

Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:	For further information contact:
Committee Room 1 – Senedd	Gareth Williams
Meeting date: 1 April 2019	Committee Clerk
Meeting time: 11.00	0300 200 6362
	SeneddCLA@assembly.wales

- 1 Introduction, apologies, substitutions and declarations of interest

- 2 **Senedd and Elections (Wales) Bill: Evidence session 5**
11.00 (Pages 1 – 11)
Jess Blair, Director, Electoral Reform Society

CLA(5)–12–19 – Briefing
CLA(5)–12–19 – Paper 1 – Written evidence

- 3 **Instruments that raise no reporting issues under Standing Order 21.2 or 21.3**
11.45 (Pages 12 – 13)
CLA(5)–12–19 – Paper 2 – Statutory instruments with clear reports
Negative Resolution Instruments

- 3.1 **SL(5)399 – Code of Practice – The Local Authority Fostering Services (Wales) Regulations 2018**

- 4 **Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3**

Negative Resolution Instruments



4.1 SL(5)398 – The Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (Wales) Regulations 2019

(Pages 14 – 47)

CLA(5)–12–19 – Paper 3 – Report

CLA(5)–12–19 – Paper 4 – Regulations

CLA(5)–12–19 – Paper 5 – Explanatory Memorandum

CLA(5)–12–19 – Paper 6 – Letter from the Minister for Finance and Trefnydd,
14 March 2019

4.2 SL(5)402 – The Equine Identification (Wales) (Amendment) Regulations 2019

(Pages 48 – 58)

CLA(5)–12–19 – Paper 7 – Report

CLA(5)–12–19 – Paper 8 – Regulations

CLA(5)–12–19 – Paper 9 – Explanatory Memorandum

CLA(5)–12–19 – Paper 10 – Letter from the Minister for Finance and
Trefnydd, 20 March 2019

**5 Instruments that raise issues to be reported to the Assembly
under Standing Order 21.2 or 21.3 – previously considered**

5.1 SL(5)362 – The Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

(Pages 59 – 72)

CLA(5)–12–19 – Paper 11 – Report

CLA(5)–12–19 – Paper 12 – Government Response

5.2 SL(5)389 – The Forest Reproductive Material (Great Britain) (Amendment) (Wales) Regulations 2019

(Pages 73 – 75)

CLA(5)–12–19 – Paper 13 – Report

CLA(5)–12–19 – Paper 14 – Government Response

5.3 SL(5)390 – The Plant Health (Forestry) (Amendment) (Wales) Order 2019

(Pages 76 – 78)

CLA(5)–12–19 – Paper 15 – Report

CLA(5)–12–19 – Paper 16 –Government Response

5.4 SL(5)394 – The Agricultural Wages (Wales) Order 2019

(Pages 79 – 82)

CLA(5)–12–19 – Paper 17 – Report

CLA(5)–12–19 – Paper 18 – Government Response

Composite Negative Resolution Instruments

5.5 SL(5)393 – The Invasive Alien Species (Enforcement and Permitting) Order 2019

(Pages 83 – 85)

CLA(5)–12–19 – Paper 19 – Report

CLA(5)–12–19 – Paper 20 –Government Response

Affirmative Resolution Instruments

5.6 SL(5)395 – The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Supplementary Provisions) Regulations 2019

(Pages 86 – 91)

CLA(5)–12–19 – Paper 21 – Report

CLA(5)–12–19 – Paper 22 –Government Response

5.7 SL(5)396 – Qualifications Wales (Monetary Penalties) (Determination of Turnover) Regulations 2019

(Pages 92 – 99)

CLA(5)–12–19 – Paper 23 – Report

CLA(5)–12–19 – Paper 24 –Government Response

6 Written statements under Standing Order 30C

6.1 WS–30C(5)126 – Food and Feed Hygiene and Safety (Miscellaneous Amendments) (EU Exit) Regulations 2019

(Pages 100 – 104)

CLA(5)–12–19 – Paper 25 – Statement

CLA(5)–12–19 – Paper 26 – Commentary

6.2 WS–30C(5)127 – Geo Blocking (Revocation) (EU Exit) Regulations 2019

(Pages 105 – 108)

CLA(5)–12–19 – Paper 27 – Statement

CLA(5)-12-19 – Paper 28 – Commentary

7 Papers to note

7.1 Letter from the First Minister to the Chair of the Climate Change, Environment and Rural Affairs Committee

(Pages 109 – 111)

CLA(5)-12-19 – Paper 29 – Letter from the First Minister, 22 March 2019

7.2 Letter from Bruce Crawford MSP, Convener of the Finance and Constitution Committee

(Pages 112 – 118)

CLA(5)-12-19 – Paper 30 – Letter from Bruce Crawford MSP, 26 March 2019

7.3 Letter from Lord Trefgarne: Scrutiny of Regulations made under the EU (Withdrawal) Act

(Page 119)

CLA(5)-21-19 – Paper 31 – Letter from Lord Trefgarne, 26 March 2019

7.4 Correspondence with the Welsh Government: UK EU Exit Regulations

(Pages 120 – 122)

CLA(5)-12-19 – Paper 32 – Letter from the Minister for Finance and Trefnydd, 27 March 2019

CLA(5)-12-19 – Paper 33 – Letter to the Minister for Environment, Energy and Rural affairs, 14 March 2019

7.5 Letter from the Minister for Environment, Energy and Rural Affairs Committee: Legislative Consent Memorandum on the UK Fisheries Bill

(Pages 123 – 130)

CLA(5)-12-19 – Paper 34 – Letter from the Minister for Environment, Energy and Rural Affairs, 27 March 2019

7.6 Letter from the First Minister: Correspondence relating to the EU (Withdrawal) Bill

(Pages 131 – 132)

CLA(5)-12-19 – Paper 35 – Letter from the First Minister, 27 March 2019

7.7 Letter from the Minister for Health and Social Services: Four Nations Ministerial Meeting

(Pages 133 – 134)

CLA(5)–12–19 – Paper 36 – Letter from the Minister for Health and Social Services, 28 March 2019

7.8 Letter from the Minister for Health and Social Services: Healthcare (International Arrangements) Bill

(Pages 135 – 136)

CLA(5)–12–19 – Paper 41 – Letter from the Minister for Health and Social Services, 28 March 2019

Break 12.30 until 13.30

8 Senedd and Elections (Wales) Bill: Evidence session 6

13.30

(Pages 137 – 149)

Professor David Egan, Cardiff Metropolitan University

Professor Ellen Hazelkorn, BH Associates

CLA(5)–12–19 – Briefing 2

9 Senedd and Elections (Wales) Bill: Evidence session 7

14.15

Colin Everett, Chief Executive Flintshire County Council, SOLACE;

Daniel Hurford, Welsh Local Government Association

10 Senedd and Elections (Wales) Bill: Evidence session 8

15.00

(Pages 150 – 151)

Rob Williams, Director NAHT Cymru

CLA(5)–12–19 – Paper 37 – Written evidence

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

15.45

12 Senedd and Elections (Wales) Bill: Consideration of evidence

13 Legislation (Wales) Bill: Stage 2 Order of Consideration

(Pages 152 – 156)

CLA(5)–12–19 – Paper 38 – Decision in principle and proceedings

14 Legislative Consent Memorandum on the River Authorities and Land Drainage Bill

(Pages 157 – 165)

CLA(5)–12–19 – Paper 39 – Draft Report

CLA(5)–12–19 – Legal Advice Note

[Legislative Consent Memorandum on the River Authorities and Land Drainage Bill](#)

15 The UK Agriculture Bill: supplementary Legislative Consent Memorandum

(Pages 166 – 167)

CLA(5)–12–19 – Paper 40 – Letter from the Minister for Environment, Energy and Rural Affairs, 26 March 2019

Document is Restricted

**ERS Cymru written evidence
Constitutional and Legislative Affairs Committee consultation on
the Senedd and Elections (Wales) Bill**

The general principles of the Senedd and Elections (Wales) Bill and whether there is a need for legislation to deliver the Bill's stated policy objectives;

As a piece of legislation the Senedd and Elections Bill is groundbreaking in its delivery of Votes at 16 for the first time in Wales. The extension of the voting age is a key opportunity for reinvigorating our democracy and engaging young people at a critical time in their life.

While we are eminently supportive of the changes to the voting age included in this piece of legislation we are disappointed that other potential avenues of assembly reform have yet to be explored. The size of the assembly is an issue that affects the working of the Senedd in all its roles and it is imperative that we do not see that issue kicked into the long grass. An extension of the franchise would lead to an additional number of people on the electoral roll, meaning more pressure on Assembly Members when they are already under strain. We hope that this legislation is just the first step in a journey of assembly reform.

In terms of the disqualification clauses included in part four of the Bill, while we have no particular view on dual membership itself we are very concerned that given the limitations in the capacity of the assembly 'double jobbing' adds extra strain for AMs. Additional roles, such as membership of the House of Lords, could detract from that.

We take no view on the name of the Assembly, however would urge the Assembly Commission to ensure the change is well communicated to the electorate. Current levels of engagement with the Senedd are lower than perhaps those of other institutions and a renaming should be considered as a chance to communicate the work of the institution to members of the public.

Potential barriers to the implementation of the provisions and whether the Bill takes account of them;

Extending the franchise

A fundamental part of this Bill extends the right to vote in Assembly elections to 16 and 17 year olds. As previously stated we are very supportive of the introduction of Votes at 16 in Wales, however it is imperative that this is delivered effectively.

Our most recent example of the extension of the vote was in Scotland, where turnout for 16 and 17 year olds (75%) in the Scottish Referendum was actually higher than their 18-24 year old counterparts (54%). While they were still less likely to vote than those aged 35 and above¹, this kind of engagement from younger voters was clearly something to be celebrated.

Research undertaken by Dr Jan Eichhorn at the University of Edinburgh has also shown engagement has extended beyond the referendum. In a comparison of 16 and 17 year old Scots with their English, Northern Irish and Welsh counterparts in a survey ahead of the 2015 General Election showed that Scottish participants showed substantially higher levels of engagement with democracy including beyond voting, for example by signing petitions, and engage with a greater range of information sources about politics².

Yet, it isn't true to say that Welsh young people will match up with Scottish young voters just due to the extension of the franchise itself.

Firstly, it would be unfair to compare a Senedd election to a Scottish Parliamentary election, which in 2016 saw a 10% higher turnout, let alone with a referendum on such a critical issue as Scottish Independence.

Secondly, the extension of the vote in itself doesn't guarantee deeper engagement. The key to a successful extension of the franchise is the potential it gives us to reach first time voters with the information they need and thereby create a positive habit of voting, which can last a lifetime.

Citizenship education

Improving citizenship education will play a vital role in ensuring we see the full benefits of votes at 16. A more informed electorate means a better public debate.

Across the UK, as Dr Andy Mycock and Professor Jonathan Tonge have pointed out political education has seemed to follow the extension of the vote rather than preceding it³. We have a chance here to do things differently and create a cohort of young voters who are more likely to turnout to vote, more likely to vote in the future and are ultimately more informed than the vast majority of voters currently are.

¹ <http://blog.whatscotlandthinks.org/2014/12/many-16-17-year-olds-voted/>

² <https://blogs.lse.ac.uk/politicsandpolicy/votes-at-16-new-evidence-from-scotland/>

³

<https://theconversation.com/votes-for-16-year-olds-should-be-based-on-wider-evidence-not-just-a-need-for-participation-90898>

The role of political education in ensuring a high turnout for 16 and 17 year olds in the Scottish referendum should not be underplayed, and should be an example that Wales can build on. While we have warned of comparing the Scottish Referendum to any Welsh election, in the Scottish Local Elections in 2017, the Electoral Commission reported similar levels of turnout for 16 and 17 year olds to 18-24 year olds⁴.

As part of their campaign to correspond with the extension of the franchise the Electoral Commission produced a Ready to Vote pack, which was distributed to schools prior to the election. Over 80% of schools in Scotland used that pack with their students ahead of polling day⁵.

A report by the d|part Think Tank for political participation by Dr Jan Eichhorn argued that political discussion in class was vital to young people's engagement, in a way that conversations with no other groups (e.g. parents) could replicate⁶. It also found that a civics lesson in itself was not enough to drive political understanding or increase propensity to vote, stating:

*"The decisive factor was not whether young people had taken Modern Studies, but whether they had actively discussed the referendum in class (though in many instances Modern Studies classes could provide this space). Schools therefore need to provide the space for young people to actively discuss politics in an informed way."*⁷

This is certainly something ERS found with our project, 'Our Voices Heard', which spoke with 200 young people across Wales about political education. When asked for their ideas on how to improve the current dispensation, which each class then voted on, in addition to putting statutory political education on the curriculum, young people called for things such as debate and discussion and experience in running a campaign⁸.

Legislation on local elections

Alongside the passage of the Bill through this Assembly, a clear and effective plan should be developed around reaching potential attainers, ensuring they join the register, and to give them the information they need to become voters. We must take advantage of the positive effects of extending the franchise, including the captive audience of young people in Welsh schools which could make registering and informing voters easier.

4

<https://www.electoralcommission.org.uk/find-information-by-subject/elections-and-referendums/past-elections-and-referendums/scottish-council-elections-2017#franchise>

5

https://www.electoralcommission.org.uk/_data/assets/pdf_file/0006/233673/Scottish-Council-elections-2017.pdf

⁶ http://politischepartizipation.de/images/downloads/dpart_Eichhorn_16VotingAge_Briefing.pdf

⁷ *Ibid.*

8

<https://www.electoral-reform.org.uk/latest-news-and-research/publications/our-voices-heard-young-peoples-ideas-for-political-education-in-wales/>

Given the plans by the Welsh Government to also extend the franchise for local elections in 2022 this would best be delivered in conjunction between the Assembly and Welsh Government. This is especially pertinent given the new curriculum being developed by the Minister for Education, which builds on the recommendations by Professor Sir Graham Donaldson that Wales should develop “Ethical and informed citizens”.

However, we remain concerned about the apparent delays in the introduction of legislation to extend the franchise for local elections. While the elections do take place a year later than the assembly elections, it is vitally important that EROs are given the best chance to get attainers on the register and for political education and information campaigns to begin being rolled out as soon as possible.

Measures to ensure block registration in schools and colleges should also be considered in legislation in order to maximise the chances of ensuring a high turnout for younger voters.

We recommend the following additional measures to try to mitigate the barriers that might stop the successful implementation of this Bill:

- The development and delivery of an effective and far reaching information campaign, to go alongside the increased rollout of political education in Welsh schools, to include civic education lessons and space to debate and discuss current affairs in other classes.
- That the Welsh Government and Assembly Commission work in close partnership on the delivery of this Bill.
- That measures to extend the vote in local government elections are brought forward as soon as possible to ensure a coherence between the campaigns for the assembly elections and local elections, with plans to reform other parts of elections (e.g. automatic registration) to apply to both local elections and Senedd elections.

We welcome the proposed changes and hope they are the starting point - not the end goal - to improving political engagement in Wales. Additional measures, including those to increase the size of the Assembly, should not be kicked into the long grass.

For further information please contact:

Jessica Blair

Director, ERS Cymru

jessica.blair@electoral-reform.org.uk

07773555390

Agenda Item 3

Offerynnau Statudol sydd ag Adroddiadau Clir 01 Ebrill 2019

SL(5)399 – Cod Ymarfer – Rheoliadau Gwasanaethau Maethu Awdurdodau Lleol (Cymru) 2018

Gweithdrefn: Negyddol

Mae'r Rheoliadau hyn yn diwygio Rheoliadau Gwasanaethau Maethu Awdurdodau Lleol (Cymru) 2018 (O.S. 2018/1339 (Cy. 261)) ("Rheoliadau 2018").

Mae rheoliad 2(a) yn diwygio rheoliad 7 o Reoliadau 2018 er mwyn caniatáu i ddarparwr awdurdod lleol benodi swyddog o awdurdod lleol arall i fod yn gyfrifol am reoli'r gwasanaeth maethu.

Mae rheoliad 2(b) yn gwneud diwygiad i destun Cymraeg rheoliad 10 o Reoliadau 2018, i sicrhau cyfwerthedd â'r testun Saesneg.

Mae rheoliad 2(c) yn gwneud diwygiad i destun Saesneg rheoliad 11 o Reoliadau 2018, i sicrhau cyfwerthedd â'r testun Cymraeg.

Mae rheoliad 2(d) yn diwygio rheoliad 26 o Reoliadau 2018 i bennu bod y cyfeiriad yn y rheoliad hwnnw at iechyd a datblygiad yn cael ei newid i iechyd a datblygiad corfforol, meddyliol ac emosiynol.

Mae rheoliad 2(e) yn diwygio rheoliad 29 o Reoliadau 2018 fel mai 1 Ebrill 2022 sy'n cael ei roi fel y dyddiad na chaiff darparwyr awdurdodau lleol gyflogi person i reoli'r gwasanaeth maethu awdurdod lleol ohono oni bai bod y person hwnnw wedi ei gofrestru fel rheolwr gofal cymdeithasol â Gofal Cymdeithasol Cymru.

Mae'r newidiadau a wneir yn rheoliadau 2(b) ac (c) yn ymateb i bwyntiau adrodd a nodwyd gan y Pwyllgor hwn yn ei adroddiad ar Reoliadau 2018.

Rhiant–Ddeddf: Deddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014

Fe'u gosodwyd ar: 14 Mawrth 2019



Yn dod i rym ar: Mai 2019



Agenda Item 4.1

SL(5)398 – The Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (Wales) Regulations 2019

Background and Purpose

The Regulations provide a technical update, ensuring animal produce remains safe for consumers from exposure to residue of veterinary drugs, and to prohibit the use of certain illegal drugs. The Regulations also bring Welsh veterinary legislation up to date alongside that of comparative UK and EU legislation.

The Regulations include details of prohibited substances, sampling and analysis, and subsequent offences, penalties and enforcement.

Procedure

Negative.

Technical Scrutiny

One point is identified for reporting under Standing Order 21.2 in respect of this instrument.

Standing Order 21.2(vii) that there appear s to be inconsistencies between the meaning of the Welsh and English texts

Regulation 2(1) sets out a number of interpretations for terms in these Regulations. The Welsh text incorrectly states “mae i “awdurdodiad marchnata” (“marketing authorisation”) yr un ystyr ag sydd i yn Erthygl 5.” It should read “mae i “awdurdodiad marchnata” yr un ystyr ag sydd i (“marketing authorisation yn Erthygl 5...”.

Merits Scrutiny

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

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

The Regulations will come into force on 28 March 2019, and were laid on 14 March. As such, they breach the 21 day rule in section 11A(4) of the Statutory instruments Act 1946.

The Explanatory Memorandum states as follows, at paragraph 2:

“The SI is being laid under the ‘Negative Procedure’ with deviation from the standard 21 day laying period. Breaching the 21 day rule will allow the Regulations to come into force before the 29th March when the UK withdraws from the EU, and on which date the Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (Wales) Regulations 2019 will also be subject to amendment by the Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 in order to ensure



the effective operation of the Regulations following withdrawal of the UK from the EU. A breach of the 21 day rule is therefore thought necessary and justifiable in this case.”

We note the Government’s explanation for the breach of the 21 day rule in this case. On balance, we consider that it was important to ensure that these Regulations came into force before the planned exit day of the UK from the European Union on 29th March 2019.

Implications arising from exiting the European Union

Parts of these Regulations are made in exercise of the powers contained in section 2(2) of the European Communities Act 1972, and will become part of retained EU law on exit day.

Government Response

A government response is required.

Legal Advisers

Constitutional and Legislative Affairs Committee

26 March 2019



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

2019 No. 569 (W. 125)

FOOD, WALES

**The Animals and Animal Products
(Examination for Residues and
Maximum Residue Limits) (Wales)
Regulations 2019**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke the statutory instruments listed in the Schedule, consolidating their provisions. The Regulations implement Council Directive 96/22/EC concerning the prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and of beta-agonists, and Council Directive 96/23/EC on measures to monitor certain substances and residues thereof in live animals and animal products, and provide for the execution and enforcement of Regulation (EC) No 470/2009 of the European Parliament and of the Council laying down Community procedures for the establishment of residue limits of pharmacologically active substances in foodstuffs of animal origin.

The Regulations—

- (a) prohibit the sale, possession or administration to animals of specified unauthorised substances (regulations 3, 4, 5, 6 and 7);
- (b) prohibit the possession or slaughter of, or the processing of the meat of, animals intended for human consumption to which there has been administered, which contains, or in which the presence has been established of, specified unauthorised substances (regulation 8);
- (c) prohibit the sale or supply, for slaughter for human consumption, of animals to which substances have been administered in certain circumstances including, subject to an exception, where the withdrawal period for the product administered has not expired (regulation 9);

- (d) prohibit the sale for human consumption of any animal product derived from an animal the sale or supply for slaughter of which is prohibited under regulation 9 or any animal product which contains an unauthorised substance or an excess of an authorised substance (regulation 10);
- (e) prohibit, subject to an exception, the disposal for human or animal consumption of the carcase or offal of an animal or an animal from a batch of animals where that animal or an animal of that batch has been slaughtered further to a notice referred to in regulation 22(3) (examination shows specified unauthorised substance) (regulations 11 and 12);
- (f) give authorised officers the power to take samples and provide for the analysis of official samples (regulations 13, 14, 15, 16, 17, 18 and 19);
- (g) give authorised officers the power to inspect and examine animals and provide for the subsequent service of notices (regulations 20, 21 and 22);
- (h) provide for offences, penalties and enforcement (regulations 23 and 24);
- (i) provide specific defences and exceptions (regulations 25, 26, 27, 28 and 29);
- (j) deny to processors a due diligence defence in specified circumstances (regulations 30 and 31);
- (k) specify requirements relating to the keeping of records (regulation 32);
- (l) apply, with some modifications, provisions of the Food Safety Act 1990, including the defence of due diligence (regulation 33); and
- (m) revoke the instruments specified in the Schedule (regulation 34).

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.

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

2019 No. 569 (W. 125)

FOOD, WALES

**The Animals and Animal Products
(Examination for Residues and
Maximum Residue Limits) (Wales)
Regulations 2019**

Made 13 March 2019

Laid before the National Assembly for Wales
14 March 2019

Coming into force 28 March 2019

The Welsh Ministers have been designated for the purposes of section 2(2) of the European Communities Act 1972(1) (“the 1972 Act”) in relation to measures in the veterinary and phytosanitary fields for the protection of public health(2) and in relation to the common agricultural policy of the European Union(3).

The Welsh Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2(4) to, the 1972 Act, and by sections 16(1)(a), (b) and (f) and (3), 17(1) and (2), 26(1) and 48(1) of, and paragraph 7 of Schedule 1 to, the Food Safety Act 1990(5).

The Welsh Ministers have carried out the consultation required by Article 9 of Regulation (EC) No 178/2002

-
- (1) 1972 c. 68.
(2) S.I. 2008/1792.
(3) S.I. 2010/2690.
(4) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51).
(5) 1990 c. 16. Section 16(1) was amended by paragraph 8 of Schedule 5 to the Food Standards Act 1999 (c. 28) (“the 1999 Act”). Section 17(1) and (2) was amended by paragraphs 8 and 12(a) of Schedule 5 to the 1999 Act and S.I. 2011/1043. Section 48(1) was amended by paragraph 8 of Schedule 5 to the 1999 Act. Functions formerly exercisable by “the Ministers” so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by S.I. 1999/672 as read with section 40(3) of the 1999 Act, and subsequently transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

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⁽¹⁾.

These Regulations make provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears to the Welsh Ministers that it is expedient for any reference in these Regulations to provisions of EU instruments to be construed as a reference to those provisions as amended from time to time.

PART 1

Introductory

Title, application and commencement

1.—(1) The title of these Regulations is the Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (Wales) Regulations 2019.

(2) These Regulations apply in relation to Wales.

(3) These Regulations come into force on 28 March 2019.

Interpretation

2.—(1) In these Regulations—

“the Act” (“*y Ddeddf*”) means the Food Safety Act 1990;

“analysis” (“*dadansoddi*”) includes any technique for establishing the composition of an official sample;

“analyst” (“*dadansoddydd*”) means the person having the management or control of an approved laboratory;

“animal” (“*anifail*”) includes aquaculture animals;

“animal product” (“*cynnyrch anifeiliaid*”) includes meat, meat products, processed products derived from animals, milk, honey and eggs;

“approved laboratory” (“*labordy a gymeradwywyd*”) means—

(a) a laboratory approved by the Secretary of State for the purposes of Council Directive 96/23; or

(1) OJ No L 31, 1.2.2002, p. 1, as last amended by Commission Regulation (EU) 2017/228 (OJ No L 35, 10.2.2017, p. 10).

