here, again as others have noted, is that the Welsh Codes will not seek to codify case law, yet they risk being seen as a fully comprehensive statement of the law on a particular subject area.

Accommodating innovation and cross-cutting issues

15. As is understandable the proposed taxonomy of Codes is effectively based around the powers originally devolved to Wales as part of a culture of executive devolution. As envisaged consolidation 'involves no or only minor amendments to the substance of the law consolidated'. On the other hand, it is stated that: 'A "Code" of Welsh law would generally be published once some or all of the primary legislation on a particular subject…has been consolidated, or has been created afresh following wholesale reform'. It is not then clear how substantive amendments short of 'wholesale reform' could be accommodated. For example, researchers have proposed a possible Administrative Procedure Code for Wales, the contents of which would largely be a consolidation of existing duties applying to various public bodies in Wales, but still the creation of such a Code, either as a freestanding Welsh Code, or as a specific aspect of the proposed Public Administration (or Public Administration and Human Rights) Code, would be more than a minor amendment to existing law.[12] We have further comments to make about the proposed taxonomy at a more appropriate juncture, our point here is that there appears to be a grey area between minor amendments and wholesale reform, and it will be important to consider further how to accommodate issues, and make people aware of issues, that cut across various Codes.

Cultural change and collaboration

16. As the Explanatory Memorandum states, the success of consolidation and codification depends upon a cultural shift. Most importantly this evolving culture must be embraced by a range of 'stakeholders' including law-makers, legal professionals and other advice/advocacy providers, academics, and judges (to name a few). Rationalisation of the statute book only goes part of the way to improve the accessibility of law and facilitate people's exercise of their legal rights. In this regard s.2(4)(a) of the Bill noting that the programme 'may also include proposed activities – (a) that are intended to promote awareness and understanding of Welsh law' is especially important. The success of Welsh Codes in improving the accessibility of law for ordinary people (and in facilitating exercise of their rights) will depend largely on initiatives to promote awareness and understanding, significantly through

[12] See e.g., S. Nason and D. Gardner, 'The Administrative Court and Administrative Law in Wales and Comparative Perspectives' (in *Administrative Justice in Wales and Comparative Perspectives* (University of Wales Press 2017)) and David Gardner, 'An Administrative Law Code for Wales: Benefits to Reap and Obstacles to Overcome' (2018) *Statute Law Review*.

the production of user-friendly materials (by academics, legal professionals, 3rd sector and others) that; bridge the gap between statutory language and everyday understanding of the law/rights, raise awareness of issues cutting across Codes, and provide additional reference to and interpretation of common law precedents. There is a case for saying that there should be a 'must' duty to include such activities as opposed to a 'may' power, if the Bill is to achieve its stated policy objectives.

Proposals to strengthen the Bill

17. In light of the points we raise we suggest some possible proposals to strengthen the Bill. In its 2011 Legacy Report, at the end of the Third Assembly, the Children and Young Persons Committee remarked that, 'Wales is policy rich but implementation poor'.[13] We suggest that further consideration could be given to imposing on Ministers not only an obligation to prepare a programme to improve accessibility of Welsh law, but also an obligation to give effect to such a programme (understandably this latter obligation would need to be qualified in some way). This would give greater assurance that programmes will be implemented.

18. We also suggest that in preparing a programme to improve accessibility of law, Ministers be required to state key priority areas, for example research has highlighted that the accessibility of education law applying to Wales is a major concern and can negatively impact achievement of other policy priorities in particular relating to children's rights.

19. As we have noted, success in improving accessibility will likely depend heavily in practice on the programme of activities that are intended to promote awareness and understanding of Welsh law. In order to strengthen this aspect of the Bill, and to redress concerns around disincentives for academics to produce materials on Welsh law, a specific reference could be added to s.2(4) that the programme; may include proposed activities fostering collaboration with universities and the legal profession in Wales to improve the accessibility of Welsh law, including a power to give financial support to such activities.

20. As the Explanatory Memorandum notes: 'In preparing a programme it will be important to take the views of the public. The main purpose of such an exercise would be to ensure focus on those areas of law most in need of consolidation and which have most impact on users of legislation (be they public bodies, business or the citizen). It is anticipated that a programme will

[13] Para [179].

be prepared in draft and consulted upon, before being agreed by the Welsh Ministers and Counsel General and laid before the National Assembly'. This provides an opportunity to identify the key priority areas (as we have referred to in our para 18). However, we note also that 'the approach to consultation will be a matter for the Government of the time'. Consideration could be given to making specific reference to consultation within the Bill itself. In particular that when preparing a programme Ministers be required to consult with a specified body (or bodies) representing the legal professions in Wales, universities, public authorities and third sector organisations.

Mark Drakeford AC/AM
Prif Weinidog Cymru/First Minister of Wales

Llywodraeth Cymru
Welsh Government

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

7 February 2019

Dear Mick,

Thank you for your letter of 14 January about the interpretation of the European Union (Withdrawal) Act 2018 ('the 2018 Act') and the Intergovernmental Agreement (IGA) on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks. This letter focused particularly on the Animal Welfare (Amendment) (EU Exit) Regulations 2018, and the Floods and Water (Amendment etc.) (EU Exit) Regulations 2019.

