

Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:	For further information contact:
Committee Room 1 – Senedd	Gareth Williams
Meeting date: 13 May 2019	Committee Clerk
Meeting time: 11.00	0300 200 6362
	SeneddCLA@assembly.wales

1 Introduction, apologies, substitutions and declarations of interest

2 Legislation (Wales) Bill: Stage 2 Proceedings

(11.00–14.00)

Jeremy Miles AM, Counsel General

Dylan Hughes, First Legislative Counsel

Claire Fife, Policy Adviser

The Constitutional and Legislative Affairs Committee agreed on 1 April 2019, under Standing Order 26.21, that the order of consideration for Stage 2 proceedings will be: Sections 1 to 5; Schedule 1; Sections 6 to 39; Schedule 2; Sections 40 to 43; Long title

Documents relevant to Stage 2 proceedings are available on the [Bill page](#).

3 Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3

14.00–14.10

Negative Resolution Instruments

3.1 SL(5)410 – The Regulated Services (Penalty Notices) (Wales) Regulations 2019 (Pages 1 – 41)

CLA(5)–15–19 – Paper 1 – Report

CLA(5)–15–19 – Paper 2 – Regulations

CLA(5)–15–19 – Paper 3 – Explanatory Memorandum



3.2 SL(5)411 – The Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019

(Pages 42 – 122)

CLA(5)–15–19 – Paper 4 – Report

CLA(5)–15–19 – Paper 5 – Regulations

CLA(5)–15–19 – Paper 6 – Explanatory Memorandum

4 Statutory Instruments requiring consent: Brexit

14.10–14.15

4.1 SICM(5)22 The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019

(Pages 123 – 228)

CLA(5)–15–19 – Paper 7 – Statutory Instrument Consent Memorandum

CLA(5)–15–19 – Paper 8 – Regulations

CLA(5)–15–19 – Paper 9 – Explanatory Memorandum

CLA(5)–15–19 – Paper 10 – Letter from the Minister for Housing & Local Government, 2 May 2019

CLA(5)–15–19 – Paper 11 – Written statement

CLA(5)–15–19 – Paper 12 – Commentary

5 Paper(s) to note

14.15–14.25

5.1 Letter from the Chair of External Affairs and Additional Legislation Committee: Attendance of Ministers at Monday committees

(Pages 229 – 230)

CLA(5)–15–19 – Paper 13 – Letter from the Chair of External Affairs and Additional Legislation Committee, 30 April 2019

5.2 Letter from the Counsel General: Legislation (Wales) Bill

(Pages 231 – 237)

CLA(5)–15–19 – Paper 14 – Letter from the Counsel General, 3 May

5.3 Letter from the Chancellor of the Duchy of Lancaster: Engagement between UK administrations

(Pages 238 – 241)

CLA(5)-15-19 – Paper 15 – Letter from the Chancellor of the Duchy of Lancaster, 3 May 2019

5.4 Letter from the Chair of the External Affairs and Additional Legislation Committee to the Minister for International Relations and the Welsh Language: Trade Bill – legislative consent

(Pages 242 – 243)

CLA(5)-15-19 – Paper 16 – Letter from the Chair of the External Affairs and Additional Legislation Committee, 7 May 2019

5.5 Letter from the Llywydd: Application of Standing Order 30A

(Pages 244 – 248)

CLA(5)-15-19 – Paper 17 – Letter from the Llywydd, 7 May 2019

CLA(5)-15-19 – Paper 18 – Letter from the Chair of the Committee to the Llywydd, 25 March 2019

5.6 Letter from the Counsel General: Joint Ministerial Committee (European Negotiations)

(Page 249)

CLA(5)-15-19 – Paper 19 – Letter from the Counsel General, 8 May 2019

5.7 Welsh Government Interim Response to the Law Commission's Report on Planning Law in Wales

(Pages 250 – 255)

CLA(5)-15-19 – Paper 20 – Written Statement and Interim Response

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

14.25

7 Supplementary Legislative Consent Memorandum on the Agriculture Bill

14.25 – 14.40

(Pages 256 – 273)

CLA(5)-15-19 – Paper 21 – Supplementary Legislative Consent Memorandum

CLA(5)-15-19 – Paper 22 – Legal note

CLA(5)-15-19 – Paper 23 – Letter from the Minister for Environment, Energy and Rural Affairs, 26 March 2019

**8 Consideration of response to letter from Bruce Crawford MSP,
Convener of the Finance and Constitution Committee**

14.40-14.50

(Pages 274 – 285)

CLA(5)-15-19 – Paper 24 – Letter from Bruce Crawford MSP, 26 March 2019

CLA(5)-15-19 – Paper 25 – Draft response

9 Forward Work Programme

14.50-15.00

(Pages 286 – 288)

CLA(5)-15-19 – Paper 26 – Forward Work Programme

Date of the next meeting – 20 May

SL(5)410 – The Regulated Services (Penalty Notices) (Wales) Regulations 2019

Background and Purpose

The Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”) reforms the regulation and inspection regime for social care in Wales and provides the statutory framework for the regulation and inspection of social care services and the social care workforce.

These Regulations prescribe the details of a penalty notice system, whereby the Welsh Ministers may issue a penalty to providers and responsible individuals of regulated services instead of bringing proceedings for an offence, should certain regulatory breaches occur. These Regulations prescribe the offences for which a penalty notice may be given.

These Regulations will replace the current Regulated Services (Penalty Notices) (Wales) Regulations 2017.

Procedure

Negative.

Technical Scrutiny

Two 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

Regulation 8(1) sets out prescribed offences under the Regulated Advocacy Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019, but states that these are prescribed offences “for the purposes of regulation 12”. Regulation 12 relates to the period during which proceedings may not be instituted. The correct reference should be to section 52(1) of the Act.

2. Standing order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts

The Welsh text of the offence “contravention of, or failure to comply with, requirements to have in place specified policies and procedures” in schedules 1 to 5 of these Regulations potentially gives rise to confusion. Due to the way it is drafted, it is not clear whether the failure to comply is in relation to the requirements to have policies and procedures in place, or in relation to the policies and procedures themselves.



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.

Legal Advisers

Constitutional and Legislative Affairs Committee

3 May 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. 887 (W. 159)

SOCIAL CARE, WALES

**The Regulated Services (Penalty
Notices) (Wales) Regulations 2019**

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”) establishes a new system of regulation and inspection of social care services in Wales, which replaces the system that was established under the Care Standards Act 2000.

Section 2 of and Schedule 1 to the Act specify the services which are “regulated services” for the purposes of the Act. These are a care home service, a secure accommodation service, a residential family centre service, an adoption service, a fostering service, and adult placement service, an advocacy service and a domiciliary support service.

Under section 3(1)(c) of the Act, a person who is registered to provide a regulated service is referred to as a “service provider”. Regulations made under section 27 of the Act impose requirements on service providers in respect of the regulated services they provide.

Section 6 of the Act requires a service provider to designate an individual as the “responsible individual” in respect of each place at, from, or in relation to which a regulated service is to be provided. Regulations made under section 28 of the Act impose requirements on the responsible individual in relation to the regulated services for which they are responsible.

Section 45 of the Act enables the Welsh Ministers to make regulations providing that it is an offence for a service provider to fail to comply with a specified provision of regulations made under section 27. Under section 46 of the Act, the Welsh Ministers may also make regulations providing that it is an offence for a responsible individual to fail to comply with a specified provision of regulations made under section 28 of the Act.

The Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 (“the 2017 Regulations”) provide that it is an offence for service providers and designated responsible individuals of regulated care home services, secure accommodation services, residential family centre services and domiciliary support services to fail to comply with any of the provisions specified in regulations 85 and 86 respectively of those Regulations.

The Regulated Adoption Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019 (“the Adoption Services Regulations”) provide that it is an offence for service providers and designated responsible individuals of regulated adoption services to fail to comply with any of the provisions specified in regulations 54 and 55 respectively of those Regulations.

The Adult Placement Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019 (“the Adult Placement Services Regulations”) provide that it is an offence for service providers and designated responsible individuals of regulated adult placement services to fail to comply with any of the provisions specified in regulations 64 and 65 respectively of those Regulations.

The Regulated Advocacy Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019 (“the Advocacy Services Regulations”) provide that it is an offence for service providers and designated responsible individuals of regulated advocacy services to fail to comply with any of the provisions specified in regulations 55 and 56 respectively of those Regulations.

The Regulated Fostering Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019 (“the Fostering Services Regulations”) provide that it is an offence for service providers and designated responsible individuals of regulated fostering services to fail to comply with any of the provisions specified in regulations 68 and 69 respectively of those Regulations.

Section 52(1) of the Act gives the Welsh Ministers the power to give a penalty notice to a person instead of bringing proceedings for an offence, but only in relation to those offences that are prescribed in regulations. Under section 52(2), only offences under sections 47 (false statements), 48 (failure to submit annual return) or 49 (failure to provide information) or under regulations made under sections 45 or 46 of the Act may be so prescribed.

These Regulations prescribe the offences for which a penalty notice may be given to a person instead of proceedings being brought in relation to the offence.

Regulations 3 and 4 prescribe the offences in the Act in respect of which the Welsh Ministers may give a penalty notice to a person. These Regulations also specify the amount of the penalty payable in respect of each of the prescribed offences.

The amount of the penalty payable in respect of each of the offences prescribed in these Regulations is expressed as multiples of the amount corresponding to level 4 on the standard scale (and range between multiples of one to two and a half times).

Regulation 5 and the first column in the table in Schedule 1 prescribe the offences in the 2017 Regulations in respect of which the Welsh Ministers may give a penalty notice to the service provider or designated responsible individual. The second and third columns contain a description of the prescribed offence and the amount of the penalty payable in respect of each offence.

Regulation 6 and the first column in the table in Schedule 2 prescribe the offences in the Adoption Services Regulations for which the Welsh Ministers may give a penalty notice to the service provider or designated responsible individual. The second and third columns contain a description of the prescribed offence and the amount of the penalty payable in respect of each offence.

Regulation 7 and the first column in the table in Schedule 3 prescribe the offences in the Adult Placement Services Regulations for which the Welsh Ministers may give a penalty notice to the service provider or designated responsible individual. The second and third columns contain a description of the prescribed offence and the amount of the penalty payable in respect of each offence.

Regulation 8 and the first column in the table in Schedule 4 prescribe the offences in the Advocacy Services Regulations for which the Welsh Ministers may give a penalty notice to the service provider or designated responsible individual. The second and third columns contain a description of the prescribed offence and the amount of the penalty payable in respect of each offence.

Regulation 9 and the first column in the table in Schedule 5 prescribe the offences in the Fostering Services Regulations for which the Welsh Ministers may give a penalty notice to the service provider or designated responsible individual. The second and third columns contain a description of the prescribed offence and the amount of the penalty payable in respect of each offence.

Regulations 10 and 11 make provision about the time by which a penalty notice must be paid and specify the way in which a payment may be made.

Regulation 12 makes provision about the period during which proceedings may not be instituted for the offence to which the penalty notice relates.

Regulation 13 makes provision about the circumstances in which a penalty notice, once given, may be withdrawn, the consequences of such withdrawal, and specifies when proceedings may be instituted or continued in respect of the offence to which the penalty notice relates.

Regulation 14 sets out the requirements for the content of a penalty notice.

Regulation 15 sets out the record-keeping requirements of the Welsh Ministers in respect of any penalty notice that is given.

Regulation 16 revokes the Regulated Services (Penalty Notices) (Wales) Regulations 2017.

The Welsh Ministers' Code of Practice on the carrying on of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Department of Health and Social Services, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

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. 887 (W. 159)

SOCIAL CARE, WALES

The Regulated Services (Penalty Notices) (Wales) Regulations 2019

Made 25 April 2019

Laid before the National Assembly for Wales
26 April 2019

Coming into force 1 July 2019

The Welsh Ministers, in exercise of the powers conferred by sections 52(1) and (6) and 187(1) of the Regulation and Inspection of Social Care (Wales) Act 2016⁽¹⁾, make the following Regulations⁽²⁾:

Title and commencement

1.—(1) The title of these Regulations is the Regulated Services (Penalty Notices) (Wales) Regulations 2019.

(2) These Regulations come into force on 1 July 2019.

Interpretation

2. In these Regulations—

“the Act” (“*y Ddeddf*”) means the Regulation and Inspection of Social Care (Wales) Act 2016;

“the 2017 Regulations” (“*Rheoliadau 2017*”) means the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017⁽³⁾;

“the Adoption Services Regulations” (“*y Rheoliadau Gwasanaethau Mabwysiadu*”) means the Regulated Adoption Services (Service

(1) 2016 anaw 2.

(2) See section 189 of the Act for the definition of “prescribed”.

(3) S.I. 2017/1264 (W. 295).

Providers and Responsible Individuals) (Wales) Regulations 2019(1);

“the Adult Placement Services Regulations” (“*y Rheoliadau Gwasanaethau Lleoli Oedolion*”) means the Adult Placement Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019(2);

“the Advocacy Services Regulations” (“*y Rheoliadau Gwasanaethau Eirioli*”) means the Regulated Advocacy Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019(3);

“the Fostering Services Regulations” (“*y Rheoliadau Gwasanaethau Maethu*”) means the Regulated Fostering Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019(4);

“offence” (“*trosedd*”) means a prescribed offence;

“payment period” (“*cyfnod talu*”) has the meaning given in regulation 10;

“penalty notice” (“*hysbysiad cosb*”) means a penalty notice given pursuant to section 52 of the Act;

“recipient” (“*derbynnnydd*”) means a person to whom a penalty notice is given in accordance with section 52 of the Act;

“service provider” (“*darparwr gwasanaeth*”) means a person whose application for registration as provider of a regulated service has been granted under section 7(1) of the Act.

Offences under the Act

3. An offence committed under section 47 (making false statements) of the Act is prescribed as an offence for the purposes of section 52(1) of that Act. The penalty to be paid is an amount corresponding to two and a half times level 4 on the standard scale(5).

4. An offence committed under section 48 (failure to submit an annual return) or 49 (failure to provide information) of the Act is prescribed as an offence for the purposes of section 52(1) of that Act. The penalty to be paid is an amount corresponding to level 4 on the standard scale.

(1) S.I. 2019/762 (W. 145).

(2) S.I. 2019/163 (W. 40).

(3) S.I. 2019/165 (W. 41).

(4) S.I. 2019/169 (W. 42).

(5) See section 37 of the Criminal Justice Act 1982 (c. 48) (“the 1982 Act”); at the date of the coming into force of these Regulations, level 4 on the standard scale is set at £2,500 (this figure may be increased by virtue of an amendment to the 1982 Act).

Offences under the 2017 Regulations

5.—(1) The offences under the provisions of the 2017 Regulations listed in the first column of the table in Schedule 1 are prescribed as offences for the purposes of section 52(1) of the Act.

(2) The second column of the table in Schedule 1 contains a description of the prescribed offence.

(3) The amount of the penalty to be paid for each offence is specified in the third column of the table in Schedule 1.

Offences under the Adoption Services Regulations

6.—(1) The offences under the provisions of the Adoption Services Regulations listed in the first column of the table in Schedule 2 are prescribed as offences for the purposes of section 52(1) of the Act.

(2) The second column of the table in Schedule 2 contains a description of the prescribed offence.