- (b) any laboratory under the direction or control of a public analyst appointed in accordance with section 27(1) of the Act;

“authorised officer” (“*swyddog awdurdodedig*”) means any person (whether or not an officer of an enforcement authority) who is authorised in writing by that authority, either generally or specially, to act in matters arising under these Regulations;

“carcase” (“*carcas*”) means—

- (a) the whole body of a slaughtered animal (other than an uneviscerated bird) after bleeding and dressing; or
- (b) the whole body of a slaughtered uneviscerated bird after bleeding;

“commercial operation” (“*gweithrediad masnachol*”), in relation to an animal or batch of animals, means any of the following—

- (a) selling, possessing for sale and offering, exposing or advertising for sale;
- (b) consigning or delivering by way of sale;
- (c) storing or transporting for the purpose of sale;
- (d) slaughtering or deriving food from it for the purpose of sale or for purposes connected with sale; and
- (e) importing and exporting;

“Council Directive 96/22” (“*Cyfarwydddeb y Cyngor 96/22*”) means Council Directive 96/22/EC concerning the prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and of beta-agonists, and repealing Directives 81/602/EEC, 88/146/EEC and 88/299/EEC(2);

“Council Directive 96/23” (“*Cyfarwydddeb y Cyngor 96/23*”) means Council Directive 96/23/EC on measures to monitor certain substances and residues thereof in live animals and animal products and repealing Directives 85/358/EEC and 86/469/EEC, and Decisions 89/187/EEC and 91/664/EEC(3);

“enforcement authority” (“*awdurdod gorfodi*”) means the Welsh Ministers and—

(1) Section 27 has been amended by the Food Standards Act 1999 (c. 28), section 40(1), Schedule 5, paragraphs 7 and 8, and the Local Government and Public Involvement in Health Act 2007 (c. 28), sections 22 and 241, Schedule 1, Part 2, paragraph 17 and Schedule 18, Part 1.

(2) OJ No L125, 23.5.1996, p. 3, as last amended by Directive 2008/97/EC (OJ No L318, 28.11.2008, p. 9).

(3) OJ No L125, 23.5.1996, p. 10, as last amended by Directive 2013/20/EU (OJ No. L158, 10.6.2013, p. 234).

(a) where enforcement is in relation to food or food sources, a food authority within its area; and

(b) where enforcement is other than in relation to food or food sources, a local authority within its area;

“examination” (*“archwiliad”, “archwilio”*) includes a physical examination of an animal or animal product or other article or substance and the taking, and any analysis of, an official sample;

“farm of origin” (*“fferm wreiddiol”*), in relation to an official sample taken from any animal or animal product means—

(a) where the official sample was taken at a farm, that farm;

(b) where the official sample was taken at any other place, the last farm on which the animal from which the sample was taken or derived was kept before being taken to that place;

“hormonal substance” (*“sylwedd hormonaidd”*) means any substance within either of the following categories—

(a) stilbenes and thyrostatic substances;

(b) substances with oestrogenic, androgenic or gestagenic action;

“list A substance” (*“sylwedd rhestr A”*) means a substance named in List A of Annex II to Council Directive 96/22;

“list B substance” (*“sylwedd rhestr B”*) means a substance named in List B of Annex II to Council Directive 96/22;

“local authority” (*“awdurdod lleol”*) means in relation to an area the county council or county borough council for that area;

“marketing authorisation” (*“awdurdodiad marchnata”*) has the same meaning as it bears in Article 5 of Directive 2001/82/EC of the European Parliament and of the Council on the Community Code relating to veterinary medicinal products⁽¹⁾;

“maximum residue limit” (*“terfyn gweddillion uchaf”*) means the maximum concentration of residue, or residues, resulting from the use of a veterinary medicinal product (expressed in µg/kg or µg/L on a fresh weight basis) that the Secretary of State has established in relation to a substance classified under Article 14 of Regulation 470/2009 as being necessary or appropriate for the protection of human health;

(1) OJ No L311, 28.11.2011, p. 1. Article 5 was replaced by Directive 2004/28/EC (OJ No. L136, 30.4.2004, p. 58).

“offal” (“*offal*”) means meat other than that of the carcass whether or not naturally connected to the carcass;

“official sample” (“*sampl swyddogol*”) means a sample taken by an authorised officer for analysis for the purposes of these Regulations which bears a reference to the type, the amount or quantity concerned and the method of collection and, in the case of an animal or animal product, the species and, where appropriate, particulars identifying the sex and farm of origin of the animal;

“owner” (“*perchennog*”) includes, in relation to any animal, batch of animals or premises, the person in charge of such animal, batch of animals or premises, and in relation to any animal product the person in possession of such product;

“possession” (“*meddu*”) in relation to any farm animal or aquaculture animal does not include possession under official control;

“primary analysis” (“*dadansoddiad sylfaenol*”) means an analysis of an official sample carried out by an approved laboratory;

“primary analysis certificate” (“*tystysgrif dadansoddiad sylfaenol*”) means an analyst’s certificate specifying the finding of a primary analysis;

“prohibited substance” (“*sylwedd gwaharddedig*”) means any beta-agonist or hormonal substance administered to an animal contrary to the prohibition in regulation 5;

“reference analysis” (“*dadansoddiad cyfeirio*”) means an analysis carried out by an approved laboratory to check the finding of a primary analysis;

“reference analysis certificate” (“*tystysgrif dadansoddiad cyfeirio*”) means an analyst’s certificate specifying the finding of a reference analysis;

“Regulation 470/2009” (“*Rheoliad 470/2009*”) means Regulation (EC) No 470/2009 of the European Parliament and of the Council laying down Community procedures for the establishment of residue limits of pharmacologically active substances in foodstuffs of animal origin, repealing Council Regulation (EEC) No 2377/90 and amending Directive 2001/82/EC of the European Parliament and of the Council and Regulation (EC) No 726/2004 of the European Parliament and of the Council⁽¹⁾;

“sell” (“*gwerthu*”) includes possess for sale, and offer, expose or advertise for sale, and “sale” and

(1) OJ No. L152, 16.6.2009, p. 11.

“sold” (“*gwerthu*”) are to be construed accordingly;

“Table 1 substance” (“*sylwedd Tabl 1*”) means a substance classified under Article 14(2)(a), (b) or (c) of Regulation 470/2009;

“Table 2 substance” (“*sylwedd Tabl 2*”) means a substance classified under Article 14(2)(d) of Regulation 470/2009;

“unauthorised substance” (“*sylwedd diawdurdod*”) means a Table 2 substance, a prohibited substance and any other substance or product the administration of which to animals is prohibited by or under EU legislation;

“unlicensed substance” (“*sylwedd didrwydded*”) means a substance—

- (a) for which a maximum residue limit has been established under Regulation 470/2009, and
- (b) which has been—
 - (i) administered (or is intended for administration) in the United Kingdom to an animal or a batch of animals, or
 - (ii) administered to an animal outside the United Kingdom,

where at the time of administration neither that substance, nor any product containing it, was authorised for use in that animal in that country of administration;

“veterinary surgeon” (“*milfeddyg*”) means a person registered in the register of veterinary surgeons or in the supplementary veterinary register;

“withdrawal period” (“*cyfnod cadw’n ôl*”), in relation to a veterinary medicinal product administered to an animal or batch of animals, means the period, specified in a current veterinary medicinal product licence or marketing authorisation relating to the product or (in the absence of any such specification) specified in a prescription given by a veterinary surgeon in respect of the administration of the product, which is required to elapse from the cessation of the medication of the animal or batch of animals with the product to the slaughter of the animal or batch of animals for human consumption or to the taking of animal products derived from the animal or batch of animals for human consumption.

(2) For the purpose of ascertaining whether the maximum residue limit established for a pharmacologically active substance has been exceeded for the purposes of these Regulations—

- (a) the presence of the drug or drug metabolite (or combination thereof) as specified in the marker residue for that pharmacologically active substance is to be taken to indicate the

presence of that substance in that part of an animal or batch of animals, or in any animal product derived from that part of an animal or batch of animals, as specified in the target tissues for that substance;

- (b) the maximum residue limit (if any) corresponding to that substance is to apply in respect of the presence in such part of an animal or batch of animals, or in any animal product derived from such part of an animal or batch of animals, of any such drug or drug metabolite (or combination thereof) as if it were that substance.

(3) Other expressions used in these Regulations and in Council Directive 96/22, Council Directive 96/23 or Regulation 470/2009 have, in so far as the context admits, the same meaning as they bear in those Directives or that Regulation, as appropriate.

(4) Any reference in these Regulations to an Annex to Council Directive 96/22 or Council Directive 96/23 is a reference to that Annex as amended from time to time.

PART 2

Prohibitions and Exceptions

Prohibition on the sale of list A and list B substances

3.—(1) Subject to paragraph (2), no person may sell for administration to any animal any product which is, or which contains, a list A substance or a list B substance, if the animal or any product of that animal is intended for human consumption.

(2) Paragraph (1) does not apply to the sale of a product that complies with the requirements of regulation 26 and which is for administration in accordance with regulation 28.

(3) Any product sold which is, or which contains, a list A substance or a list B substance is to be presumed, unless the contrary is proven, to have been sold for administration to an animal which is, or any product of which is, intended for human consumption.

Prohibition on possession of beta-agonists

4. No person, other than a veterinary surgeon, may possess on a farm any veterinary medicinal product containing a beta-agonist which is authorised to be used for induction purposes in the treatment of tocolysis.

Prohibition on administration of beta-agonists or hormonal substances

5.—(1) Subject to paragraph (2), no person may administer or knowingly cause or permit to be administered to any animal any product which is, or which contains, a substance listed in Annex II or III to Council Directive 96/22.

(2) The prohibition in paragraph (1) does not apply to the administration of a compliant veterinary medicinal product—

- (a) containing testosterone, progesterone or a derivative of these substances which readily yields the parent compound on hydrolysis after absorption at the site of application, if the administration is in accordance with regulation 27;
- (b) containing allyl trenbolone or a beta-agonist, if the administration is in accordance with regulation 28; or
- (c) having oestrogenic action (but not containing oestradiol 17b or its ester-like derivatives), androgenic action or gestagenic action, if the administration is in accordance with regulation 29.

(3) In paragraph (2), “compliant veterinary medicinal product” means a veterinary medicinal product which complies with the requirements of regulation 26.

Prohibition of administration to animals of unlicensed substances or products

6.—(1) Subject to paragraph (2), no person may administer or knowingly cause or permit to be administered to an animal any unlicensed substance.

(2) Nothing in paragraph (1) prohibits the administration of any veterinary medicinal product in accordance with an exemption specified in paragraphs 1, 5 and 9 of Schedule 4 to the Veterinary Medicines Regulations 2013⁽¹⁾.

Prohibition of administration of Table 2 substances

7. It is an offence to contravene Article 14(6) of Regulation 470/2009 (prohibition on administration of substances to food-producing animals in certain circumstances).

(1) S.I. 2013/2033.

Prohibition of possession or slaughter of animals and of processing

8.—(1) No person may slaughter or otherwise be in possession on a farm of an animal intended for use for human consumption to which there has been administered, which contains, or in which the presence has been established of, any substance listed in Annex II or Annex III to Council Directive 96/22.

(2) No person may process the meat of an animal intended for human consumption where—

- (a) that animal contains, or
- (b) the presence in has been established of, or
- (c) to which there has been administered,

any substance listed in Annex II or Annex III to Council Directive 96/22.

(3) Any animal slaughtered or in the possession of a person on a farm which is commonly slaughtered or possessed for use for human consumption is presumed, until the contrary is proven, to have been slaughtered or possessed for such use and an animal commonly used for human consumption from which meat is processed is presumed, until the contrary is proven, to be an animal for such use.

Prohibition on the sale of animals

9.—(1) Subject to paragraph (2), no person may sell or supply, for slaughter for human consumption, any animal—

- (a) which contains or to which there has been administered an unauthorised substance;
- (b) to which there has been administered a substance in contravention of regulation 5;
- (c) that is an aquaculture animal to which a substance listed in Annex II or III to Council Directive 96/22 has been administered;
- (d) to which a list A substance or a substance listed in Annex III to Council Directive 96/22 has been administered;
- (e) which contains a Table 1 substance at a concentration exceeding the maximum residue limit; or
- (f) to which a veterinary medicinal product has been administered if the withdrawal period for that product has not expired.

(2) Nothing in paragraph (1)(f) prohibits the sale before the end of the withdrawal period of any high-value horse to which has been administered allyl trenbolone or a beta-agonist in accordance with regulation 5, provided that the type and date of treatment was entered on the horse's passport by the

veterinary surgeon directly responsible for the treatment.

Prohibition of the sale of animal products

10.—(1) No person may sell for human consumption any animal product derived from an animal the sale or supply for slaughter of which is prohibited under regulation 9.

(2) No person may sell for human consumption any animal product which contains—

- (a) an unauthorised substance; or
- (b) an authorised substance at a concentration exceeding the relevant maximum residue limit.

Prohibition of disposal of slaughtered animal or batch of animals

11. Where an animal or batch of animals has been slaughtered further to a notice referred to in regulation 22(3), no person may dispose of the carcase or offal of that animal or of any animal of that batch of animals, or any part of such carcase or offal, for human or animal consumption.

Exception to prohibition on slaughter

12.—(1) Notwithstanding the prohibition on slaughter of an animal or batch of animals by notice given in accordance with regulation 22(4), that animal or batch of animals may be slaughtered before the withdrawal of such notice if the owner of that animal or batch of animals complies with the following paragraphs of this regulation.

(2) Notice of the proposed date and place of slaughter must be given to an authorised officer before that date.

(3) The animal or batch of animals, marked, or caused to be marked, by an authorised officer under regulation 21(2)(c), must be accompanied to the place of slaughter by a certificate issued by an authorised officer identifying the animal or batch of animals and the farm of origin.

(4) After slaughter any animal product derived from the animal or from an animal of that batch of animals must be retained in such place and manner as an authorised officer may specify, while it is subjected to such examination an authorised officer may reasonably consider necessary.

(5) Where the examination (the result of which is to be given by an authorised officer to the owner by notice in writing) confirms that any animal product referred to in paragraph (4) contains an authorised substance at a concentration exceeding the relevant

maximum residue limit, the animal product must be disposed of for a purpose other than human consumption.

PART 3

Sampling and Analysis

Procurement of samples

13. An authorised officer may—

- (a) take a sample of any article or substance which is found by that officer on or in any premises which the officer is authorised to enter and which the officer has reason to believe may be required as evidence in proceedings under any of the provisions of these Regulations; and
- (b) take a sample from any animal, whether or not intended for human consumption, which is found by that officer on or in any such premises.

Primary analysis of official samples

14.—(1) An official sample is to be submitted for analysis at an approved laboratory and dealt with in accordance with paragraph (2) or (3).

(2) Except where the official sample is of a kind described in paragraph (3), part of that sample is to be subjected to a primary analysis and the remainder is to be retained for any reference analysis.

(3) Where the official sample contains the remains of any solid implant or injection site, the analyst is to prepare an extract of such implant or injection site and subject part of that extract to a primary analysis and retain the remainder of the extract for any reference analysis.

Results of primary analysis

15.—(1) Where the primary analysis shows that an official sample, or in the case of such a sample containing the remains of a solid implant or injection site, such remains of a solid implant or injection site, contains—

- (a) an unauthorised substance;
- (b) a substance which an analyst reasonably suspects may be an unauthorised substance;
- (c) in the case of a sample taken from an animal or batch of animals, its excrement or body fluids or from its tissues, an authorised substance at a concentration which is notified to the analyst by an authorised officer as one

which causes the officer reasonably to suspect that an animal product derived from that animal or batch of animals may contain an authorised substance at a concentration exceeding the relevant maximum residue limit; or

- (d) in the case of a sample taken from any animal product, an authorised substance at a concentration exceeding the relevant maximum residue limit,

the analyst is to record that information in a primary analysis certificate and provide a copy of that certificate to an authorised officer who is then to give that copy to the relevant person.

(2) Where the primary analysis does not show anything requiring a primary analysis certificate to be given under paragraph (1), the analyst is to notify an authorised officer of that fact and the authorised officer is to then notify the relevant person.

(3) For the purposes of this regulation and regulations 16 and 17, “relevant person” means the owner of the premises where the sample was taken or, where another person is the owner of the animal, animal product or other article or substance from which the sample was taken, whichever one of them the authorised officer considers appropriate.

Reference analysis

16.—(1) The finding specified in the primary analysis certificate is to be referred by an authorised officer to an approved laboratory for a reference analysis together with the remainder of the official sample retained by the analyst in accordance with regulation 14(2) or 14(3), as appropriate, if—

- (a) the finding shows that the official sample, whether or not an extract of any solid implant or injection site, contains a substance which is specified under the heading “Group A” in Annex 1 to Council Directive 96/23; or
- (b) an authorised officer in any event so decides.

(2) The analyst is to record the results of the reference analysis in a reference analysis certificate and provide a copy of that certificate to an authorised officer who is to then give a copy to the relevant person.

(3) The relevant person may, on the basis of a contradictory analysis and by notice in writing served on an authorised officer, challenge the finding specified in a primary analysis certificate in relation to an official sample at any time before that sample, or part thereof, is referred for a reference analysis.

(4) Where, in accordance with paragraph (3), the relevant person challenges the finding specified in a

primary analysis certificate that person is liable for the costs of any reference analysis which confirms the finding specified in that certificate.

Notification to analyst

17.—(1) An authorised officer who submits to an approved laboratory a sample for primary analysis is to inform the analyst of that approved laboratory of the name and address of the relevant person.

(2) An authorised officer who refers to an approved laboratory a finding specified in a primary analysis is to inform the analyst of that approved laboratory of the name and address of the relevant person.

Methods of analysis

18. The analysis of an official sample must be carried out in accordance with methods authorised by Commission Decision 2002/657/EC implementing Council Directive 96/23/EC concerning the performance of analytical methods and the interpretation of results⁽¹⁾.

Certificates of analysis

19.—(1) Any certificate given by an analyst under these Regulations—

- (a) must be signed by the analyst; and
- (b) must specify the name of the authorised officer who submitted the sample for analysis and—
 - (i) if that officer is an officer of an enforcement authority, the name and address of the enforcement authority of which that person is an officer, or
 - (ii) if that officer is not the officer of an enforcement authority, the name and address of the organisation for which that officer works.

(2) In any proceedings under these Regulations, the production by one of the parties—

- (a) of a document purporting to be a certificate given by an analyst under paragraph (1); or
- (b) of a document supplied to that party by the other party as being a copy of such a certificate,

is sufficient evidence of the facts stated in it unless, in a case falling within sub-paragraph (a), the other party requires the analyst to be called as a witness.

(1) OJ No L221, 17.8.2002, p. 8, as last amended by Commission Decision 2004/25/EC (OJ No L6, 10.1.2004, p. 38).

Animal inspections

20.—(1) An authorised officer may, by giving written notice, require—

- (a) the detention of an animal or a batch of animals in the place where the animal or the batch of animals is located; or
- (b) the removal to, and the detention at, another place of an animal or batch of animals,

in order to carry out an inspection.

(2) An inspection under paragraph (1) is to be undertaken to ascertain whether—

- (a) any animal contains any unauthorised substance or a residue of any other substance which the authorised officer reasonably suspects may result in any animal product derived from the animal containing an unauthorised substance or a Table 1 substance at a concentration exceeding the maximum residue limit; or
- (b) any withdrawal period has expired.

(3) Where detention alone is required, the notice is to be served on the owner of the premises where the animal or batch of animals is located.

(4) Where removal and detention elsewhere is required the notice is to be served on the owner of the premises where the animal or batch of animals is located unless another person is the owner of the animal or batch of animals, in which case the authorised officer is to serve the notice on whichever one of them the officer considers appropriate.

Examination of an animal or batch of animals

21.—(1) If it appears to an authorised officer, as a result of an inspection carried out for the purposes referred to in regulation 20, that any animal or batch of animals may contain an unauthorised substance or a residue of an authorised substance which the officer reasonably suspects may result in any animal product derived from that animal or batch of animals containing an authorised substance at a concentration exceeding the relevant maximum residue limit or that the withdrawal period in relation to any animal has not expired, an authorised officer has the powers specified in paragraph (2) in relation to such an animal or batch of animals.

(2) An authorised officer may—

- (a) give notice in writing to the owner of the animal or batch of animals that, until the notice is withdrawn by a further notice in writing—

- (i) no commercial operations are to be carried out with respect to the animal or batch of animals;
 - (ii) the animal or batch of animals is not to be moved from the place where it then is or is not to be so moved except to a place specified in the notice; and
 - (iii) no animal, other than as permitted by paragraph (ii), is to be moved from the farm of origin except as specified in the notice;
- (b) subject the animal or batch of animals to such examinations for the presence of substances or residues as the authorised officer may reasonably consider to be necessary;
 - (c) paint, stamp, clip, tag or otherwise mark, or cause to be marked, the animal or batch of animals in order to identify it for the purposes of these Regulations.

Notice on completion of examination

22.—(1) On completion of an examination specified in regulation 21(2)(b), an authorised officer is to give notice in writing to the owner of the animal or batch of animals in accordance with the following paragraphs of this regulation.

(2) Where such an examination shows that an animal or batch of animals does not contain any unauthorised substance or the residue of any authorised substance at a concentration likely to result in any animal product derived from that animal or batch of animals having a concentration of the substance exceeding the relevant maximum residue limit or where an authorised officer considers that such an examination is unnecessary, the notice is to so declare and is to provide for the withdrawal of any notice served on the owner of the animal or batch of animals under regulation 21(2)(a) in so far as it relates to that animal or batch of animals.

(3) Where the examination shows that an animal or batch of animals contains a prohibited substance, an unlicensed substance or a Table 2 substance the notice is to so declare, is to specify the result of the examination and is to require the owner of the animal or batch of animals to slaughter the animal or batch of animals, or to cause it to be slaughtered, within such a period and in accordance with such requirements as may be specified in the notice.

(4) Where the examination shows that an animal or batch of animals contains a concentration of an authorised substance which an authorised officer reasonably suspects may result in any animal product derived from that animal or batch of animals having a concentration of that substance exceeding the relevant maximum residue limit, the notice is to so declare, is

to specify the result of the examination and, subject to regulation 12, is to prohibit the slaughter of that animal or batch of animals for human consumption.

(5) A notice given in accordance with paragraph (4) prohibiting the slaughter of any animal or batch of animals may at any time be withdrawn by a further notice in writing given by an authorised officer to the owner of the animal or batch of animals; and a notice given in accordance with paragraph (4) is to be so withdrawn as soon as an authorised officer is satisfied that the animal or batch of animals does not contain a concentration of an authorised substance which may result in any animal product derived from the animal or batch of animals having a concentration of that substance exceeding the relevant maximum residue limit.

(6) If any person on whom a notice has been served under paragraph (3) fails to comply with the requirements of the notice relating to the slaughter of an animal or batch of animals, an authorised officer may, without prejudice to any proceedings arising out of such default, slaughter, or cause to be slaughtered, that animal or batch of animals.

(7) The enforcement authority may make a charge of an amount equal to the amount of expenses reasonably incurred by the authorised officer in the exercise of the powers conferred on the officer under—

- (a) regulation 21(2), if paragraph (3) or (4) applies; or
- (b) paragraph (6).

(8) The charge referred to in paragraph (7) is payable by the person in default and is recoverable by the enforcement authority.

PART 4

Offences and Penalties

Offences, penalties and enforcement

23.—(1) A person who—

- (a) contravenes regulation 3, 4, 5, 6, 8, 9, 10, 11, 32(1), (2), (3) or (4) or any provision of a notice given to that person under these Regulations; or
- (b) without the consent in writing of an authorised officer, defaces, obliterates or removes any marking made under regulation 21(2)(c) or attempts to do so,

is guilty of an offence.

(2) A person guilty of an offence under paragraph (1) or regulation 7 is liable on summary conviction or on conviction on indictment to a fine.

(3) Each enforcement authority is to enforce these Regulations and is to give such assistance and information to each other enforcement authority as that other enforcement authority reasonably requires for the purpose of its duties under these Regulations.

Corporate offences

24.—(1) If an offence under these Regulations committed by a body corporate is shown—

(a) to have been committed with the consent or connivance of an officer; or

(b) to be attributable to any neglect on their part, the officer as well as the body corporate is liable to prosecution.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with their functions of management as if they were a director of the body.

(3) If an offence under these Regulations committed by a partnership is shown—

(a) to have been committed with the consent or connivance of a partner; or

(b) to be attributable to any neglect on their part, the partner as well as the partnership is liable to prosecution.

(4) If any offence under these Regulations committed by an unincorporated association, other than a partnership, is shown—

(a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body; or

(b) to be attributable to any neglect on the part of such an officer or member,

that officer or member as well as the association is liable to prosecution.

(5) In this regulation—

“officer” (“*swyddog*”), in relation to a body corporate or unincorporated association, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity; and

“partner” (“*partner*”) includes a person purporting to act as a partner.

Defences and exceptions

25.—(1) In any proceedings for an offence alleging a contravention of regulation 4 it is a defence for the person charged to prove that the veterinary medicinal

product to which the allegation relates is intended for purposes other than administration to an animal.