You will have noted the corresponding Welsh SIs have been laid in the National Assembly for sifting. Your committee reported on the Animal Health and Welfare (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 on 21 January, noting the issue of certificates of competence and recommending the SI be laid according to the affirmative procedure. Your committee's report on the Flood and Water (Amendments) (England and Wales) (EU Exit) Regulations 2019 SI was published on 21 January and recommended for the negative procedure. We can therefore discuss these SIs as we have seen the complete scope of amendments proposed through the UK SIs and the Welsh SIs.

In respect of the interpretation of the 2018 Act, there is an element of policy choice in deciding the appropriate way in which to address a deficiency, but a policy choice is not necessarily a substantive change to the policy itself. We have given careful consideration to all UK regulations, which make provision in devolved areas and where there is no policy divergence about how to correct the deficiencies, consent has been provided.

We note your view that, in respect of the regulations you have highlighted, there has been a 'new' policy, but we disagree with that assessment. The policy choice is limited to what is necessary to make the law operational on exit.

In both these SIs, we have opted to retain the fundamental aspects of the existing policy, as far as they can be retained once the participation of the EU is removed. This means that in some cases the mode of delivery has needed amendment but, in our view, the substantive policy position has remained unchanged.

The question is what degree of policy change constitutes a new policy, and we do not consider that threshold to be met in this case.

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In terms of the Animal Welfare (Amendment) (EU Exit) Regulations 2018 and Council Regulation (EC) 1099/2009 about the protection of animals at the time of killing, we accept the corrections to the deficiency will have the effect of reducing the number of countries from which certificates of competence will be recognised in the UK post exit. This is clearly a consequence of exit to enable the enforcement framework to remain operational and it also maintains the fundamental policy of a UK-wide certification scheme for slaughterers, with an effective ability to enforce standards.

As the UK Government Explanatory Memorandum makes clear, there is currently a certificate of competence, issued to slaughterers by other Member States, which must be recognised in the UK. Certificates of competence are required by slaughterhouses in the EU to demonstrate an individual has been trained and successfully assessed as reaching a sufficient level of competence to undertake animal handling, stunning and killing and related operations required of them. The amendments made to Article 21(4) of Council Regulation (EC) 1099/2009 remove this recognition requirement.

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

We have opted to retain the fundamental aspects of our existing policy, which is to remain within the existing UK-wide system for certificates of competence. An alternative would be to adopt a new policy and establish a separate Welsh system for certificates of competence. There was not a compelling policy rationale for doing so at this point, although this option remains open to us in the future should this become Welsh Government policy.

With respect to the Floods and Water (Amendment etc.) (EU Exit) Regulations 2019, we do not consider the amendments introduce a 'new' policy position, but instead place the existing obligations on a domestic footing. Taking the obligation relating to urban waste water as an example – the reporting provision introduced as new Regulation 12A in the Urban Waste Water Treatment (England and Wales) Regulations 1994 is designed to replace the Member State function of producing a situation report to the Commission found in Article 16 of Council Directive 91/271/EEC of 21 May 1991, concerning urban waste water treatment.

> *Article 16*
> Without prejudice to the implementation of the provisions of Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment [5], Member States shall ensure that every two years the relevant authorities or bodies publish situation reports on the disposal of urban waste water and sludge in their areas. These reports shall be transmitted to the Commission by the Member States as soon as they are published.

The same is done throughout this SI in relation to areas such as Nitrates and Bathing Waters among others.

The difference is the current reports will be made public rather than be sent to the Commission. Not to replace this function, or to replace the function on a Wales-only basis, would have been a change from the current policy, where action is taken at a UK level. The Defra Explanatory Memorandum states: "Where there was a reference in an EU Directive to a Member State reporting to the European Commission, for example the requirement in the

Urban Waste Water Treatment Directive to provide a situation report on the disposal of urban waste water and sludge, this is being replaced by a requirement in the domestic legislation that such an environmental report is to be made publicly available. This is being done as the Department wishes to remain transparent about its environmental performance".

Our policy position remains the same – it is important to be transparent about environmental performance and therefore this function should be retained. The cross-border nature of flooding and water management (where the boundaries of devolved competence do not match the geographical border) means we have decided to retain our existing approach of reporting on a UK level.

We appreciate the points you have raised about the interpretation of the 2018 Act and the application of the IGA; in particular the regulations you have highlighted as examples.

This valuable discussion highlights the careful consideration which needs to be given to the correction of deficiencies by regulations under the 2018 Act and we will ensure we will continue to assess carefully the regulations made by the UK on our behalf so they are made in accordance with the IGA.

Best wishes,

Mark

Mark Drakeford

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

National Assembly for Wales
Constitutional and Legislative Affairs Committee

Mark Drakeford AM
First Minister
Welsh Government

14 January 2019

Dear Mark

Interpretation of the European Union (Withdrawal) Act 2018 and the Intergovernmental Agreement on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks

Further to the former First Minister's letter of 7 December 2018 regarding the Animal Welfare (Amendment) (EU Exit) Regulations 2018, there are a number of issues we would be grateful to receive clarification on relating to the Welsh Government's interpretation of the *European Union (Withdrawal) Act 2018*. (the 2018 Act).