(3) The amount of the penalty to be paid for each offence is specified in the third column of the table in Schedule 2.

Offences under the Adult Placement Services Regulations

7.—(1) The offences under the provisions of the Adult Placement Services Regulations listed in the first column of the table in Schedule 3 are prescribed as offences for the purposes of section 52(1) of the Act.

(2) The second column of the table in Schedule 3 contains a description of the prescribed offence.

(3) The amount of the penalty to be paid for each offence is specified in the third column of the table in Schedule 3.

Offences under the Advocacy Services Regulations

8.—(1) The offences under the provisions of the Advocacy Services Regulations listed in the first column of the table in Schedule 4 are prescribed as offences for the purposes of regulation 12.

(2) The second column of the table in Schedule 4 contains a description of the prescribed offence.

(3) The amount of the penalty to be paid for each offence is specified in the third column of the table in Schedule 4.

Offences under the Fostering Services Regulations

9.—(1) The offences under the provisions of the Fostering Services Regulations listed in the first column of the table in Schedule 5 are prescribed as offences for the purposes of section 52(1) of the Act.

(2) The second column of the table in Schedule 5 contains a description of the prescribed offence.

(3) The amount of the penalty to be paid for each offence is specified in the third column of the table in Schedule 5.

Period for payment of the penalty

10.—(1) The time by which the penalty specified in a penalty notice is to be paid is the end of the period of 28 days beginning with the date of receipt of the notice (“payment period”).

(2) Section 184 of the Act⁽¹⁾ applies to a penalty notice as it applies to a notice required to be given under the Act.

Payment of the penalty

11.—(1) Payment of the penalty specified in a penalty notice must be made to the Welsh Ministers by the method specified in the notice.

(2) In any proceedings a certificate purporting to be signed by or on behalf of the Welsh Ministers stating that payment of a penalty was or was not received by the date specified in the certificate is evidence of the facts stated.

Period during which proceedings may not be instituted

12. Where a recipient is given a penalty notice, proceedings for the offence to which the notice relates may not be instituted against the recipient before the expiry of the payment period.

Withdrawal of penalty notice

13.—(1) The Welsh Ministers may withdraw a penalty notice by giving written notice of the withdrawal to the recipient if—

- (a) the Welsh Ministers determine that—
 - (i) it ought not to have been given, or
 - (ii) it ought not to have been given to the person named as the recipient; or
- (b) it appears to the Welsh Ministers that the notice contains material errors.

(1) Section 184 of the Act (service of documents etc.) specifies that notices may be hand delivered, may be left at a recipient’s address, sent by recorded delivery or, if the recipient has agreed to receive it electronically, by being sent electronically to an address provided for that purpose; subsection (8) provides that where a notice is sent by recorded delivery or electronically it is to be taken to have been received 48 hours after it is sent (unless the contrary is shown).

(2) A penalty notice may be withdrawn in accordance with paragraph (1) whether or not the payment period has expired, and whether or not the penalty has been paid.

(3) Where a penalty notice has been withdrawn in accordance with paragraph (1), the Welsh Ministers must repay any amount paid by way of penalty in pursuance of that notice to the person who paid it.

(4) Except as provided in paragraph (5), no proceedings may be instituted or continued against a recipient for the offence to which the penalty notice relates where the notice has been withdrawn in accordance with paragraph (1).

(5) Where a penalty notice has been withdrawn under paragraph (1)(b), proceedings may be instituted or continued for the offence in connection with which that penalty notice was given if a further penalty notice in respect of the offence has been given and the penalty has not been paid before the expiry of the payment period.

Content of penalty notice

14.—(1) A penalty notice must give such details of the circumstances alleged to constitute the offence as seem to the Welsh Ministers to be reasonably required to give the recipient information about it.

(2) A penalty notice must state—

- (a) the name and address of the recipient;
- (b) the amount of the penalty;
- (c) the payment period;
- (d) that payment within that period will discharge any liability for the offence;
- (e) the period within which proceedings in respect of the offence to which the notice relates will not be brought;
- (f) the consequences of the penalty not being paid before the expiry of the period for paying it;
- (g) the person to whom and the address at which the penalty may be paid and to which any correspondence about the penalty notice may be sent;
- (h) the means by which payment of the penalty may be made;
- (i) the grounds on which the penalty notice may be withdrawn.

Records

15. The Welsh Ministers must keep a record of any penalty notices given, which must include—

- (a) a copy of each penalty notice given;

- (b) a record of all payments made and the dates upon which they were received;
- (c) details of any penalty notice which was withdrawn and the grounds for its withdrawal;
- (d) details of whether the recipient was prosecuted for the offence for which the penalty notice was given.

Revocation

16. The Regulated Services (Penalty Notices) (Wales) Regulations 2017⁽¹⁾ are revoked.

Julie Morgan

Deputy Minister for Health and Social Services, under authority of the Minister for Health and Social Services, one of the Welsh Ministers
25 April 2019

⁽¹⁾ S.I. 2017/1292 (W. 298).

SCHEDULE 1 Regulation 5

Prescribed offences – services regulated under the 2017 Regulations

<i>Provision creating offence</i>	<i>General nature of the offence</i>	<i>Amount of penalty</i>
Regulation 7(3) and (5) of the 2017 Regulations	Contravention of, or failure to comply with, requirements in relation to the statement of purpose	An amount corresponding to two and a half times level 4 on the standard scale
Regulation 11(3) of the 2017 Regulations	Contravention of, or failure to comply with, requirements in relation to the financial sustainability of the service	An amount corresponding to level 4 on the standard scale
Regulation 12(1) and (2) of the 2017 Regulations	Contravention of, or failure to comply with, requirements to have in place specified policies and procedures	An amount corresponding to level 4 on the standard scale
Regulation 19(1), (2) and (3) of the 2017 Regulations	Contravention of, or failure to comply with, requirements in relation to the provision of information about the service	An amount corresponding to two times level 4 on the standard scale
Regulation 20(1) of the 2017 Regulations	Contravention of, or failure to comply with, requirements in relation to the provision of a service agreement	An amount corresponding to level 4 on the standard scale
Regulation 35(1) of the 2017 Regulations	Contravention of, or failure to comply with, requirements in relation to the fitness of staff	An amount corresponding to two and a half times level 4 on the standard scale

Regulation 38(1) of the 2017 Regulations	Contravention of, or failure to comply with, requirements in relation to the provision of information for staff	An amount corresponding to two times level 4 on the standard scale
Regulation 59(1), (2) and (3) of the 2017 Regulations	Contravention of, or failure to comply with, requirements in relation to records	An amount corresponding to two times level 4 on the standard scale
Regulation 60(1), (2) and (4) of the 2017 Regulations	Contravention of, or failure to comply with, requirements in relation to notifications	An amount corresponding to two times level 4 on the standard scale
Regulation 67(1) of the 2017 Regulations	Contravention of, or failure to comply with, requirements in relation to the duty of a responsible individual to appoint a manager	An amount corresponding to two and a half times level 4 on the standard scale
Regulation 74(1) and (2) of the 2017 Regulations	Contravention of, or failure to comply with, requirements in relation to the duty of a responsible individual to report on the adequacy of resources	An amount corresponding to two times level 4 on the standard scale
Regulation 75(1) of the 2017 Regulations	Contravention of, or failure to comply with, requirements in relation to the making by a responsible individual of other reports to the service provider	An amount corresponding to two times level 4 on the standard scale
Regulation 80(4) of the 2017 Regulations	Contravention of, or failure to comply with, requirements in relation to the	An amount corresponding to two times level 4 on the standard scale

<p>Regulation 81(1) of the 2017 Regulations</p>	<p>preparation by a responsible individual of a report in respect of a quality of care review</p>	<p>An amount corresponding to two times level 4 on the standard scale</p>
<p>Regulation 84(1) and (3) of the 2017 Regulations</p>	<p>Contravention of, or failure to comply with, requirements in relation to the preparation by a responsible individual of a statement of compliance with the requirements as to standards of care and support</p> <p>Contravention of, or failure to comply with requirements in relation to the responsible individual's duty to make notifications to the service regulator</p>	<p>An amount corresponding to two times level 4 on the standard scale</p>

SCHEDULE 2 Regulation 6

Prescribed offences – regulated adoption services

<i>Provision creating offence</i>	<i>General nature of the offence</i>	<i>Amount of penalty</i>
Regulation 5(3) and (5) of the Adoption Services Regulations	Contravention of, or failure to comply with, requirement to give notice of revision to the statement of purpose	An amount corresponding to two and a half times level 4 on the standard scale
Regulation 9(3) of the Adoption Services Regulations	Contravention of, or failure to comply with, requirement to provide copy accounts	An amount corresponding to level 4 on the standard scale
Regulation 10(1) of the Adoption Services Regulations	Contravention of, or failure to comply with, requirements to have in place specified policies and procedures	An amount corresponding to level 4 on the standard scale
Regulation 13(1), (2) and (3) of the Adoption Services Regulations	Contravention of, or failure to comply with, requirements in relation to the provision of information about the service	An amount corresponding to two times level 4 on the standard scale
Regulation 14(1) of the Adoption Services Regulations	Contravention of, or failure to comply with, requirements in relation to the provision of a service agreement	An amount corresponding to level 4 on the standard scale
Regulation 23(1) of the Adoption Services Regulations	Contravention of, or failure to comply with, requirements in relation to the fitness of staff	An amount corresponding to two and a half times level 4 on the standard scale
Regulation	Contravention	An amount

26(1) of the Adoption Services Regulations	of, or failure to comply with, requirements in relation to the provision of information for staff	corresponding to two times level 4 on the standard scale
Regulation 30(1) and (2) of the Adoption Services Regulations	Contravention of, or failure to comply with, requirements in relation to records	An amount corresponding to two times level 4 on the standard scale
Regulation 31(1), (2), (3) and (5) of the Adoption Services Regulations	Contravention of, or failure to comply with, requirements in relation to notifications	An amount corresponding to two times level 4 on the standard scale
Regulation 36(1) of the Adoption Services Regulations	Contravention of, or failure to comply with, requirements in relation to the duty of a responsible individual to appoint a manager	An amount corresponding to two and a half times level 4 on the standard scale
Regulation 43(1) and (2) of the Adoption Services Regulations	Contravention of, or failure to comply with, requirements in relation to the duty of a responsible individual to report on the adequacy of resources	An amount corresponding to two times level 4 on the standard scale
Regulation 44(1) of the Adoption Services Regulations	Contravention of, or failure to comply with, requirements in relation to the making by a responsible individual of other reports to the service provider	An amount corresponding to two times level 4 on the standard scale
Regulation 49(4) of the Adoption Services Regulations	Contravention of, or failure to comply with, requirements in relation to the preparation by a	An amount corresponding to two times level 4 on the standard scale

<p>Regulation 50(1) of the Adoption Services Regulations</p>	<p>responsible individual of a report in respect of a quality of service review Contravention of, or failure to comply with, requirements in relation to the preparation by a responsible individual of a statement of compliance with the requirements as to standards of support</p>	<p>An amount corresponding to two times level 4 on the standard scale</p>
<p>Regulation 53(1) and (3) of the Adoption Services Regulations</p>	<p>Contravention of, or failure to comply with requirements in relation to the responsible individual's duty to make notifications to the service regulator</p>	<p>An amount corresponding to two times level 4 on the standard scale</p>

SCHEDULE 3 Regulation 7

Prescribed offences – adult placement services

<i>Provision creating offence</i>	<i>General nature of the offence</i>	<i>Amount of penalty</i>
Regulation 3(3) and (5) of the Adult Placement Services Regulations	Contravention of, or failure to comply with, requirement to give notice of revision to the statement of purpose	An amount corresponding to two and a half times level 4 on the standard scale
Regulation 7(3) of the Adult Placement Services Regulations	Contravention of, or failure to comply with, requirement to provide copy accounts	An amount corresponding to level 4 on the standard scale
Regulation 8(1) of the Adult Placement Services Regulations	Contravention of, or failure to comply with, requirements to have in place specified policies and procedures	An amount corresponding to level 4 on the standard scale
Regulation 11(1) of the Adult Placement Services Regulations	Contravention of, or failure to comply with, requirements in relation to the provision of a carer agreement	An amount corresponding to level 4 on the standard scale
Regulation 16(1), (2) and (3) of the Adult Placement Services Regulations	Contravention of, or failure to comply with, requirements in relation to the provision of information about the service	An amount corresponding to two times level 4 on the standard scale
Regulation 28(1) of the Adult Placement Services Regulations	Contravention of, or failure to comply with, requirements in relation to the fitness of staff	An amount corresponding to two and a half times level 4 on the standard scale
Regulation 31(1) of the	Contravention of, or failure to	An amount corresponding

Adult Placement Services Regulations	comply with, requirements in relation to the provision of information for staff	to two times level 4 on the standard scale
Regulation 40 (1) and (2) of the Adult Placement Services Regulations	Contravention of, or failure to comply with, requirements in relation to records	An amount corresponding to two times level 4 on the standard scale
Regulation 41(1) and (3) of the Adult Placement Services Regulations	Contravention of, or failure to comply with, requirements in relation to notifications	An amount corresponding to two times level 4 on the standard scale
Regulation 46(1) of the Adult Placement Services Regulations	Contravention of, or failure to comply with, requirements in relation to the duty of a responsible individual to appoint a manager	An amount corresponding to two and a half times level 4 on the standard scale
Regulation 53(1) and (2) of the Adult Placement Services Regulations	Contravention of, or failure to comply with, requirements in relation to the duty of a responsible individual to report on the adequacy of resources	An amount corresponding to two times level 4 on the standard scale
Regulation 54(1) of the Adult Placement Services Regulations	Contravention of, or failure to comply with, requirements in relation to the making by a responsible individual of other reports to the service provider	An amount corresponding to two times level 4 on the standard scale
Regulation 59(4) of the Adult Placement Services Regulations	Contravention of, or failure to comply with, requirements in relation to the preparation by a responsible	An amount corresponding to two times level 4 on the standard scale

	individual of a report in respect of a quality of care review	
Regulation 60(1) of the Adult Placement Services Regulations	Contravention of, or failure to comply with, requirements in relation to the preparation by a responsible individual of a statement of compliance with the requirements as to standards of care and support	An amount corresponding to two times level 4 on the standard scale
Regulation 63(1) and (3) of the Adult Placement Services Regulations	Contravention of, or failure to comply with requirements in relation to the responsible individual's duty to make notifications to the service regulator	An amount corresponding to two times level 4 on the standard scale