(2) In any proceedings for an offence alleging a contravention of regulation 8 it is a defence for the person charged to prove that the substance listed in Annex II or Annex III to Council Directive 96/22 contained or present in the animal or which has been administered to the animal was administered in accordance with regulation 5.

Compliant products

26.—(1) A product which is, or which contains, a substance listed in Annex II or Annex III to Council Directive 96/22 complies with the requirements of this regulation if—

- (a) a marketing authorisation has been issued in relation to it;
- (b) in the case of a product which is, or which contains, a beta-agonist, it has a withdrawal period of less than 28 days after the end of treatment; and
- (c) in the case of a product which is, or which contains, a hormonal substance, it is not a product which falls within paragraph (2).

(2) A product falls within this paragraph if it—

- (a) acts as a deposit;
- (b) has a withdrawal period of more than 15 days after the end of treatment; or
- (c) was authorised before 1 January 1995, has no known conditions of use and for which no reagents or equipment exists for use in the analytical techniques for detecting the presence of residues in excess of the prescribed limits.

Exception to prohibition on administration for testosterone and progesterone

27.—(1) Subject to paragraph (2), administration of any product which is, or which contains, testosterone or progesterone is in accordance with this regulation if it is carried out by a veterinary surgeon for a therapeutic purpose on a farm animal by injection.

(2) Paragraph (1) does not apply to the treatment of ovarian dysfunction, in which case administration is in accordance with this regulation if it is carried out by a veterinary surgeon using a product in the form of vaginal spirals.

Exception to prohibition on administration for allyl trenbolone and beta-agonists

28.—(1) Subject to paragraphs (2) and (3), administration of any product which is, or which contains, allyl trenbolone or beta-agonists is in accordance with this paragraph if it is carried out for a therapeutic purpose and it is carried out by a veterinary surgeon or under the direct responsibility of that surgeon.

(2) Paragraph (1) only applies to a veterinary medicinal product which is, or which contains, allyl trenbolone if it is authorised for oral administration, it is administered in accordance with the manufacturer's instructions and it is administered to an animal which is not a production animal.

(3) Paragraph (1) only applies to a veterinary medicinal product which is, or which contains, a beta-agonist if it is administered to—

- (a) a member of the *equidae* Family; or
- (b) a calving cow, by injection by a veterinary surgeon, to induce tocolysis during labour.

Exception to prohibition on administration for products having oestrogenic, androgenic or gestagenic action

29.—(1) Administration is in accordance with this regulation if, in the case of farm animals other than production animals—

- (a) the administration is carried out for the purpose of zootechnical treatment;
- (b) the administration is carried out—
 - (i) in the case of the synchronisation of oestrus or the preparation of donors or recipients for the implantation of embryos by, or under the direct responsibility of a veterinary surgeon, and
 - (ii) in any other case, by a veterinary surgeon; and
- (c) the veterinary surgeon responsible for the treatment issues a prescription for the products to be administered, whether the surgeon supplies them or not.

(2) Administration is in accordance with this regulation if, in the case of fish aged three months or less, the administration is of products with an androgenic action for sex inversion purposes.

PART 5

Miscellaneous

Responsibilities of processors

30. The owner of an establishment of initial processing of animal products must, in respect of each animal or animal product brought into that establishment, ensure that—

- (a) it does not contain—
 - (i) a residue level which exceeds the maximum permitted limit;
 - (ii) any unauthorised substance or product; and
- (b) any appropriate withdrawal period has been observed.

Unavailability of defence

31. A person is not entitled to rely on the defence provided by section 21(1), (5) and (6) of the Act, as applied by regulation 33, in any proceedings alleging a contravention of regulation 8 or 10 if that person has contravened regulation 30.

Keeping and retention of records

32.—(1) The owner of an establishment of initial processing of animal products must keep such records as are sufficient, either alone or in combination with records or information held by some other person, to enable the animals from which those animal products were derived, and the farm of origin or departure of those animals, to be identified.

(2) Persons holding a manufacturing or wholesale dealer's authorisation granted under the Veterinary Medicines Regulations 2013, for purposes relating to a marketing authorisation for a product to which regulation 4 applies, must, in relation to hormonal substances and beta-agonists, keep a record in chronological order of—

- (a) quantities produced;
- (b) quantities purchased or otherwise acquired and from whom each quantity was purchased or acquired;
- (c) quantities sold and to whom each quantity was sold; and
- (d) quantities used in the production of pharmaceutical or veterinary medicinal products.

(3) Any person required to keep a record by paragraph (1) or (2) must keep that record in a permanent and legible form and must retain that record

for a period of three years from the end of the calendar year to which such record relates save in the case of a prescription intended to show that withdrawal periods have been observed, which must be retained for a period of five years from the date of the commencement of the withdrawal period to which it relates.

(4) Subject to paragraph (5), if an authorised officer directs a person to produce for inspection a record which paragraph (1) or (2) requires that person to keep, the person must comply with the direction.

(5) No direction may be given under paragraph (4) after the end of the period mentioned in paragraph (3).

(6) The requirement in paragraph (3) to keep records in a legible form is not to be taken to prevent their being kept by means of computer.

(7) Where a record is so kept, the duty under paragraph (4) to produce it for inspection, is a duty to produce it in a form in which it can be taken away.

Application and modification of provisions of the Food Safety Act 1990

33.—(1) The following provisions of the Act apply for the purposes of these Regulations and, unless the context otherwise requires, any reference in them to that Act is construed for the purposes of these Regulations as a reference to these Regulations—

- (a) section 2 (extended meaning of “sale” etc.);
- (b) section 3 (presumption that food is intended for human consumption);
- (c) section 20 (offences due to fault of another person);
- (d) section 21(1), (5) and (6) (defence of due diligence);
- (e) section 22 (defence of publication in the course of business);
- (f) section 33 (obstruction etc. of officers); and
- (g) section 35(1) to (3) (punishment of offences) in so far as it relates to offences under section 33(1) and (2).

(2) Section 9 of the Act (inspection and seizure of suspected food) applies, subject to paragraph (3), for the purposes of these Regulations as if an animal product which it is an offence to sell under these Regulations was food which failed to comply with food safety requirements.

(3) Section 9 of the Act applies with the following modifications—

- (a) for the words “food authority” in each place where they occur there is substituted the words “enforcement authority”; and

- (b) the reference in subsection (5)(a) to section 7 of the Act is construed as a reference to these Regulations.

(4) Section 29 of the Act (procurement of samples) applies subject to the modification that for the words “section 32 below” in paragraph (b)(ii) there is substituted the words “section 32 of the Act as applied by this regulation”.

(5) Section 30 of the Act (analysis etc. of samples) applies subject to the modification that after the words “section 29 above” there is inserted the words “, other than an official sample,”.

(6) Section 32 of the Act (powers of entry) applies with the omission of the word “food” in subsection (5) and the references to “regulations” in subsection (1) are, for the purposes of these Regulations, construed as including a reference to Articles 14(6) and 16 of Regulation 470/2009.

(7) Section 44 of the Act (protection of officers acting in good faith) applies subject to the modification that for the words “food authority” in each place where they occur there is substituted the words “enforcement authority”.

Revocations

34. The instruments specified in the first column of the Schedule are revoked to the extent specified in the third column of the Schedule.

Lesley Griffiths

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

13 March 2019

SCHEDULE Regulation 34

Revocations

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Title</i>	<i>Reference</i>	<i>Extent of revocation</i>
The Animals and Animal Products (Examination for Residues and Maximum Residue Limits) Regulations 1997	S.I. 1997/1729	The whole of the instrument
The Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (Amendment) Regulations 2001	S.I. 2001/3590	The whole of the instrument
The Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (Amendment) Regulations 2004	S.I. 2004/147	The whole of the instrument
The Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (Amendment) Regulations 2006	S.I. 2006/755	The whole of the instrument
The Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (Amendment) Regulations 2009	S.I. 2009/1925	The whole of the instrument

The Agriculture, Animals, Environment and Food etc. (Miscellaneous Amendments) Order 2012	S.I. 2012/2897	Article 2
The Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (Amendment) Regulations 2013	S.I. 2013/804	The whole of the instrument

Explanatory Memorandum to The Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (Wales) Regulations 2019

This Explanatory Memorandum has been prepared by the Office of the Chief Veterinary Officer and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (Wales) Regulations 2019.

Lesley Griffiths AM

Minister for Environment, Energy and Rural Affairs

14 March 2019

PART 1

1. Description

The Regulations provide a technical update, ensuring animal produce remains safe for consumers from exposure to residue of veterinary drugs, and to prohibit the use of certain illegal drugs. The Regulations also bring Welsh veterinary legislation up to date alongside that of comparative UK and EU legislation.

The Regulations include details of prohibited substances, sampling and analysis, and subsequent offences, penalties and enforcement.

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

The SI is being laid under the 'Negative Procedure' with deviation from the standard 21 day laying period. Breaching the 21 day rule will allow the Regulations to come into force before the 29th March when the UK withdraws from the EU, and on which date the Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (Wales) Regulations 2019 will also be subject to amendment by the Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 in order to ensure the effective operation of the Regulations following withdrawal of the UK from the EU. A breach of the 21 day rule is therefore thought necessary and justifiable in this case.

The changes being made are entirely technical in nature and do not constitute a change in policy.

3. Legislative background

The Welsh Ministers make the Regulations in exercise of the powers conferred by section 2(2) of and paragraph 1A of Schedule 2 to the European Communities Act 1972, and by sections 16, 17, 26 and 48 of and paragraph 7 of Schedule 1 to the Food Safety Act 1990.

The Welsh Ministers are designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures in the veterinary and phytosanitary fields for the protection of public health and in relation to the common agricultural policy of the European Union.

This legislation applies to Wales only, is issued by Welsh Ministers and comes into force on 28th March 2019.

4. Purpose and intended effect of the legislation

The Animals and Animal Products (Examination for Residues and Maximum Residue Limits) Regulations 1997 provide the current regulatory framework for veterinary medicine residues issues in Wales.

A technical update to that legislation is required. This is important in maintaining current policy standards, which ensure animal produce is safe from exposure to residues of veterinary drugs and thus works to eliminate any potential associated risks to human health and the environment.

The update will bring the Welsh Regulations up-to-date alongside those already in force elsewhere in the UK and EU.

5. Consultation

A four-week consultation took place from 28th January – 26th February.

The consultation documentation was published on the Welsh Government website in the form of a questionnaire and known interested parties were contacted at the beginning of the consultation period to allow adequate time for review and response. The consultation can be seen here:

<https://beta.gov.wales/veterinary-medicines-residues>

No responses to the consultation were received.

6. Regulatory Impact Assessment (RIA)

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.

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



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA-L-LG-0232-19

Elin Jones AM
Presiding Officer
National Assembly for Wales

14 March 2019

Dear Elin,

The Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (Wales) Regulations 2019

In accordance with guidance, I am notifying you that in accordance with section 11A(4) of the Statutory Instruments Act 1946, as inserted by paragraph 3 of Schedule 10 to the Government of Wales Act 2006, which affords the rule that statutory instruments come into force at least 21 days from the date of laying, will be breached for the introduction of the Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (Wales) Regulations 2019. The Explanatory Memorandum is attached for your information.

The Regulations are an update to the Animals and Animal Products (Examination for Residues and Maximum Residue Limits) Regulations 1997. They ensure animal produce remains safe for consumers from exposure to the residue of veterinary drugs, and to prohibit the use of certain illegal drugs. The Regulations will bring this area of Welsh veterinary legislation up to date alongside that of comparative UK and EU legislation ahead of the UK withdrawing from the EU. The Regulations include details of prohibited substances, sampling and analysis, together with subsequent offences, penalties and enforcement.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

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

Gohebiaeth.Rebecca.Evans@llyw.cymru
Correspondence.Rebecca.Evans@gov.wales

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

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

Background

During the drafting of the Regulations, an error was identified in the definition of “maximum residue limit” in UK legislation, and officials at Defra were made aware of this error by Welsh Government staff. In order to ensure consistency across the UK, Defra agreed to provide an updated definition (to be agreed with the Welsh Government), that would be inserted into UK amending legislation by Defra through amending legislation and also inserted into the draft of the Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (Wales) Regulations 2019. However, due to the magnitude of work in preparing legislation ahead of the UK withdrawing from the EU, this definition was not received and agreed to by Welsh Government officials until 8th March 2019, later than the 7th March deadline for making and laying the Regulations 21 days before the UK leaves the EU.

Breaching the 21 day rule will allow the Regulations to come into force before the 29th March when the UK withdraws from the EU, and on which date the Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (Wales) Regulations 2019 will also be subject to amendment by the Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 in order to ensure the effective operation of the Regulations following withdrawal of the UK from the EU. A breach of the 21 day rule is therefore thought necessary and justifiable in this case.

An Explanatory Memorandum has been prepared and this has been laid, together with the Regulations, in Table Office.

A copy of this letter goes to Mick Antoniw AM, Chair of the Constitutional and Legislative Affairs Committee and Sian Wilkins, Head of Chamber and Committee Services.

Yours sincerely,



Rebecca Evans AC/AM

Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact
Centre: 0300 0604400
Gohebiaeth.Rebecca.Evans@llyw.cymru
Correspondence.Rebecca.Evans@gov.Wales

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

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

Agenda Item 4.2

SL(5)402 – The Equine Identification (Wales) (Amendment) Regulations 2019

Background and Purpose

These Regulations amend the Equine Identification (Wales) Regulations 2019 (the 2019 Regulations). to substitute 'responsible person' in regulation 8 with 'owner'. These Regulations ensure that the system of equine identification set out by Regulation 2015/262 functions effectively in Wales. This system includes requirements in relation to the identification of equines and the identification document in relation to an equine, the marking of equines by way of a transponder, and a central database.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

Two points are identified for reporting under Standing Order 21.3 in respect of this instrument.

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

The Regulations were made on 19 March, laid on 20 March and will come into force on 28 March 2019,. As such, they breach the 21 day rule in section 11A(4) of the Statutory instruments Act 1946.

The Explanatory Memorandum states as follows, at paragraph 2:

...The SI is being laid under the 'Negative Procedure' with deviation from the standard 21 day laying period. Breaching the 21 day rule will allow the Regulations to come into force before the 29th March when the UK withdraws from the EU, and on which date the 2019 Regulations will also be subject to amendment by the Equine Identification (Wales) (Amendment) (EU Exit) Regulations 2019 in order to ensure the effective operation of the Regulations following withdrawal of the UK from the EU. A breach of the 21 day rule is therefore thought necessary and justifiable in this case...

By letter dated 20 March 2019, Rebecca Evans AM, the Minister for Finance and Trefnydd notified the Presiding Officer that it had been necessary to breach the 21 day rule to allow the Regulations to come into force before 29 March when the UK withdraws from the EU, and on which date the Equine Identification (Wales) Regulations 2019 will also be subject to amendment by the Equine Identification (Wales) (Amendment) (EU Exit) Regulations 2019 in order to ensure the effective operation of the Regulations following withdrawal of the UK from the EU.

We note the Government's explanation for the breach of the 21 day rule in this case. On balance, we consider that it was important to ensure that this amendment was made to the legislation as soon as was possible, and before the UK leaves the European Union.



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

The 2019 Regulations were made on 15 January 2019 and laid before the National Assembly on 17 January 2019. On 30 January, the Committee identified one point for reporting under Standing Order 21.2(v) (that for any particular reason its form or meaning needs further explanation) in respect of the 2019 Regulations¹. The Minister for Environment, Energy and Rural Affairs agreed that an amending Statutory Instrument would be drafted which substituted 'responsible person' in regulation 8 of the 2019 Regulations with 'owner'. This change addresses the concern raised by the Committee. We are pleased that the Minister agreed that an amendment to the 2019 Regulations would be beneficial, and that the amending instrument has been laid within two months of receiving the Committee's report.

Implications arising from exiting the European Union

These Regulations are made in exercise of the powers contained in section 2(2) of the European Communities Act 1972, and will become part of retained EU law on exit day.

Government Response

No government response is required.

Legal Advisers

Constitutional and Legislative Affairs Committee

27 March 2019

¹ This was that Regulation 8 of the 2019 Regulations required an owner to ask the issuing body to modify or update an equine's ID, if the responsible person (the owner or the keeper) believed 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 have been potential for an owner to not be aware of the keeper's belief that the ID needed to be amended. As such there was 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.



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

2019 No. 614 (W. 128)

ANIMALS, WALES

**The Equine Identification (Wales)
(Amendment) Regulations 2019**

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Equine Identification (Wales) Regulations 2019 (S.I. 2019/57 (W. 20)) (“the Equine Regulations”) supplement and make provision for the enforcement of Commission Implementing Regulation (EU) 2015/262 laying down rules pursuant to Council Directives 90/427/EEC and 2009/156/EC as regards the methods for the identification of equidae (OJ No L 59, 3.3.2015, p.1) in Wales. Regulation 2 corrects the Equine Regulations to amend one reference to “responsible person” to “owner”.

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.

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

2019 No. 614 (W. 128)

ANIMALS, WALES

**The Equine Identification (Wales)
(Amendment) Regulations 2019**

Made 19 March 2019

Laid before the National Assembly for Wales
20 March 2019

Coming into force 28 March 2019

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

The Welsh Ministers make these Regulations in exercise of the powers conferred by section 2(2) of the 1972 Act.

Title and commencement

1.—(1) The title of these Regulations is the Equine Identification (Wales) (Amendment) Regulations 2019.

(2) These Regulations come into force on 28 March 2019

Amendment to the Equine Identification (Wales) Regulations 2019

2. In regulation 8 of the Equine Identification (Wales) Regulations 2019⁽³⁾, for “responsible person” substitute “owner”.

(1) S.I. 2010/2690.

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

(3) S.I. 2019/57 (W. 20).

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs, one
of the Welsh Ministers
19 March 2019

Explanatory Memorandum to Equine Identification (Wales) (Amendment) Regulations 2019

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

Minister's Declaration

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

Lesley Griffiths

Minister for Environment, Energy and Rural Affairs:

20 March 2019

1. Description

The aim of these Regulations is to make one amendment to the Equine Identification (Wales) Regulations 2019 (the 2019 Regulations). These Regulations amend the 2019 Regulations to substitute 'responsible person' in regulation 8 with 'owner'. These Regulations ensure that the system of equine identification set out by Regulation 2015/262 functions effectively in Wales. This system includes requirements in relation to the identification of equines and the identification document in relation to an equine, the marking of equines by way of a transponder, and a central database.

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

The Equine Identification (Wales) Regulations 2019 (the 2019 Regulations) were made on 15 January 2019 and laid before the National Assembly on 17 January 2019. On 30 January the Constitutional and Legislative Affairs Committee identified one point for reporting under Standing Order 21.2(v) (that for any particular reason its form or meaning needs further explanation) in respect of the 2019 Regulations. The Minister for Environment, Energy and Rural Affairs agreed that a short amending Statutory Instrument would be drafted which substituted 'responsible person' in regulation 8 of the 2019 Regulations with 'owner'. The change being made does not constitute a change in policy; it addresses the concern raised by the Committee and requires an owner to ask the issuing body to modify or update an equine's ID, if the owner believes that any identity details contained in the equine's ID require modification or updating.

The SI is being laid under the 'Negative Procedure' with deviation from the standard 21 day laying period. Breaching the 21 day rule will allow the Regulations to come into force before the 29th March when the UK withdraws from the EU, and on which date the 2019 Regulations will also be subject to amendment by the Equine Identification (Wales) (Amendment) (EU Exit) Regulations 2019 in order to ensure the effective operation of the Regulations following withdrawal of the UK from the EU. A breach of the 21 day rule is therefore thought necessary and justifiable in this case.

3. Legislative background

The 2019 Regulations implement Commission Implementing Regulation (EU) 2015/262 of 17 February 2015, regarding the identification of equidae and known as the Equine Passport Regulation. The Equine Identification (Wales) (Amendment) Regulations 2019 make one amendment to the 2019 Regulations so as to replace 'responsible person' in regulation 8 of the 2019 Regulations with 'owner'.

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

These Regulations are being made under the negative resolution procedure and will come into force on 28 March 2019.

4. Purpose & intended effect of the legislation

Regulation 2015/262 came into force on 1 January 2016. The Equine Identification (Wales) Regulations 2019 implement Regulation 2015/262 in Wales and support the requirement that all

equines moving in, to or through the EU must be identified in accordance with Regulation 2015/262 and that the human food chain is protected against animals treated with potentially harmful veterinary medicines.

These Regulations supplement and make provision for the enforcement of Commission Implementing Regulation (EU) 2015/262. The overall purpose of these amending Regulations is to address the issues raised by the Constitutional and Legislative Affairs Committee. They correct the 2019 Regulations by substituting 'responsible person' in regulation 8 of the 2019 Regulations with 'owner'. The amendment does not constitute a change in policy and will mean that the position adopted under the equivalent regulations for England, is mirrored. It will remove the potential for an owner to be unaware of the keeper's belief that the ID needs to be amended.

5. Consultation

A 12 week consultation was carried out in connection with the 2019 Regulations. No consultation was carried out in relation to these Regulations, as only one minor correction is made to the 2019 Regulations.

6. Regulatory Impact Assessment (RIA)

An Explanatory Memorandum and fully scoped RIA to support the 2019 Regulations has been completed and can be found here:

<http://senedd.assembly.wales/documents/s83239/EM%20SL5304%20-%20The%20Equine%20Identification%20Wales%20Regulations%202019.pdf>

No separate RIA has been completed for these amendment Regulations as they only make one minor amendment to the 2019 Regulations, the impact of which has already been addressed within the RIA referenced above. 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.



Ein cyf/Our ref

Elin Jones AM
Presiding Officer
National Assembly for Wales

20 March 2019

Dear Elin,

The Equine Identification (Wales) (Amendment) Regulations 2019

I am notifying you that in accordance with section 11A(4) of the Statutory instruments Act 1946, as inserted by paragraph 3 of Schedule 10 to the Government of Wales Act 2006, which affords the rule that statutory instruments come into force at least 21 days from the date of laying, will be breached for the introduction of the Equine Identification (Wales) (Amendment) Regulations 2019. The Explanatory Memorandum is attached for your information.

The Regulations supplement and make provision for the enforcement of Commission Implementing Regulation (EU) 2015/262 as regards the methods for the identification of equidae in Wales. The Regulations correct the Equine Identification (Wales) Regulations 2019 to amend one reference to 'responsible person' to 'owner'.

Background

The Equine Identification (Wales) Regulations 2019 ("the 2019 Regulations") were made on 15 January 2019 and laid before the National Assembly on 17 January 2019. On 30 January 2019 CLAC identified one point for reporting under Standing Order 21.2(v) (that for any particular reason its form or meaning needs further explanation) in respect of the 2019 Regulations. The Minister for Environment, Energy and Rural Affairs agreed a short amending Statutory Instrument would be drafted which substituted 'responsible person' in regulation 8 of the 2019 Regulations with 'owner'. The drafting, translation and equivalence

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

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

Gohebiaeth.Rebecca.Evans@llyw.cymru
Correspondence.Rebecca.Evans@gov.Wales

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

Pack Page 57

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

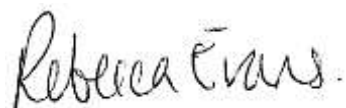
check of the Equine Identification (Wales) (Amendment) Regulations 2019 were not able to take place until after 8 March 2019, later than the 7 March deadline for making and laying the Regulations 21 days before the UK leaves the EU.

Breaching the 21 day rule will allow the Regulations to come into force before 29 March when the UK withdraws from the EU, and on which date the Equine Identification (Wales) Regulations 2019 will also be subject to amendment by the Equine Identification (Wales) (Amendment) (EU Exit) Regulations 2019 in order to ensure the effective operation of the Regulations following withdrawal of the UK from the EU. A breach of the 21 day rule is therefore thought necessary and justifiable in this case.

An Explanatory Memorandum has been prepared and this has been laid, together with the Regulations, in Table Office.

A copy of this letter goes to Mick Antoniw AM, Chair of the Constitutional and Legislative Affairs Committee and Sian Wilkins, Head of Chamber and Committee Services.

Yours sincerely,



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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

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

Gohebiaeth.Rebecca.Evans@llyw.cymru
Correspondence.Rebecca.Evans@gov.Wales

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

Pack Page 58

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

SL(5)362 - The Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Background and Purpose

The Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 amend the existing implementation of Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of GMOs ("the Deliberate Release Directive"). The Directive specifies a framework of controls on the release of GMOs, both for trial purposes and for placing on the market.

Under the Directive, proposed releases require prior authorisation, based on the GMO in question passing a scientific assessment of its potential impact on human health and the environment. In the case of releases for trial, the decision whether to approve lies with Member States, and, in the UK, these decisions are devolved, including to Wales. By contrast, decisions on GMO releases for commercial marketing are currently taken collectively at EU level. The Directive also deals specifically with GMO seeds for cultivation: in this regard, the Directive allows Member States to block cultivation in their territory, despite the seeds having EU approval. Decisions on this matter are also devolved to Wales.