The letter states that:

> "The enabling power within the Withdrawal Act cannot be used to introduce new policies, but is to be used to address deficiencies within retained EU law."
>
> It goes on to say that "this is not a new policy but a necessary correction to address a deficiency that would otherwise arise".

In the section headed "Use of Concurrent Powers in the Withdrawal Bill", the intergovernmental agreement states that the UK Government will not use its powers to enact new policy in devolved areas but rather they would be used for administrative efficiency only. This suggests that new policy can be enacted by

using the powers to correct deficiencies under the 2018 Act, as does the UK Government's Explanatory Memorandum to the Animal Welfare (Amendment) (EU Exit) Regulations 2018, which we refer to in our first letter and which clearly identifies a change in policy.

In our view what the 2018 Act prevents is the introduction of new policy which is unrelated to correcting deficiencies in EU law that arise from the UK's exit from the EU, and a change in policy is a new policy (unless there is absolutely no choice as to how the change can be effected).

Furthermore, by its nature, correcting deficiencies in EU law may require a substantive policy decision to be taken. While this may, from the Welsh Government perspective, result in the same policy decision being taken as that by the UK Government, under the terms of the intergovernmental agreement, we believe the Welsh Government should have introduced its own Animal Welfare (Amendment) (EU Exit) Regulations.

In addition, the Floods and Water (Amendment etc.) (EU Exit) Regulations 2019 used the power to correct deficiencies to, among other things, introduce a new reporting regime in respect of urban waste water and sludge (see, for example, new regulation 12A inserted into the Urban Waste Water Treatment (England and Wales) Regulations 1994).

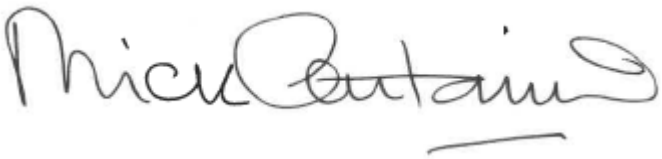
There were many ways this new reporting regime could have been drafted, therefore a policy decision was made to draft the reporting regime in the way it is set out in the Regulations. Our view is that this amounts to enacting new policy and certainly goes beyond administrative efficiency.

We have considered this example further since we considered these Regulations at our meeting of 7 January and come to the conclusion that because the Regulations enact new policy, they should have been made by the Welsh Ministers, in accordance with paragraph 8 of the memorandum to the intergovernmental agreement.

We would be grateful for your observations on the above points, and as part of those observations, clarification on the meaning of paragraph 8 of the

memorandum to the intergovernmental agreement relating to the use of concurrent powers.

Yours sincerely



Mick Antoniw
Chair

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

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Minister for Finance and Trefnydd

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Mick Antoniw AM
Chair, Constitutional and Legislative Affairs Committee
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7 February 2019

Dear Mick,

Thank you for your letter of 14 January regarding the scrutiny of regulations arising from the European Union (Withdrawal) Act 2018.

The EU Exit legislation programme requires both Welsh Ministers and the National Assembly to consider an unprecedented amount of legislation in a very short period of time. Determining which elements fall within devolved competence is one of factors Welsh Ministers must determine when considering how best to prepare for Brexit. It is important to ensure our approach to analysing issues of competence is proportionate, while being mindful of the importance of protecting and preserving that competence. I am content our approach secures both aims.

As the Welsh Government has previously observed, the written statements do not detail which parts of SIs Welsh Ministers have consented because they are consenting to the whole SI. Where an SI is in at least part devolved, Welsh Ministers will consider whether to consent.

There are several reasons why Welsh Ministers have adopted this approach. When an SI is partially devolved, the non-devolved elements will affect the exercise of the devolved elements because these elements work together as a whole. We must consider the effect of the SI on the legislative competence of the National Assembly as well as the executive competence of the Welsh Ministers. To restrict our consideration to the devolved areas only would do a disservice to devolution in Wales.

Logically, it follows that the priority for analysis of competence is whether an SI is within competence or not, at least in part. Issues of competence are often not clear-cut. The devolved and non-devolved elements of an SI are, in many cases, so intertwined that it can become artificial to draw rigorous distinctions between them. Taking a proportionate approach that focuses on the impact of the SI means the exact boundary of devolution

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within the SI is not of immediate relevance, as long as we are confident that it falls within competence to an extent.

Once the presence of a devolved element has been identified, officials and lawyers can focus on a detailed analysis of the effect and impact of the SI; negotiations about how functions are to be exercised, and considerations about whether the UK SI sets out an approach that aligns with that of the Welsh Government's.

Your letter asks for information about the preparation of the explanatory memoranda to be laid in Parliament. In general, the Welsh Government does not routinely provide the UK Government with material for inclusion in these. The drafts have been shared with the Welsh Government in advance of being laid in Parliament and officials have considered and commented as appropriate.

You also raise the issue of directly-applicable EU law. None of the regulations laid in the National Assembly have so far amended directly-applicable EU law. SIs amending directly-applicable EU law are being considered on a case-by-case basis and the Welsh Ministers will keep this approach under review. In the cases seen so far, the Welsh Government's approach has been to retain a UK-wide approach, rather than create new policies and delivery structures in the immensely constrained circumstances of Brexit.