SCHEDULE 4 Regulation 8

Prescribed offences – regulated advocacy services

<i>Provision creating offence</i>	<i>General nature of the offence</i>	<i>Amount of penalty</i>
Regulation 4(3) and (5) of the Advocacy Services Regulations	Contravention of, or failure to comply with, requirement to give notice of revision to the statement of purpose	An amount corresponding to two and a half times level 4 on the standard scale
Regulation 8(3) of the Advocacy Services Regulations	Contravention of, or failure to comply with, requirement to provide copy accounts	An amount corresponding to level 4 on the standard scale
Regulation 9(1) of the Advocacy Services Regulations	Contravention of, or failure to comply with, requirements to have in place specified policies and procedures	An amount corresponding to level 4 on the standard scale
Regulation 15(1), (2) and (3) of the Advocacy Services Regulations	Contravention of, or failure to comply with, requirements in relation to the provision of information about the service	An amount corresponding to two times level 4 on the standard scale
Regulation 24(1) of the Advocacy Services Regulations	Contravention of, or failure to comply with, requirements in relation to the fitness of staff	An amount corresponding to two and a half times level 4 on the standard scale
Regulation 27(1) of the Advocacy Services Regulations	Contravention of, or failure to comply with, requirements in relation to the provision of information for staff	An amount corresponding to two times level 4 on the standard scale
Regulation 31(1) and (2) of	Contravention of, or failure to	An amount corresponding

the Advocacy Services Regulations	comply with, requirements in relation to records	to two times level 4 on the standard scale
Regulation 32(1) and (3) of the Advocacy Services Regulations	Contravention of, or failure to comply with, requirements in relation to notifications	An amount corresponding to two times level 4 on the standard scale
Regulation 37(1) of the Advocacy Services Regulations	Contravention of, or failure to comply with, requirements in relation to the duty of a responsible individual to appoint a manager	An amount corresponding to two and a half times level 4 on the standard scale
Regulation 44(1) and (2) of the Advocacy Services Regulations	Contravention of, or failure to comply with, requirements in relation to the duty of a responsible individual to report on the adequacy of resources	An amount corresponding to two times level 4 on the standard scale
Regulation 45(1) of the Advocacy Services Regulations	Contravention of, or failure to comply with, requirements in relation to the making by a responsible individual of other reports to the service provider	An amount corresponding to two times level 4 on the standard scale
Regulation 50(4) of the Advocacy Services Regulations	Contravention of, or failure to comply with, requirements in relation to the preparation by a responsible individual of a report in respect of a quality of service review	An amount corresponding to two times level 4 on the standard scale
Regulation 51(1) of the Advocacy Services	Contravention of, or failure to comply with, requirements in	An amount corresponding to two times level 4 on the

Regulations	relation to the preparation by a responsible individual of a statement of compliance with the requirements as to standards of advocacy	standard scale
Regulation 54(1) and (3) of the Advocacy Services Regulations	Contravention of, or failure to comply with requirements in relation to the responsible individual's duty to make notifications to the service regulator	An amount corresponding to two times level 4 on the standard scale

SCHEDULE 5 Regulation 9

Prescribed offences – regulated fostering services

<i>Provision creating offence</i>	<i>General nature of the offence</i>	<i>Amount of penalty</i>
Regulation 4(3) of the Fostering Services Regulations	Contravention of, or failure to comply with, requirement to give notice of revision to the statement of purpose	An amount corresponding to two and a half times level 4 on the standard scale
Regulation 8(3) of the Fostering Services Regulations	Contravention of, or failure to comply with, requirement to provide copy accounts	An amount corresponding to level 4 on the standard scale
Regulation 9(1) of the Fostering Services Regulations	Contravention of, or failure to comply with, requirements to have in place specified policies and procedures	An amount corresponding to level 4 on the standard scale
Regulation 12(1), (2) and (3) of the Fostering Services Regulations	Contravention of, or failure to comply with, requirements in relation to the provision of information about the service	An amount corresponding to two times level 4 on the standard scale
Regulation 30(1) of the Fostering Services Regulations	Contravention of, or failure to comply with, requirements in relation to the fitness of staff	An amount corresponding to two and a half times level 4 on the standard scale
Regulation 33(1) of the Fostering Services Regulations	Contravention of, or failure to comply with, requirements in relation to the provision of information for staff	An amount corresponding to two times level 4 on the standard scale
Regulation	Contravention	An amount

39(1) and (2) of the Fostering Services Regulations	of, or failure to comply with, requirements in relation to records	corresponding to two times level 4 on the standard scale
Regulation 40(1), (2), (3), (4), (5) and (8) of the Fostering Services Regulations	Contravention of, or failure to comply with, requirements in relation to notifications	An amount corresponding to two times level 4 on the standard scale
Regulation 50(1) of the Fostering Services Regulations	Contravention of, or failure to comply with, requirements in relation to the duty of a responsible individual to appoint a manager	An amount corresponding to two and a half times level 4 on the standard scale
Regulation 57(1) and (2) of the Fostering Services Regulations	Contravention of, or failure to comply with, requirements in relation to the duty of a responsible individual to report on the adequacy of resources	An amount corresponding to two times level 4 on the standard scale
Regulation 58(1) of the Fostering Services Regulations	Contravention of, or failure to comply with, requirements in relation to the making by a responsible individual of other reports to the service provider	An amount corresponding to two times level 4 on the standard scale
Regulation 63(4) of the Fostering Services Regulations	Contravention of, or failure to comply with, requirements in relation to the preparation by a responsible individual of a report in respect of a quality of care review	An amount corresponding to two times level 4 on the standard scale
Regulation 64(1) of the Fostering Services Regulations	Contravention of, or failure to comply with,	An amount corresponding to two times level 4 on the standard scale

Services Regulations	requirements in relation to the preparation by a responsible individual of a statement of compliance with the requirements as to standards of care and support	level 4 on the standard scale
Regulation 67(1) and (4) of the Fostering Services Regulations	Contravention of, or failure to comply with requirements in relation to the responsible individual's duty to make notifications to the Welsh Ministers	An amount corresponding to two times level 4 on the standard scale

Explanatory Memorandum to:

The Regulated Services (Penalty Notices) (Wales) Regulations 2019

This Explanatory Memorandum has been prepared by the Health and Social Services Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of:

The Regulated Services (Penalty Notices) (Wales) Regulations 2019

I am satisfied that the benefits justify the likely costs.

Julie Morgan
Deputy Minister for Health and Social Services

26 April 2019

Part 1 – OVERVIEW

1. Description

The Regulation and Inspection of Social Care (Wales) Act 2016 (“the 2016 Act”) reforms the regulation and inspection regime for social care in Wales and provides the statutory framework for the regulation and inspection of social care services and the social care workforce. It enables the Welsh Ministers to put in place a number of items of subordinate legislation through the making of regulations, the publication of guidance and the issuing of codes of practice.

This Explanatory Memorandum relates to *The Regulated Services (Penalty Notices) (Wales) Regulations 2019* (‘the 2019 Regulations’) which will come into force on 1 July 2019. These Regulations prescribe the details of a penalty notice system, whereby the regulator - the Care Inspectorate Wales (CIW) - may issue a penalty to providers and responsible individuals (RIs) of regulated services in lieu of prosecution, should certain regulatory breaches occur.

This Explanatory Memorandum and Regulatory Impact Assessment relate to penalty notices as may be issued to all services regulated under the 2016 Act. These are:

- Care home services;
- Secure accommodation services;
- Residential family centre services;
- Domiciliary support services;
- Adoption services;
- Fostering services;
- Advocacy services; and
- Adult placement services.

The 2019 Regulations will replace the current *Regulated Services (Penalty Notices) (Wales) Regulations 2017* which only apply to care home, secure accommodation, residential family centre and domiciliary support services.

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

No specific matters have been identified.

3. Legislative background

The powers enabling the 2019 Regulations to be made are contained in section 52 of the 2016 Act. Section 52 is a regulation making power to enable Welsh Ministers to prescribe offences in respect of which a penalty notice may be issued. Only offences committed under sections 47, 48 and 49 of the 2016 Act, and under Regulations made under sections 45 and 46 of the 2016 Act, may be so prescribed.

Further details about the relevant sections of the 2016 Act are set out below:

- section 47 - a person who knowingly makes false or materially misleading statements in relation to:
 - an application for registration as a service provider,
 - an application for variation or cancellation of registration,
 - an annual return,
 - responding to a requirement to provide information imposed by the Welsh Ministers;
- section 48 - failure of a service provider to submit an annual return in time;
- section 49 - failure to comply with a requirement to provide information imposed by the Welsh Ministers by:
 - a service provider;
 - a responsible individual;
 - a person employed by or otherwise working for a service provider; and
 - any person who has held any of these positions.
- Regulations made under section 45 of the 2016 Act detail which of the breaches of the requirements in regulations made under section 27 of the 2016 Act – requirements on regulated service providers – are criminal offences.
- Regulations under section 46 of the 2016 Act detail which of the breaches of the requirements in regulations made under section 28 of the 2016 Act - requirements on responsible individuals – are criminal offences.

A number of regulations made under section 45 and 46 of the 2016 Act provide that it is an offence to fail to comply with specified provisions of those regulations, including:

- *The Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017,*
- *The Regulated Fostering Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019,*
- *The Regulated Advocacy Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019,*
- *The Adult Placement Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019* and
- *The Regulated Adoption Services (Service Providers and Responsible Individuals) Regulations 2019.*

The 2019 Regulations made under section 52 of the 2016 Act, set out which of the offences listed in the above regulations may be discharged by the service provider or responsible individual (as applicable) by payment of a penalty.

The purpose of the penalty notice is to offer the recipient of the notice the opportunity to discharge any liability for the offence by paying the sum specified in the notice. If the

person pays the sum specified in the notice as required, the person cannot be prosecuted for the offence to which the notice relates.

The 2019 Regulations are being laid under the negative procedure.

4. Purpose & intended effect of the legislation

The purpose of the 2019 Regulations is to set out the details of a penalty notice system, enabling CIW to issue a penalty notice to providers and responsible individuals of all services regulated under the 2016 Act, should certain offences occur.

The intention is to create a more flexible system of regulation so that CIW has a full range of powers at its disposal to deal with a failure by service providers and responsible individuals to comply with the requirements imposed on them under the 2016 Act and associated regulations.

Section 52(6) of the 2016 Act states that Welsh Ministers may by regulations make provision –

- as to the form and content of the penalty notices;
- as to the sum payable under a penalty notice and the time within which it is to be paid (including provision permitting a different sum to be payable in relation to different offences and according to the time by which it is paid);
- determining the ways in which a sum may be paid;
- as to the records to be kept in relation to penalty notices;
- about the circumstances in which a penalty notice may be withdrawn, including provision about –
 - the repayment of any sum paid before a notice is withdrawn, and
 - the circumstances in which proceedings for an offence may not be brought despite the withdrawal of a notice.

The approach in the 2019 Regulations is to provide clarity to both the regulator and the recipient of the penalty notice as to the way in which the scheme will operate.

Penalty amounts vary depending on the nature of the offence committed, but are currently capped at a maximum of two and a half times level 4 on the standard scale (Level 4 is currently set at £2,500).

Prescribing the amounts by reference to the standard scale means the 2019 Regulations will not need to be amended should the level change as a result of amendments being made to the Criminal Justice Act 1982.

5. Consultation

The suite of Regulations made under the 2016 Act were developed in three overlapping phases. During phase two of implementation, *The Regulated Services (Penalty Notices) (Wales) Regulations 2017* established a penalty notice system for care home services, domiciliary support services, secure accommodation services and residential family centre services. Those regulations were consulted on between 2 May and 15 July 2017. A summary of the comments that were made and the Welsh Government's response to

these is set out in the consultation summary report¹ published on the Welsh Government website on 21 November 2017.

The proposal to extend the penalty notice system to phase three services (adoption, fostering, adult placement and advocacy services) was also highlighted within the consultation documents for each set of Regulations at phase three of implementation.

The consultations for the regulations in relation to regulated fostering, adult placement and regulated advocacy services were held between 24 May and 16 August 2018. The regulations in relation to regulated adoption services were consulted on between 4 September and 27 November 2018.

The consultation summary reports have been published on the Welsh Government website at <https://gov.wales/consultations>.

¹ <http://gov.wales/consultations/healthsocialcare/regulation-and-inspection-act/?lang=en>

PART 2 – REGULATORY IMPACT ASSESSMENT

Options

Option one: do not implement a penalty notice scheme for the remaining regulated services under the 2016 Act²

Under this option there would not be a penalty notice scheme in relation to adoption, fostering, adult placement and advocacy services under the 2016 Act. However, there would be a penalty notice scheme for care home services, domiciliary support services, secure accommodation services and residential family centres, as set out in the *Regulated Services (Penalty Notices) (Wales) Regulations 2017*, which are already in force.

Option two: create regulations which provide detail about how the penalty notice scheme will operate in relation to all regulated services.

Under option two, the Welsh Government would establish a penalty notice scheme for all regulated services under the 2016 Act and Regulations would be created that set out:

- the offences that can be dealt with via a penalty notice;
- the amount that can be charged for each of the offences;
- the form the penalty notice must take and the information that must be included in it;
- the payment methods that can be used to pay the penalty;
- the records CIW must keep in relation to issuing penalty notices; and
- the circumstances in which a penalty notice can be withdrawn.

Costs

Option one: do not implement a penalty notice scheme for the remaining regulated services under the 2016 Act

Under option one there would be no additional costs to the regulator or sector in relation to adoption, fostering, advocacy or adult placement services. The costs in relation to care home services, domiciliary support services, secure accommodation services and residential family centre services are set out in the Regulatory Impact Assessment for *the Regulated Services (Penalty Notices) (Wales) Regulations 2017* which can be accessed here: <http://www.assembly.wales/laid%20documents/sub-ld11334-em/sub-ld11334-em-e.pdf>

Option two: create regulations which provide detail about how the penalty notice scheme will operate in relation to all regulated services

Under this option there would be obvious costs to providers and RIs that receive penalty notices as a result of non-compliance with certain requirements. The penalty amounts would be set out in the 2019 Regulations. Section 54 of the 2016 Act restricts

² These are adoption services, fostering services, advocacy services and adult placement services.

the amount of the sum payable to two and a half times level 4 on the standard scale. Level 4 on the standard scale is currently £2,500.

The penalties listed in the 2019 Regulations would range from one to two and a half times level 4 on the standard scale, which means the penalties would range from £2,500 to £6,250 at the moment.

The frequency of issuing such fines would depend on how CIW implements the scheme. The [Securing Improvement and Enforcement policy](#) sets out CIW's proportionate approach to enforcement. The issuing of penalty notices is one of a suite of enforcement actions that is available to CIW. However, the issuing of a penalty notice will depend on the particular circumstances of each case as to whether this is most appropriate or whether an alternative enforcement action would be more appropriate.

Therefore, CIW will continue to apply the principles of its existing inspection process that enables providers the opportunity to remedy any non-compliance identified during an inspection before enforcement action is taken. To gauge the number of fines that may be issued under the new system we have looked at the level of non-compliance for similar offences under the Care Standards Act 2000 ("the 2000 Act") in 2016-17.