The Directive is implemented in Wales by The Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 ("the 2002 Deliberate Release Wales Regulations").

The Regulations under scrutiny also amend the Genetically Modified Organisms (Transboundary Movements) (Wales) Regulations 2005 ("the 2002 Transboundary Movements Wales Regulations"), which govern the export of GMOs from Wales, as part of the EU, to third (non-EU) countries. The key requirement is for the planned first export of a GMO intended for environmental release to be notified to the receiving country for approval before shipment.

The 2002 Transboundary Movements Wales Regulations currently implement, in Wales, Regulation (EC) No. 1946/2003 of the European Parliament and of the Council of 15 July 2003. This EU Regulation, in turn, implements an international treaty (to which the EU and UK are each a Party), the Cartagena Biosafety Protocol to the United Nations Convention on Biological Diversity Regulation.

Most of the amendments to these two Wales statutory instruments are made under powers in paragraph 1(1) of Schedule 2, and paragraph 21 of Schedule 7, to the EUWA. Paragraph 1(1) of Schedule 2 gives the Welsh Ministers the power to address, within devolved competence, failures of retained EU law to operate effectively, and other deficiencies in retained EU law, arising from the UK's withdrawal from the European Union. Paragraph 21 of Schedule 7 gives Welsh Ministers the power to make provision that is supplementary, consequential, incidental, transitional, transitory or saving, when addressing those failures or deficiencies, including the power to restate any retained EU law in a clearer or more accessible way.

The Wales statutory instruments amended by these Regulations constitute retained EU law for the purposes of section 2 of the European Union (Withdrawal) Act 2018 (“EUWA”). The EU Regulations and Decisions referred to in these Regulations also constitute retained EU law, under section 3 of the EUWA.

Some amendments made do not, however, arise out of the UK’s withdrawal from the EU, but, rather, correct out of date references. These amendments are made using powers given under section 2(2) of the European Communities Act 1972 (“the ECA”). Although that Act will be repealed on exit day by section 1 of the EUWA, the amendments made to domestic legislation will continue to have effect, by virtue of section 2 of that Act.

The amendments made by the Regulations under scrutiny can be broadly categorised as:

- Removing references to provisions being ‘in accordance with [particular EU legislation]’, and other references to EU law or obligations, and instead referring to that EU law or those obligations as they are transformed into retained EU law by virtue of the EUWA;
- Copying out definitions within EU instruments, so that they become part of domestic legislation, instead of defining terms by reference to those EU instruments; alternatively, specifying that references should be to specific ‘versions’ of pieces of EU legislation, so that post-Brexit changes to that legislation will not read across;
- Updating references to other sets of legislation that will be changed following EU exit or where references were simply to an out of date piece of legislation;
- Changing references from EU law concepts to UK ones, e.g. changing ‘Member State level’ to ‘any law of any part of the UK’; and
- Removing provisions which requires Welsh Ministers to take action on an EU level, such as to notify the Commission or other EU Member States.

Procedure

Negative.

Technical Scrutiny

11 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(i) – that there appears to be doubt as to whether it is intra vires, or Standing Order 21.2(ii) – that it appears to make unusual or unexpected use of the powers conferred by the enactment under which it is made

1.1 Regulation 3(10(a))

- 1.1.1 Regulation 3(10)(a) substitutes (inter alia) a new paragraph (4) in regulation 25 of the 2002 Deliberate Release Wales Regulations. Regulation 25 of the 2002 Deliberate Release Wales Regulations deals with consent to market GMOs, and the original paragraph (4) provided that the maximum period for which the National Assembly (now, the Welsh Ministers) could grant consent was 10 years. The amendments made by these regulations appear to remove that cap on consent periods.



1.1.2 We cannot immediately see how the cap would cause a failure of retained EU law to operate effectively, or other deficiency in retained EU law, arising from the UK's withdrawal from the European Union; and therefore we cannot see how removing the cap falls within the powers given to the Welsh Ministers by paragraph 1(1) of Schedule 2 to the EUWA. Moreover, we consider that removing a cap on GMO consent periods cannot be said to fall within the power in paragraph 21 of Schedule 7 to the EUWA; it does not appear to us to be supplementary, consequential, incidental, transitional or transitory provision.

1.2 Regulation 3(16)(b)

1.2.1 This provision inserts a new paragraph (3A) into regulation 35 of the 2002 Deliberate Release Wales Regulations, which deals with data to be included on a public register of information about GMOs, maintained by the Welsh Ministers under section 122 of the Environmental Protection Act 1990 (and under obligations in and under the Deliberate Release Directive).

1.2.2 New paragraph (3A) will mean that additional information will be placed on a public register when someone applies for permission to market a GMO. Confidential information is, however, exempt.

1.2.3 We note that applications for permission to market will, post-Brexit, be decided by the Welsh Ministers, not the European Commission. For that reason, we understand why new sub-paragraph (3A)(e) is appropriate; it makes administrative sense for the Welsh Ministers to assign an application reference code to each application and to link this to any information about that application on the register. Therefore, we see sub-paragraph (3A)(e) as covered by the incidental powers provided by paragraph 21 of Schedule 7 to the EUWA.

1.2.4 In relation to the other sub-paragraphs, however, we are less clear as to vires. The provisions do not appear to be required by pre-Brexit EU law, and therefore the powers given by the ECA do not seem relevant. In terms of the powers provided by the EUWA, we would expect these to be used to replace, as closely as possible, any obligations on the Commission to put information about applications to market GMOs in the public domain.

1.2.5 However, it appears to us that the Commission's obligations in this regard are to publish the summary information provided by the applicant, together with the Member State's assessment of the application, if favourable. Clearly, the second part of this obligation will fall away once the Welsh Ministers become the final decision-taker and so it is appropriate not to replicate this in the regulations. But the first part of the obligation appears to be transferred to the Welsh Ministers by new sub-paragraph (i), inserted into regulation 35(3). At first sight, this would appear to us appropriate to prevent any failure in retained EU law to operate effectively, arising out of the UK's withdrawal from the EU (taken together with the new provision in sub-paragraph (3A)(e)).

1.2.6 We wish to emphasise that we are very supportive of the aim of transparency in Welsh Minister decisions, and particularly so on subjects that directly affect all citizens of Wales, such as the availability of GMOs on the market. However, what we are concerned with here is vires to ensure that transparency. If new paragraph (3A)(a)-(d) and (f)-(g) go further than giving the Welsh Ministers duties which mirror the present Commission obligations to publish, it is difficult to see how this is covered either by the powers in paragraph 1 of



Schedule 2 to the EUWA, or the supplemental ones in paragraph 21 of Schedule 7. Therefore we would ask the Welsh Ministers to clarify these matters so as to remove any doubt about vires.

2. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation
 - 2.1 Regulation 3(2)(a) and (f), amending definitions contained in regulation 2(1) of the 2002 Deliberate Release Wales regulations
 - 2.1.1 Regulation 3(2)(a) changes the definition of an “approved product”, for the purposes of permission to be marketed in Wales. Essentially, the present definition of an “approved product” becomes the definition of a “pre-exit approved product”, by virtue of a new definition inserted into regulation 2(1) of the 2002 Deliberate Release Wales regulations by regulation 3(2)(f) of the present Regulations.
 - 2.1.2 The new definition of an “approved product” is, in essence a product that has either been given consent by the Welsh Ministers under section 111(1) of the Environmental Protection Act 1990, or authorised under Regulation 1829/2003 EC, known (and referred to in the present regulations) as the Food and Feed Regulation.
 - 2.1.3 The Food and Feed Regulation will pass into domestic law on exit day, by virtue of section 3 of the EUWA. Regulation 3 of the present regulations will not come into force until exit day. Therefore, for the purposes of post-Brexit Welsh law, authorisation under the Food and Feed Regulation appears to mean an authorisation granted after exit day. This is also logical in view of the creation of a separate definition for “pre-exit approved product[s]”.
 - 2.1.4 However, this raises two issues. First, the Food and Feed Regulation is already in force. Further explanation is requested as to why the definition of a “pre-exit approved product” does not include products approved under that Regulation before exit day.
 - 2.1.5 The second issue is a Merits point and is reported below under Standing Order 21.3(ii).
 - 2.2 Regulation 3(6)(b) and (c), amending regulation 17(2)(g) and (j) of the 2002 Deliberate Release Wales Regulations
 - 2.2.1 These provisions update the references to documents setting out the format for applications for consent to market GMOs, where those applications are made to the Welsh Ministers. They are, therefore, important provisions for applicants. Regulation 3(6)(b) provides that applicants must provide a monitoring plan prepared, inter alia, according to a format set out in the Annex to Commission Decision 2002/811/EC.
 - 2.2.2 The application forms set out in that Annex refer in a number of places to the European Community (now, of course, the European Union) and to the European Commission. In particular, they require an applicant to describe, as part of the monitoring plan that forms a mandatory part of the application, the conditions in which the applicant will report to the Commission. More explanation is required as to why and how the format set out in this Annex is appropriate for post-Brexit applications for consent to the Welsh Ministers.



- 2.2.3 Regulation 3(6)(c) relates to the mandatory summary which has to form part of the application. We raise, below, the point that the document identified in regulation 3(6)(c) as setting out the format for this summary appears not to be the correct one. For the purposes of this reporting point, we will assume that the intention was to mandate applicants to follow the format set out in the Annex to Council Decision 2002/812 EC.
- 2.2.4 That Annex also includes a number of references to the EC (*sic*) which appear to require further explanation. For instance, applicants are required to state whether their product is being notified to another “Member State”, and whether another product with the same combination of GMOs has been placed on the “EC market” by another person. In the latter case, it is not clear to us how applicants will have this information after the UK leaves the EU. Applicants are also required to provide an estimate of the demand in export markets for “EC supplies” of the product (pre-Brexit, UK supplies would of course have counted as EC supplies but will not do so post-Brexit).
- 2.3 Regulation 3(8)(b), amending regulation 22(6) of the 2002 Deliberate Release Wales Regulations
- Our concerns about this provision are similar to those set out in 1.2. Applicants are required, by the new provision, to provide information in a format set out in the Annex to a Commission Decision (2003/71/EC). That Annex makes various references that appear difficult to operate post-Brexit, including a requirement for applicants to quote a “European notification number”.
- 2.4 Regulation 3(9)(a)(ii), amending regulation 24(1)(e) of the 2002 Deliberate Release Wales Regulations
- 2.4.1 This provision replaces regulation 24(1)(e) of the 2002 Deliberate Release Wales regulations with a new provision. The fact of replacement does not require further explanation, as the original provision places a duty on the Welsh Ministers *vis a vis* the European Commission, which will clearly no longer be operable after exit day. However, we consider that the placement of the new provision in regulation 24(1) does require some explanation. Regulation 24(1)(d) deals with the Welsh Ministers’ duties to notify an applicant of their decision. The original 24(1)(e) dealt with action following that decision. However, the new 24(1)(e) requires the Welsh Ministers to take into account certain matters in taking their decision. Logically, therefore, it appears that the new regulation 24(1)(e) should precede regulation 24(1)(d), not follow it.
- 2.5 Regulation 3(16)(b) and (17), amending regulations 35 and 36 of the 2002 Deliberate Release (Wales) Regulations
- 2.5.1 As discussed above, regulation 3(16)(b) imposes duties on the Welsh Ministers to publish additional information in the public register concerning GMOs. However, regulation 3(17) does not amend regulation 36 of the 2002 Deliberate Release (Wales) Regulations so as to prescribe a deadline for the Welsh Ministers to do so. It may be that it was not the Welsh Ministers’ policy intention to impose such a deadline on themselves. However, regulation 36 of the 2002 Deliberate Release (Wales) Regulations does so for all the other categories of information listed in regulation 35 (although the amendments made by the regulations under scrutiny lift those deadlines in relation to pre-Brexit decisions of the European Commission or other Member States).



2.5.2 Further explanation of the absence of a deadline for publication of the relevant information is, therefore, requested.

2.6 Throughout regulation 3

- 2.6.1 A number of the amendments made by regulation 3 have the effect that the 2002 Deliberate Release Wales regulations will use two different names to refer to what is now the same legal person, i.e. “the [former] National Assembly for Wales” and “the Welsh Ministers”. All these references are to be interpreted as references to the Welsh Ministers, by virtue of paragraphs 28 and 30 of Schedule 11 to the Government of Wales Act 2006. However, that will not be immediately apparent to those seeking to understand the legislation. In certain places, both names will appear in the same provision – for instance, in regulation 24 of the 2002 Deliberate Release Wales regulations (see regulation 3(9)(a) of the regulations under scrutiny).
- 2.6.2 In our view, the Welsh Ministers would have had the vires to change all references to the National Assembly into references to themselves, where appropriate, under paragraph 21 of Schedule 7 to the EUWA, as they would be supplementary or incidental to provision made under paragraph 1(1) of Schedule 2 to that Act, and would restate retained EU law (the Wales statutory instruments amended) in a clearer and more accessible way.
- 2.6.3 However, we understand that the Welsh Government is working under severe pressure to make all the essential amendments to retained EU law, as it applies in Welsh devolved competence, before exit day and that it may not always have been practicable to make amendments that were, arguably, desirable without being necessary for post-exit operability.
- 2.6.4 We also request further explanation of the rationale behind amendments to the way in which some EU legislation is referred to in the regulations. This legislation will become retained EU law on exit day, by virtue of the EUWA.
- 2.6.5 Regulation 3(2)(e) provides that references in the 2002 Deliberate Release Wales regulations to the First Simplified Procedure (crop plants) Decision is a reference to that Decision as it applied immediately before exit day. However, the regulations do not amend other references to retained direct EU law in the 2002 Deliberate Release Wales regulations in that way (for instance, the references, in regulation 2 of those regulations, to the Food and Feed Regulation, Council Regulation 1829/2003/EC).
- 2.6.6 Nor are new references in the regulations to retained direct EU law (EU Regulations and Decisions) treated in this way (see for instance the reference to Council Decision 2002/813/EC, inserted by regulation 3(4)(b)).
- 2.6.7 It appears to us that all of these references to EU legislation – whether existing in or newly inserted into the 2002 Deliberate Release Wales regulations - will be treated as references to the EU legislation as it applied immediately before exit day, by virtue of the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019, currently in draft. This is because none of the references are “ambulatory” (i.e. they are not stated to be references to the EU instruments as amended from time to time



by the EU institutions; nor are they stated to be references to those instruments as they applied at a particular time prior to exit day). Indeed, it would be outside the EUWA powers to render new references in domestic law to EU instruments ambulatory in this sense; the EUWA does not give Ministers powers to track future EU-law developments in this way, in subordinate legislation.

2.6.8 Further explanation of the rationale for the Welsh Ministers choosing to make provision of the kind of regulation 3(2)(e) in some cases and not others is therefore requested in the interests of transparency, both for the Assembly and the users of the legislation.

2.7 Regulation 4 – amendments to the Schedule to the 2005 Transboundary Movements Wales regulations

2.7.1 Many provisions of the 2005 Transboundary Movements Wales regulations are dependent on “the specified Community provisions”, i.e. those provisions of Regulation (EC) No. 1946/2003 listed in the Schedule to the regulations. For example, regulation 3 provides that the National Assembly (now, the Welsh Ministers) must enforce and execute the specified Community provisions, while regulation 8 provides that it is an offence for anyone to contravene, or fail to comply with, the specified Community provisions. Therefore, the exact meaning of the specified Community provisions is extremely important.

2.7.2 Regulation 4 of the regulations under scrutiny amends the description of two of the “specified Community provisions” in the Schedule. Both of the amendments appear, in themselves, appropriate in terms of adapting the 2005 Transboundary Movements Wales regulations in consequence of the UK leaving the EU. One simply removes a reference to “the Commission”, while the other amends the rules on what authorisations are necessary to export GMOs for direct use as food or feed or for processing. Previously, authorisation for import into a particular country could have been agreed within the EU; the regulations under scrutiny replace this from exit day with a provision that permission to market in the UK is sufficient.

2.7.3 However, it is not clear to us how these amendments are effective unless the relevant provisions of Regulation No. 1946/2003 itself are amended in the same way, as retained EU law. The provisions in the Schedule to the 2005 Transboundary Movements Wales regulations are defined as provisions of that Regulation. In light of that definitional link it seems to us dubious that the effect of those provisions, for the purposes of the 2005 Regulations, can be altered simply by amending the Schedule, and not the underlying EU Regulation (as it will exist in domestic law after exit day). Once again, we emphasise that non-compliance with the provisions of the Schedule constitutes an offence; the second example given in the previous paragraph is an example of a situation where this could be directly relevant.

2.7.4 We recognise that the issue we have identified may be being avoided or rectified by other Brexit-related legislation. However, as we said in our recent report on The Common Agricultural Policy (Miscellaneous Amendments)(Wales)(EU Exit) Regulations 2019, we consider that it is incumbent on the Welsh Government to seek to explain, better and more fully, to the Assembly and to citizens how each piece of Welsh EU exit legislation fits into the whole picture of UK and EU legislation – current and intended - on the particular subject-matter. The appropriate place for this would appear to be the EM accompanying statutory instruments.



2.7.5 Moreover, as we have repeatedly said in previous Reports, clarity in the criminal law is of particular importance. For all these reasons, therefore, we call on the Welsh Government to provide a further explanation of these provisions.

3. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

3.1 Regulation 3(6)(c)

As set out above, this provision changes the document which sets out the format for applications for deliberate release authorisations. It is, therefore, an important provision for applicants. It provides that the correct format is that set out in “the Annex to Commission Decision 2002/812 EC”. However, there appears to be no Commission Decision with that number. There is, however, a Council Decision with that number, the Annex to which appears to be the relevant document.

3.2 Regulation 3(10)(b)(ii)

This provision amends regulation 25(5) of the 2002 Deliberate Release Wales regulations. It refers to “regulation (3) of the Seeds (National Lists of Varieties) Regulations 2001”. This is clearly an incorrect reference, as regulations are not identified by numbers in brackets. Having considered the 2001 Regulations referred to, it appears to us that the intention was to refer to “regulation 3”. We consider that this is simply a typographical error and that there is no real risk of confusion with another provision of the 2001 statutory instrument. However, it should be corrected so as to remove any doubt for users of the legislation.

Merits Scrutiny

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

4. 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

4.1 Regulation 3(2)(a) and (f), amending regulation 2(1) of the 2002 Deliberate Release Wales Regulations

4.1.1 This point relates to the amendments made by regulation 3(2)(a) and (f) to the definition of an “approved product” in the 2002 Deliberate Release Wales regulations, for the purposes of permission to be marketed in Wales. Detail of these two provisions is set out above, under paragraph 2.1, relating to Standing Order 21.1(v).

4.1.2 These provisions also raise a merits point. The Food and Feed Regulation gives the function of authorising products for marketing to the European Commission, assisted by an EU Committee, and on the basis of a scientific opinion from the European Food Safety Authority (“EFSA”). If the Food and Feed Regulation, once imported into domestic law on exit day, is not amended in that regard, the Commission will be able to continue giving authorisations that are recognised in the UK, including in Wales. This would be consistent with the overall intention of the EUWA, to maintain continuity, as far as practicable and for the time being, between pre- and post-Brexit law derived from the EU.



- 4.1.3 However, it is of political importance that marketing certificates for food and feed products made of, or including, genetically-modified ingredients, issued by an EU body, will continue to be recognised in Wales after Brexit. This is particularly so given the controversy within the UK and in Wales over the safety or otherwise of genetically-modified food.
- 4.1.4 We recognise that the Food and Feed Regulation may have been, or may be about to be, amended in some relevant way, as retained EU law, by UK Government subordinate legislation under the EUWA. We also recognise the difficulties facing the Welsh Ministers in seeking to legislate under extreme time pressure and in a context in which a great deal of other related legislation is also being made, both by them and by the UK Government.
- 4.1.5 However, we consider that, where such independencies exist between different pieces of legislation, made or to be made, in such an important area of law, they should be explained, or at least pointed to, in the Explanatory Memorandum accompanying the subordinate legislation for scrutiny.

Implications arising from exiting the European Union

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

The last sentence of paragraph 4.5 of the Explanatory Memorandum states:

Wales intends to follow England, Northern Ireland and Scotland's approach on the release of GMO's.

This may be simply a question of infelicitous language, but we do not consider that the Welsh Government should simply "follow" the approach of other nations of the UK; particularly on such an important and controversial matter. "Following" is a very different matter from agreeing a common approach with the governments of those other nations. We note that the Intergovernmental Agreement between the Welsh and UK Governments of 24 April 2018 identified "Agriculture - GMO marketing and cultivation", as well as various matters concerning food, as areas where both governments would agree that common UK frameworks – legislative or otherwise - were likely to be required, and we assume that the sentence highlighted above is attempting to reflect this agreement.

Government Response

A government response is required.

Committee Consideration

The Committee considered the instrument at its meeting on 18 March 2019 and reports to the Assembly in line with the technical and merits points above.



Government response: The Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Technical Points

Eleven technical points have been identified for reporting under Standing Order 21.2 in respect of the Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019.

(1) Regulation 3(10)(a), substituting new paragraphs (1) to (4) in regulation 25 of the Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 (“the 2002 Regulations”)

In relation to this point, the Welsh Government notes that the effect of the substitution by regulation 3(10)(a) of paragraphs (1) to (4) of regulation 25 of the 2002 Regulations, is inter alia, to remove the 10 year cap on consents by the Welsh Ministers for the marketing of genetically modified organisms in Wales. It is the policy of the Welsh Government to maintain the 10 year cap post exit from the EU. Consequently, a suitable amendment will be brought forward at the first available opportunity.

(2) Regulation 3(16)(b), inserting new paragraph (3A) into regulation 35 of the 2002 Regulations

This point relates to the new paragraph (3A) inserted by regulation 3(16)(b) into regulation 35 of the 2002 Regulations. New paragraph (3A) means that additional information will be placed on a public register when someone applies for permission to market a GMO. The Welsh Government considers that the amendments are within the European Union (Withdrawal) Act 2018 powers. New paragraph (3A)(a)-(d) and (f)-(g) make provision for the application summaries required by regulation 12(1)(d) and regulation 17(2)(j) of the 2002 Regulations to be included in the public register. This information is currently published by the Commission. The Welsh Government considers that the effect of the provisions is to maintain the same level of transparency for the public, and does not amount to a change in policy.

(3) Regulation 3(2)(a) and (f), amending definitions contained in regulation 2(1) of the 2002 Regulations

This technical point relates to regulation 3(2)(a) which changes the definition of “approved product” in regulation 2(1) of the 2002 Regulations, for the purposes of permission for genetically modified organisms to be marketed in Wales. The Welsh Government acknowledges the point that definition of a “pre-exit approved product” should include products approved under the food and feed regulations but should discount products for cultivation approved post-exit. An amendment will be made at the next available opportunity.

(4) Regulation 3(6)(b) and (c), amending regulation 17(2)(g) and (j) of the 2002 Regulations

This technical point relates to new provision inserted into regulation 17(2)(g) and (j) of the 2002 Regulations, by regulation 3(6)(b) and (c) respectively, to provide for information required pursuant to an application for consent to the Welsh Ministers to market genetically modified organisms..

With regard to the reference to Council Decision 2002/811/EC inserted by regulation 3(6)(b) into regulation 17(2)(g) of the 2002 Regulations. This Decision consists of guidelines for preparation of a monitoring plan to be included in any post EU exit application for consent to market genetically modified organisms. The Welsh Government are not aware of any application forms (paragraph 2.2.2 of the report) in the Annex to that Decision, and take the view that while the Decision will become retained EU law on exit, its primary effect is to provide guidance on the provision of a monitoring plan as part of a consent application.

With regard to the reference to Council Decision 2002/812/EC, inserted into regulation 17(2)(j) of the 2002 Regulations by regulation 3(6)(c). Operability amendments have been made to the Annex by the Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2019.

(5) Regulation 3(8)(b), amending regulation 22(6) of the 2002 Regulations

The reference in regulation 3(8)(b) is to Commission Decision 2003/701/EC, and not 2003/71/EC. Operability amendments have been made to Decision 2003/701 by the Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2019.

(6) Regulation 3(9)(a)(ii), amending regulation 24(1)(e) of the 2002 Deliberate Release Wales Regulations

This provision replaces regulation 24(1)(e) of the 2002 Deliberate Release Wales Regulations with a new provision. In terms of the citing of new 24(1)(e), the Welsh Government acknowledges the point appears that the new regulation 24(1)(e) should precede regulation 24(1)(d), not follow it. An amendment will be made at the next available opportunity.