Powers to amend directly-applicable EU law were included in the EU (Withdrawal) Act at the request of the Welsh Government to ensure parity between the powers being conferred on the Welsh Ministers and UK Government Ministers. Having the powers to amend directly-applicable EU law means that taking a UK-wide approach has been a conscious policy choice rather than one we are compelled to accept due to a lack of powers to do otherwise. It also gave the Welsh Ministers the flexibility to consider how best to make legislation addressing directly-applicable EU law.

Finally, you requested information about which Welsh EU Exit SIs were not dependent on the UK legislation. An analysis of the Welsh EU exit legislation programme indicated the only Welsh EU Exit SI, which did not have a dependency on UK EU Exit legislation was the Learner Travel (Wales) (Amendment) (EU Exit) Regulations 2019. This was laid for sifting as scheduled on 29 January. All other SIs have links with the UK's legislative programme to a greater or lesser extent. This is a consequence of EU law having a UK-wide impact as the UK is the Member State.

I hope this information is helpful to the committee.

Yours sincerely,

Rebecca Evans AC/AM
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

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National Assembly for Wales
Constitutional and Legislative Affairs Committee

Rebecca Evans AM
Minister for Finance and Trefnydd
Welsh Government

14 January 2019

Dear Rebecca

Scrutiny of regulations arising from the European Union (Withdrawal) Act 2018

I refer to the letter from the former Leader of the House and Chief Whip on 10 December 2018.

We are grateful for the update provided in response to the questions we raised in our letter of 15 November 2018. In that letter, we also said that it would be helpful if written statements could state the relevant provisions for which consent is being given.

The Welsh Government's response states that the Welsh Ministers consider and consent to the statutory instrument (SI) as a whole, rather than confine their consideration to the devolved areas. While that may be the case, we are unclear why the written statement cannot detail the specific provisions for which consent is being given, i.e. which parts of each SI make provision in devolved areas.

For that reason, we would be grateful if you could confirm that the specific provisions for which consent is being given are identified before the Welsh Ministers make a decision to give that consent to the UK Ministers. In our view this would be necessary to ensure compliance with the intergovernmental agreement relating to the use of concurrent powers.

This issue has become even more important following our meeting this week, in which we noted that the decision of the Welsh Ministers to give consent to the

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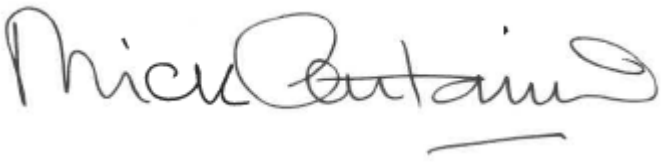
Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2018 has the effect of permitting the UK Government to make a negative resolution statutory instrument restricting the legislative competence of the National Assembly for Wales, without the Assembly having any role.

We would also be grateful if you could confirm, as part of your process for making decisions about giving consent, whether the Welsh Government provides material for inclusion in explanatory memorandums on concurrent SIs that are to be scrutinised by the UK Parliament.

We would also be grateful for the reasons why the Welsh Government will not be making any amendments to directly applicable EU law. Are we correct to say that the original EU (Withdrawal) Bill did not contain a power for the Welsh Ministers to amend directly applicable EU law, and that such a power was subsequently included at the request of the Welsh Government?

Finally, with regard to the need for Welsh legislation "often" to wait for UK legislation to be made first, can you confirm how many Welsh Government SIs have not been dependent on UK legislation being made first, and the reason for the delay of such SIs?

Yours sincerely



Mick Antoniw
Chair

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7 February 2019

Dear Mick,

Thank you for your letter regarding the Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2018.

Before addressing the specific questions raised in your letter, I would like to set out some more detailed information about the effect and intention of these regulations to give the committee some more context about why these regulations were made on a UK-wide basis.

The Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2018 (the 2018 Regulations) address deficiencies resulting from the UK's withdrawal from the EU. They confer functions on an existing public authority (the Controller of Plant Variety Rights –the Controller) that acts under the direction of, and is appointed by, the Secretary of State, the Welsh Ministers, the Scottish Ministers and the Northern Ireland Department acting jointly.

A well-established UK-wide legislative framework already exists for Plant Variety Rights through The Plant Varieties Act 1997(the 1997 Act) and a non-legislative agreement is planned to set out governance, decision-making, dispute resolution and market access/export.

When the UK leaves the EU, Council Regulation 2100/04 and Community Plant Variety Rights (CPVR) granted pursuant to it will no longer be recognised in the UK. This will affect the economic interests of rights holders and deprive them of enjoyment of those rights. The changes made by the 2018 Regulations are necessary to ensure continued protection in the UK of varieties granted CPVR before 29 January 2019, which would allow for the two-month appeal provision to conclude on 29 March. It is also necessary to allow applications for UK plant breeders' rights for any application for CPVR, which is unresolved on exit day.

Some provisions of the 1997 Act refer to the Council Regulation and amendments are required to bring these, where appropriate, into UK legislation.

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The 2018 Regulations will allow an application for UK rights within six months of exit for any variety with an unresolved application for CPVR on exit, using the priority date (date of application) and technical examination (test for distinctness, uniformity and stability) as for CPVR. This will be an application for UK rights under the 1997 Act, with the decision made by the Controller. An unresolved application is an application where a decision has not been made by the Community Plant Variety Office before exit day or where a decision to grant rights has been made but the two-month appeal period does not end before exit day.