The 2000 Act was the legislative framework previously in operation. The table below shows the provisions creating penalties under the 2016 Act against the closest corresponding regulations in the 2000 Act and the number of non-compliance notices issued against these regulations in 2016-17. The services highlighted in bold relate to the additional regulated services to be included in the scope of the penalty notices scheme:

<i>General nature of the offence</i>	<i>Amount of penalty</i>	<i>Existing closest corresponding Regulation under the 2000 Act</i>	<i>No. of non-compliance notices issued in 2016-17</i>	<i>No. of non-compliance persisting over 12 months</i>	<i>Amount, if penalty notice issued</i>
Making false statements	An amount corresponding to two and a half times level 4 on the standard scale(1)	Adult care homes: regulation 7 Children's homes: regulation 6 Domiciliary support services: regulation 8 Fostering services: 8	None	None	£0
Failure to submit an annual return	An amount corresponding to level 4 on the standard scale	N/A as this is a new offence	N/A as this is a new offence	N/A	£0

Failure to provide information	An amount corresponding to level 4 on the standard scale	Adult care homes: regulations 11, 38, 39,40 Children's homes: regulations 10, 29, 36, 37 Domiciliary support services: regulations 12, 26, 27, 28 Fostering services: 9, 43, 45, 46.	4 for adult care homes	1 for adult care homes	£2500
Contravention of, or failure to comply with, requirements in relation to the statement of purpose	An amount corresponding to two and a half times level 4 on the standard scale	Adult care homes: regulation 4 Children's homes: regulation 4 Domiciliary support services: regulation 4 Fostering services: 3	1 for adult care homes 2 for children's homes 2 for domiciliary support services	1 for adult care homes 1 for domiciliary support services	£12,500
Contravention of, or failure to comply with, requirements in relation to the financial position of the service	An amount corresponding to level 4 on the standard scale	Adult care homes: regulation 26(2) Children's homes: regulation 35 Domiciliary support services: regulation 25 Fostering services: 44	None	None	£0
Contravention of, or failure to comply with, requirements to have in place specified	An amount corresponding to level 4 on the standard scale	Adult care homes: regulation 13(2), 23(1)	3 for adult care homes: 2 for children's homes	None	£0

policies and procedures		Children's homes: regulation 17, 11 Fostering services: 44			
Contravention of, or failure to comply with, requirements in relation to the provision of information about the service	An amount corresponding to two times level 4 on the standard scale	Adult care homes: regulation 5 Children's homes: regulation 4 Domiciliary support services: regulation 5 Fostering services: 4	None	None	£0
Contravention of, or failure to comply with, requirements in relation to the provision of a service agreement	An amount corresponding to level 4 on the standard scale	Adult care homes: regulation 5(1)(c) Children's homes: regulation 4 Domiciliary support services: regulation 5 Fostering services: 4	None	None	£0
Contravention of, or failure to comply with, requirements in relation to the fitness of staff	An amount corresponding to two and a half times level 4 on the standard scale	Adult care homes: regulation 19 Children's homes: regulation 26 Domiciliary support services: regulation 15 Fostering services: 20	6 for adult care homes 6 for domiciliary support services	None	£0

Contravention of, or failure to comply with, requirements in relation to the provision of information for staff	An amount corresponding to two times level 4 on the standard scale	Adult care homes: regulation 18(4) Children's homes: regulation 27 Domiciliary support services: regulation 16 Fostering services: 21	None	None	£0
Contravention of, or failure to comply with, requirements in relation to the making and maintenance of records	An amount corresponding to two times level 4 on the standard scale	Adult care homes: regulation 17 Children's homes: regulation 28 Domiciliary support services: regulation 20 Fostering services: 22	1 for adult care homes	None	£5000
Contravention of, or failure to comply with, requirements in relation to notifications to the service regulator	An amount corresponding to two times level 4 on the standard scale	Adult care homes: regulations 11, 38, 39,40 Children's homes: regulations 10, 29, 36, 37 Domiciliary support services: regulations 12, 26, 27, 28 Fostering services: 9, 43, 45, 46	None	None	£0
Contravention of, or failure to comply with, requirements in relation to	An amount corresponding to two and a half times level 4 on the	N/A as this is a new offence	N/A as this is a new offence	N/A	unknown

the duty of a responsible individual to appoint a manager	standard scale				
Contravention of, or failure to comply with, requirements in relation to the duty of a responsible individual to report the adequacy of resources	An amount corresponding to two times level 4 on the standard scale	N/A as this is a new offence	N/A as this is a new offence	N/A	unknown
Contravention of, or failure to comply with, requirements in relation to the making by a responsible individual of other reports to the service provider	An amount corresponding to two times level 4 on the standard scale				
Contravention of, or failure to comply with, requirements in relation to the preparation by a responsible individual of a report in respect of a quality of care review	An amount corresponding to two times level 4 on the standard scale	[this is applicable currently to the registered person] Adult care homes: regulation 25 Children's homes: regulation 33 Domiciliary support services: regulation 23 Fostering services: 42	[this is applicable currently to the registered person] 9 for adult care homes 3 for children's homes	None	£0
Contravention of, or failure to comply with, requirements in relation to the preparation by a responsible individual of a statement of	An amount corresponding to two times level 4 on the standard scale	Adult care homes: regulation 27 Children's homes: regulation 32 Domiciliary	11 for adult care homes	1 for adult care homes	£5000

compliance with the requirements as to standards of care and support		support services: regulation 23 Fostering services: 42			
Contravention of, or failure to comply with requirements in relation to the responsible individual's duty to make notifications to the service regulator	An amount corresponding to two times level 4 on the standard scale	N/A as this is a new offence	N/A as this is a new offence	N/A	
			Total = 50		£25,000

The table shows that the total amount for fines for all services³ over a year would be £25,000, if CIW focussed on non-compliance that persisted over 12 months. However, these fines relate to services which are already included in *The Regulated Services (Penalty Notices) (Wales) Regulations 2017*, which are already in force.

In relation to the additional services to be included in *The Regulated Services (Penalty Notices) (Wales) Regulations 2019*, there were no breaches which might have led to the issuing of a penalty notice. However, this table does not take into account some of the new offences under the 2016 Act or the offences that could be brought against Advocacy services which are a newly regulated service under the 2016 Act. As there are currently only two advocacy service providers that are likely to be required to register under the 2016 Act however, costs are likely to be minimal. Due to the lack of data it is not possible to estimate the level of non-compliance against these requirements.

Benefits

Option one: Do not implement a penalty notice scheme for the remaining regulated services under the 2016 Act

For some providers there would be cost savings in not having to pay fines for non-compliance of certain requirements. For CIW, there would be a small saving in terms of staff time, as the regulator would be able to focus their efforts more strongly on inspecting services and spend less time on administering a penalty notice system. However, implementing a penalty notice scheme could arguably reduce the number of prosecutions brought forward, as providers may opt to pay the penalty rather than go through the lengthy process of criminal proceedings.

³ All services except Advocacy services which are a new type of regulated service and were not previously regulated under the Care Standards Act 2000.

Option two: create regulations which provide detail about how the penalty notice scheme will operate in relation to all regulated services

Establishing a penalty notice scheme for all regulated services is in keeping with the policy intention of ensuring consistency across the range of regulated services. A penalty notice scheme provides CIW with a more flexible and proportionate system of regulation so that the regulator has a full range of powers at its disposal to deal with regulatory breaches. Sometimes there may be a need for prosecution as an alternative to civil enforcement, to deal with more serious offences under the 2016 Act. At other times there may not be an overriding desire to pursue prosecution which is expensive and consumes valuable time and resources in preparing for prosecution. In these circumstances, the regulator can opt to issue a penalty notice which sends a clear message to providers and RIs who are failing to comply with their duties; this goes further than the issuing of a non-compliance notice under civil enforcement powers. Creating regulations about penalty notices would add clarity about the way in which the penalty notice system would operate. It would benefit both CIW and service providers who would have a better understanding of the circumstances in which it would be appropriate to issue a penalty notice, the amount that can be charged, the time limit within which to pay the penalty and the information the notice should contain.

Risks

Option one: Do not implement a penalty notice scheme for the remaining regulated services under the 2016 Act

Without a penalty notice scheme for the remaining regulated services there is a risk that unscrupulous providers who continually fail to comply with the regulations will not make the necessary improvements because the current enforcement mechanisms do not act as a sufficient deterrent to non-compliance. There is also a risk of not fulfilling the policy intention of the Regulation and Inspection of Social Care (Wales) Act 2016 to ensure a consistent approach across all regulated services.

Option two: create regulations which provide detail about how the penalty notice scheme will operate in relation to all regulated services.

There is a risk that providers could challenge the penalty notices issued which would result in CIW having to take forward criminal proceedings, which is costly and time-consuming. The risk has been mitigated by developing the [Securing Improvement and Enforcement policy](#) which sets out CIW's proportionate approach to enforcement, of which the issuing of penalty notices is a part. Service Providers and Responsible Individuals are likely to be given notice and time to address non-compliance before penalty notices are issued.

Conclusion

The preferred option is option two in all cases.

The competition filter test

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

*only in relation to advocacy services.

The filter test shows that it is not likely that the regulation will have any detrimental effect on competition; therefore a detailed assessment has not been conducted.

Post implementation review

CIW will monitor the implementation of these Regulations following their coming-into-force date of July 2019.

Agenda Item 3.2 The Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019

Background and Purpose

These Regulations provide for the making of loans to students who are ordinarily resident in Wales for postgraduate master's degree courses which begin on or after 1 August 2019.

To qualify for support under these Regulations a student must be an "eligible student". To be an eligible student, a person must satisfy the eligibility provisions in Chapter 2 of Part 4 and fall within one of the categories set out in Schedule 2. An eligible student must also satisfy the specific requirements applicable to each type of financial support. A person is not an eligible student if, amongst other things, that person has already obtained a qualification equivalent to or higher than a master's degree.

Support is only available under these Regulations in respect of "designated" courses within the meaning of regulations 5 and 8. Support is provided to eligible students undertaking a designated course wherever they study in the United Kingdom.

The Regulations also set out provisions for, amongst other things:

- detailed support calculations
- transfers between designated courses
- time limits for applications
- information gathering
- payments, overpayment and recovery
- eligible prisoners
- amendments to the Education (Postgraduate Master's Degree Loans) (Wales) Regulations 2017

Procedure

Negative.

Technical Scrutiny

Two 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.



Exemption 3 in regulation 10(1), and regulation 13(1), confers a discretion on the Welsh Ministers that is not otherwise subject to specific criteria or limitations (nor is it expanded upon in the EM). As such, this appears to confer a discretion that amounts to sub-delegation of a kind that requires express enabling powers.

It is noted the enabling power¹ permits regulations to make provision “for determining” eligibility that, in effect, allows the Welsh Ministers to sub-delegate a discretionary function to themselves. However, the presumption against sub-delegation is a strong one for rule of law reasons, and does not appear to have been rebutted clearly in this case merely by a reference to provision “for determining” eligibility. Whilst it is accepted that an exhaustive list of objective criteria cannot easily be set out in the enabling legislation (although it could be amended by regulations from time to time), the Committee considers there to be a respectable argument, justifying reporting on this point, that the enabling power should refer to objective criteria rather than simply providing an open discretion.

It is noted that the Welsh Ministers are subject to general public law restrictions, or indeed that guidance could be issued with a view to narrowing the discretion, but this does not address the underlying question of whether the enabling power is sufficiently wide to confer the discretion in the first place.

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

In the definition of ‘public body’ in paragraph 20 of Sch. 3, reference is made to ‘national, regional or local’. This is ambiguous and unclear. For example, the provision does not make it clear whether “national” is meant to refer to Welsh, UK, or wider public bodies.

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.

Regulation 10(1), Exception 11 provides that a person is not eligible for a postgraduate doctoral degree loan if they have reached the age of 60 on the first day of the first academic year of the designated course.

The Committee raises the following human rights and equality concerns in respect of this age limit.

¹ Teaching and Higher Education Act 1998, section 22(2)(a)



Article 2 of Protocol 1 to the European Convention on Human Rights (ECHR) contains a free-standing right to education.

Article 14 of the ECHR provides that the enjoyment of the rights and freedoms set out in the ECHR shall be secured without discrimination on various protected grounds, including age.²

Section 13(1) of the Equality Act 2010 (Equality Act) prohibits direct age discrimination, unless it can be justified under section 13(2).

The Committee notes that the margin of appreciation increases with the level of education, and that a master's degree is at a high level on the education scale. The Committee also notes that the measure is intended to deliver social policy aims as set out in the Explanatory Memorandum, which is consistent with the instructive case law relating to the application of Article 6(1) of Directive 2000/78/EC.

The Committee believes that the issues raised by Regulation 10(1), Exception 11 relate to the right to education. Setting an upper age limit of 60 is discriminatory. It is therefore necessary to look at whether the upper age limit is justified. If it can be justified, there is no breach of the ECHR or the Equality Act. The Supreme Court has set out a fourfold test³:

- a) Does the measure have a legitimate aim sufficient to justify the limitation of a fundamental right?
- b) Is the measure rationally connected to that aim?
- c) Could a less intrusive measure have been used?
- d) Has a fair balance been struck?

The Explanatory Memorandum provides justification as to the setting of the upper age limit on the basis that:

- a) The aim of the scheme is to increase, in the context of finite resources, high level skills for the economy. The Government states that to ensure value for money, sustainable funding is required and the age limit of 60 mitigates against the risk that loans are disproportionately taken out by older students who will be unlikely to repay the loan amount in full or make significant repayments and who would have a limited number of working years in which their skills would be available to

² The European Court of Human Rights ECtHR has found that 'age' is included among 'other status' in Article 14 (Schwizgebel v Switzerland (No. 25762/07)).

³ R (on the application of Tigere) (Appellant) v Secretary of State for Business, Innovation and Skills (Respondent) [2015] UKSC 57



the economy. The Explanatory Memorandum sets out findings of analyses that the Government has carried out to bring it to this conclusion.

- b) It is necessary to ensure value for money for the taxpayer and the Government takes the view that the imposition of the age limit is rationally connected to the aim.
- c) The possibility of a less intrusive measure to achieve the aim was considered. The conclusion was that a system which required individual investigation and assessment would create a heavy administrative burden which could consume scarce resources. Such a system might also introduce scope for inconsistent decision-making.
- d) An amount of funding via the Higher Education Funding Council for Wales (HEFCW) will be disseminated to higher education institutions in Wales to provide a non-repayable bursary to eligible students, aged 60 and over, studying postgraduate Master's courses in Wales which begin in the 2019/20 academic year. According to the Explanatory memorandum, thereafter it is the aim of Government to provide access the grant elements of Welsh Government support for students aged 60 and over.
- e) Taking into account its evidence concerning not only repayment rates of loans but also employment rates (it is not the purpose of the loan to facilitate the uptake of doctoral degree courses by students who have no particular intention to return to the workplace), the Government considers that the age restriction strikes a fair balance and is justified. However, due to increasing retirement ages, the Government makes a commitment to keep under review all age limits that are placed on full-time and part-time undergraduate as well as postgraduate Master's student support.

We welcome the justification set out in the Explanatory Memorandum. The policy aims pursued by the Government appear legitimate and the measures taken by the Regulations to achieve them are rationally connected to such aims. The Committee notes the options analysis set out in the Explanatory Memorandum which provides evidence that due consideration has been given to imposing a fairly balanced and minimally intrusive regime. As such, it appears the Government has given proper and careful consideration to the justification of setting an upper age limit of 60 in these Regulations.

Implications arising from exiting the European Union

The eligibility requirements for student finance are drafted to take account of UK membership of the European Union. Therefore, certain EU students will be eligible for support under the Regulations. It is not confirmed at this stage what effect Brexit will have on the mobility of



students, but at statement by Welsh Government on 2 July 2018 confirmed that "...that EU students will continue to be entitled to student support in the 19/20 academic year."

Government Response

A Government response is required to the technical scrutiny points raised in this report.