(7) Regulation 3(16)(b) and (17), amending regulations 35 and 36 of the 2002 Deliberate Release (Wales) Regulations

Regulation 3(16)(b) imposes duties on the Welsh Ministers to publish additional information in the public register concerning GMOs. Regulation 3(17) does not amend regulation 36 of the 2002 Deliberate Release (Wales) Regulations so as to prescribe a deadline for the Welsh Ministers to do so. Further explanation of the absence of a deadline for publication of the relevant information is, therefore, requested. The technical point is noted. An amendment will be made at the next available opportunity.

(8) Throughout regulation 3

The report highlights (paragraph 2.6.1 to 2.6.3), that two different names to refer to what is now the same legal person, i.e. “the [former] National Assembly for Wales” and “the Welsh Ministers”.

The position of the Welsh Government is that while it might have been desirable to make amendments to update references to the National Assembly more comprehensively, given the considerable pressures to deliver the EU Exit legislation within exceptionally challenging timescales, the focus has of necessity, centred on making the necessary operability and deficiency amendments in the legislation. The Welsh Government is of the view that failure to update the references does not render the instrument defective.

The report also requests (paragraph 2.6.4 et seq) further explanation of the rationale behind amendments to the way in which some EU legislation is referred to in the regulations, with particular reference to regulation 3(2)(e) which amends the definition in regulation 2(1) of the 2002 Regulations, of “the First Simplified Procedure (crop plants) Decision” restating the definition as “a reference to that Decision as it applied immediately before exit day”.

In relation to the point raised in paragraph 2.6.5 concerning regulation 3(2)(e). The Welsh Government notes that the reference to the Food and Feed Regulation in regulation 2 of the 2002 Regulations is treated differently from the references to the “Deliberate Release Directive”, and the “First Simplified Procedure”. The Welsh Government also notes the proposed operation of the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019 (in draft). It is accepted that there is an inconsistency and appropriate amendments will be made at the next available opportunity.

(9) Regulation 4 – amendments to the Schedule to the 2005 Transboundary Movements Wales Regulations (“the 2005 Regulations”)

In relation to the point concerning how the amendments to the 2005 Transboundary Movements (Wales) Regulations 2005 are effective in relation to “the specified Community provisions”, i.e. those provisions of Regulation (EC) No. 1946/2003 listed in the Schedule to the 2005 Regulations. Operability amendments have been made to Regulation (EC) No. 1946/2003 by the Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2019.

(10) Regulation 3(6)(c)

It is accepted that the cross referencing in regulation 3(6)(c) is incorrect. These references will be updated by way of a correction slip following publication.

(11) Regulation 3(10)(b)(ii)

It is accepted that the cross referencing in regulation 3(10)(b)(ii) is incorrect. These references will be updated by way of a correction slip following publication.

(12) Regulation 3(2)(a) and (f), amending regulation 2(1) of the 2002 Regulations

In relation to the merit point that it is of political importance that marketing certificates for food and feed products made of, or including, genetically-modified ingredients, issued by an EU body, will continue to be recognised in Wales after Brexit, the Welsh Government confirms that only products intended for food and feed purposes, not for cultivation, would be recognised in Wales post-Brexit.

Welsh agriculture is reliant upon imports of animal feed, the majority of which would contain GM ingredients. New approvals of GM varieties for food and feed purposes will continue in the EU post-Brexit and in all likelihood these would be included in future imports of animal feed into Wales/UK. If these new authorisations are not recognised in Wales it could have a detrimental effect on animal feed imports as it would be impossible to detect which animal feed lots contained which GM varieties as they are usually a mixture of many types.

There is a clear distinction with the approval of varieties for cultivation which would only be approved by Welsh Ministers post-Brexit and new varieties for cultivation purposes approved by the EU would not have automatic authorisation in Wales.

SL(5)389 – The Forest Reproductive Material (Great Britain) (Amendment) (Wales) Regulations 2019

Background and Purpose

These Regulations amend the Forest Reproductive Material (Great Britain) Regulations 2002 (S.I. 2002/3026) in relation to Wales. The 2002 Regulations were made to implement European legislation on a Great Britain basis (specifically Council Directive 1999/105/EC of 22nd December 1999 on the marketing of forest reproductive material). The 2002 Regulations have since been amended, including in 2014 in respect of England and Scotland only (these amendments were made by the Forest Reproductive Material (Great Britain) (Amendment) (England and Scotland) Regulations 2014). As such, the amendments made by these Regulations are necessary to bring Welsh legislation up to date with EU law obligations, and to make provision in line with the law in England and Scotland.

The amendments set out the revised requirements which apply in Wales in relation to forest reproductive material produced in countries outside the European Union, and implements Council Decision 2008/971/EC on the equivalence of forest reproductive material produced in third countries, as amended. These Regulations also implement in full the derogation permitted by Commission Decision 2008/989/EC authorising member States (in accordance with Council Directive 1999/105/EC) to take decisions on the equivalence of the guarantees afforded by forest reproductive material to be imported from certain third countries.

Regulation 3(1)(b) provides for the references to Council Decision 2008/971/EC in the 2002 Regulations to be read as references to that instrument as amended from time to time.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

One points is identified for reporting under Standing Order 21.3 in respect of this instrument.

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

These Regulations amend the 2002 Regulations, which are Great Britain Regulations. The amendments made by these Regulations apply only in relation to Wales. Amendments have previously been made in respect of England and Scotland, in 2014. The Explanatory Memorandum does not explain why there has been a delay of almost five years between amendments being made in respect of England and Scotland in 2014, and amendments being made in respect of Wales by these Regulations.



Implications arising from exiting the European Union

These Regulations are made in exercise of the powers in section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972. As such, they will form part of retained EU law on exit day. These Regulations come into force on 28 March 2019, the day before exit day.

The provision made by these Regulations will be further amended on exit day by The Plant Health (Forestry) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019.

Government Response

A government response is required.

Committee Consideration

The Committee considered the instrument at its meeting on 25 March 2019 and reports to the Assembly in line with the merits points above and also to highlight issues as a result on the UK exiting the EU.



Government Response: The Forest Reproductive Material (Great Britain) (Amendment) (Wales) Regulations 2019

Merit Scrutiny point under Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

The Welsh Government acknowledges the timescales involved in making these amendments compared to England and Scotland. The Forest Resources Policy Branch's work has had to be re-prioritised to meet competing demands, especially more recently in light of Brexit. There are steps being taken to address this, and it is anticipated that the proposals for the new Cross-Border GB Forestry Functions post 1st April 2019 will be a positive one in doing so. The Plant Health function has also established a Cross-Border Plant Health Steering Group, which will be a useful forum for Welsh Government Officials to participate in any discussions about proposed amendments to policy/legislation at an early stage.

Agenda Item 5.3

SL(5)390 – The Plant Health (Forestry) (Amendment) (Wales) Order 2019

Background and Purpose

This Order applies in relation to Wales certain provisions which have been made amending the Plant Health (Forestry) Order 2005 (“the 2005 Order”) in relation to England and Scotland.

Those amending instruments implemented in relation to England and Scotland certain provisions including Commission Directive 2002/757/EC and Commission Implementing Decisions 2014/690/EU, 2015/789/EU, 2015/893/EU, 2012/535/EU, 2015/2416/EU and 2017/2014 and Decision No 1/2015 of the Joint Committee on Agriculture relating to the agreement between the European Community and the Swiss Confederation on trade in agricultural products (2017/169/EU).

In addition, it introduces a new provision to allow the disclosure of information for the purposes of the 2005 Order from HM Revenue and Customs (HMRC) to the Welsh Ministers.

It implements the specific control measures to prevent the introduction of the pest *Xylella fastidiosa* in Commission Implementing Decision (EU) 2017/2352.

Moreover, this Order implements measures which strengthen import and movement requirements for oak trees, to minimise the risk of further incursions of *Thaumetopoea processionea* (oak processionary moth (OPM)).

Procedure

Negative

Technical Scrutiny

Four points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Article 6(a) of this Order amends article 21(1) of the 2005 Order to make reference to article 18(3) of the same Order. However, article 18(3) of the 2005 Order only applies in relation to England and Scotland, and it is therefore unclear as to why article 21(1) of the 2005 Order would refer to article 18(3) of the same Order in relation to Wales.

2. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Article 7(b) of this Order inserts a new paragraph (1B) into article 40 of the 2005 Order in relation to Wales. However, it then applies the new paragraph (1B) in relation to England and Scotland, replacing the current paragraph (1B) that applies to them. Though this does not seem to have an adverse legal effect, as the instrument is limited in application to Wales, the paragraph appears to be unworkable.



3. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Article 15(b) of this Order substitutes wording in Part A of Schedule 4 to the 2005 Order relating to item 10A, removing a reference to Decision (EU) 2015/2416. However, article 15(c) of this Order then substitutes item 10A in Part A of Schedule 4 to the 2005 Order in its entirety, while leaving in the reference to Decision (EU) 2015/2416. Therefore, articles 15(b) and (c) of this Order are contradictory.

4. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Article 20(b) of this Order substitutes wording in paragraph 3(a)(ii) in Part B of Schedule 6 to the 2005 Order. However, the exact same wording already appears to be in force in relation to Wales. While this does not cause an adverse legal effect, the inclusion of article 20(b) appears to be unnecessary.

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

After the UK exits the European Union, this instrument will form part of retained EU law.

Government Response

A government response is required.

Committee Consideration

The Committee considered the instrument at its meeting on 25 March 2019 and reports to the Assembly in line with the technical points above.



Government Response: The Plant Health (Forestry) (Amendment) (Wales) Order 2019

Technical Scrutiny point 1 : The reference to Art 18(3) of the 2005 order is an error. The offending provision is a remnant from an earlier draft which should have been removed as Art 18(3) does not apply in Wales. The whole of article 18 and this reference to article 18(3) in Art 21 will be omitted by the EU Exit SI which is due to come into force on exit day (currently anticipated to be 29th March 2019). This error does not cause a legal issue but if it is to persist because exit day is delayed for a significant period it will be amended to avoid confusion.

Technical Scrutiny point 2 : it had been intended to amend the text, but not the legal effect, of some of the provisions of the 2005 order in relation to England, Scotland and Wales in order to achieve textual alignment. This intention was abandoned but has led to the erroneous inclusion of the reference noted which attempts to replace paragraph (1B) of article 40 as it applies in England and Scotland. We do not consider this to be ultra vires as the application of this SI is specifically limited to Wales by virtue of Art 1(2) and so the offending paragraph is simply unworkable. If this remains it could cause confusion and so it will be amended at the earliest opportunity.

Technical Scrutiny point 3 : Art 15 (b) is redundant and will be removed. The inserted item 10A column 3, should contain the new reference. This whole schedule will however be removed by the EU Exit SI which is due to come into force on exit day. If it is to persist for a lengthy period because exit day is delayed it will be amended at the earliest opportunity.

Technical Scrutiny point 4 : the provision was replaced in order to insert a full stop before the comma. It transpires, however, that the two key versions of the 2005 Order on Westlaw and Legislation.gov include said full stop. This provision therefore replaces itself without making any legal change or changing the intended effect and so we do not propose to take any action.

SL(5)394 – The Agricultural Wages (Wales) Order 2019

Background and Purpose

This Order is made by the Welsh Ministers pursuant to sections 3, 4(1) and 17 of the Agricultural Sector (Wales) Act 2014. It makes provision about the minimum rates of remuneration and other terms and conditions of employment for agricultural workers.

The Order revokes and replaces, subject to some changes and transitional provision, the Agricultural Wages (Wales) Order 2018 (“the **2018 Order**”) and therefore increases the 2018 pay rates for agricultural workers.

Procedure

Negative.

Technical Scrutiny

Three points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

Article 15(1) confirms that, where in any week an employer provides an agricultural worker with a house for the whole of that week, the employer may deduct the sum of £1.50 from the agricultural worker’s minimum wage for that week.

Article 15(2) confirms that, where in any week an employer provides an agricultural worker with “other accommodation”, the employer may, subject to certain conditions, deduct the sum of £4.82 from the agricultural worker’s minimum wage for each day in the week that the other accommodation is provided to the worker.

An agricultural worker’s minimum wage is determined in accordance with Article 12 of, and Schedule 4 to, the Order, which sets out minimum hourly rates.

Articles 15(1) and (2) may be interpreted as permitting an employer to make:

- a) deductions of £1.50 and £4.82 respectively from the hourly rate in accordance with which an agricultural worker’s minimum wage is calculated; or
- b) net deductions of £1.50 and £4.82 respectively,

for the relevant periods referred to, and in the circumstances described in, those provisions.

Article 15 replicates provision contained in the 2018 Order. During scrutiny of the 2018 Order, the Committee queried this drafting. In its response, the Welsh Government did not accept the points raised by the Committee. However, the Committee considers that the drafting of Article 15 in this Order should be reviewed in light of the clear scope for alternative interpretation of the permissible deductions.

2. Standing Order 21.2 (vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

Article 21(2) sets out the maximum numbers of weeks that an agricultural worker is entitled to agricultural sick pay in each period of entitlement. The relevant maximum number of weeks is determined by reference to the length of a worker's employment with the same employer. There are five fixed levels of entitlement set out in Article 21(2), which range between 13 and 26 weeks of entitlement.

The drafting of this provision employs an "at least [x] months but not more than [x] months" format to describe the length of employment to which each level of entitlement applies. For example, an agricultural worker is entitled to 16 weeks agricultural sick pay where the agricultural worker has been employed by the same employer for "at least 24 months but not more than 36 months" (per Article 21(2)(b)).

There appears to be an unintended consequence of this drafting approach in that, at set intervals during an employee's period of employment, being exactly 24, 36, 48 and 59 months respectively, two separate levels of entitlement could apply to that employee. For example, if an agricultural worker has been employed for exactly 24 months, then in accordance with the provisions of the Order, that worker could be regarded as being entitled to:

- a) 13 weeks sick pay (on the basis of being employed for **not more than** 24 months per Article 21(2)(a)); and also,
- b) 16 weeks sick pay (on the basis of being employed **at least** 24 months per Article 21(2)(b)).

3. Standing Order 21.2(vii) - that there appear to be inconsistencies between the meaning of its English and Welsh texts.

In Article 22(3)(a) of the Welsh language version of the Order, it appears that 'dwy rannu' should instead read 'drwy rannu'.

Merits Scrutiny

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

Implications arising from exiting the European Union

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

Government Response

A government response is required.

Committee Consideration

The Committee considered the instrument at its meeting on 25 March 2019 and reports to the Assembly in line with the technical points above.



Government Response: The Agricultural Wages (Wales) Order 2019

1. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

and;

2. Standing Order 21.2 (vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

The points are accepted.

The Welsh Ministers will ask the Agricultural Advisory Panel for Wales to review and consider amending the provisions in future agricultural wages orders.

The Welsh Ministers will also consider issuing guidance on how the provisions should be applied.

3. Standing Order 21.2(vii) - that there appear to be inconsistencies between the meaning of its English and Welsh texts.

The point is accepted. A correction slip will be requested.

SL(5)393 – The Invasive Alien Species (Enforcement and Permitting) Order 2019

Background and Purpose

This Order introduces permitting and licensing provisions needed to comply with the requirements of EU Regulation No 1143/2014 on the prevention and management of the introduction and spread of invasive alien species (“the EU Regulation”). It also provides enforcement provisions and prescribes offences and penalties.

The EU Regulation creates a list of species of Union concern whose adverse impacts are such that they require coordinated action across the EU. It applies strict restrictions on these species so they cannot be imported, kept, bred, transported, sold, used or exchanged, allowed to reproduce, or be grown, cultivated, or released into the environment.

The EU Regulation will be converted into UK law when the UK leaves the EU.

Procedure

Negative.

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument:-

1. Standing Order 21.2(ix) – the instrument is not made in both English and Welsh

This Order has been made as a composite instrument, meaning the Order has been: (a) made by both the Welsh Ministers and the Secretary of State, and (b) laid before both the National Assembly for Wales and the UK Parliament. As a result, the Order has been made in English only.

The Explanatory Memorandum states that the Order needed to be made on a composite basis in order to “assist with a consistent enforcement approach, and accessibility and understanding for members of the public and others”. Legal Advisers accept there are good reasons to make this Order on a composite basis, but we note the effect that has (i.e. there is no Welsh language version).

2. Standing Order 21.2 (vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements.

The ‘Minister’s Declaration’ section of the Explanatory Memorandum incorrectly refers to this Order as the Invasive Alien Species (Enforcement and Permitting) (*Wales*) Order 2019 (*emphasis added*).

3. Standing Order 21.2 (vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements.

Article 32(1)(a) refers to “the costs of storing a relevant organism detained under article 27(2)” (*emphasis added*). Sub-paragraph (2) of Article 27 provides the maximum period a relevant organism may be detained for, it does not provide a designated customs official with the power to seize.

It appears that the power allowing a designated customs official to seize a relevant organism is actually contained in sub-paragraph (1) of Article 27 (rather than sub-paragraph (2)). Legal Advisers would welcome clarification on this point.

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

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument:

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

This Order directly transposes the requirements of EU Regulation No 1143/2014, which places a duty on Member States to “lay down the provisions on penalties applicable to infringements of the EU Regulation” and to “take all the necessary measures to ensure that they are applied”. The Explanatory Memorandum highlights that at the time of laying, the Order contains known operability issues, including the need to ensure consistency with the parent EU Regulation (which was corrected by the Invasive Non-Native Species (Amendment etc.) (EU Exit) Regulations 2019).

The Explanatory Memorandum states that it is planned that these operability issues will be corrected by means of a separate operability instrument.

Government Response

A government response is required.

Committee Consideration

The Committee considered the instrument at its meeting on 25 March 2019 and reports to the Assembly in line with the technical points above and also to highlight issues as a result on the UK exiting the EU.



Government response: The Invasive Alien Species (Enforcement and Permitting) Order 2019

The Committee has raised various reporting points under Standing Orders 21.2(ix) and (vi), which will be addressed in turn.

In relation to reporting point 2 under SO 21.2(vi), there is a typographical error in the Welsh Explanatory Memorandum meaning that the title of this statutory instrument is incorrectly referred to as the “Invasive Alien Species (Enforcement and Permitting) (Wales) Order 2019” (*emphasis added*). The title should of course read the “Invasive Alien Species (Enforcement and Permitting) Order 2019”. This will be corrected via a correction slip. This will be done on a Wales only basis as the Explanatory Memorandum is specific to Wales. The UK Government have drafted their own, separate EM.

In relation to reporting point 3 also under SO 21.2(vi), we have been in discussions with Defra officials to clarify the position in relation to the cross-reference in article 32(1)(a). Following this, we can confirm that the reference is intended to be to article 27(2). When drafting the Order, it was considered that it was more sensible to refer to a detention under article 27(2) as this is the power to continue the detention for a period of 5 days, which is distinct from the power of seizure under article 27(1). In this context, that is the context of the costs of storing a relevant organism, it is sensible to refer to the power enabling continuous detention where there would be such associated costs.

We note the Committee’s first reporting point and reiterate the concession given by the Legal Advisers that there are good reasons as to why this instrument is not made in both Welsh and English.

Agenda Item 5.6

SL(5)395 – The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Supplementary Provisions) Regulations 2019

Background and Purpose

The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (**the 2018 Act**) establishes the statutory system in Wales for meeting the additional learning needs of children and young people. Part 3 of the 2018 Act continues the Special Educational Needs Tribunal for Wales and re-names it the Education Tribunal for Wales.

These Regulations make amendments to section 91 of the 2018 Act which provides for the constitution of the Education Tribunal, including the appointment of the President of the Tribunal and other members of the Education Tribunal.

Regulation 2(2) removes from section 91(3) of the 2018 Act the requirement for the agreement of the Lord Chief Justice for the appointment of the President of the Education Tribunal by the Lord Chancellor.

Regulation 2(3) removes from section 91(4) of the 2018 Act the requirement for the agreement of the President of the Tribunal for the appointment of the legal chair panel by the Lord Chancellor.

Regulation 3 substitutes for the entry in Schedule 14 to the Constitutional Reform Act 2005 relating to the Special Educational Needs Tribunal for Wales an entry relating to the Education Tribunal.

Procedure

Affirmative.

Technical Scrutiny

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

Merits Scrutiny

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

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

1.1 The JAC process for appointing the President of SENTW



The Judicial Appointments Committee (JAC) process currently applies to the appointment of the President of the Special Education Needs Tribunal for Wales (**SENTW**). The JAC process requires the Lord Chancellor to follow a three-stage process before appointing the President of SENTW.

1.2 The 2018 Act process for appointing the President of ETW

The JAC process does not currently apply to the appointment of the President of the Education Tribunal for Wales (**ETW**). A different appointment process applies under the 2018 Act to the appointment of the President of the ETW. Under The 2018 Act, the President of the ETW is appointed by the Lord Chancellor with the agreement of the Lord Chief Justice.

1.3 The Regulations

These Regulations seek to amend JAC-related legislation so that the JAC process applies to appointing the President of the ETW. Under the JAC process, the function of appointing the President of the ETW would rest with the Lord Chancellor.

This therefore creates a conflict with regard to the appointment of the President of the ETW: the JAC process would involve just the Lord Chancellor, while the 2018 Act process would involve both the Lord Chancellor and the Lord Chief Justice.

The Regulations seek to address this conflict by deleting the reference to the Lord Chief Justice in the relevant sections of the 2018 Act, so that both the JAC process and the 2018 Act involve only the Lord Chancellor.

1.4 Use of supplementary powers

The Explanatory Memorandum states that the enabling powers in section 97(1) and (2) of the 2018 Act (emphasis added):

“provides the Welsh Ministers with power to make regulations to make supplementary, incidental, consequential, transitory, transitional or saving provisions if they consider it necessary or expedient **to give full effect to provisions in the Act or in consequence of any provisions in the Act or for the purposes of any provisions of the Act.**”

Given that the appointment process as set out in the 2018 Act works as it is currently drafted (legally there is no fault in the appointment process set out in the 2018 Act) we ask the Welsh Government to clarify:

- its understanding of the word “supplementary” in section 97(1) of the 2018 Act, and why the “supplementary” power is being used to apply the JAC process to the appointment process of the President of the ETW (thereby changing the law as debated and passed by the Assembly);
- which element of “giving full effect to provisions in the Act or in consequence of any provisions in the Act or for the purpose of any provisions of the Act” in section 97(1) of the 2018 Act is being relied upon in these Regulations (bearing in mind that the appointment process in the 2018 Act is not defective).

It should come as no surprise that this Committee is concerned that supplementary powers are being used to reverse important sections of an Assembly Act.





1.5 Stage 4 proceedings on the 2018 Act

We note that, during Stage 4 proceedings on the 2018 Act, the Minister for Education said:

I want to quickly mention a very recent development that will require a minor amendment to the Bill when it becomes an Act. Appointments to the Special Educational Needs Tribunal for Wales were not previously part of the Judicial Appointments Commission, which was an oddity. An order made by the UK Government's Ministry of Justice, which came into force on 1 December, remedied that for the first time and that is to be welcomed. As a result, we propose to amend section 91 of the Bill by order. This will remove the agreement role of the Lord Chief Justice and the president. It will bring appointments to the future education tribunal into line and normalise the position, as has been done for SENTW. An agreement has been reached with the UK Government for dealing with this, which in practice is a small, technical issue.

We accept that the Assembly was given notice of the change that is being proposed by these Regulations, and we accept the Assembly voted in favour of the Additional Learning Needs and Education Tribunal (Wales) Bill at Stage 4 by 50 votes to 0.

However, we do not believe that Stage 4 is the proper way to announce intentions to make changes to important parts of Assembly Acts, especially changes that arise as a result of a last-minute agreement reached between the Welsh Government and the UK Government.

We ask the Welsh Government to clarify why could the proposed changes not have been properly debated during an additional Report Stage.

Implications arising from exiting the European Union

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

Government Response

A government response is required.

Committee Consideration

The Committee considered the instrument at its meeting on 25 March 2019 and reports to the Assembly in line with the merits points above.