We saw no benefit to Welsh citizens affected by the regulations of establishing a Wales-only regime for plant breeders' rights. The subject of plant breeders' rights has a history of joint action. The 1997 Act provides that the Controller acts under the direction of and is appointed by the Secretary of State, the Welsh Ministers, the Scottish Ministers and the Northern Ireland Department acting jointly. The transfer of the functions under that Act to the National Assembly for Wales (by SI 1999/672) preserved those joint functions. The secondary legislation the Regulations amend was made jointly. The Plant Breeders' Rights (Naming and Fees) Regulations 2006 were made jointly, in part, by the National Assembly.

The lack of benefit to establishing a separate Wales-only regime, which was considered alongside the potential cost and logistical challenges of establishing such a regime by exit day, was a compelling policy rationale for deciding the Controller is the appropriate body on which the new functions should be conferred. UK-wide regulations were the only method by which to achieve this policy aim as the devolved administrations do not have the power to confer joint UK-wide functions on the Controller.

Additionally, there was no scope to create a functional Wales-only regime through the EU Exit SI programme. The Welsh Ministers' powers under the EU (Withdrawal) Act 2018 are subject to various limitations, the most pertinent of which appears in section 8(7)(d) (applied to the corresponding powers of the Welsh Ministers by paragraph 1(3) of Schedule 2) that regulations under section 8(1) may not establish a public authority. There are powers under the EU (Withdrawal) Act for additional functions to be conferred on an existing public authority – in this case the Controller – but no powers to establish a new public authority such as a Wales-only Controller.

Plant varieties and seeds are devolved subjects (see the exception to section C4 of Schedule 7B to the Government of Wales Act 2006). The Assembly could legislate to create a Wales Plant Variety Office but there would have been no opportunity to do so by exit day. Doing so would also have involved removing functions from the Controller, which would engage paragraph 10 of Schedule 7B to the Government of Wales Act 2006. Paragraph 10 does not constitute an absolute bar to legislation – it requires that the Secretary of State consents to provisions that engage the paragraph.

As paragraph 10 of Schedule 7B to the Government of Wales Act 2006 already applies to the Controller, it is not certain that conferring functions that sit naturally within the Controller's remit will have a negative impact on legislative competence compared to the current position. It seems unlikely that any hypothetical future legislation on plant breeders' rights would be confined to addressing the new functions in isolation.

You asked why the Assembly was not consulted in advance of Welsh Ministers giving consent to this SI. The Presiding Officer has previously written to the First Minister about the reliance on the UK Government's legislation, with concerns that this has not enabled detailed scrutiny by the National Assembly. The First Minister's reply explained the need to work with the UK Government in the unique circumstances of Brexit and stated that written statements are being provided for Assembly Members about those UK SIs which are being laid in areas devolved to Wales.

As the EU (Withdrawal) Act powers require that new functions are conferred on existing public bodies, leaving the EU will mean some existing public authorities will assume additional functions. We anticipate that in Wales many of these will be conferred on authorities within the Welsh legislative competence. However, there may be similar instances where the most appropriate body is a UK-wide body. The effect such a conferral would have on legislative competence will vary depending on the subject matter. It is not possible to state definitively whether a future SI would raise the same issue in advance of considering the draft of the SI.

You also asked about the agreements we have entered into with the UK Government about future consents.

Welsh Government officials are in contact with the Wales Office about the unintended restrictions on the Assembly's competence created by powers conferred in EU Exit SIs and other legislation, which engages paragraphs 8, 10 and 11 of Schedule 7B of the Government of Wales Act. Officials are examining the issue in detail and considering how it can best be resolved. The Welsh Government will keep the National Assembly, including the Constitutional and Legislative Affairs Committee, informed about the progress of these discussions.

Yours sincerely,

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Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

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National Assembly for Wales
Constitutional and Legislative Affairs Committee

Rebecca Evans AM
Minister for Finance and Trefnydd
Welsh Government

14 January 2019

Dear Rebecca

The Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2018

The National Assembly received a notification from you in accordance with Standing Order 30C in respect of the Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2018 (the PBR Regulations). At our meeting on 7 January 2019, we considered the notification and in particular the following paragraph:

> "These regulations confer functions on the Controller of Plant Variety Rights, an officer established by the Plant Varieties Act 1997 as the head of the Plant Variety Rights Office. The Controller acts under the direction of and is appointed by the Secretary of State, the Welsh Ministers, the Scottish Ministers and the Northern Ireland Department acting jointly.
>
> Functions transferred to a public authority other than a devolved Welsh authority would engage paragraph 10 of Schedule 7B to GoWA 2006. This therefore may be a relevant consideration in the context of the Assembly's competence to legislate in the future in these areas."