Legal Advisers

Constitutional and Legislative Affairs Committee

8 May 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. 895 (W. 161)

EDUCATION, WALES

**The Education (Student Support)
(Postgraduate Master's Degrees)
(Wales) Regulations 2019**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the making of grants and loans to students who are ordinarily resident in Wales for postgraduate master's degree courses which begin on or after 1 August 2019.

To qualify for support under these Regulations a student must be an "eligible student". To be an eligible student, a person must satisfy the eligibility provisions in Chapter 2 of Part 4 and any other eligibility requirements elsewhere in the Regulations. An eligible student must also satisfy the specific requirements applicable to each type of financial support.

To be an eligible student, a person must fall within one of the categories set out in Schedule 2. The majority of those categories require the person to be ordinarily resident in Wales. For the purposes of these Regulations, a person who is ordinarily resident in England, Wales, Scotland, Northern Ireland, the Channel Islands or the Isle of Man as a result of having moved from one of those areas for the purpose of undertaking a designated course is considered ordinarily resident in the place from which that person has moved (Schedule 2, paragraph 11(1)). A person is not an eligible student if, amongst other things, that person has already obtained a qualification equivalent to or higher than a master's degree.

The period for which a student is eligible to receive support under these Regulations is determined in accordance with regulations 11 to 14. In certain circumstances an eligible student may transfer from one designated course to another.

Support is only available under these Regulations in respect of “designated” courses within the meaning of regulations 5 and 8. Support is provided to eligible students undertaking a designated course wherever they study in the United Kingdom. Regulations 15 and 16 set out the circumstances in which a student may qualify for support under these Regulations after the designated course has started.

Part 5 of these Regulations makes provision for applications for support (regulation 18), time limits for applications (regulation 19) and regulation 20 permits the Welsh Ministers to make such enquiries as they think necessary to make a decision on an application and to notify an applicant of a decision. This Part also imposes obligations on eligible students to provide the Welsh Ministers with information (regulation 22) and to enter into a contract for a loan (regulation 23).

Support under these Regulations is available in the form of the following grants and loans—

- (a) base grant and contribution to costs grant (Part 6);
- (b) contribution to costs loan (Part 7).

The amount of base grant payable to an eligible student is £1,000 (regulation 25). The amount of contribution to costs grant payable to a student is determined by reference to the student’s household income and whether they are a care leaver (regulation 27). An eligible student’s household income is calculated in accordance with Part 2 of Schedule 3. “Care leaver” is defined in regulation 29.

Contribution to costs loans are payable to eligible students in accordance with Part 7 of these Regulations. The amount of contribution to costs loan is calculated in accordance with regulation 31.

Part 8 of these Regulations makes provision in respect of payments, overpayments and recovery of payments. Regulation 33 gives the Welsh Ministers the power to pay support in instalments.

Regulation 34 provides that the Welsh Ministers must not make any payment of support until they have received confirmation from the relevant academic authority of the student’s attendance on the designated course. Regulation 35 enables the Welsh Ministers to cease further payments of support if they receive notice of a student’s lack of attendance on the course, other than where they consider it appropriate to make such payments during the student’s absence.

Regulation 36 sets out how entitlement to support changes when an eligible student becomes or ceases to be an eligible prisoner.

Chapter 3 of Part 8 sets out how the Welsh Ministers can recover any overpayment of support under these Regulations.

Part 9 sets out information requirements in relation to contribution to costs loans.

Part 10 contains amendments to the Education (Postgraduate Master's Degree Loans) (Wales) Regulations 2017.

Schedule 4 is the final schedule to these Regulations and contains the index of defined terms.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Higher Education Division, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

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. 895 (W. 161)

EDUCATION, WALES

**The Education (Student Support)
(Postgraduate Master's Degrees)
(Wales) Regulations 2019**

Made 29 April 2019

Laid before the National Assembly for Wales
30 April 2019

Coming into force 27 May 2019

The Welsh Ministers, in exercise of the powers conferred upon the Secretary of State by sections 22 and 42(6) of the Teaching and Higher Education Act 1998(1), and now exercisable by them(2), make the following Regulations:

-
- (1) 1998 c. 30; section 22 was amended by the Learning and Skills Act 2000 (c. 21), section 146 and Schedule 11; the Income Tax (Earnings and Pensions) Act 2003 (c. 1), Schedule 6; the Finance Act 2003 (c. 14), section 147; the Higher Education Act 2004 (c. 8), sections 42 and 43 and Schedule 7; the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), section 257; the Education Act 2011 (c. 21), section 76; S.I. 2013/1181 and the Higher Education and Research Act 2017 (c. 29), section 88. *See* section 43(1) of the Teaching and Higher Education Act 1998 for the definition of “prescribed” and “regulations”.
- (2) The Secretary of State’s functions in section 22(2)(a) to (i) and (k) were transferred to the National Assembly for Wales so far as they relate to making provision in relation to Wales by section 44 of the Higher Education Act 2004 (c. 8), with subsections (a), (c) and (k) exercisable concurrently with the Secretary of State. The Secretary of State’s function in section 42 was transferred, so far as exercisable in relation to Wales, to the National Assembly for Wales by S.I. 1999/672. The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

PART 1

General

Title and commencement

1.—(1) The title of these Regulations is the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019.

(2) These Regulations come into force on 27 May 2019.

Application

2.—(1) These Regulations apply in relation to Wales.

(2) These Regulations apply to the provision of support to students in relation to a course which begins on or after 1 August 2019 whether anything done under these Regulations is done before, on or after 1 August 2019.

(3) But these Regulations do not apply to the provision of support to students in relation to such a course if the course is one in relation to which the student's status has transferred under regulation 6 of the Education (Postgraduate Master's Degree Loans) (Wales) Regulations 2017⁽¹⁾ (“the 2017 Master's Degree Loans Regulations”).

(4) For provision about support provided to students in relation to a course—

(a) to which paragraph (3) applies, or

(b) which begins before 1 August 2019,

see the 2017 Master's Degree Loans Regulations.

PART 2

Overview

Overview

3.—(1) The remaining Parts of these Regulations are arranged as follows.

(2) Part 3 introduces 2 Schedules—

(a) Schedule 1, which contains provisions about the interpretation of certain key terms;

(b) Schedule 4, which contains an index of the terms defined in these Regulations.

(1) S.I. 2017/523 (W. 109), amended by S.I. 2017/712 (W. 169), S.I. 2018/277 (W. 53) and S.I. 2018/814 (W. 165).

(3) Part 4 comprises 2 Chapters containing provision about the key concepts which determine eligibility for support under these Regulations—

- (a) Chapter 1 makes provision about determining whether a course is designated for the purposes of these Regulations and is therefore a course in respect of which a student may be eligible for support;
- (b) Chapter 2 makes provision about how a student undertaking a designated course may be eligible for support under these Regulations.

(4) Part 5 makes administrative provision about—

- (a) applications for support under these Regulations;
- (b) requirements imposed on applicants and eligible students to provide information;
- (c) contracts for loans applied for under these Regulations.

(5) Part 6 makes provision about the grant support available to eligible students including provision about—

- (a) the qualifying conditions that a student must meet in order to qualify for a grant;
- (b) the amount of grant available.

(6) Part 7 makes provision about the loan support available to eligible students including provision about—

- (a) the qualifying conditions that a student must meet in order to qualify for a loan;
- (b) the amount of loan available.

(7) Part 8 comprises 3 Chapters about payments, overpayments and the recovery of overpayments, in particular—

- (a) Chapter 1 makes provision permitting payments to be made on the basis of provisional decisions;
- (b) Chapter 2 makes provision about the payment of grants and loans, including provision about when payments may be made and the requirements to be met before payments are made;
- (c) Chapter 3 makes provision about overpayments, including provision specifying what constitutes an overpayment and how an overpayment may be recovered.

(8) Part 9 sets out restrictions on the payment of loans, including provision—

- (a) restricting payment of a loan if the student fails to provide a National Insurance number;
- (b) withholding payment of a loan if the student fails to provide certain requested information.

(9) Part 10 contains amendments to the 2017 Master's Degree Loans Regulations.

PART 3

Interpretation and index

Interpretation and index

4.—(1) Schedule 1 makes provision about the interpretation of certain key terms for the purposes of these Regulations.

(2) Schedule 4, which is the final Schedule to these Regulations, contains the index of defined terms.

PART 4

Key concepts

CHAPTER 1

Designated courses

Designated courses

5. In these Regulations (and for the purposes of section 22 of the Teaching and Higher Education Act 1998 (“the 1998 Act”)), a course is a designated course if it—

- (a) satisfies each of the conditions in regulation 6, and
- (b) does not fall within any of the exceptions in regulation 7.

Designated courses – conditions

6.—(1) The conditions are—

Condition 1

The course is one which—

- (a) leads to an award granted or to be granted by a body falling within section 214(2)(a) or (b) of the Education Reform Act 1988⁽¹⁾, and
- (b) the teaching and supervision which comprise the course have been approved by that body.

Condition 2

The course is one of the following—

- (a) a full-time course of one or two academic years' duration, or
- (b) a part-time course which it is ordinarily possible to complete in up to four academic years.

Condition 3

The course is provided by—

- (a) a Welsh funded institution, a Scottish funded institution, a Northern Irish funded institution or an English regulated institution (whether alone or in conjunction with an institution within or outside the United Kingdom), or
- (b) a registered English institution on behalf of an English plan provider.

Condition 4

At least half of the teaching and supervision which comprise the course is provided in the United Kingdom.

(2) For the purposes of Condition 3—

- (a) a course is provided by an institution if it provides the teaching and supervision which comprise the course, whether or not the institution has entered into an agreement with the student to provide the course;
- (b) a university and any constituent college or institution in the nature of a college of a university is regarded as—
 - (i) a Welsh funded institution,
 - (ii) a Scottish funded institution,
 - (iii) a Northern Irish funded institution,
 - (iv) an English regulated institution,
 - (v) a registered English institution, or
 - (vi) an English plan provider,

(1) 1998 c. 40; section 214(2) was amended by the Further and Higher Education Act 1992 (c. 13), section 93 and Schedule 8 and by the Higher Education and Research Act 2017 (c. 29), section 53.

if either the university or the constituent college or institution is such an institution;

- (c) an institution is not regarded as a Welsh funded institution by reason only that it receives funds from the governing body of a higher education institution as a connected institution in accordance with section 65(3A) and (3B) of the Further and Higher Education Act 1992⁽¹⁾.

Designated courses – exceptions

7. A course is not a designated course if it is recognised as a designated course for the purposes of—

- (a) regulation 5 or 83 of the Education (Student Support) (Wales) Regulations 2017⁽²⁾ (“the 2017 Student Support Regulations”);
- (b) regulation 5 or 8 of the Education (Student Support) (Wales) Regulations 2018⁽³⁾ (“the 2018 Student Support Regulations”);
- (c) regulation 4 of the Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018⁽⁴⁾ (“the 2018 Doctoral Degree Loans Regulations”).

Designation of other courses

8.—(1) The Welsh Ministers may specify that a course is to be treated as a designated course despite the fact that, but for the specification, it would not otherwise be a designated course.

(2) The Welsh Ministers may suspend or revoke the specification of a course made under paragraph (1).

CHAPTER 2

Eligibility

Eligible students

9.—(1) A person is an eligible student in connection with a designated course that the person is undertaking if—

- (a) the person falls within one of the categories of persons set out in Schedule 2, and

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- (1) 1992 c. 13; subsections (3A) and (3B) of section 65 were inserted by the Teaching and Higher Education Act 1998 (c. 30), section 27.
 - (2) S.I. 2017/47 (W. 21), amended by S.I. 2018/191 (W. 42) and S.I. 2018/814 (W. 165).
 - (3) S.I. 2018/191 (W. 42), amended by S.I. 2018/813 (W. 164) and S.I. 2018/814 (W. 165).
 - (4) S.I. 2018/656 (W. 124), amended by S.I. 2018/814 (W. 165).

- (b) none of the exceptions set out in regulation 10 apply to the person.

(2) A person may, at any given time, be an eligible student only in connection with one designated course.

Eligible students – exceptions

10.—(1) A person (“P”) is not an eligible student if any of the following exceptions applies—

Exception 1

P is in breach of any obligation to repay any loan.

Exception 2

P has reached the age of 18 and has not ratified any agreement for a loan made with P when P was under the age of 18.

Exception 3

The Welsh Ministers think that P’s conduct is such that P is not fit to receive support.

Exception 4

P is a prisoner, unless P is an eligible prisoner.

Exception 5

P is enrolled on a course which is a designated course under—

- (a) regulation 5, 66 or 83 of the 2017 Student Support Regulations and is receiving support under those Regulations for that course;
- (b) regulation 5 of the 2018 Student Support Regulations and is receiving support under those Regulations for that course;
- (c) regulation 4 of the 2017 Master’s Degree Loans Regulations and is receiving support under those Regulations for that course;
- (d) regulation 4 of the 2018 Doctoral Degree Loans Regulations and is receiving support under those Regulations for that course.

Exception 6

P has already obtained an equivalent or higher qualification.

Exception 7

P has already enrolled on a designated course and is in receipt of support under these Regulations for that course.

Exception 8

P has previously received support in respect of a course—

- (a) under these Regulations,
- (b) under the 2017 Master’s Degree Loans Regulations, or

- (c) in the form of a loan provided out of funds provided by a government authority within the United Kingdom.

But P may be an eligible student despite this exception if the Welsh Ministers are of the view that P had not been able to complete the course to which the previous loan related due to compelling personal reasons.

Exception 9

In respect of P undertaking the designated course, there has been bestowed on or paid to P—

- (a) a healthcare bursary;
- (b) any allowance under the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007(1);
- (c) any allowance, bursary or award of similar description made under section 67(4)(a) of the Care Standards Act 2000(2) save to the extent that A is eligible for such a payment in respect of travel expenses;
- (d) any allowance, bursary or award of a similar description made under section 116(2)(a) of the Regulation and Inspection of Social Care (Wales) Act 2016(3) save to the extent that P is eligible for such a payment in respect of travel expenses;
- (e) any allowance, bursary or award made under the KESS 2 Scheme.

Exception 10

The designated course is a distance learning course and P is not in Wales on the first day of the first academic year of the course.

But this exception does not apply where—

- (a) P or a close relative of P is a member of the armed forces,
- (b) P is not in Wales on the first day of the first academic year, and
- (c) P is not in Wales on that day because P or the close relative is serving as a member of the armed forces outside Wales.

Exception 11

P is aged 60 or over on the first day of the first academic year of the designated course.

(2) In Exceptions 1 and 2, “loan” means a loan made under any provision of the student loans legislation.

(1) S.S.I. 2007/151, amended by S.S.I. 2007/503, S.S.I. 2008/206, S.S.I. 2009/188, S.S.I. 2009/309, S.S.I. 2012/72, S.S.I. 2013/80 and S.S.I. 2017/180.

(2) 2000 c. 14; amended by the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2), Schedule 3(2), paragraph 43.

(3) 2016 anaw 2.

(3) The Welsh Ministers may only exercise their discretion under Exception 8 once in respect of a particular student.

Period of eligibility – general rule

11.—(1) A student’s status as an eligible student in connection with a designated course is retained until the end of the student’s period of eligibility unless terminated in accordance with regulation 12 or 13.