Government response to draft report for Constitutional and Legislative Affairs Committee on The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Supplementary Provisions) Regulations 2019

Points raised under Standing Order 21.3(ii)

1. The current law in force relating to special educational needs in Wales is the Education Act 1996 ('the 1996 Act'). Under the 1996 Act the relevant functions of appointing the President and legal chairs to the Special Educational Needs Tribunal for Wales ('SENTW') is vested in the Lord Chancellor (LC) only.
2. The Additional Learning Needs and Education Tribunal (Wales) Act 2018 ('the 2018 Act') introduced the Lord Chief Justice (LCJ) functions in respect of the similar appointment functions in relation to the Education Tribunal for Wales (which is a continuation of SENTW, but renamed by the 2018 Act) so as to ensure that those functions were not vested wholly and unfettered in the hands of the executive. (Section 91 of the 2018 Act is not yet in force.)
3. During a late stage in the passage of the ALNET Bill the law affecting SENTW in this regard changed by virtue of the Judicial Appointments and Discipline (Amendment and Addition of Offices) Order 2017 which was made by the UK Government. This order came into force on 1 December 2017. That Order could not, of course, amend the ALNET Bill. It is considered that as the selection of the President and the Legal Chairs have been brought, by the Order, within the Judicial Appointments Commission (JAC) procedures, that the additional roles in section 91 of the 2018 Act are not required because of the particular role enshrined in the Constitutional Reform Act 2005 to ensure that the LC upholds judicial independence.
4. The effect of the 2017 Order is to bring the LC's functions of appointing the President and legal chairs of SENTW within the formal JAC process for appointing members of the judiciary (by adding those functions in the relevant places in Schedule 14 to the Constitutional Reform Act 2005) for the first time. The effect of the 2017 Order read along with the Judicial Appointments Regulations 2013 is that the appointing authority (at stage 3) must make a selection. It is contended that retaining a role for the LCJ in the appointment of the President would cause operational difficulties in that two people would have to be in agreement with the recommendation of the Judicial Appointments Commission for appointment of a person as President. (The same position applies in relation to the appointment of the legal members). For example, by virtue of the Order and the Judicial Appointments Regulations 2013 (regulations 32 to 34) there comes a point in the appointments process when the appointing authority (in this case the LC) must make an appointment from those selected by the JAC. The effect of the relevant provisions of the 2018 Act are that the LC cannot appoint unless the LCJ agrees. Whilst the likelihood of disagreement following a JAC process is very small the fact that the Bill creates this possibility does give credence to

this concern. There is a recognition that this could affect the operability of the system.

5. It is considered that the changes introduced by the Ministry of Justice in the Order secure the same end (preserving judicial independence) as the agreement requirements currently in section 91(3) and (4) of the 2018 Act particularly taken in conjunction with the duty on the LC in s. 3 of the 2005 Constitutional Reform Act. Moreover the effect of the Order is to 'normalise' the judicial appointments procedure for the SENTW (and this will be applied also to the Education Tribunal appointments) by bringing the process for those appointments into line with other similar appointments made by the LC.
6. What we are left with, therefore, in terms of the appointment of the President and legal chairs of SENTW following the 2017 Order is that those appointments are brought into line with the usual process for making judicial appointments. On the other hand as regards the appointments to the same posts under the 2018 Act the procedure is not in line with that usual process. It is, we think, to those provisions in the 2018 Act that create the offices of President and legal chairs of the Education Tribunal that the provisions we propose to make in the current set of draft regulations are supplementary.
7. To bring the relevant provisions of the Act 2018 into line with those now applying to SENTW we need to replace the reference to SENTW in Sch 14 of the Constitutional Reform Act 2005 and remove the Lord Chief Justice functions.
8. Sections 97 and 99 of the Act 2018 clearly envisage that regulations under section 97 may amend or repeal a provision of the Act itself.
9. In terms of dictionary definitions, a provision is "supplementary" if it completes or enhances something. A provision is "expedient" if it is convenient or practical.
10. Considering the objective underlying the LCJ's functions in section 91(3) and (4) of the 2018 Act, the question arises whether, in the light of the change of the law applying in this regard to SENTW, it is convenient to supplement the provisions of the 2018 Act (including by amending or repealing provisions) creating the offices of President and legal chair by 'normalising' the appointment provisions in section 91(3) and (4) to bring them into line with the law that now applies to SENTW in this regard.
11. Our view is that regulations under section 97 of the 2018 Act can be made having that effect.
12. The draft report asserts under 1.4 that the Committee is concerned that "supplementary powers are being used to reverse important sections of an Assembly Act."
13. It is not agreed that the effect of the regulations is to reverse the section. "Reversing" would suggest that the purpose of the amendment is to give the

section an entirely opposite purpose and effect. The purpose and effect of section 91 of the 2018 Act was to ensure that there is an independent process in place to appoint the president and other members of the tribunal. The amended section 91 would serve and achieve the same purpose.

14. In terms of our proposed amendments, this is not a case where there is an extension of power, an amendment of a definition or the exclusion of the operation of a provision of primary legislation. The issue in this case is, in the light of the change of law applying to SENTW, whether the objective underlying the consent functions in section 91(3) and (4) of the 2018 Act in relation to the Education Tribunal can be achieved in a different way which is consistent (a) with the law that now applies to SENTW and (b) with other Lord Chancellor appointments. This is not a case where the proposal represents a fundamental (or contradictory) change in the scheme of the primary legislation.
15. A number of options were considered at the time for dealing with this matter and the Welsh Government considered that this was the best approach in the circumstances outlined above. As the draft report indicates, at the stage 4 debate on the ALNET Bill, Members were informed of the need to make a minor amendment to section 91 of the Bill when it became an Act. The National Assembly for Wales passed the Bill on that basis. Assembly Members will have an opportunity to debate the regulations.

Agenda Item 5.7

SL(5)396 – The Qualifications Wales (Monetary Penalties) (Determination of Turnover) Regulations 2019

Background and Purpose

These draft Regulations make provision for how Qualifications Wales (“QW”) is to determine the amount of a monetary penalty to be imposed on an awarding body that has failed to comply with a condition of its recognition, or a condition of approval to which its approved qualification is subject. Section 38(1) of the Qualifications Wales Act 2015 (“the Act”) enables QW to impose such penalties.

Regulation 3 would set a cap on the penalties of 10% of the turnover of the awarding body. Regulations 4 and 5 would determine the turnover of an awarding body for these purposes. Subject to those parameters, and to certain general requirements in the Act as to how it carries out its enforcement functions, QW would be able to decide what penalty is appropriate in all the circumstances of each case.

The general requirements in the Act most relevant to these Regulations are the requirement to have regard to listed principles in exercising its enforcement functions, and the duty to publish certain information about the way in which it is likely to exercise those functions.

The principles to which QW must have regard in exercising its enforcement functions, amongst other functions, are that:

- (a) regulatory activities should be carried out in a way that is transparent, accountable, proportionate and consistent, and
 - (b) regulatory activities should be targeted only at cases in which action is needed;
- (section 54 of the Act).

The publication duty is to prepare and publish a policy statement containing (amongst other things) information as to:

- (a) the circumstances in which QW is likely to impose a monetary penalty; and
 - (b) factors which QW is likely to take into account in determining the amount of a penalty to be imposed;
- (section 47 of the Act).

Procedure

Affirmative.

Technical Scrutiny

One point is identified for reporting under Standing Order 21.2 in respect of this instrument.



Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

Regulation 4 sets out what period is to be used to calculate a body's turnover, on which the maximum penalty laid down in Regulation 3 would be based. It uses the words "month" and "months" in a number of places. The word "month" is not defined in the Act, nor in the Education Act 1996, definitions from which are imported into the Act by section 57(1).

However, "month" is defined in the Interpretation Act 1978, for the purposes of all primary and secondary legislation in Wales and England (subject to a clear contrary intention) as meaning a calendar month. This avoids any possible ambiguity, given the alternative possible meaning of a four-week (lunar month) period. It also makes clear that a "month" is a full calendar month, unless the enactment makes clear that part months are also included.

This Committee wrote to the Welsh Government on 26 January 2018 to express concern about the difficulties, for users of legislation, caused by the use of terms that are defined for the purposes of a piece of secondary legislation, but where that definition is not contained in that secondary legislation itself. The Counsel General responded (9 February 2018) with a commitment to "look to make greater use of ... approaches" such as footnotes in those circumstances.

We are concerned that this approach appears not to have been followed in these draft Regulations. It is true that, in this case, the meaning of "month[s]" is reasonably clear from regulation 4 itself (given, for instance, references to "the last day of the month"). The Counsel General's response expressed the view that definitions (or, presumably, references to definitions) should be avoided where meanings were clear, and we agree, in principle, with that view. Nevertheless, in the present case, we consider that the draft Regulations do not give absolute clarity, and, particularly given the importance of the provision in question to those affected, we report on it and remind the Welsh Government of its previous commitment in this regard.

Merits Scrutiny

Three points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Standing Order 23.3(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

1. Extent of QW's discretion as to amount of penalties

The first point relates to the discretion left to QW in setting the amount of a penalty. Section 38(3) of the Act, the power under which these draft Regulations are proposed to be made, provides:

"A *monetary penalty*" is a requirement to pay to QW a penalty of an amount determined by it in accordance with regulations."

Our report of March 2015 on the Qualifications Wales Bill at Stage 1 (paragraphs 22-23) focused on section 38(3) (then, section 33(3)). We quoted from the Government's original Explanatory Memorandum on the Bill ("the Bill EM") (pp. 36-37), which explained that regulations under that section had been subjected to the affirmative procedure because they affect:



“... the amount an awarding body may be required to pay as a monetary penalty **and affords the Assembly the opportunity to debate and scrutinise the amount of the penalty**”(emphasis added).

However, in the event, the draft Regulations would leave QW free to set a penalty of any amount, and calculated in any way, provided that it:

- (a) does not exceed the cap laid down in regulation 3;
- (b) does not breach QW’s own statutory policy statement (but, as we have seen, QW is not required to set out in that statement what factors it **will** take into account when determining the amount of a penalty);
- (c) does not breach the principles laid down in the Act, such as proportionality and consistency; and
- (d) does not breach public law requirements, notably reasonableness and the need to take into account all relevant factors and set aside all irrelevant ones.

Notably, penalties below the cap level do not have to be based on turnover; not only the amount, but the method of calculating it, are at QW’s discretion (subject to the matters listed in the previous paragraph).

We considered carefully whether there appeared to be doubt that regulation 3(3) was *intra vires*, and so whether to report it under Standing Order 21.2(i). Our consideration focused on the rule against unlawful sub-delegation: that is, the rule that subordinate legislation cannot give a greater discretion to make decisions than is allowed by the parent primary legislation¹. After careful consideration, we reached the view that the wording of section 38(3) of the Act was wide enough to allow regulations to set only very minimal conditions on QW’s discretion, and so that there did not appear to be doubt as to *vires*.

However, we remain concerned that Assembly Members, when considering the Bill that led to the Act, might not have anticipated such a wide discretion being left to QW. The wording of section 38(3) might have suggested to Members that the Regulations would create a firmer framework for the exercise of that discretion. Moreover, this impression would in our view have been strengthened by the Bill EM, which promised that the Assembly would have the opportunity to “debate and scrutinise” the way in which penalties would be set. This Committee, as constituted in March 2015, evidently gave weight to that promise, given that it quoted it verbatim in its Report.

In the event, the discretion left to QW by the draft Regulations is so wide that there is little for the Assembly to scrutinise, other than the very width of that discretion.

We note that the England equivalent of section 38(3), section 151B of the Apprenticeship, Skills, Children and Learning Act 2009 (as amended) states,

“151B Monetary penalties: amount

- (1) The amount of a monetary penalty imposed on a recognised body under section 151A must not exceed 10% of the body’s turnover.
- (2) The turnover of a body for the purposes of subsection (1) is to be determined in accordance with an order made by the Secretary of State.

¹ The rule also forbids giving a power to a person unless the parent Act allows this.



(3) Subject to subsection (1), the amount may be whatever Ofqual decides is appropriate in all the circumstances of the case.”

Thus, the England provision makes clear the extent of Ofqual’s discretion **on the face of primary legislation**, while in Wales the equivalent is stated in subordinate legislation (regulation 3(3)), to which the Assembly has no power to propose amendments.

2. Concerns raised in the Welsh Government’s consultation

The Explanatory Memorandum (“the EM”) accompanying the draft Regulations reveals, at paragraph 13, that five of the eight awarding bodies who responded to the Welsh Government’s consultation on how monetary penalties should be set expressed concern about the effects of an event occurring which affected qualifications in both England and Wales. This would mean the involvement of both Ofqual (for England) and Qualification Wales. The five bodies were concerned that, if both regulators decided to impose financial penalties, an organisation could face a fine of up to 20% of its turnover. On a related point, some responses suggested a risk that potential high penalties could lead awarding bodies to withdraw from the market in Wales, and thus lead to gaps in regulated qualification provision across Wales.

We note that the Welsh Government states (paragraph 20 of the EM):

“QW works closely with the other regulators of qualifications, especially Ofqual and so would want to co-ordinate any monetary penalty decisions to ensure that the regulators were joined up in their overall approach and to safeguard from placing fines on the same awarding bodies for the same breaches”.

The EM (paragraph 27, under the heading Option 2) goes on to state that this close working between QW and Ofqual is supported by a Memorandum of Understanding. We note that the Memorandum (signed 26 February 2016) is, intentionally, a high-level document and contains no specific commitment to avoiding “double-jeopardy” penalties. Instead, it simply states (paragraph 11),

“11. ... There will be circumstances where collaborative working between us will be the best way to enable us to discharge our statutory responsibilities effectively and efficiently. This will be to our benefit and that of the awarding organisations we both regulate by avoiding duplication and unnecessarily increasing regulatory burden (*sic*).

Those areas of common interest include: ... the imposition of sanctions ... on awarding organisations which are recognised by both Regulators.”

Therefore, the Memorandum of Understanding (which, of course, is not legally binding) does not provide very strong reassurance on this point. However, we note that QW is under a duty to exercise its enforcement functions in a manner which is “proportionate” (see section 54 of the Act). And, finally, we note that one of its principal aims, under section 3 of the Act, is “ensuring that qualifications, and the Welsh qualification system, are effective for meeting the reasonable needs of learners in Wales”.

These factors reassure us that the maximum level of penalty set by the draft Regulations is an appropriate policy choice for the Welsh Government to make, having considered the consultation responses.

However, this matter is likely to be of interest to the Assembly and so we report it.



3. The EM - potential confusion for stakeholders

The third point we report under Standing Order 23.3(ii) relates to the EM itself. We are concerned that its drafting could cause confusion for stakeholders as to the present status, and effect, of the policy statement required by section 47 of the Act. Paragraphs 19 and 35 of the EM appear to us to suggest that such a statement (listing the factors likely to be taken into account when fixing a penalty) is already operational. However, paragraphs 22 and 30 state (presumably correctly) that the policy statement is in draft and will be published once the Regulations have been made.

Perhaps more importantly, paragraphs 19 and 35 of the EM gives the impression that the factors set out in the statutory policy statement **will** be taken into account in determining a monetary penalty. However, section 47 of the Act requires QW only to list factors it is “likely” to take into account in reaching that decision. We call on the Welsh Government to clarify the EM in these regards.

In considering this point, we have noted what may be a weakness in the Act itself. We note it here, although it is not a reporting point on the draft Regulations themselves, in the hope that the Welsh Government may bear it in mind when drafting future legislation. It is this. The ambiguity around what factors QW will in fact take into account in reaching a decision on monetary penalty appears to run counter to the statutory requirement for QW to exercise its regulatory functions “transparently”. We consider that the Government would have to show good reasons, in future, for proposing that public bodies (including themselves) should merely have to list factors “likely to” influence decisions which affect others. Other tried and tested formulations are available, which would give stakeholders more certainty, while allowing a degree of discretion. For instance, factors which QW was required to take into account, in so far as relevant to the individual case, could have been listed on the face of the Act. The list could have been exhaustive, but with a power for Ministers to add to or change them, subject to Assembly approval. Alternatively, more discretion could have been left to QW, by the Act listing the factors on a non-exhaustive, “including but not limited to”, basis.

We should however note here that, if QW does propose to impose a monetary penalty, section 38 of the Act requires it to give the awarding body in question notice of this fact and of its reasons. Therefore, any vagueness as to the status of the factors listed in the policy statement should not obstruct an awarding body from making representations to QW to challenge the proposal, or indeed seeking judicial review of, or appealing against, the subsequent decision.

Moreover, as a public body, the common law requires that QW’s decisions must be reasonable, while the Act expressly requires them to be “proportionate” and “consistent”.

Therefore, our concerns about the Act, noted here, are mainly about transparency for stakeholders, rather than about potential impact on them; in other words, they are more about legislative drafting than about policy.

Implications arising from exiting the European Union

No points have been identified for reporting under this heading in respect of this instrument, which does not flow from the UK’s withdrawal from the EU.

Government Response

A government response is required.



Committee Consideration

The Committee considered the instrument at its meeting on 25 March 2019 and reports to the Assembly in line with the reporting points above.



Government response: Qualifications Wales (Monetary Penalties) (Determination of Turnover) Regulations 2019

Technical Scrutiny

The technical scrutiny element of the draft report refers to one drafting point - that the draft Regulations do not give absolute clarity as to the meaning of “month” in regulation 4.

We note the commitment made by the Counsel General in the letter of 9 February 2018 to look to make greater use of approaches such as footnotes where a definition is not contained in the secondary legislation itself. However, the Counsel general also advised in the same response that “... *if a term is intended to have its ordinary dictionary meaning, or it is obvious from the context what the term is referring to, it might be positively confusing to include a definition*”. We consider in these circumstances that the meaning of month (i.e. a calendar month) is sufficiently clear from the context of the regulations. As you have correctly highlighted, this is demonstrated by references to “*the last day of the month*” which clearly indicates that month is to mean a calendar month.

Also, the wording and the method of calculating an awarding body’s turnover has existed for a significant period of time without any apparent problem (see Office of Qualifications and Examinations Regulation (Determination of Turnover for Monetary Penalties) Order 2012 in England and the previous regulations which were in force in Wales - Recognised Persons (Monetary Penalties) (Determination of Turnover) (Wales) Order 2012). Awarding bodies, which operate in both England and Wales, would therefore be familiar with this wording and that “month” means calendar month.

Therefore, an amendment to address this technical scrutiny point is not considered necessary.

Merits Scrutiny

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

The point is noted. However, the Welsh Government would make the following point:

- A policy decision has been taken to allow Qualification Wales, as the independent regulator of qualifications in Wales, a wide discretion when imposing monetary penalties on awarding bodies. As the regulations are being made subject to the affirmative procedure, we consider that the Assembly are being provided with an adequate opportunity to debate and scrutinise the way in which penalties will be set.

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

The point is noted.

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

The Welsh Government has noted the matters the Committee has suggested should be clarified and the Explanatory Memorandum will be withdrawn and revised before re-laying.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **Food and Feed Hygiene and Safety (Miscellaneous Amendments)
(EU Exit) Regulations 2019**

DATE **20 March 2019**

BY **Rebecca Evans AM, Minister for Finance and Trefnydd**

The retained EU law which is being amended

- Regulation (EEC) No. 315/93 laying down procedures for contaminants in food*
- Regulation (EC) No. 178/2002 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*
- Regulation (EC) No. 1829/2003 on genetically modified food and feed*
- Regulation (EC) No. 1831/2003 on additives for use in animal nutrition*
- Regulation (EC) No. 2065/2003 on smoke flavourings used or intended for use in or on foods
- Regulation (EC) No. 852/2004 on the hygiene of foodstuffs*
- Regulation (EC) No. 853/2004 laying down specific hygiene rules for food of animal origin
- Regulation (EC) No. 854/2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption
- Regulation (EC) No. 882/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules*
- Regulation (EC) No. 1935/2004 on materials and articles intended to come into contact with food*
- Regulation (EC) No. 183/2005 laying down requirements for feed hygiene*
- Regulation (EC) No. 378/2005 on detailed rules for the implementation of Regulation (EC) No. 1831/2003 as regards the duties and tasks of the Community Reference Laboratory concerning applications for authorisations of feed additives*
- Regulation (EC) No. 2073/2005 on microbiological criteria for foodstuffs
- Regulation (EC) No. 2074/2005 laying down implementing measures for certain products under Regulation (EC) No. 853/2004 and for the organisation of official controls under Regulation (EC) No. 854/2004 and Regulation (EC) No. 882/2004, derogating from Regulation (EC) No. 852/2004 and amending Regulations (EC) No. 853/2004 and (EC) No. 854/2004

- Regulation (EC) No. 282/2008 on recycled plastic materials and articles intended to come into contact with foods and amending Regulation (EC) No. 2023/2006*
- Regulation (EC) No. 733/2008 on the conditions governing imports of agricultural products originating in third countries following the accident at the Chernobyl nuclear power station*
- Regulation (EC) No. 1331/2008 establishing a common authorisation procedure for food additives, food enzymes and food flavourings*
- Regulation (EC) No. 1332/2008 on food enzymes and amending Council Directive 83/417/EEC, Council Regulation (EC) No. 1493/1999, Directive 2000/13/EC, Council Directive 2001/112/EC and Regulation (EC) No. 258/97*
- Regulation (EC) No. 1333/2008 on food additives
- Regulation (EC) No. 1334/2008 on flavourings and certain food ingredients with flavouring properties for use in and on foods*
- Regulation (EC) No. 767/2009 on the placing on the market and use of feed*
- Regulation (EU) No. 10/2011 on plastic materials and articles intended to come into contact with food*
- Regulation (EU) 2015/1375 laying down specific rules on official controls for *Trichinella* in meat
- Regulation (EU) 2015/2283 on novel foods, amending Regulation (EU) No. 1169/2011 and repealing Regulation (EC) No. 258/97 and Commission Regulation (EC) No. 1852/2001*
- Regulation (Euratom) 2016/52 laying down maximum permitted levels of radioactive contamination of food and feed following a nuclear accident or any other case of radiological emergency, and repealing Regulation (Euratom) No. 3954/87 and Commission Regulations (Euratom) No. 944/89 and (Euratom) No. 770/90*
- Regulation (EU) 2016/759 drawing up lists of third countries, parts of third countries and territories from which Member States are to authorise the introduction into the Union of certain products of animal origin intended for human consumption, laying down certificate requirements
- Regulation (EU) 2016/1843 on transitional measures for the application of Regulation (EC) No. 882/2004 as regards the accreditation of official laboratories carrying out official testing for *Trichinella*
- Regulation (EU) 2017/185 laying down transitional measures for the application of certain provisions of Regulations (EC) No. 853/2004 and (EC) No. 854/2004 Commission Regulation (EU) 2017/185 laying down transitional measures for the application of certain provisions of Regulations (EC) No. 853/2004 and (EC) No. 854/2004
- Regulation (EU) 2017/625 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products*
- Commission Implementing Decision (EU) 2018/2045
- Commission Implementing Decision (EU) 2018/2046

The only amendments being made to the retained direct EU law marked with * are minor changes in relation to the definition of 'appropriate authority' in Northern Ireland and/or changes to wording relating to the negative resolution procedure in the Northern Ireland Assembly. These amendments do not make any changes that are relevant to Wales.

The SI also amends EU derived domestic law in relation to England and Northern Ireland, but not in relation to Wales.

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

The SI makes technical amendments to the retained direct EU law and involves no transfer of European Commission functions. 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 arising from the UK leaving the European Union in legislation relating to 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, removing requirements to provide information on an EU website, and will define 'third countries' as any country outside of the UK.

20 pieces of retained direct EU law are being amended to make only minor and technical changes to make clear who the 'appropriate authority' is in Northern Ireland and/or modify wording relating to the negative procedure in the Northern Ireland Assembly.

A technical amendment to Regulation (EU) 2016/759 (on the import of certain types of products of animal origin from third countries) provides that the certificate that must accompany particular imports must be in English / English and Welsh, or accompanied by a certified translation. Currently, the requirement is that the certificate be in an official language of the Member State into which the product is being imported.

The SI will also make minor amendments to two EU Decisions (2018/2045 and 2018/2046) to ensure authorisations for two specific GM products remain valid so that they can continue to be placed on the UK market after EU exit.

Regulations (EC) 853/2004 and 854/2004 are amended to modify slightly the new requirements for the application of health and ID marks to carcasses and other products of animal origin. The amendments to be made by the Specific Food Hygiene (Amendment etc.) (EU Exit) Regulations 2019 provide that, post-exit, health and ID Marks must display 'United Kingdom' or 'UK' to denote the meat's origin. The SI will make a further amendment to also allow the display of 'GB' (the ISO code for the United Kingdom), which EU law will require to be displayed on meat exported from the UK to the EU27 post-exit.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: <https://beta.parliament.uk/work-packages/dxBqslw7>

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

Food and Feed Hygiene and Safety (Miscellaneous Amendments) (EU Exit) Regulations 2019

Laid in the UK Parliament: 18 March 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	Not known
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 25
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

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

Commentary

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

The purpose of the amendments is to correct deficiencies arising from the UK leaving the European Union in legislation relating to 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 SI makes does not transfer any European Commission functions. There is no impact on the Welsh Ministers' executive competence or the National Assembly's legislative competence.

Legal advisers agree with the statement laid by the Welsh Government dated 20 March 2019 regarding the effect of these Regulations. The statement is comprehensive and contains all the necessary information. The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

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

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



**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **Geo Blocking (Revocation) (EU Exit) Regulations 2019**

DATE **29 March 2019**

BY **Rebecca Evans AM, Minister for Finance and Trefnydd**

Geo Blocking (Revocation) (EU Exit) Regulations 2019 (“2019 Regulations”)

The law which is being amended

European Directly Applicable Instruments

- Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018) on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC.

UK Domestic Legislation

- Geo-Blocking (Enforcement) Regulation 2018

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

There is no effect on the National Assembly for Wales’ legislative competence or the Welsh Minister’s executive competence

The purpose of the amendments

The 2019 Regulations revoke existing direct EU legislation and domestic legislation which forms UK law relating to Geo Blocking.