It is very disappointing that the National Assembly was not provided with advance notice of the Welsh Government's intention to consent to the making of the PBR Regulations by the UK Government. While we accept that subordinate legislation is, in general, a matter for governments, the PBR Regulations are, as far as we are

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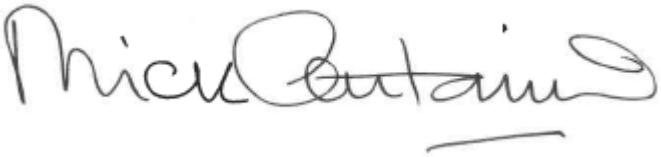
aware, the first ever of their kind – the effect of the PBR Regulations can be summarised like this: the Welsh Government has consented to the UK Government making a negative resolution statutory instrument that restricts the legislative competence of the National Assembly for Wales, without the Assembly having any role.

Could you therefore:

- explain why you did not think it appropriate to consult the Assembly before consenting to the PBR Regulations,
- explain why the Welsh Government did not make the PBR Regulations itself (at least in so far as they impact the Assembly's legislative competence),
- tell us how many other pieces of subordinate legislation are likely to raise the same issue, and undertake to consult the Assembly on any such subordinate legislation,
- provide details about any agreements you have entered into with the UK Government with regard to obtaining future consents under paragraph 10 of Schedule 7B to the *Government of Wales Act 2006*.

We are also drawing the matter to the attention of various UK Parliament Committees, as the Committees that will be scrutinising such subordinate legislation in the UK Parliament.

Yours sincerely



Mick Antoniw
Chair

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We welcome correspondence in Welsh or English.

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Minister for Finance and Trefnydd

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7 February 2019

Dear Mick,

Thank you for your letter regarding the Nutrition (Amendment etc.) (EU Exit) Regulations 2019. I will address each of the points you raise in your letter in turn.

There is not a set process for how the Welsh Government responds when an EU Exit SI is withdrawn and re-laid by the UK Government. The Welsh Government's actions depend on why the SI was withdrawn, and what changes are required to the SI before it is re-laid in Parliament. A very small number of SIs have been withdrawn and re-laid and the Welsh Government has considered each on a case-by-case basis.

In the majority of cases, the SI has been withdrawn because minor errors have been detected (such as spelling mistakes and inaccuracies in EU Regulation reference numbers). In these cases, officials have considered no action is required, as these minor corrections do not affect the substance of the SI, nor do they affect the consent of the Welsh Ministers. In the very small number where more substantive changes have been required, officials have worked with their counterparts in the UK Government to understand the rationale and impact of the changes. Where the changes have had a substantive impact on an SI, Ministers have been engaged and a decision has been taken about whether the changes materially affect the consent of the Welsh Ministers and whether to confirm or withdraw consent to the SI.

In this particular case, Welsh Government officials were not informed about the SI being withdrawn and re-laid until after it was laid for the second time on 17 January. Officials were unaware of any issues up to this point but they have subsequently been made aware that errors were spotted in two schedules of the regulations shortly after they were laid on 16 January following legal validation.

Further to this, officials were last week informed by their UK Government counterparts that further minor amendments were requested by the Lords legislative committee, requiring the regulations to be laid for a third time on 30 January. Neither sets of amendments has changed the purpose or effect of the regulations. Officials are content the final regulations

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laid by the UK Government on 30 January reflect the approach agreed by the Minister for Health and Social Care and the Counsel General and Brexit Minister.

I note your view that when an SI is withdrawn and re-laid, the corresponding written statement should also be withdrawn and re-issued. This is a view, which clerks have also communicated to officials.

Our reading of SO.30C is that this is not required to comply with Standing Orders, and where the corrections have been very minor and have no impact on the substance of the SI (such as rectifying spelling errors), it would add no value to highlight these.

However, if you feel it would be beneficial for the transparency of the process, we can lay revised written statements when UK SIs are withdrawn and re-laid for the rest of the EU Exit SI programme.

Thank you for also for bringing the drafting issues in the written statement for this SI to our attention. These matters can be addressed in a revised written statement.

You have also asked for more information about the Welsh Government's approach to UK-led consultations about the EU Exit SIs. In general, EU Exit SIs have not been subject to public consultation as they make technical corrections to remedy deficiencies in the statute book. However, there are exceptions where consultation is considered necessary. In these particular cases, the Welsh Government works with the UK Government to establish what kind of consultation is required, depending on the changes to be made and who will be affected.

The Nutrition (Amendment etc.) (EU Exit) Regulations 2019 required a consultation under Article 9 of Regulation (EC) No 178/2002. A shortened consultation period of two weeks was held for these regulations. This was considered necessary to ensure UK officials met the deadline to lay the regulations and – given the processes and procedures outlined in the regulations – replicate those set out in current EU law. They do not introduce any additional burdens for industry or enforcement bodies. This consultation was shared with relevant stakeholders in Wales but no responses were received.

You have asked for some clarification on the exercise of concurrent powers. I refer you to my response to your letter about plant breeders' rights, which raised the same point about the effect on the National Assembly's competence of the creation of concurrent powers and conferral of functions on UK-wide bodies. I trust this will provide the clarity which you have requested.

Yours sincerely,

Rebecca Evans.

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Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

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National Assembly for Wales
Constitutional and Legislative Affairs Committee

Rebecca Evans AM
Minister for Finance and Trefnydd
Welsh Government

31 January 2019

Dear Rebecca

The Nutrition (Amendment etc) (EU Exit) Regulations 2019

The Constitutional and Legislative Affairs Committee considered the Welsh Government written statement issued under Standing Order 30C for the above named regulations at its meeting on 28 January 2019.