(2) A student’s period of eligibility ends at the end of the academic year in which the student completes the designated course.

Early termination of eligibility

12.—(1) An eligible student’s (“P’s”) period of eligibility terminates at the end of the day on which—

- (a) P withdraws from P’s designated course and the Welsh Ministers do not transfer P’s status as an eligible student under regulation 17, or
- (b) P abandons or is expelled from P’s designated course.

(2) Where—

- (a) an eligible student’s (“P’s”) designated course is a distance learning course, and
- (b) P undertakes the course outside the United Kingdom,

P’s period of eligibility terminates at the beginning of the first day on which P undertakes the course outside the United Kingdom.

(3) Paragraph (2) does not apply where P is undertaking a distance learning course outside the United Kingdom because P or a close relative of P is serving as a member of the armed forces.

Misconduct and failure to provide accurate information

13.—(1) The Welsh Ministers may terminate an eligible student’s period of eligibility if they are satisfied that the student’s conduct is such that the student is no longer fit to receive support.

(2) Paragraph (3) applies if the Welsh Ministers are satisfied that an eligible student—

- (a) has failed to comply with a requirement to provide information or documentation under these Regulations, or
- (b) has provided information or documentation which was materially inaccurate.

(3) Where this paragraph applies, the Welsh Ministers may—

- (a) terminate the student's period of eligibility;
- (b) determine that the student does not qualify for a particular category of support or amount of such support.

Reinstatement of eligibility after termination

14. Where a student's period of eligibility terminates under regulation 12 or 13 during the academic year in which the student completes the designated course, the Welsh Ministers may reinstate the student's period of eligibility for such period as they think appropriate.

Students becoming eligible during a course

15. Where one of the events listed in regulation 16(1) occurs during the currency of a student's course, a student may qualify for support under these Regulations, provided the student complies with the application provisions set out in Part 5.

16.—(1) The events are—

- (a) the student's course becomes a designated course;
- (b) the student becomes an eligible student on the grounds that—
 - (i) the student or the student's spouse, civil partner or parent is recognised as a refugee, becomes a person granted stateless leave or becomes a person with leave to enter or remain;
 - (ii) a state accedes to the EU where the student is a national of that state or a family member of a national of that state;
 - (iii) the student becomes a family member of an EU national;
 - (iv) the student acquires the right of permanent residence;
 - (v) the student becomes a child of a Turkish worker;
 - (vi) the student becomes a person described in paragraph 6(1)(a) of Schedule 2;
 - (vii) the student becomes the child of a Swiss national;
 - (viii) the student or the student's parent becomes a person with section 67 leave to remain;
- (c) the student commences a designated course after the start date of the designated course as the relevant academic authority has

permitted the student to commence the course at this later start date.

(2) In this regulation, the following terms have the same meaning as in Schedule 2—

“child” (“*plentyn*”);

“family member” (“*aelod o deulu*”) (within the meaning given by paragraph 8(5) of Schedule 2);

“parent” (“*rhiant*”);

“person granted stateless leave” (“*person y rhoddwyd caniatâd iddo aros fel person diwladwriaeth*”);

“person with leave to enter or remain” (“*person sydd â chaniatâd i ddod i mewn neu i aros*”);

“person with section 67 leave to remain” (“*person sydd â chaniatâd i aros o dan adran 67*”);

“refugee” (“*ffoadur*”);

“right of permanent residence” (“*hawl i breswyllo ‘n barhaol*”);

“Turkish worker” (“*gweithiwr Twrcaidd*”).

Transfer of status

17.—(1) Where an eligible student (“P”) transfers from a designated course to another designated course (“the new course”), the Welsh Ministers must transfer the student’s status as an eligible student to the new course if—

- (a) they receive a request from the student to do so,
- (b) they are satisfied that one of the grounds for transfer applies (see paragraph (2)), and
- (c) the student’s period of eligibility has not terminated.

(2) The grounds for transfer are—

- (a) on the recommendation of the academic authority P ceases one designated course and starts to undertake another designated course at the same institution; or
- (b) P starts to undertake a designated course at another institution.

(3) Where P transfers under paragraph (1), P is entitled to receive in connection with the course to which P transfers, the remainder of the support, if any, in accordance with regulation 33 and where relevant regulation 36, in respect of the course from which P transfers.

PART 5

Applications, providing information and loan contracts

Requirement to apply for support

18.—(1) A person does not qualify for support as an eligible student in relation to a designated course unless the person makes an application for support in relation to that course.

(2) An application under paragraph (1) must—

- (a) be in such form and contain such information as the Welsh Ministers may require,
- (b) be accompanied by such documentation as the Welsh Ministers may require,
- (c) reach the Welsh Ministers within the time limit specified in regulation 19, and
- (d) state whether the person is applying for—
 - (i) a base grant,
 - (ii) a contribution to costs grant,
 - (iii) a contribution to costs loan, or
 - (iv) any combination of the above.

Time limits

19.—(1) Subject to paragraph (2), an application under regulation 18(1) or an application to amend the amount of the loan under regulation 31(4) must reach the Welsh Ministers no later than the end of the ninth month of the final academic year of the course.

(2) Paragraph (1) does not apply where the Welsh Ministers consider that having regard to the circumstances of the particular case the time limit should not apply, in which case the application to amend the amount must reach the Welsh Ministers no later than such date as they specify in writing.

Welsh Ministers' decision on an application

20.—(1) The Welsh Ministers may take any steps and make any inquiries as they think necessary to make a decision on an application under regulation 18.

(2) Those steps may include requiring the applicant to provide further information or documentation.

(3) The Welsh Ministers may make a provisional decision on an application under regulation 18 (see regulation 32 for provision about payments made on the basis of a provisional decision).

(4) A decision on an application made by the Welsh Ministers after a provisional decision has been made may—

- (a) confirm the provisional decision, or
- (b) substitute it with a different decision.

(5) The Welsh Ministers must notify the applicant of a decision (including a provisional decision) on an application under regulation 18.

(6) The notification must state—

- (a) whether the Welsh Ministers consider the applicant to be an eligible student,
- (b) if so, whether the eligible student qualifies for support in relation to the designated course,
- (c) if the student does qualify, the category of support for which the student qualifies and the amount payable,
- (d) in the case of a provisional decision, the fact that the decision is provisional and the consequences of that fact.

21.—(1) Paragraph (2) applies where—

- (a) a person (“P”) makes an application for support in accordance with regulation 18,
- (b) any information or documentation provided by P in, or in connection with, the application is not materially inaccurate, and
- (c) P receives notification from the Welsh Ministers under regulation 20(5) incorrectly stating that P is an eligible student.

(2) Where this paragraph applies, despite the notification incorrectly stating that P is an eligible student, the Welsh Ministers may, for the purposes of these Regulations, treat P as being an eligible student.

Requirements on eligible students to provide information

22.—(1) An eligible student must, as soon as reasonably practicable after being requested to do so, provide the Welsh Ministers with such information or documentation as the Welsh Ministers may require—

- (a) for the purposes of determining—
 - (i) the eligibility of a student;
 - (ii) whether a student qualifies for support;
 - (iii) the type and amount of support payable to a student;
 - (iv) whether an overpayment has been made to a student;
- (b) for any purpose relating to the recovery of an overpayment;
- (c) for any purpose relating to the repayment of a loan;

- (d) for any other purpose related to these Regulations that the Welsh Ministers think appropriate.

(2) A request under paragraph (1) may include requesting sight of an eligible student's—

- (a) valid passport issued by the state of which that student is a national,
- (b) valid national identity card, or
- (c) birth certificate.

(3) Where an event mentioned in paragraph (4) occurs in respect of an eligible student, the student must inform the Welsh Ministers as soon as is reasonably practicable after the event occurs.

(4) The events are—

- (a) the student withdraws from, is suspended from, abandons or is expelled from their course;
- (b) the student transfers to another course (whether at the same or at a different institution);
- (c) the student otherwise ceases to undertake their course and does not intend to or is not permitted to continue it for the remainder of the academic year;
- (d) the student is absent from the course for—
 - (i) more than 60 days due to illness, or
 - (ii) for any period for any other reason;
- (e) the month for the start or completion of the course changes;
- (f) the applicant's home or term-time—
 - (i) address,
 - (ii) telephone number, or
 - (iii) email address,changes;
- (g) the applicant becomes or ceases to be a prisoner.

(5) Information or documentation that is required to be provided to the Welsh Ministers under these Regulations must be provided in such form as the Welsh Ministers may specify.

(6) The Welsh Ministers may require that—

- (a) an application under regulation 18;
- (b) any other documentation provided to them under these Regulations,

must be signed in such manner (including electronically) as they may specify.

(7) The reference to an eligible student in paragraph (1) is to be treated as including a person who makes an application under regulation 18 even if the Welsh

Ministers' decision on the application is that the person is not an eligible student.

(8) See regulation 13 for provision about the consequences of failing to comply with a requirement imposed by this regulation.

Requirement to enter into a contract for a loan

23.—(1) An eligible student may not receive a contribution to costs loan under these Regulations unless the student enters into a contract for the loan with the Welsh Ministers.

(2) The contract—

- (a) must be in such form and on such terms, and
- (b) may be required to be signed in such matter (including electronically),

as the Welsh Ministers may specify.

PART 6

Base grant and contribution to costs grant

CHAPTER 1

Qualifying conditions

Base grant and contribution to costs grant

24. A base grant and contribution to costs grant are grants made available by the Welsh Ministers to an eligible student in relation to a designated course.

CHAPTER 2

Base grant

Amount of base grant

25. The amount of the base grant available to an eligible student is £1,000.

CHAPTER 3

Contribution to costs grant

Qualifying conditions for contribution to costs grant

26. An eligible student qualifies for a contribution to costs grant in relation to a designated course unless the eligible student is an eligible prisoner.

Amount of contribution to costs grant

27.—(1) The maximum amount of contribution to costs grant available to an eligible student is £5,885.

(2) Where—

- (a) the student's household income does not exceed £18,370, or
- (b) the student is a care leaver,

the amount of contribution to costs grant is £5,885.

(3) Where the student's household income exceeds £18,370 but is less than £59,200, the amount of contribution to costs grant payable to the student is the maximum amount of contribution to costs grant reduced by £1 for every £6.937 of household income exceeding £18,370.

(4) Where the eligible student's household income is £59,200 or more, the amount of contribution to costs grant payable is £0.

Household income

28. See Schedule 3 for provision about calculating an eligible student's household income.

Meaning of care leaver

29. An eligible student is a "care leaver" if the student—

- (a) is under the age of 25 on the first day of the first academic year of the designated course,
- (b) is, or has been, a category of young person defined in, or by virtue of, section 104 of the Social Services and Well-being (Wales) Act 2014⁽¹⁾, and
- (c) between the student's 14th birthday and the first day of the first academic year of the course, the student—
 - (i) was looked after, fostered or accommodated (within the meaning of sections 74 and 104 of the Social Services and Well-being (Wales) Act 2014) for an aggregate period of 13 weeks or more, or

(1) 2014 anaw. 4.

- (ii) was a person with respect to whom a special guardianship order (within the meaning given by section 14A of the Children Act 1989⁽¹⁾) was in force for a period of 13 weeks or more.

PART 7

Contribution to costs loan

Contribution to costs loan

30. A contribution to costs loan is a loan made available by the Welsh Ministers to an eligible student in respect of a designated course.

Amount of contribution to costs loan

31.—(1) The amount of contribution to costs loan payable to an eligible student is calculated as follows—

Maximum amount of contribution to costs loan available to the student in respect of a designated course.

Minus

Amount of contribution to costs grant payable to the student under regulation 27.

(2) Subject to paragraph (3), the maximum amount of contribution to costs loan is £16,000.

(3) Where an eligible prisoner applies for a contribution to costs loan the amount of loan must not exceed the lesser of—

- (a) the fees payable in respect of the designated course minus the amount of base grant payable to the eligible prisoner under regulation 25, and
- (b) £16,000.

(4) Except where regulation 36(5) to (10) applies an eligible student may apply to the Welsh Ministers to amend the amount of contribution to costs loan for which the student has applied, provided that—

- (a) in aggregate, the amounts of contribution to costs loan applied for do not exceed the applicable amounts set out in paragraphs (2) and (3);
- (b) such application is made in accordance with regulation 18(2).

⁽¹⁾ 1989 c. 41; section 14A was inserted by the Adoption and Children Act 2002 (c. 38) and amended by the Children and Families Act 2014 (c. 6) and the Children and Young Persons Act 2008 (c. 23).

PART 8

Payments, Overpayments and Recovery

CHAPTER 1

Payment following a provisional decision

Payment based on provisional assessment

32. Where the Welsh Ministers make a provisional decision on an application made under regulation 18, the Welsh Ministers may make a payment based on that decision.

CHAPTER 2

Payment of grants and loans

Payment of grants and loans

33.—(1) The Welsh Ministers must pay an amount of base grant, contribution to costs grant or contribution to costs loan to an eligible student where it is payable to the student.

(2) Subject to paragraph (3), the Welsh Ministers may pay that amount—

- (a) either as a lump sum or by instalments, and
- (b) at such times, and in such manner, as the Welsh Ministers consider appropriate.

(3) The Welsh Ministers may make it a condition of entitlement to payment that the eligible student must provide the Welsh Ministers with particulars of a bank or building society account in the United Kingdom into which payments may be made by electronic transfer.

(4) In the case of an eligible prisoner, the Welsh Ministers must pay the base grant and contribution to costs loan for which an eligible prisoner qualifies to the institution to which the eligible prisoner is liable to make payment for the fees payable in connection with the designated course or to such third party that the Welsh Ministers consider appropriate for the purpose of ensuring the payment of such fees to the relevant institution.

Confirmation of attendance

34.—(1) The Welsh Ministers must not pay the grant or loan or any instalment of the grant or loan for which an eligible student qualifies unless they have received from the relevant academic authority confirmation (in such form as may be required by the Welsh Ministers) of the student's attendance on the designated course.

(2) The academic authority must forthwith inform the Welsh Ministers and provide the Welsh Ministers

with particulars if the student withdraws, is suspended or is expelled from the designated course or is otherwise absent.

(3) An eligible student is not to be considered absent from the eligible student's course if the eligible student is unable to attend due to illness and the eligible student's absence has not exceeded 60 days.

Absence from the course

35.—(1) Subject to paragraphs (2) to (4), if the Welsh Ministers receive notice under regulation 34(2) or under regulation 22(3) in relation to an event listed in regulation 22(4)(a) to (d), the Welsh Ministers may not make any further payment of the base grant, contribution to costs grant or the contribution to costs loan in respect of the eligible student to which the notice relates.

(2) Further payments may be made despite the student's lack of attendance if, in the opinion of the Welsh Ministers, those payments would be appropriate in all the circumstances during the student's absence.

(3) If the eligible student recommences the designated course the student must notify the Welsh Ministers and give full details of the length and cause of the preceding absence.

(4) After considering the student's notification under paragraph (3), the Welsh Ministers may recommence any remaining payments of the base grant, contribution to costs grant or the contribution to costs loan under regulation 33, if, in the opinion of the Welsh Ministers, it would be appropriate in all the circumstances for such payment to be made.