In a ‘no deal’ scenario, the UK version of the Geo-Blocking Regulation will cease to have effect in UK law. The original EU Regulation will continue to apply to UK businesses operating within the EU, and all other non-EU businesses selling goods and services into the single market.

Following repeal of the Geo-Blocking Regulation in the UK, traders from the UK, EU and third countries would not be prohibited from discriminating between EU customers and UK customers.

The Regulations and accompanying Explanatory Memorandum, is available here:
<https://beta.parliament.uk/work-packages/nDmWcvUE>

Why consent was given

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

UK MINISTERS ACTING IN DEVOLVED AREAS

Geo-Blocking (Revocation) (EU Exit) Regulations 2019

Laid in the UK Parliament: 14 March 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	Not known
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 27
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.

The term “geo-blocking” is used to describe the situation where traders discriminate against customers on the basis of the nationality or location of the customer, for example by automatically re-directing customers to country-specific versions of their website, with different terms and conditions.

These Regulations will revoke the “retained EU law” version of Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers’ nationality, place of residence or place of establishment within the external market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC (the “Geo-Blocking Regulation”).

The Geo-Blocking Regulation prohibits certain forms of geo-blocking. This includes mandating access to all versions of a website in the EU, non-discrimination between EU customers when distance shopping, and non-discrimination as to the payment terms accepted.

In the event of a the UK leaving the EU without a deal, the Geo-Blocking Regulation would lose important elements of reciprocity necessary for it to function effectively in the UK. If the Geo-Blocking Regulation is not revoked, UK traders would continue to have obligations to EU customers under the Regulation, while UK customers would be unlikely to receive any of its benefits. To avoid the inequality in enforcement obligations in the EU's favour, the Geo-Blocking Regulation is to be revoked in the UK. These Regulations will also revoke the Geo-Blocking (Enforcement) Regulations 2018, which currently allows customers to pursue claims arising from the Geo-Blocking Regulation directly against traders. As the Geo-Blocking Regulation is being revoked, this provision will no longer be appropriate and therefore will also be revoked.

These revocations are being made in order to address deficiencies arising as a result of the UK's withdrawal from the EU.

Legal Advisers agree with the statement laid by the Welsh Government dated 29 March 2019 (laid on 20 March 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.

Eich cyf/Your ref:
Ein cyf/Our ref:

Mike Hedges AM
Chair of Climate Change, Environment and Rural Affairs Committee
SeneddCCERA@assembly.wales

22 March 2019

Dear Mike,

I am writing in response to your letter dated 28 February about scrutiny of legislative consent memorandums, in which you sought clarity on how the Welsh Government determines whether or not it is appropriate for the UK Parliament to legislate in areas of devolved competence, and about the Welsh Government's legislative programme for the rest of this Assembly and whether it is the intention to make time available for Welsh legislation arising from Brexit.

Specifically, you asked for clarification on the following points:

The principles underpinning the Welsh Government's approach to the use of the legislative consent process

The Welsh Government's position remains as set out by the previous First Minister in his letter to the Constitutional and Legislative Affairs Committee on 15 November 2011.

That is, we follow the principle that primary legislation in devolved areas should be enacted by the National Assembly. However, it is necessarily the case that there are, and will continue to be, circumstances in which it is sensible and advantageous if provision which would be within the Assembly's legislative competence is sought for Wales in UK Parliament Bills, with the consent of the Assembly. Such provision will not infrequently include conferring new delegated powers on the Welsh Ministers.

Taking provision in a UK Bill can enable pragmatic solutions to be reached in a timely fashion, while simultaneously respecting the legislative competence of the Assembly through the legislative consent process. It can be a matter of practical good government for such provisions to be included in a UK Bill.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
YP.PrifWeinidog@llyw.cymru • ps.firstminister@gov.wales

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

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

Examples of situations where such an approach would be appropriate could include:

- *When the UK Government's legislative proposal would also be appropriate for Welsh circumstances but there is no time available for similar provisions to be brought forward in the Assembly.*

This applies to the Agriculture Bill, which you mentioned in your letter, in that the UK Government's legislative proposal was appropriate and the circumstances deemed it practical to include the provisions to be able to provide certainty to Welsh farmers. Although the provisions in the UK Agriculture Bill would not be required for the 2019 CAP scheme year, depending on the nature of our exit from the European Union, we may face a legislative gap for the 2020 scheme year if legislation is not in place to continue to make Direct Payments. This would mean the Welsh Government would not have the power to support farmers in 2020 and beyond. Given this risk, we deemed it prudent to ensure the required powers are in place in good time, providing much-needed reassurance to Welsh farmers that the necessary law will be in place to enable the Government to continue to support them post-Brexit.

- *Where the interconnected nature of the relevant Welsh and English administrative systems mean that it is most effective and appropriate for provision for both to be taken forward at the same time in the same legislative instrument.*
- *Where the devolved provisions in question are minor or technical and non-contentious.*

This applies to the Animal Welfare (Service Animals) Bill, which you also mentioned in your letter.

- *Where the UK Bill covers both devolved and reserved matters and the UK Parliament route must be taken in order to achieve the policy objective.*
- *Where the legislative competence of the Assembly and/or the powers of the Welsh Ministers would be extended in a way that could not be achieved through an Assembly Act, given the limits on the Assembly's legislative competence.*

This applies to the Fisheries Bill, which you also mentioned in your letter, because it would extend the Assembly's legislative competence on fisheries matters to the Welsh zone beyond Wales.

I concur with the previous First Minister's observation that it would be most unwise for the Welsh Government to adopt a self-denying ordinance in such circumstances. Indeed this applies even more in our current predicament, when Brexit has created an urgency to ensure immediate arrangements are in place while preserving our ability to create new systems in the future.

The actions the Welsh Government is planning to take if the UK Agriculture and Fisheries Bills are not passed by the end of March 2019

In such uncertain times it would have been desirable to be able to provide certainty to stakeholders before the UK leaves the European Union. The delays in the Parliamentary timetable mean it is very unlikely the UK Agriculture Bill will achieve Royal Assent before the end of March 2019. Nonetheless, I expect the necessary powers to be in place before 2020, meaning we are still able to provide Welsh farmers with the reassurance that law will be in place allowing the Government to support them when we leave the European Union.

On the UK Fisheries Bill, alongside the suite of correcting statutory instruments (SIs), contingency SIs are being introduced in the event that the UK exits the EU at the end of March and the Fisheries Bill has not been enacted. The contingency SIs will allow us to control the activities of foreign fishing vessels. This is not an ideal solution but provides a bridge to the new regime which the Bill will introduce.

Confirmation that time will be made available to bring forward Welsh Bills arising from Brexit before the end of this Assembly

As the Minister for Environment, Energy and Rural Affairs has previously stated, the powers being taken for Welsh Ministers in the UK Agriculture Bill are intended to be transitional until our own primary legislation can be brought forward. We remain committed to bringing forward a Wales Agriculture Bill as soon as practicable and appropriate. Officials are currently reviewing the responses to the Brexit and Our Land consultation and the Minister has confirmed her intention to undertake a further consultation on a White Paper in the summer. As I am sure the Committee would expect, we are working closely with stakeholders and giving proper consideration to their views to ensure legislation is fit for purpose.

In regards to a Welsh Fisheries Bill, it is clear we will at some stage need to put the provisions onto the Welsh statute book. The Minister for Environment, Energy and Rural Affairs made clear that the powers we are seeking are transitional. However, until the UK Fisheries Bill has passed through Parliament it is difficult to commit to a timetable. We are dependent on a number of provisions, and in particular the extension of the Assembly's legislative competence.

In the case of Environmental Principles and Governance we issued a consultation on 18 March that seeks views on how to maintain effective, coherent environmental governance after the UK leaves the European Union. The consultation will run for twelve weeks and we are planning for all potential outcomes including the potential need for Welsh primary legislation.

I am copying this letter to the Llywydd and to the Chair of the Constitutional and Legislative Affairs Committee.

Yours sincerely

A handwritten signature in black ink that reads "Mark". The signature is written in a cursive, slightly slanted style.

MARK DRAKEFORD

Agenda Item 7.2



The Scottish Parliament
Pàrlamaid na h-Alba

Finance and Constitution Committee

The Scottish Parliament
Edinburgh
EH99 1SP

TEL: (0131) 348 5451

Finance.Constitution@parliament.scot

26 March 2019

Dear Chair,

The Finance and Constitution Committee noted in our report on the Trade Bill LCM that there is an urgent need for a transparent and consultative debate about whether or not the devolution settlement is robust enough to deal with Brexit. The Committee agreed at our meeting on 20 March 2019 to explore a more co-ordinated approach with other Scottish parliamentary committees to developing the Scottish Parliament's scrutiny role in relation to the new powers arising from the UK's withdrawal from the EU. This covers three main areas—

- Legislation in devolved areas which previously would have been within the competence of the EU;
- International Treaties including trade deals which cover devolved areas and which would previously have been negotiated by the EU;
- Common UK frameworks which the UK Government and the Scottish and Welsh Governments agree will be needed post-Brexit.

The Committee also agreed to seek the views of the respective constitution committees in the House of Commons, House of Lords and the National Assembly of Wales.

Background

One of the consequences of the UK leaving the EU is the need to reflect on the existing devolution settlement. The EU (Withdrawal) Act 2018 alters the legislative competence of the devolved parliaments and assemblies by removing the requirement for the Parliament to legislate compatibly with EU law. The 2018 Act also alters the competence of the Parliament by introducing a new legislative constraint. This constraint is defined with reference to EU law that is retained in domestic law by the provisions of the 2018 Act and that is specified in UK regulations under the Scotland Act 1998.

Legislation

The UK Government has introduced a number of “Brexit Bills” which have or are likely to be subject to the legislative consent process. To date Scottish Parliament’s committees have considered legislative consent memoranda (LCMs) in relation to the following Brexit Bills:

- European Union (Withdrawal) Bill;
- Trade Bill;
- Fisheries Bill;
- Agriculture Bill;
- Healthcare (international Arrangements) Bill.

A LCM is also expected to be lodged shortly in relation to the Immigration and Social Security Co-ordination (EU Withdrawal) Bill.

A key theme which has emerged from parliamentary scrutiny of these LCMs is concern about the provision of delegated powers for the UK Government to legislate in devolved areas (previously within the competence of the EU) without the consent of the Scottish Parliament. There have also been circumstances, such as clause 18(1) of the Fisheries Bill, where the Secretary of State is required to consult with Scottish Ministers but does not require consent.

The Finance and Constitution Committee stated it was “deeply concerned” about specific powers relating to retained EU law in both the EU (Withdrawal) Bill and the Trade Bill which allow UK Ministers to make statutory instruments in non-reserved areas currently governed by EU law without any statutory requirement to seek the consent of Scottish Ministers or the Scottish Parliament. The Committee considers that this cuts across the devolution settlement.

The Delegated Powers and Law Reform (DPLR) Committee has also raised similar concerns in each of its reports on Brexit Bill LCMs. For example, in relation to the delegated powers conferred on UK Ministers in the Fisheries Bill in relation to devolved matters previously within EU competence, it stated the following –

“The Committee notes that the exercise of the power is subject to the consent of the Scottish Ministers but that there is no role on the face of the Bill for the Scottish Parliament in considering the consent provided. The Committee is concerned that the Scottish Parliament does not have any scrutiny function in relation to the Scottish Ministers providing consent to the Secretary of State to make provision in this area.”

The DPLR Committee recommended that the “lead committee considers what role is envisaged for the Scottish Parliament in scrutinising the decision of the Scottish Ministers to consent to any regulations being made by the Secretary of State.”

In its report on the Fisheries Bill LCM the Rural Economy and Connectivity (REC) Committee called on the Scottish Government –

“to provide its response to the issues raised by the DPLR Committee in its report, in relation to the role that is envisaged for the Scottish Parliament in scrutinising the decision of the Scottish Ministers to consent to any regulations being made under the Bill by the Secretary of State which relate to devolved powers.”

The Scottish Government has not yet responded to the REC Committee. However, in response to the Finance and Constitution Committee and the DPLR Committee regarding the need for consent provisions within the EU (Withdrawal) Bill, the Scottish Government stated that it recognises—

“the importance of ensuring that the Scottish Parliament is given the opportunity to scrutinise that consent, and of ensuring that scrutiny is proportionate and can be conducted within timescales which will enable instruments to proceed at a UK level or an alternative approach to be taken if necessary.”

A protocol was subsequently agreed between the Scottish Parliament and the Scottish Government. This protocol sets out a shared understanding between the Scottish Government and the Scottish Parliament on the process for obtaining the approval of the Scottish Parliament to Scottish Ministers’ consent to the exercise by UK Ministers of regulation-making powers under the EU (Withdrawal) Act in relation to proposals within the legislative competence of

the Scottish Parliament. The protocol was developed to enable powers in the EU (Withdrawal) Act to be exercised from July 2018 when it came into force. Since then, it has become clear that this question about the exercise of powers is a consistent, recurring theme applicable to other Brexit-related UK legislation.

The Committee would welcome the views of your committee on the value of parliamentary scrutiny in those areas where the UK Government seeks the consent of devolved government to exercise powers in areas within the legislative competence of the devolved Parliaments and which previously were within the competence of the EU. In particular, whether—

- **Further consideration needs to be given to the role of the devolved parliaments and assemblies in relation to future UK legislation which may confer powers on UK Ministers to legislate in non-reserved matters currently subject to EU law;**
- **As a matter of principle, the devolved parliaments and assemblies, as a minimum, must be consulted prior to consent being given by devolved government Ministers to the exercise of the powers.**

International Treaties

Responsibility for foreign affairs, including international relations and the regulation of international trade, is a reserved competence under Schedule 5 of the Scotland Act 1998. The Scottish Government, however, highlights “important exceptions to this general reservation of foreign affairs” in its discussion paper on Scotland’s Role in the Development of Future UK Trade Arrangements. These are as follows—

- The Scottish Parliament and Scottish Ministers are responsible for implementing international, ECHR and EU obligations relating to devolved matters;
- The Scotland Act 1998 enables the Scottish Government to assist the UK Government in relation to international relations (including the regulation of international trade), so far as relating to devolved matters;
- The Scottish Government could, therefore, assist the UK Government in the formulation, negotiation and implementation of policy relating to regulation of international trade issues regarding devolved matters;
- The Scottish Government could, therefore, participate in relevant international obligations.

While the UK remains a Member State, the EU retains exclusive competence to negotiate and agree trade agreements on the UK's behalf; the UK cannot negotiate or conclude any trade deals with a third country. In total the EU is party to 36 regional or bilateral Free Trade Agreements, covering more than 60 countries. The European Parliament has a formal locus in the EU process for signing up to these agreements including a formal veto power.

The Finance and Constitution Committee has previously recommended that “it is imperative that robust processes and new institutional mechanisms are urgently developed to allow for the four nations of the UK to develop a consensual position before the beginning of trade negotiations.”¹

The Scottish Government has published a discussion paper on Scotland's role in the development of future UK trade arrangements.² The paper proposes a statutory requirement that new trade agreements with otherwise devolved content, or which touch on devolved issues, must be agreed by the Scottish Government and Scottish Parliament and that, in practice, this would almost certainly mean all such agreements.

The UK Government has recently committed to establishing a new intergovernmental Ministerial Forum to provide a formal mechanism for UK and Devolved Government Ministers to discuss and provide input to future trade negotiations. In correspondence with the Committee the UK Minister of State for Trade Policy states that it “will be a matter for the Scottish Parliament to determine how it will scrutinise the role of the Scottish Government in those arrangements.”³

The Committee would welcome the views of your Committee on the role of the UK and devolved parliaments and assemblies in scrutinising future international treaties.

Common Frameworks

The UK Government has identified 153 areas of EU law that intersect with devolved competence; 150 in Northern Ireland; 107 in Scotland and 64 in Wales. Of these areas the UK Government has identified 82 where a UK common approach on a non-legislative basis is potentially needed. A further 24 areas have been identified where frameworks are likely to require legislative elements either in part or wholly.

¹ <https://sp-bpr-en-prod-cdnep.azureedge.net/published/FCC/2018/10/31/Report-on-Trade-Bill-LCM/FCC-S5-18-11.pdf> paragraph 78

² <https://www.gov.scot/publications/scotlands-role-development-future-uk-trade-arrangments/>

³ https://www.parliament.scot/S5_Finance/General%20Documents/2019.2.18_-_George_Hollingberry_to_Convener_re_trade_bill.pdf

The UK Government is required by the EU (Withdrawal) Act 2018 to publish a quarterly report on progress in developing common frameworks. The most recent report published in February 2019 states that significant joint progress continues to be made on future common frameworks.

The Committee recommended in its interim report on the EU (Withdrawal) Bill LCM that there needs to be parliamentary oversight of non-legislative as well as legislative common frameworks. The Scottish Government responded that it believes that the Parliament should have the opportunity to scrutinise and agree such non-statutory arrangements for common frameworks, as well as legislative arrangements, in line with the provisions set out in the Inter-Governmental Relations Written Agreement between the Scottish Parliament and Scottish Government.

In our report on common frameworks, published on 25 March 2019, the Committee welcomed this commitment. The Committee also recommended that common frameworks should include the following –

- their scope and the reasons for the framework approach (legislative or non-legislative) and the extent of policy divergence provided for;
- decision making processes and the potential use of third parties;
- mechanisms for monitoring, reviewing and amending frameworks including an opportunity for Parliamentary scrutiny and agreement;
- the roles and responsibilities for each administration; and
- the detail of future governance structures, including arrangements for resolving disputes and information sharing.

The Committee would welcome the views of your committee on the role of the devolved parliaments and assemblies Parliament in scrutinising common frameworks. In particular, whether there is –

- **a need for Parliamentary consent prior to the UK and devolved Governments agreeing both legislative and non-legislative common frameworks.**

Conclusion

It would be helpful if your Committee could respond by Friday 17 May. The Committee will then consider the responses and provide a summary to the Cabinet Secretary for Government Business and Constitutional Relations before taking evidence from him prior to Summer recess.

I look forward to your response.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Bruce Crawford". The signature is written in a cursive style and is positioned above the typed name.

**Bruce Crawford MSP,
Convener**



26 March 2019

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

Dear Chair,

Regulations made under the European Union (Withdrawal) Act 2018

Thank you for your letter of 22 March and for alerting the Secondary Legislation Scrutiny Committee (SLSC) to the disagreement between yourselves and the UK Government over the devolution settlement.

Unfortunately, the Sub-Committees of the SLSC have already considered the instruments to which you refer and cleared them from scrutiny. Once the Sub-Committees have cleared an instrument from scrutiny, they do not have ground to raise further concerns about the instrument.

We did draw the Food and Drink, Veterinary Medicines and Residues (Amendments etc) (EU Exit) Regulations 2019 and the Environment, Food and Rural Affairs (Amendment) (EU Exit) Regulations 2019 to the special attention of the House on the ground of policy interest in relation to the geographic indication of food products. The 19th Report of Sub-Committee B is available on our website.

I would like to assure you that the Sub-Committees are alert to concerns about the devolution settlement and will continue to raise such issues with the UK Government as appropriate. We will raise particular questions now that we are aware of the concerns about State aid and geographical indication of food products.

Yours sincerely

Trefgarne

Rt Hon. Lord Trefgarne PC
Chairman of the Secondary Legislation Scrutiny Committee

Agenda Item 7.4

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



Llywodraeth Cymru
Welsh Government

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

27 March 2019

Dear Mick,

Thank you for your letter of 14 March to the Minister for Environment, Energy and Rural Affairs about laying revised written statements when UK SIs are withdrawn and re-laid. I am responding as the matter principally relates to the management of government business in the Assembly and therefore falls within my portfolio.

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. However, I can confirm that, in line with the correspondence to you on 7 February about this matter, the Welsh Government has adopted an arrangement for SO30C so that, for the remainder of the EU Exit SI programme, revised written statements are laid when UK SIs are withdrawn and re-laid. This has already happened in several cases. For example written statements were reissued in February or The Zoonotic Disease Eradication and Control (EU Exit) (Amendments) Regulations 2018 and The Nutrition (Amendment)(EU Exit) Regulations 2019 after they were withdrawn and re-laid by the UK Government.

Yours sincerely,

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

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Correspondence.Rebecca.Evans@gov.wales
Gohebiaeth.Rebecca.Evans@llyw.cymru

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

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

Lesley Griffiths AM
Minister for Environment, Energy and Rural Affairs

14 March 2019

Dear Lesley

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

Thank you for your letter of 15 February 2019 regarding The Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2019.

As I indicated in my letter of 6 February, we consider that where Regulations to which a written statement refers are amended before being made or laid for approval before the UK Parliament, the Regulations in the amended format should be treated as a different set of Regulations.

For that reason, we do believe it would be beneficial for the transparency of the process if the Welsh Government, for the remainder of the EU Exit SI programme, laid revised written statements when UK SIs are withdrawn and re-laid.

This letter is copied to the Minister for Finance and Trefnydd.

Yours sincerely



Mick Antoniw AM
Chair



Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.



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

Agenda Item 7.5


Llywodraeth Cymru
Welsh Government

Ein Cyf/Our Ref: LG/0284/19

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

SeneddCLA@assembly.wales

27 March 2019

Dear Mick,

**Constitutional and Legislative Affairs Committee report on the Welsh Government's
Legislative Consent Memorandum on the Fisheries Bill**

Thank you for the Committee's consideration and recent report on the Legislative Consent Memorandum ('LCM') in relation to the UK Fisheries Bill

I have carefully considered the recommendations of the Committee and I have included a response to the recommendations individually in the annex to this letter. However, I want to take this opportunity to provide more detail on the Welsh Government's position on fisheries management and on certain elements of the Bill.

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

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

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

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

The need for legislation and the approach taken

The Welsh Government fully supports the UK Fisheries Bill. It enables the establishment of a clear and robust framework at a UK level for managing our fisheries, and provides the necessary powers and management mechanisms for the Assembly and the Welsh Government to deliver for our distinct fisheries in Wales, following our exit from the EU. Importantly, the Bill makes provision for the extension of the National Assembly for Wales' legislative competence in matters relating to fishing, fisheries or fish health in the Welsh zone. This is a significant change and a welcome achievement which, as you know, was a red line for me.

Until the achievement of the wider legislative competence, it would be unwise to introduce a Welsh Fisheries Bill, which could only make provisions applying to the Welsh inshore waters, whereas our fisheries management responsibilities extend out to our offshore waters.

I appreciate concerns around using a UK Bill to make provisions for Wales, I am strongly of the view the provisions within the Bill are transitional until we are able to make Welsh primary legislation. However, it is appropriate to seek these powers now to enable us to act quickly and decisively in Wales, in an uncertain future, which enables the fullest opportunities for our immediate future fisheries policy.

Alongside the Bill, we are currently drafting a range of Memoranda of Understanding (MoU) which will cement and enhance the good inter-governmental working practices we have in this subject area, including setting out an agreed dispute resolution mechanism and ways of working.

Fisheries Objectives and Fisheries Statements

The Bill, as currently drafted sets out shared UK objectives for the management of fisheries. These objectives build on those contained with the Common Fisheries Policy, providing a level of consistency in our approach. These objectives therefore set the context for fisheries policy within Wales, the rest of the UK and beyond.

The Joint Fisheries Statement (JFS) will detail our policies for achieving the objectives. The JFS will reflect our approach to fisheries management in Wales which is framed, not just by the international legislation but also our unique legislative landscape in Wales including the Environment (Wales) Act 2016 and the Well-being of Future Generations (Wales) Act 2015.

I know there is a lot of interest in the contents of the JFS and also the Secretary of State's Fisheries Statement. At this stage, it is too early to comment on the contents. The Bill sets out consultation and scrutiny requirements. It also sets the deadline for the production of the first JFS.

I want to provide the Committee with reassurance the JFS will be developed in discussion with stakeholders, with pre-consultation engagement as well as the formal consultation process. This will provide all stakeholders with the opportunity to drive the contents of the JFS and as such our over arching policy direction for the following 6 years.

When we exit the EU a range of functions and powers which were previously exercised at the EU level will be exercised by the Secretary of State on behalf of the UK or exercised by Welsh Ministers in relation to Wales, the Welsh zone and Welsh vessels. Fish stocks are a shared natural resource, not just intra UK but also on an international scale. As a result a Fisheries Management Framework Agreement is needed to ensure effective management of this shared resource.

The JFS provides the cornerstone of the Fisheries Management Framework Agreement. This framework will cover a range of legislative and non-legislative solutions ranging from provisions contained within the UK Fisheries Bill and retained EU legislation and will be underpinned by a range of MoUs and concordats. It will be some time before all of this Framework is in place, I will write to the Committee with further details when available.