I would like to draw your attention to a number of concerns we have with the effect of these Regulations.

First, the written statement refers to Regulations which were laid before the UK Parliament on 16 January 2019. The Regulations were subsequently withdrawn and a new version of the Regulations were laid on 17 January. The later version of the Regulations differ from the version laid the previous day.

It is not clear, from the written statement laid on 18 January, whether the Welsh Government has consented to the most recent version of the Regulations and what role, if any, the Welsh Government had in respect of the re-drafting of the Regulations. We seek confirmation on this point and, more generally, on what process is followed in circumstances where the UK Government withdraws, amends and then re-lays regulations.

It is our view that written statements must document fully and accurately the consent Welsh Government has provided. Where necessary, this should involve the laying of revised written statements to cover subsequent changes to regulations

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made on their behalf, however minor the Welsh Government perceives them to be, with an explanation for the changes made.

We have noted that, on 29 January 2019, a revised written statement was issued with a link to the version of the Regulations laid on 17 January. This does not satisfy the concerns and questions raised above.

Secondly, and as with a number of other Regulations which we have drawn to the attention of Welsh Government, while these Regulations contain provision which enable the Welsh Ministers to exercise functions in relation to Wales without encumbrance, they also contain provision whereby the Welsh Ministers could provide consent to the Secretary of State to exercise functions in relation to Wales on their behalf.

Where a function is conferred on the Secretary of State (or a reserved authority) in an area which falls within the legislative competence of the National Assembly for Wales, this may have the effect of restricting the Assembly's ability to legislate in this area without requiring UK Government consent. If these Regulations confer functions on the Secretary of State, it is not clear whether the restriction in paragraph 11 of Schedule 7B will serve to restrict the Assembly's ability to modify or remove those functions without the consent of the UK Government. This is despite the fact that the function will operate in a devolved area.

For that reason, we request further clarification from the Welsh Government on this important constitutional issue.

Thirdly, we noted that the UK Government's consultation on the Regulations was carried out between 3 and 14 December 2018. We also noted that almost a quarter of respondents to the consultation reported negative feedback about the 11 day consultation period.

The Explanatory Memorandum accompanying the Regulations states that the Welsh Government was engaged throughout the development of the consultation and in relation to the amendments included in the Regulations. The Explanatory Memorandum further explains that the Regulations were adapted to incorporate changes and comments that were proposed by the Devolved Administrations.

However, it is not clear whether the consultation sought the specific involvement and views of Welsh public bodies, organisations and individuals etc. We would like clarification on the Welsh Government's current approach to UK Government led consultations on draft Regulations to be made by UK Ministers which impact on devolved areas.

There are also a number of other issues which we draw to your attention.

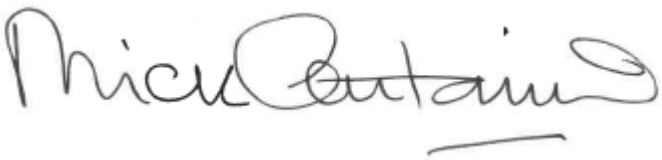
The written statement does not make clear that the list of retained EU law which is being amended by the instrument, as provided in the statement, is not an exhaustive list. There is a series of retained EU law which are subject to minor and technical amendments by this instrument which have not been included in the list within the written statement.

Additionally, retained EU law has been included in the list of retained EU law which is being amended, when in reality that law is being revoked by this instrument.

Furthermore, on a minor point, in the list of amended retained EU law in the written statement, the first bullet point should read Regulation (EC) 1924/2006 (not 1924/2206).

I would be grateful for a response and clarification on these matters by 7 February 2019. I am copying this letter to Vaughan Gething AM, Minister for Health and Social Services.

Yours sincerely



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7 February 2019

Dear Mick,

Thank you for your letter regarding the Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019. I will answer each of the issues raised in your letter in turn.

You have asked for more information about why functions relating to the Nagoya Protocol have been conferred solely on the Secretary of State.

The legislation relating to the EU Regulation on Access to Genetic Resources and Benefit Sharing (Nagoya Protocol) (EU Regulations 511/2014) contains an intricate mixture of clearly reserved functions, with some others, which can be described as devolved. The existing domestic legislation in this area contains functions, which are undertaken solely by the Secretary of State and the previous Nagoya Protocol (Compliance) (EU Exit) Regulations 2018 and this EU Exit SI continue this approach. It is not possible practically to exercise functions independently by the Welsh Ministers due to this mingling of the devolved and reserved elements.

You also asked for a further explanation about why the Welsh Government is able to state that the other corrections in relation to devolved policy areas do not impact on the National Assembly's legislative competence.

The committee has raised concerns that if the EU Exit SI conferred functions on the Secretary of State relating to the control of pollution of water resources, the operation of paragraph 11(1) of Schedule 7B to the Government of Wales Act 2006 would mean that the Assembly would not have competence to remove that function without the consent of the UK Government. You have requested further detail about whether any of the functions conferred on the Secretary of State relate to the control of pollution of water resources (or any other matter listed in paragraph 11(1) of Schedule 7B to the Government of Wales Act 2006).