Effect of becoming, or ceasing to be, an eligible prisoner

36.—(1) Paragraph (2) applies where an eligible student who is in receipt of a base grant, contribution to costs grant or contribution to costs loan becomes an eligible prisoner and continues to undertake a designated course.

(2) The Welsh Ministers must—

- (a) not make any future payment of the contribution to costs grant,
- (b) adjust future payment of the base grant and contribution to costs loan or future payments of instalments of the base grant and contribution to costs loan, so that the total of the support received by the eligible student does not exceed the amount to which the student, as an eligible prisoner, is entitled to under regulation 31(3), and

- (c) make any future payments of the base grant or contribution to costs loan in accordance with regulation 33(4).

(3) Paragraphs (4) to (10) apply where an eligible prisoner who is in receipt of a base grant or a contribution to costs loan ceases to be an eligible prisoner and remains an eligible student, and continues to undertake a designated course.

(4) The Welsh Ministers must make any future payments of the base grant, contribution to costs loan and contribution to costs grant, if any, in accordance with regulation 33(2).

(5) Where an eligible student (“P”) ceases to be an eligible prisoner P may, subject to paragraphs (6) to (8) apply for a contribution to costs grant.

(6) Subject to paragraph (8), the amount of the contribution to costs grant payable to P is calculated by reference to the following formula—

$$G \times \left(\frac{R}{T}\right)$$

where—

G equals the maximum amount of contribution to costs grant payable to P in accordance with paragraph (7);

T equals the total number of days of the duration of the designated course;

R equals the number of days of the designated course which remain when P ceases to be an eligible prisoner.

(7) The maximum amount of the contribution to costs grant payable to P is—

- (a) £5,885 where the student’s household income does not exceed £18,370;
- (b) £5,885 reduced by £1 for every £6.937 of household income exceeding £18,370;
- (c) £0 where the student’s household income is £59,200 or more.

(8) The amount of contribution to costs grant payable to a student under paragraph (6) must not exceed £16,000 minus A, where A is the amount of contribution to costs loan the student has already received when they cease to be an eligible prisoner.

(9) Where P ceases to be an eligible prisoner P may, subject to paragraph (10), apply for the amount of contribution to costs loan to be increased.

(10) The maximum amount of the increase of P’s contribution to costs loan for which P may apply under paragraph (9) is calculated by reference to the following formula—

$$(J - F) \times \left(\frac{R}{T}\right)$$

where—

J equals £16,000 minus the maximum amount of contribution to costs grant payable to P under paragraph (7);

F equals the amount of contribution to costs loan for which P qualifies as an eligible prisoner;

T equals the total number of days of the duration of the designated course;

R equals the number of days of the designated course which remain when P ceases to be an eligible prisoner.

CHAPTER 3

Overpayments and recovery

Overpayments - general

37.—(1) Where an eligible student has been paid an amount of any grant or contribution to costs loan which exceeds the amount to which the student is entitled under these Regulations, the student must repay the excess amount if required to do so by the Welsh Ministers.

(2) In this Chapter, references to an eligible student are to be treated as including a person who has received support but is not, or is no longer, an eligible student.

Recovery of overpayments of grants

38.—(1) The Welsh Ministers must recover any overpayment of a grant unless they think it is not appropriate to do so.

(2) A payment of a grant made before the day on which the course begins is an overpayment if the student withdraws from the course before that day.

(3) Overpayment of a grant may be recovered by subtracting the overpayment from any grant payable to the eligible student from time to time under these Regulations or any other regulations made by the Welsh Ministers under section 22 of the 1998 Act.

(4) Paragraph (3) does not prevent the Welsh Ministers from recovering an overpayment by any other method available to them.

Recovery of overpayment of contribution to costs loan

39.—(1) Any overpayment of a contribution to costs loan is recoverable by the Welsh Ministers from—

- (a) the institution or third party which received the monies of the contribution to costs loan where payment was made to such institution or third party, or
- (b) the student who received the contribution to costs loan.

(2) An overpayment of a contribution to costs loan may be recovered from a student under paragraph (1)(b) in whichever one or more of the following ways the Welsh Ministers consider appropriate in all the circumstances—

- (a) by subtracting the overpayment from any amount of the contribution to costs loan which remains to be paid;
- (b) by subtracting the overpayment from any kind of grant or loan payable to the student from time to time pursuant to regulations made by the Welsh Ministers under section 22 of the 1998 Act;
- (c) by requiring the student to repay the contribution to costs loan in accordance with regulations made under section 22 of the 1998 Act;
- (d) by taking such other action for the recovery of the overpayment as is available to them.

Repayment

40.—(1) The Welsh Ministers may at any time require an applicant or eligible student to enter into an agreement to repay a contribution to costs loan by a particular method.

(2) Where the Welsh Ministers have required an agreement as to the method of repayment under this regulation, the Welsh Ministers may withhold any payment of a contribution to costs loan until the applicant or eligible student provides what has been required.

PART 9

Restrictions relating to contribution to costs loans

Requirement to provide national insurance number

41.—(1) The Welsh Ministers may make it a condition of entitlement to payment of the contribution to costs loan or any instalment of the loan that an

eligible student must provide them with the student's United Kingdom national insurance number.

(2) If that condition is imposed, the Welsh Ministers must not make any payment of the contribution to costs loan until the eligible student has complied, unless the Welsh Ministers are satisfied that, owing to exceptional circumstances, it would be appropriate to make a payment despite the condition not being complied with.

Information requirements relating to loans

42.—(1) Where the Welsh Ministers have required information or documentation under regulation 22(1), for any of the purposes mentioned in paragraph (2) of this regulation, they may withhold any payment of a contribution to costs loan or contribution to costs grant until the student complies with the requirement or provides a satisfactory explanation for not doing so.

(2) The purposes are—

- (a) determining whether the student is an eligible student who qualifies for a loan;
- (b) determining the amount of loan payable to the student;
- (c) any matter relating to the payment of a loan by the student.

PART 10

Amendments to the Education (Postgraduate Master's Degree Loans) (Wales) Regulations 2017

Amendments to the Education (Postgraduate Master's Degree Loans) (Wales) Regulations 2017

43. The 2017 Master's Degree Loans Regulations are amended as follows.

44. In regulation 1 (title, commencement and application), after paragraph (3) insert—

“(4) These Regulations do not apply to the provision of postgraduate master's degree loans to students in relation to courses which begin on or after 1 August 2019 unless regulation 2(3) of the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019 applies to the course.”

45. In regulation 2 (interpretation), in paragraph (1)—

- (a) for the definition of “fees” substitute—

““fees” (*“ffioedd”*) has the meaning given in section 57(1) of the Higher Education (Wales) Act 2015(1);”;

(b) in the appropriate place insert—

““person with section 67 leave to remain” (*“person sydd â chaniatâd i aros o dan adran 67”*) means a person who—

(a) has extant leave to remain in the United Kingdom under section 67 of the Immigration Act 2016(2) and in accordance with the immigration rules(3); and

(b) has been ordinarily resident in the United Kingdom and Islands throughout the period since the person was granted such leave;”.

46. In regulation 4—

(a) for paragraph (1)(b) substitute—

“(b) wholly provided by an institution in the United Kingdom that before 1 August 2019 was a publicly funded institution (whether alone or in conjunction with another such institution or with an institution situated outside the United Kingdom);”;

(b) for paragraph (3)(d) substitute—

“(d) an institution is not to be regarded as having been publicly funded before 1 August 2019 by reason only that it received public funds before that date from the governing body of a higher education institution in accordance with section 65(3A) of the Further and Higher Education Act 1992; and”.

47. In regulation 8 (events), after paragraph (b) insert—

“(ba)the student or the student’s parent becomes a person with section 67 leave to remain;”.

48. In Schedule 1, after paragraph 5 (persons with leave to enter or remain and their family members) insert—

“Persons with section 67 leave to remain

5A.—(1) A person who—

(a) is a person with section 67 leave to remain;

(1) 2015 anaw 1.

(2) 2016 c. 19.

(3) See paragraphs 352ZG to 352ZS.

- (b) is ordinarily resident in Wales on the first day of the first academic year of the course; and
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course.

(2) A person who—

- (a) is the child of a person with section 67 leave to remain;
- (b) on the leave application date was under 18 years old and was the child of the person with section 67 leave to remain;
- (c) is ordinarily resident in Wales on the first day of the first academic year of the course; and
- (d) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course.

(3) In this paragraph, “leave application date” means the date on which the person with section 67 leave to remain made the application that led to that person being granted leave to remain in the United Kingdom.”

Kirsty Williams

Minister for Education, one of the Welsh Ministers

29 April 2019

SCHEDULES

SCHEDULE 1 Regulation 4(1)

Interpretation

Meaning of academic year

1.—(1) An “academic year”, in respect of a course, is determined as follows—

- (a) identify the period in Column 2 of Table 1 within which the academic year actually begins;
- (b) the academic year is the period of 12 months beginning on the date specified in the entry in Column 1 of the Table corresponding to the period set out in Column 2.

(2) Any reference in these Regulations to an “academic year” is a reference to a year determined in accordance with sub-paragraph (1).

Table 1

<i>Column 1</i>	<i>Column 2</i>
<i>Start date of academic year for the purposes of these Regulations</i>	<i>Period within which academic year begins</i>
1 September	On or after 1 August but before 1 January
1 January	On or after 1 January but before 1 April
1 April	On or after 1 April but before 1 July
1 July	On or after 1 July but before 1 August

Educational institutions

2.—(1) In these Regulations—

- (a) “Welsh funded institution” means an institution maintained or assisted by recurrent grants out of funds provided by the Welsh Ministers;
- (b) “Scottish funded institution” means an institution maintained or assisted by recurrent grants out of funds provided by the Scottish Ministers;
- (c) “Northern Irish funded institution” means an institution maintained or assisted by

recurrent grants out of funds provided by the Northern Ireland Executive;

- (d) “English regulated institution” means a registered English institution subject to a fee limit condition under section 10 of the Higher Education and Research Act 2017⁽¹⁾;
- (e) “registered English institution” means an institution registered by the Office for Students⁽²⁾ in the register;
- (f) “English plan provider” means a registered English institution which has an access and participation plan approved by the Office for Students under section 29 of the Higher Education and Research Act 2017 and which remains in force.

(2) In this paragraph, any reference to the register is a reference to the register established and maintained by the Office for Students under section 3 of the Higher Education and Research Act 2017.

Interpretation of other key terms

3.—(1) In these Regulations—

“academic authority” (*“awdurdod academaidd”*) means, in relation to an institution, the governing body or other body having the functions of a governing body and includes a person acting with the authority of that body;

“close relative” (*“perthynas agos”*) (in relation to a person (“P”)) means—

- (a) P’s spouse or civil partner;
- (b) a person ordinarily living with P as if the person were P’s spouse or civil partner;
- (c) P’s parent, where P is under the age of 25;
- (d) P’s child, where P is dependent on that child;

“course” (*“cwrs”*) means, unless the context otherwise requires, a taught programme of study, a programme of research, or a combination of both, and which may include one or more periods of work experience, and which leads, on successful completion, to the award of a postgraduate master’s degree;

“current academic year” (*“blwyddyn academaidd gyfredol”*) means the academic year of the designated course in which the student applies for support;

(1) 2017 c. 29.

(2) The Office for Students is a body corporate established under section 1 of the Higher Education and Research Act 2017.

“distance learning course” (“*cwrs dysgu o bell*”) means a course in relation to which a student undertaking the course is not required to be in attendance by the institution providing the course, other than to satisfy any requirement imposed by the institution to attend any institution—

- (a) for the purpose of registration, enrolment or any examination, or
- (b) on a weekend or during any vacation;

“eligible prisoner” (“*carcharor cymwys*”) means a prisoner—

- (a) who begins a designated course on or after 1 August 2019,
- (b) who has been authorised by the prison Governor or Director or other appropriate authority to study the designated course, and
- (c) whose earliest release date is within 4 years of the first day of the first academic year of the designated course;

“equivalent or higher qualification” (“*cymhwyster cyfatebol neu uwch*”) means a qualification determined in accordance with paragraph (2) to be an equivalent or higher qualification;

“EU national” (“*gwladolyn UE*”) means a national of a member State of the EU;

“fees” (“*ffioedd*”) has the meaning given in section 57(1) of the Higher Education (Wales) Act 2015(1);

“healthcare bursary” (“*bwrsari gofal iechyd*”) means a bursary or award of similar description under section 63(6) of the Health Services and Public Health Act 1968(2) or Article 44 of the Health and Personal Social Services (Northern Ireland) Order 1972(3);

“information” (“*gwybodaeth*”) includes documents;

“KESS 2 Scheme” (“*Cynllun KESS 2*”) means the Knowledge Economy Skills Scholarships 2 Scheme which is funded, in part, by the European Social Fund(4);

“member of the armed forces” (“*aelod o’r lluoedd arfog*”) means a member of the regular naval, military or air forces of the Crown;

“periods of work experience” (“*cyfnodau o brofiad gwaith*”) means—

(1) 2015 anaw 1.
 (2) 1968 c. 46.
 (3) S.I. 1972/1265 (N.I. 14).
 (4) The European Social Fund is established under Article 162 of the Treaty on the Functioning of the European Union.

- (a) periods of industrial, professional or commercial experience associated with the designated course at an institution, but at a place outside that institution;
- (b) periods during which a student is employed and residing in a country whose language is one that the student is studying for that student's designated course (provided that the period of residence in that country is a requirement of that student's course and the study of one or more modern languages accounts for not less than one half of the total time spent studying on the course);

“prisoner” (“*carcharor*”) means a person who is serving a sentence of imprisonment in the United Kingdom including a person who is detained in a young offender institution (and “prison” is to be construed accordingly);

“public funds” (“*cronfeydd cyhoeddus*”) means moneys provided by Parliament including funds provided by the Welsh Ministers;

“statutory award” (“*dyfardal statudol*”) means any award bestowed, grant paid, or other support provided, by virtue of the 1998 Act or the Education Act 1962⁽¹⁾, or any comparable award, grant, or other support, in respect of undertaking a course which is paid out of public funds;

“student loans legislation” (“*y ddeddfwriaeth ar fenthyciadau i fyfyrwyr*”) means the Education (Student Loans) Act 1990⁽²⁾, the Education (Student Loans) (Northern Ireland) Order 1990⁽³⁾, the Education (Scotland) Act 1980⁽⁴⁾ and regulations made under those Acts or that Order, the Education (Student Support) (Northern Ireland) Order 1998⁽⁵⁾ and regulations made under that Order or the 1998 Act and regulations made under the 1998 Act;

“support” (“*cymorth*”), except where otherwise indicated, means financial support by way of grant or loan made by the Welsh Ministers under—

- (a) these Regulations, or
- (b) any other regulations made under section 22 of the 1998 Act.

(1) 1962 c. 12 (now repealed).
 (2) Repealed by the Teaching and Higher Education Act 1998 (c. 30), Schedule 4, with savings *see* the Teaching and Higher Education Act 1998 (Commencement No. 2 and Transitional Provisions) Order 1998 (S.I. 1998/2004) (C. 46).
 (3) S.I. 1990/1506 (N.I. 11), amended by S.I. 1996/274 (N.I. 1), Schedule 5 Part 2, S.I. 1996/1918 (N.I. 15), Article 3 and the Schedule and S.I. 1998/258 (N.I. 1), Articles 3 to 6 and revoked, with savings, by SR (N.I.) 1998 No. 306.
 (4) 1980 c. 44.
 (5) S.I. 1998/1760 (N.I. 14) to which there have been amendments not relevant to these Regulations.