Access to British Fisheries

The Fisheries Bill consolidates and clarifies a range of legislation relating to the licensing of fishing vessels, making clear each administration is responsible for the licensing of its own vessels. The Bill revokes the automatic access of EU vessels to UK waters, reflecting new arrangements whereby access to British Fisheries will be controlled through annual Coastal States negotiations. The Bill provides powers to Welsh Ministers to license foreign fishing vessels within Wales and the Welsh zone.

However, in preparation for a possible exit before the UK Fisheries Bill receives Royal Assent, the Fisheries Administrations have introduced secondary legislation to allow us to control foreign vessels in UK Waters in the interim. Officials are considering what necessary amendments will need to be made to the UK Bill as a result of the introduction of these Statutory Instruments.

Whatever the mechanism, the practical administration of foreign fishing vessel licensing will be undertaken by a Single Issuing Authority (SIA). The SIA will provide a single point of contact for foreign vessels and, for European Member States and the Commission. The intention is the SIA will act on behalf of the Welsh Ministers in relation to the licensing of foreign fishing vessels in Wales and the Welsh zone.

Our ability to set appropriate license conditions within Welsh waters will not be affected by this proposed delegation of administrative functions in relation to the issuing of licenses to foreign vessels.

Discussions on the establishment of the SIA remain ongoing. I would be happy to update the Committee at the appropriate time, including any details of financial implications for Welsh Government.

Fishing opportunities and quota share

I have consistently said I want Welsh fishers to receive their fair share of fishing opportunities within Welsh waters. I have written to UK Ministers expressing my views and I will continue to press for a better settlement. Any rebalancing of the share of fishing opportunities between the UK and EU following our exit from the EU should be used to redress this imbalance.

Financial assistance powers and future funding

We are working with UK Government and the other Devolved Administrations to identify scope to maximise the economic growth of the UK's marine sectors. This work will guide policy in how best to support the sustainable growth of the different industry sectors in a strategic and streamlined way.

Access to markets

Welsh Government is working with industry to grow the Welsh fisheries industry, through the industry led Wales Seafood Strategy.

International markets – careful consideration needs to be given to the fact most of the seafood produced in Wales is exported alive therefore freight times are a consideration for target markets. There are also cultural and religious considerations. Welsh Government promotes its seafood to a global market the largest global seafood trade show in Brussels annually and also through targeted trade missions: 2017 – China, 2018 - Hong Kong.

Domestic markets - the seafood species routinely caught in Wales are not normally those eaten in Wales and the UK and as such it would take a multi-generational change in eating habits to replace the international markets with domestic markets. However, any new quota regime may see a change in species caught and Welsh Government will need to be agile in assisting the industry to establish markets for these products.

Brexit and our seas and future fisheries policy

Brexit and our seas is intended to start a conversation and to inform our future fisheries policy. In order to undertake a meaningful consultation exercise in this respect we first need a better picture of the fisheries management arrangements that will be in place post EU exit. Consequently, the consultation will be published when I am confident we can reflect the latest position.

Regards,

A handwritten signature in cursive script that reads "Lesley Griffiths". The signature is written in black ink and is positioned above the printed name and title.

Lesley Griffiths AC/AM

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

Welsh Government response to the Constitutional and Legislative Affairs Committee report (published 12 February 2019) on the Welsh Government's Legislative Consent Memorandum on the Fisheries Bill

CLAC Recommendation	Welsh Government Response
<p>Recommendation 1</p> <p>During the debate on the consent motion in respect of the Legislative Consent Memorandum, the Minister should explain her views about the amount of legislative power being provided to the Welsh Ministers through the UK Government's Fisheries Bill.</p>	<p>Accept</p> <p>The First Minister has written to the Climate Change, Environment and Rural Affairs Committee in general terms on this matter. However, I am happy to explain the Government's view on this during the debate also.</p>
<p>Recommendation 2</p> <p>The Minister should write to this Committee to:</p> <p>(i) clarify which provisions within the Bill are necessary solely for the purpose of providing a common UK legislative framework;</p> <p>(ii) clarify which provisions within the Bill (and the legislative competence of the Assembly) are not necessary for the purpose of providing a common legislative framework and in each case the reason for their inclusion;</p> <p>(iii) confirm that it is her intention to bring forward a Welsh Fisheries Bill as soon as possible;</p> <p>(iv) explain how a Welsh Fisheries Bill will work with the UK Fisheries Bill, particularly in the context of the common framework.</p>	<p>Accept</p> <p>(i) Clauses 1 – 6 and Schedule 1 are all in relation to Joint Fisheries Statement. Clauses 9 – 17 and Schedules 2 and 3 are providing common licencing powers, setting clearly who is responsible for licencing which vessels, other provisions within the Bill are necessary for the functioning of the framework, Clauses 31 – 38 and Schedule 6.</p> <p>(ii) Brexit has created an urgency to ensure immediate arrangements are in place while preserving our ability to create new systems in the future.</p> <p>At present the Assembly only has legislative competence for fisheries matters in relation to Wales (i.e. the first 12 nautical miles of territorial sea). The Welsh Ministers' Executive Competence in this area, however, extends to both Wales and the Welsh zone. In order to make appropriate provision in primary legislation at this stage, therefore, it was necessary to proceed with the provisions in the UK Fisheries Bill. The Welsh Government has been able to secure the additional legislative competence for the Assembly via the UK Fisheries Bill and, consequently, the Assembly will not suffer with this restriction on its legislative competence as we move</p>

	<p>forward.</p> <p>I see the Welsh provisions, not related to the common framework, as transitional subject to the introduction at the appropriate time of a Welsh Fisheries Bill which is able to include provisions which apply to both Wales and the Welsh zone and Welsh fishing Boats beyond that zone</p> <p>Schedule 4 provides Welsh Ministers with the power to create financial assistance schemes in relation to Wales. Schedule 7 provides powers to Welsh Ministers via amendments to the Marine and Coastal Access Act 2009 in relation to the exploitation of the sea fisheries resources. Neither of these provisions could have been included in a Welsh Fisheries Bill at this time as both provisions have elements which apply in the Welsh zone beyond Wales for which the National Assembly for Wales currently has no competence.</p> <p>(iii) In regards to a Welsh Fisheries Bill, it is likely we will at some stage need to make further fisheries provisions in a Welsh Act. The powers we are seeking in this UK Fisheries Bill are needed as soon as possible in order to ensure that the operation of Welsh fisheries is as effective as possible. However, until the UK Fisheries Bill has passed through Parliament it is difficult to commit to a timetable. We are dependent on a number of provisions, and in particular the extension of the Assembly's legislative competence.</p> <p>(iv) It is difficult to give a firm answer to this at this time. The final provisions of the UK Fisheries Bill are not yet know but any gaps which become apparent as we move post-Brexit (and having secured the additional legislative competence) can then be dealt with via a Welsh Fisheries Bill.</p>
<p>Recommendation 3</p> <p>The Minister should seek an amendment to the UK Fisheries Bill to insert a sunset clause in order to ensure there is future clarity about the application of primary legislation on fisheries in Wales.</p>	<p>Reject</p> <p>I see the Welsh provisions, not related to the common framework, as transitional until a Welsh Fisheries Bill is introduced. As and when the future direction of Welsh fisheries management becomes clear, further analysis of the necessary primary powers</p>

	<p>can be undertaken and it will only be appropriate to consider the terms of a Welsh Fisheries at this stage.</p> <p>In addition, as I note above, until the UK Fisheries Bill has passed through Parliament it is difficult to commit to a timetable. We are dependent on a number of provisions, and in particular the extension of the Assembly's legislative competence. Currently this is to be commenced by the Secretary of State by an Order. I am seeking for this to be commenced automatically.</p> <p>My position remains therefore it is not appropriate for a sunset clause to be included in the Bill (given the current uncertainties regarding the future management of Welsh fisheries) but I restate my commitment to bring forward Welsh legislation as soon as possible.</p>
<p>Recommendation 4</p> <p>The Minister should provide an update to the Committee about progress on resolving the Welsh Government's concerns with clause 18 of the UK Government's Fisheries Bill, including an explanation of whether the inter-governmental agreement spoken of is likely to be put in place and, if so, if it would, in effect, allow UK Ministers to act in devolved areas without any scrutiny by the National Assembly.</p>	<p>Accept</p> <p>This is a red line for me and we have sought for amendments to the Bill on this matter. We have been unable to reach agreement with the UK Government on an amendment which would expressly resolve this matter. However, I am happy we have made progress on the matter (described below) and I am content with the approach we have agreed with UK Government.</p> <p>To overcome the concerns raised, my officials have worked with Defra to obtain further reassurances. I have reached an agreement with the Secretary of State for Environment, Food and Rural Affairs to set out in the Fisheries MoU, more detail on the intended use of the power and strengthened consultations processes. This will align the work already underway on establishing an agreed Dispute Resolution Mechanism. Officials are working together, as a matter of priority, to agree the detail needed. I intend to share the outcome of these discussions in advance of the debate on the consent motion.</p>
<p>Recommendation 5</p> <p>The Minister should work towards including a legislative provision for a dispute</p>	<p>Reject</p> <p>I do not accept a legislative provision is necessary on this matter. However, it is</p>

<p>resolution mechanism within the UK Government's Fisheries Bill and keep the Committee updated with detailed information about her discussions with the UK Government about such provision.</p>	<p>imperative we have a fit for purpose dispute resolution mechanism in place. As such, an intergovernmental dispute resolution mechanism is being taken forward within the parameters of existing and emerging intergovernmental agreements and ways of working. Welsh Government officials are working with UK Government and Devolved Administrations on the final mechanism and further detail on the outcome of discussions on this will be made available to the Committee as soon as possible.</p>
<p>Recommendation 6</p> <p>As regards notifying the National Assembly of regulations made by the UK Ministers in devolved areas under the Fisheries Bill, once enacted, the Minister should commit to following an equivalent procedure to that set out in Standing Order 30C.</p>	<p>I note the Committee's recommendation and will give it further consideration and respond in due course.</p>
<p>Recommendation 7</p> <p>The Minister should ensure that the information requested in recommendations 2, 4 and 5 should be provided to the Committee in good time before a legislative consent motion seeking the consent of the Assembly in respect of provisions in the UK Government's Fisheries Bill is debated. Progress on implementing recommendations 3 and 6 should be provided during the debate on the legislative consent motion.</p>	<p>Accept</p> <p>It is my intention to provide all of the information requested on all recommendations in good time before a legislative consent motion seeking the consent of the Assembly, to enable full consideration by Members in advance of the debate.</p>



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

SeneddCLA@assembly.wales

27 March 2019

Dear Mick,

I am writing in response to your letter dated 21 February 2019 about correspondence concerning the:

- **Interpretation of the European Union (Withdrawal) Act 2018 and the Intergovernmental Agreement on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks; and**
- **Scrutiny of regulations arising from the European Union (Withdrawal) Act 2018**

We have exchanged a number of letters in relation to these matters in the last few months. The UK SI programme where it intersects with devolved competency has largely come to an end now ahead of exit day.

I have previously responded on our different interpretation of a “new” policy in a number of letters and my response to your recent report on the scrutiny of regulations under the EU (Withdrawal) Act provides you with our position on this.

I have also stated our position on the process of consenting to UK Government EU Exit SIs in previous correspondence, most notably in my letter to the Presiding Officer dated 11 January 2019, of which you were a copy recipient.

Finally, I do not accept your assertion that the National Assembly is being by-passed by this consenting process. My response to your progress report sets out our interpretation of these circumstances.

I think we should agree to disagree on these issues and move on to focus on the remaining Welsh EU Exit SIs that have been laid in the National Assembly under the affirmative procedure as well as the reality of leaving the EU and working to protect the welfare of citizens, as far as possible, in the event of a no deal Brexit.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
YP.PrifWeinidog@llyw.cymru • ps.firstminister@gov.wales

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

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

The UK's withdrawal from the European Union has created an unprecedented legislative programme across the UK and we have all been working to ensure that we will be ready for exit day. I want to thank you for your Committee's diligence in scrutinising both the Welsh and UK SI programme arising from the extraordinary circumstances surrounding Brexit. We will continue to work with the Committee on these matters as we approach and pass exit day.

Yours sincerely

A handwritten signature in black ink that reads "Mark". The letters are cursive and fluid, with a large initial 'M'.

MARK DRAKEFORD

Ein cyf/Our ref MA-P/VG/1254/19

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

28 March 2019

Dear Mick,

Following CLAC's recent inquiry into inter-governmental relations, I felt it appropriate to update the Committee with an update post the first Four Nations Ministerial meeting. The meeting, in London on Monday 11 March, was held to discuss the health challenges posed by Brexit.

The meeting was attended by the UK Government Minister of State for Health, Stephen Hammond MP, Scottish Government Minister for Public Health Joe Fitzpatrick MSP and Northern Ireland's Permanent Secretary Richard Pengelly. We jointly reviewed the steps being taken across the UK to ensure continuity of supply of medicines and medical equipment; workforce; resilience and emergency response, and the reciprocal healthcare agreements following the UK's exit from the EU. As you are aware, plans have been put in place across all four nations, as well as shared arrangements at UK level.

During the discussions I emphasised my deep concern over the proposed £30k cap for migration within the Immigration White Paper and the classification of care work as low skilled. This proposed cap represents a real challenge for the economy of Wales and for recruitment and retention within the health and social care sector specifically. Stephen Hammond recognised and shared these concerns. However, immigration policy sits with the Home Office, and regrettably he did not commit to raising the issue with his ministerial colleagues.

We also discussed reciprocal healthcare arrangements post Brexit and confirmed the close and effective working between governments on the legislative requirements and provisions in this area. I expressed my strong preference for EFTA wide arrangements rather than bilateral agreements with each member state. The EU will not respond until a deal is agreed by the UK Parliament and is advising its members not to negotiate bilaterally with the UK.

In a no deal scenario the existing reciprocal healthcare arrangements would be switched off. The UK Government has written to all EU Member States asking them to continue current arrangements until 31 December 2020. Arrangements would only be in place for countries

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Gohebiaeth.Vaughan.Gething@llyw.cymru
Correspondence.Vaughan.Gething@gov.wales

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

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

with agreed bilateral arrangements (which would replicate the current situation) with the UK. The Healthcare (International Arrangements) Bill will be used to give effect to future healthcare arrangements which differ from the current arrangements.

The meeting concluded with agreement to the following key points and actions:

- should we face a situation where supplies need to be prioritised, decisions will be taken on a clinical basis by all four CMOs collectively, rather than by Ministers individually
- all 4 UK CMOs will take decisions on allocation and prioritisation of all supplies in the event of scarcity, without any Ministerial involvement/ intervention;
- DHSC to share information on radioisotope, including through regular calls between officials;
- DHSC to share correspondence between UKG and EU on reciprocal healthcare;
- WG to share analysis of social care workforce in Wales when available;
- all four administrations will continue to meet and discuss these plans regularly from now on, no matter what happens over the next few months.

I am sure you will agree that many of the steps now being taken to prepare for a no deal Brexit could and should have been avoided if the UK Government had been able to provide certainty on our future with Europe in good time. It is more important than ever that the UK Parliament and the UK Government finally rule out a no deal Brexit. Failure to do so risks causing real and lasting health and wellbeing consequences for individuals, families and communities across the UK.

Yours sincerely,



Vaughan Gething AC/AM

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services



Ein cyf/Our ref: MA-L/VG/0239/19

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

28 March 2019

Dear Mick,

Healthcare (International Arrangements) Bill

I am writing following the plenary debate on the Legislative Consent Motion for the Healthcare (International Arrangements) Bill. You raised a number of questions during the debate which I committed to respond to.

You queried whether the UK Ministers would be able to act in devolved areas without agreement from the Welsh Government. As you know, this is a complex area of devolved competence. It is for the UK Government to enter into international agreements with other territories and international organisations. Where these agreements have legal effect they are binding on Wales. The Secretary of State will be required to consult with the Welsh Ministers (and other Devolved Administrations) before making any regulations under Clause 2 to give effect to a healthcare agreement that contains provisions within the legislative competence of the National Assembly for Wales. The agreed Memorandum of Understanding (MoU) further sets out that the UK Government will not normally make regulations that have not been agreed with Ministers from Devolved Administrations. I would not expect the UK Government to act in devolved areas without agreement from the Welsh Government. The Bill and MoU offer new assurances on how policy decisions in this area will be taken forward.

Following a prolonged period of discussion, UK Government agreed to amend the Bill to introduce a consultation requirement and to agree the underpinning MoU. Given the initial response from UK Government to the concerns raised by Welsh Government I consider this to be a positive outcome as it ensures that Welsh Ministers will be involved from a meaningful stage of policy development.

In relation to your request that the National Assembly be notified when consent is given to UK Ministers where they are exercising the functions of Welsh Ministers in devolved areas, I appreciate your clarification that this did not relate to any amendment to the Bill to introduce a statutory requirement to seek consent. I note the Committee's recommendation. The Government is giving further consideration to this issue and will respond in due course.

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Gohebiaeth.Vaughan.Gething@llyw.cymru
Correspondence.Vaughan.Gething@gov.wales

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

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

As you pointed out in the plenary debate, the MoU states that the UK Government will not normally make regulations without securing agreement from the Devolved Administrations, and that where agreement cannot be reached, an exchange of Ministerial letters will be placed in both Houses of Parliament. I am happy to commit to provide the National Assembly with this exchange of correspondence should this take place.

I would like to thank the Committee again for your scrutiny of the Healthcare (International Arrangements) Bill and the LCM.

Yours sincerely,

A handwritten signature in black ink that reads "Vaughan Gething". The signature is written in a cursive style with a large, sweeping 'V' and 'G'.

Vaughan Gething AC/AM

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

Document is Restricted

NAHT Cymru further evidence for:

The Constitutional and Legislative Affairs Committee

NAHT welcomes the opportunity to make this submission to the Constitutional and Legislative Affairs Committee

NAHT represents more than 29,000 school leaders in early years, primary, secondary and special schools, making us the largest association for school leaders in the UK.

We represent, advise and train school leaders in Wales, England and Northern Ireland. We use our voice at the highest levels of government to influence policy for the benefit of leaders and learners everywhere.

Our new section, NAHT Edge, supports, develops and represents middle leaders in schools.

The purpose of the Senedd and Election (Wales) Bill is to:

- *rename the National Assembly to Senedd;*
- *lower the minimum voting age of National Assembly elections to 16; and*
- *deliver other reforms to the National Assembly's electoral and operational arrangements.*

In response to the above, NAHT Cymru presents the following:

1. 'Education for Sustainable Development and Global Citizenship: A Common Understanding for Schools' was published by the then Department for Children, Education, Lifelong Learning and Skills of the Welsh Assembly Government in July 2008 as an information document for schools (No: 065/2008).
2. The document contained relevant information to aid delivery of ESDGC in schools. The 'Themes' identified in the 'Common Understanding' covered the range of ESDGC and supported the delivery of statutory Subject Orders, relevant frameworks, other relevant non-statutory frameworks and the 14-19 Learning Core. At the time, the document also supported delivery of the Welsh Baccalaureate.
3. Within the document the content outlined issues related to a number of citizenship areas relevant to the new bill, including the 'choices and decisions' we make as individuals.
For example, through ESDGC, Foundation Phase pupils could be given opportunities to:
 - have their views listened to and listen to the views of others;
 - see that rules can help everyone;
 - and to understand choices and decisions have consequences.
4. At Key Stage 2, within the same area, pupils could be given opportunities to:
 - participate in aspects of school life helping to make decisions
 - what is meant by the rights of the child and that not everyone has these
 - that environment can be affected by the decisions we make individually and collectively.

5. Pupils at this same age group were also encouraged, through examples in the document, to become involved with activities such as the School Council, staff and student consultation processes, inviting the local councillor, AM, MP or MEP in for questioning on a local or controversial issue.
6. At Key Stage 3, under the same 'choices and decisions' area, learners could be given opportunities to:
 - participate in the school and wider community in order to change things;
 - develop opinions about the denial of human rights;
 - appreciate the value of a well balanced and well supported argument;
 - what is meant by basic human rights and that no everyone has them;
 - the principles of democracy;
 - how conflict can arise from different views about global issues.
7. Within the new curriculum, specifically the new 'Humanities' Area of Learning and Experience, children and young people will be expected to cover a range of relevant areas of learning. Pupils will be expected to study the past and present, and by imagining possible futures, will learn about people, place, time and beliefs. Among other areas, pupils will also:
 - understand historical, geographical, political, economic and societal concepts;
 - engage in learning experiences about rights, values, ethics, beliefs, religion, philosophy and spirituality;
 - positively contribute to their community and critically engage with local, national and global issues to become a responsible citizen of Wales and the wider world.
8. The Rights of Children and Young Persons (Wales) Measure 2011 made Wales the first country in the UK to incorporate the United Nations Convention on the Rights of the Child (UNCRC) into its domestic law. This means that all Welsh policy and legislation has to take into account children's rights. Schools have steadily incorporated many processes and activities into their work in order to enact the principles of children's rights into their daily work.
9. NAHT Cymru know of rights respecting schools who have built upon the generally accepted School Council expectations and have now developed a whole school Senedd, included pupils in Governing Body Committee activity and developed the work of students within school improvement processes.
10. Young people also have access to more information than ever before via the internet, social media and 24-hour news production. It is critical that as a nation, Wales recognises it's duty to ensure children and young people stay safe, assess information for accuracy and make better and more informed choices. Many schools already seek to do this within their learning activities.
11. As a result of the work already undertaken at school to prepare children and young people to take their place within a democratic society, and with the increased focus upon these issues within the imminent new curriculum, NAHT Cymru believe there is a great opportunity to engage young people in the proactive wider political process from 16 years of age onwards.
12. It will be critical that schools are provided with the resources and professional learning for staff on an ongoing basis

Rob Williams
NAHT Cymru – Director

Agenda Item 13

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

Document is Restricted

Document is Restricted

Document is Restricted

Agenda Item 15

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



Llywodraeth Cymru
Welsh Government

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

26 March 2019

Dear Mick.

UK Agriculture Bill – Supplementary Legislative Consent Memorandum

Thank you for the Committee's valuable scrutiny of the Legislative Consent Memorandum in relation to the UK Agriculture Bill and their report of January 2019. Officials are carefully considering the recommendations made and I will update the Committee on how we are addressing the concerns raised in due course.

In the interim, I wish to make the Committee aware of a Supplementary Legislative Consent Memorandum for the UK Agriculture Bill which I have laid today. I attach a copy for your reference.

The latest version of the Bill, as amended in Public Bill Committee, can be found here:
<https://publications.parliament.uk/pa/bills/cbill/2017-2019/0292/18292.pdf>

In the Legislative Consent Memorandum laid on 4 October 2018, I outlined two outstanding concerns in relation to the Red Meat Levy and the World Trade Organisation (WTO) Agreement on Agriculture. I am pleased to confirm we have now resolved these two concerns.

As the Committee will be aware, we have successfully secured an amendment to the Bill to provide appropriate means for resolving the long standing issue of repatriation of red meat levy. This is now part of the Bill (as amended in Public Bill Committee) at Clause 29. The new Clause confers powers on Ministers, acting jointly, to establish a scheme that requires agricultural boards within Great Britain to redistribute levy between themselves. Officials will now continue to develop a scheme in parallel to the legislation progressing through Parliament to ensure a fair system is in place as soon as possible.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

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

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

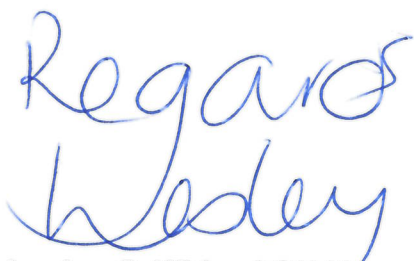
Pack Page 166

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

I am also pleased to inform the Committee we have secured a significant agreement with the UK Government to govern the use of Secretary of State powers in the UK Agriculture Bill in respect of the UK's compliance with the WTO Agreement on Agriculture. This ensures that the interests of Wales are fully taken into account. I attach a copy of the agreement for your reference. The agreement sets out a robust and transparent mechanism for involving Welsh Ministers in decision making as well as a mechanism for dispute resolution. I am pleased with this outcome, which provides a strong role and flexibility for Welsh Ministers following extensive and highly collaborative working between Governments. It also provides a valuable model which could be used in other areas where intergovernmental co-operation is needed and demonstrates both Governments' commitment to collaboration.

The Supplementary Memorandum updates the position in respect of the concerns outlined above as well as setting out additional amendments made to the UK Agriculture Bill during Public Bill Committee which make relevant provision within the legislative competence of the Assembly. I would be happy to provide further information the Committee would find helpful if required.

Further changes are likely to be made to the Bill at House of Commons Report stage and as it progresses through the Lords, not least in order to respond to points raised by the Committee's scrutiny. I, therefore, expect to lay further Memoranda before the Assembly at a later stage in the Bill process, as appropriate, prior to tabling a debate for the Assembly to consider consent to the LCM.



Lesley Griffiths AC/AM

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