It is the Welsh Government's view that the functions conferred on the Secretary of State in relation to persistent Organic pollutants (POPs); the European Pollutant Release and

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Transfer Register (EPRTR) and mercury and industrial emissions by this EU Exit SI are not functions exercisable in relation to water supply, water quality, water resources management, control of pollution of water resources, sewerage, rivers and other watercourses, land drainage or flood risk management or coastal protection, being the matters listed in paragraph 11(1)(c) of Schedule 7B to the Government of Wales Act 2006 ("the water matters").

Each of the functions conferred is exercisable only in relation to a specific aspect of regimes, which each regulate specific substances, or emission(s). Moreover, none of them directly relate to the actual discharge of these substances or emissions into the environment (including water).

These functions are more accurately characterised as being "exercisable in relation to… [the control of] POPs, mercury, the EPRTR and harmonisation of "best available techniques" (BAT) relating to certain industrial activities". More specifically:

- Regulation 2 confers functions exercisable in relation to POPs waste concentration limits and the use of POPs in accordance with international agreements.

- Regulation 4 confers functions exercisable in relation to reporting on releases of relevant pollutants from diffuse sources where no data exists, adopting guidelines for the monitoring and reporting of emissions and the amendment of technical annexes to the regulation in light of scientific and technical progress or international agreements.

- Regulation 8 confers functions exercisable in relation to mercury export and import restrictions, technical requirements for the environmentally sound interim storage of mercury, mercury compounds and mixtures of mercury, the authorisation of new mercury-added products or manufacturing processes and time limits for the temporary storage of mercury waste.

- Regulation 9 confers functions exercisable in relation to the adoption of BAT conclusions in relation to activities listed in the industrial emissions directive (IED), which concern only the harmonisation of agreed statements of industry BAT for the IED activities.

While such functions might have applications which touch on the water matters (and might even make provision about water), they cannot be directly exercised in relation to the water matters.

For example, while BAT conclusions might set out the current BAT for processes/plant that will include processes/plant that involve discharge of material in liquid form, the BAT conclusions do not prescribe requirements for the actual discharge of pollutants into water, for example. That is determined in relation to individual installations by the environmental regulators pursuant to the environmental permitting regime. Equally, the power to adopt BAT conclusions cannot be used to make provision in relation to water resources/pollution of water resources (or any of the other water matters).

I hope this additional information is helpful to the committee.

Yours sincerely,

Rebecca Evans AC/AM
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

National Assembly for Wales
Constitutional and Legislative Affairs Committee

Rebecca Evans AM
Minister for Finance and Trefnydd
Welsh Government

31 January 2019

Dear Rebecca

The Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019

The Constitutional and Legislative Affairs Committee considered the Welsh Government written statement issued under Standing Order 30C for the above named regulations at its meeting on 28 January 2019.

I would like to draw your attention to a number of concerns we have with the effect of these Regulations.

The Nagoya Protocol relates to access to genetic resources (EU Regulation 511/2014). The Welsh Government states that it is not practically possible for the Welsh Ministers to exercise functions relating to the Nagoya Protocol independently from the UK Government. Therefore, functions are conferred solely on the Secretary of State. The Welsh Government offers no explanation as to why this is the case. We invite the Welsh Government to provide further detailed information on this point.

As regards the remaining EU Regulations (and the one Directive) which relate to devolved policy areas, namely the:

- Persistent Organic Pollutants (EC Regulation 850/2004);
- European Pollutant Release and Transfer Register (EC Regulation 166/2006);
- Mercury (EU Regulation 2017/852); and

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- Industrial Emissions (EU Directive 2010/75 (described in the Welsh Government's statement as "adopting BAT conclusions"))

the Welsh Government states that there is "no impact on the Assembly's legislative competence". However, it is not clear whether this assertion is correct and we invite further explanation.

Where a function is conferred on the Secretary of State in an area which falls within the legislative competence of the National Assembly for Wales, this may have the effect of restricting the Assembly's ability to legislate in this area. Under paragraph 11 of Schedule 7B to the Government of Wales Act 2006, an Assembly Act cannot remove or modify a function of a Minister of the Crown that relates (among other things) to control of pollution of water resources unless the UK Government consents.

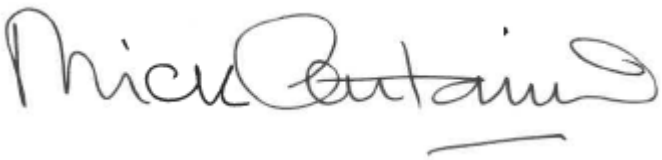
If these Regulations confer functions on the Secretary of State that relate to control of such pollution, then the Assembly will not have competence to remove that function without the consent of the UK Government. This is despite the fact that the function will operate in a devolved area.

For that reason, we request further detail from the Welsh Government as to whether any of the functions conferred on the Secretary of State relate to the control of pollution of water resources (or any other matter listed in paragraph 11(1) of Schedule 7B to the Government of Wales Act 2006).

I would be grateful for a response and clarification on these matters by 7 February 2019.

I am copying this letter to Lesley Griffiths AM, Minister for Environment, Energy and Rural Affairs.

Yours sincerely



Mick Antoniw
Chair

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

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