(2) The Welsh Ministers may determine that a qualification is an equivalent or higher qualification if—

- (a) an eligible student holds a higher qualification from any institution whether or not in the United Kingdom, and
- (b) the qualification referred to in paragraph (a) is a postgraduate master's degree from an institution in the United Kingdom or is of an academic level which, in the opinion of the Welsh Ministers, is equivalent to or higher than a qualification to which the designated course leads.

SCHEDULE 2

Regulation 9(1)(a)

Categories of eligible students

Category 1 – Persons settled in the United Kingdom

1.—(1) A person—

- (a) who on the first day of the first academic year of the course—
 - (i) is settled in the United Kingdom other than by reason of having acquired the right of permanent residence, and
 - (ii) is ordinarily resident in Wales,
- (b) who has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course, and
- (c) whose residence in the United Kingdom and Islands has not, during any part of the period referred to in paragraph (b), been wholly or mainly for the purpose of receiving full-time education (unless the person is treated as being ordinarily resident in the United Kingdom and Islands in accordance with paragraph 11(2)).

(2) A person who—

- (a) is settled in the United Kingdom by virtue of having acquired the right of permanent residence,
- (b) is ordinarily resident in Wales on the first day of the first academic year of the course,
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course, and
- (d) in a case where the person's ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the EEA and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).

Category 2 – Refugees and their family members

2.—(1) A person who—

- (a) is a refugee,
- (b) is ordinarily resident in the United Kingdom and Islands and has not ceased to

be so resident since the person was recognised as a refugee, and

(c) is ordinarily resident in Wales on the first day of the first academic year of the course.

(2) A person who—

(a) is the spouse or civil partner of a refugee,

(b) was the spouse or civil partner of the refugee on the date on which the refugee made the application for asylum,

(c) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being given leave to remain in the United Kingdom, and

(d) is ordinarily resident in Wales on the first day of the first academic year of the course.

(3) A person who—

(a) is the child of a refugee or the child of the spouse or civil partner of a refugee,

(b) on the date on which the refugee made the application for asylum, was the child of the refugee or the child of a person who was the spouse or civil partner of the refugee on that date,

(c) was under 18 years old on the date on which the refugee made the application for asylum,

(d) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being given leave to remain in the United Kingdom, and

(e) is ordinarily resident in Wales on the first day of the first academic year of the course.

Category 3 – Persons granted stateless leave and their family members

3.—(1) A person granted stateless leave who—

(a) is ordinarily resident in Wales on the first day of the first academic year of the course, and

(b) has been ordinarily resident in the United Kingdom and Islands throughout the three year period preceding the first day of the first academic year of the course.

(2) A person—

(a) who—

(i) is the spouse or civil partner of a person granted stateless leave, and

(ii) on the leave application date, was the spouse or civil partner of a person granted stateless leave,

- (b) who is ordinarily resident in Wales on the first day of the first academic year of the course, and
- (c) who has been ordinarily resident in the United Kingdom and Islands throughout the three year period preceding the first day of the first academic year of the course.

(3) A person—

- (a) who—
 - (i) is the child of a person granted stateless leave or the child of the spouse or civil partner of a person granted stateless leave, and
 - (ii) on the leave application date, was the child of a person granted stateless leave or the child of a person who, on the leave application date, was the spouse or civil partner of a person granted stateless leave,
- (b) who was under 18 on the leave application date,
- (c) who is ordinarily resident in Wales on the first day of the first academic year of the course, and
- (d) who has been ordinarily resident in the United Kingdom and Islands throughout the three year period preceding the first day of the first academic year of the course.

(4) In this paragraph—

- (a) “person granted stateless leave” means a person who—
 - (i) has extant leave to remain as a stateless person under the immigration rules, and
 - (ii) has been ordinarily resident in the United Kingdom and Islands throughout the period since the person was granted such leave;
- (b) “leave application date” means the date on which a person granted stateless leave made an application to remain in the United Kingdom as a stateless person under the immigration rules.

Category 4 – Persons with leave to enter or remain and their family members

4.—(1) A person—

- (a) with leave to enter or remain,
- (b) who is ordinarily resident in Wales on the first day of the first academic year of the course, and

- (c) who has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course.

(2) A person who—

- (a) is the spouse or civil partner of a person with leave to enter or remain,
- (b) was the spouse or civil partner of the person with leave to enter or remain on the leave application date,
- (c) is ordinarily resident in Wales on the first day of the first academic year of the course, and
- (d) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course.

(3) A person who—

- (a) is the child of a person with leave to enter or remain or the child of the spouse or civil partner of a person with leave to enter or remain,
- (b) on the leave application date was under 18 years old and was the child of the person with leave to enter or remain or the child of a person who was the spouse or civil partner of the person with leave to enter or remain on that date,
- (c) is ordinarily resident in Wales on the first day of the first academic year of the course, and
- (d) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course.

(4) In this paragraph, a “person with leave to enter or remain” means a person (“P”)—

- (a) who has—
 - (i) applied for refugee status but has, as a result of that application been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that, although P is considered not to qualify for recognition as a refugee, it is thought right to allow P to enter or remain in the United Kingdom on the grounds of humanitarian protection or discretionary leave, and who has been granted leave to enter or remain accordingly,
 - (ii) not applied for refugee status but has been informed in writing by a person acting under the authority of the

Secretary of State for the Home Department that it is thought right to allow P to enter or remain in the United Kingdom on the grounds of discretionary leave, and who has been granted leave to enter or remain accordingly,

- (iii) been granted leave to remain on the grounds of private life under the immigration rules,
- (iv) been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that, although P is not considered to qualify for leave to remain on the grounds of private life under the immigration rules, P has been granted leave to remain outside the rules⁽¹⁾ on the grounds of Article 8 of the European Convention on Human Rights,
- (b) whose period of leave to enter or remain has not expired or has been renewed and the period for which it was renewed has not expired or in respect of whose leave to enter or remain an appeal is pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002⁽²⁾), and
- (c) who has been ordinarily resident in the United Kingdom and Islands throughout the period since P was granted leave to enter or remain.

(5) In this paragraph, “leave application date” means the date on which the person with leave to enter or remain made the application that led to that person being granted leave to enter or remain in the United Kingdom.

Category 5 – Persons with section 67 leave to remain

- 5.—(1) A person who—
- (a) is a person with section 67 leave to remain,
 - (b) is ordinarily resident in Wales on the first day of the first academic year of the course, and
 - (c) has been ordinarily resident in the United Kingdom throughout the three-year period

(1) Paragraph 276BE(2) of the Immigration Rules refers.
 (2) 2002 c. 41. Section 104 was amended by the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 (c. 19), Schedules 2 and 4, the Immigration, Asylum and Nationality Act 2006 (c. 13), section 9, S.I. 2010/21, the Immigration Act 2014 (c. 22), Schedule 9.

preceding the first day of the first academic year of the course.

- (2) A person who—
- (a) is the child of a person with section 67 leave to remain,
 - (b) on the leave application date was under 18 years old and was the child of the person with section 67 leave to remain,
 - (c) is ordinarily resident in Wales on the first day of the first academic year of the course, and
 - (d) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course.
- (3) In this paragraph—
- (a) “person with section 67 leave to remain” means a person who—
 - (i) has extant leave to remain in the United Kingdom under section 67 of the Immigration Act 2016⁽¹⁾ and in accordance with the immigration rules, and
 - (ii) has been ordinarily resident in the United Kingdom and Islands throughout the period since the person was granted such leave;
 - (b) “leave application date” means the date on which the person with section 67 leave to remain made the application that led to that person being granted leave to remain in the United Kingdom.

Category 6 – Workers, employed persons, self-employed persons and their family members

- 6.—(1) A person who—
- (a) is one of the following—
 - (i) an EEA migrant worker or an EEA self-employed person, who is ordinarily resident in Wales on the first day of the first academic year of the course;
 - (ii) a Swiss employed person or a Swiss self-employed person, who is ordinarily resident in Wales on the first day of the first academic year of the course;
 - (iii) a family member of a person mentioned in sub-paragraph (i) or (ii), who is ordinarily resident in Wales on the first

(1) 2016 c. 19.

- day of the first academic year of the course;
- (iv) an EEA frontier worker or an EEA frontier self-employed person;
 - (v) a Swiss frontier employed person or a Swiss frontier self-employed person;
 - (vi) a family member of a person mentioned in sub-paragraph (iv) or (v), and
- (b) has been ordinarily resident in the territory comprising the EEA and Switzerland throughout the three-year period preceding the first day of the first academic year of the course.
- (2) A person who—
- (a) is ordinarily resident in Wales on the first day of the first academic year of the course,
 - (b) has been ordinarily resident in the territory comprising the EEA and Switzerland throughout the three-year period preceding the first day of the first academic year of the course, and
 - (c) is entitled to support by virtue of Article 10 of Regulation (EU) No. 492/2011 of the European Parliament and of the Council on freedom of movement for workers within the Union, as extended by the EEA Agreement⁽¹⁾.
- (3) In sub-paragraph (1)—
- “EEA frontier self-employed person” (“*person hunangyflogedig trawsffiniol AEE*”) means an EEA national who—
- (a) is a self-employed person in Wales, and
 - (b) resides in Switzerland or the territory of an EEA State other than the United Kingdom and returns to the national’s residence in Switzerland or that EEA State, as the case may be, at least once a week;
- “EEA frontier worker” (“*gweithiwr trawsffiniol AEE*”) means an EEA national who—
- (a) is a worker in Wales, and
 - (b) resides in Switzerland or the territory of an EEA State other than the United Kingdom and returns to the national’s residence in Switzerland or that EEA State, as the case may be, at least once a week;
- “EEA migrant worker” (“*gweithiwr mudol AEE*”) means an EEA national who is a worker, other than an EEA frontier worker, in the United Kingdom;

(1) OJ No L141, 27.05.2011, p. 1.

“EEA self-employed person” (*“person hunangyflogedig AEE”*) means an EEA national who is a self-employed person, other than an EEA frontier self-employed person, in the United Kingdom;

“family member” (*“aelod o deulu”*) means—

- (a) in relation to an EEA frontier worker, an EEA migrant worker, an EEA frontier self-employed person or an EEA self-employed person—
 - (i) the person’s spouse or civil partner,
 - (ii) direct descendants of the person or of the person’s spouse or civil partner who are under the age of 21 or who are 21 and over and are dependants of the person or the person’s spouse or civil partner, or
 - (iii) dependent direct relatives in the ascending line of the person or that person’s spouse or civil partner;
- (b) in relation to a Swiss frontier employed person, a Swiss employed person, a Swiss frontier self-employed person or a Swiss self-employed person—
 - (i) the person’s spouse or civil partner, or
 - (ii) the person’s child or the child of the person’s spouse or civil partner;

“Swiss employed person” (*“person cyflogedig Swisaidd”*) means a Swiss national who is an employed person, other than a Swiss frontier employed person, in the United Kingdom;

“Swiss frontier employed person” (*“person cyflogedig trawsffiniol Swisaidd”*) means a Swiss national who—

- (a) is an employed person in Wales, and
- (b) resides in Switzerland or in the territory of an EEA State other than the United Kingdom and returns to the national’s residence in Switzerland or that EEA State, as the case may be, at least once a week;

“Swiss frontier self-employed person” (*“person hunangyflogedig trawsffiniol Swisaidd”*) means a Swiss national who—

- (a) is a self-employed person in Wales, and
- (b) resides in Switzerland or in the territory of an EEA State other than the United Kingdom and returns to the national’s residence in Switzerland or that EEA State, as the case may be, at least once a week;

“Swiss self-employed person” (*“person hunangyflogedig Swisaidd”*) means a Swiss national who is a self-employed person, other than

a Swiss frontier self-employed person, in the United Kingdom.

(4) For the purposes of sub-paragraph (3)—

“EEA national” (“*gwladolyn AEE*”) means a national of an EEA State other than the United Kingdom;

“employed person” (“*person cyflogedig*”) means an employed person within the meaning of Annex 1 to the Swiss Agreement;

“self-employed person” (“*person hunangyflogedig*”) means—

- (a) in relation to an EEA national, a person who is self-employed within the meaning of Article 7 of Directive 2004/38 or the EEA Agreement, as the case may be, or
- (b) in relation to a Swiss national, a person who is a self-employed person within the meaning of Annex 1 to the Swiss Agreement;

“worker” (“*gweithiwr*”) means a worker within the meaning of Article 7 of Directive 2004/38 or the EEA Agreement, as the case may be.

Category 7 – Persons who are settled in the United Kingdom and have exercised a right of residence elsewhere

7.—(1) A person who—

- (a) is settled in the United Kingdom,
- (b) was ordinarily resident in Wales and settled in the United Kingdom immediately before leaving the United Kingdom and who has exercised a right of residence,
- (c) is ordinarily resident in the United Kingdom on the day on which the course begins,
- (d) has been ordinarily resident in the territory comprising the EEA and Switzerland throughout the three-year period preceding the first day of the first academic year of the course, and
- (e) in a case where the person’s ordinary residence referred to in paragraph (d) was wholly or mainly for the purposes of receiving full time education, was ordinarily resident in the territory comprising the EEA and Switzerland immediately before the period of ordinary residence referred to in paragraph (d).

(2) For the purposes of this paragraph, a person has exercised a right of residence if sub-paragraph (3) or (4) applies to the person.

(3) This sub-paragraph applies to a person who is—

- (a) a United Kingdom national,
- (b) a family member of a United Kingdom national for the purposes of Article 7 of Directive 2004/38 (or corresponding purposes under the EEA Agreement or Swiss Agreement), or
- (c) a person who has exercised a right of permanent residence,

who has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or Swiss Agreement in a state other than the United Kingdom.

(4) This paragraph applies to a person (“P”)—

- (a) who is settled in the United Kingdom and has a right of permanent residence, and
- (b) who goes to the state within the territory comprising the EEA and Switzerland of which P is a national or of which the person in relation to whom P is a family member is a national.

(5) For the purposes of sub-paragraph (4), P is a family member of another person (“Q”) if P—

- (a) is Q’s spouse or civil partner,
- (b) is a direct descendant of Q or of Q’s spouse or civil partner and P—
 - (i) is under the age of 21, or
 - (ii) is 21 or over and a dependant of Q or of Q’s spouse or civil partner, or
- (c) where Q is an EU national who falls within Article 7(1)(b) of Directive 2004/38, is a dependant direct relative in Q’s ascending line or that of Q’s spouse or civil partner.

Category 8 – EU nationals

8.—(1) A person—

- (a) who is either—
 - (i) an EU national on the first day of the first academic year of the course, other than a person who is a United Kingdom national who has not exercised a right of residence, or
 - (ii) a family member of such a person,
- (b) who is undertaking a designated course in Wales,
- (c) who has been ordinarily resident in the territory comprising the EEA and Switzerland throughout the three-year period preceding the first day of the first academic year of the course, and

- (d) whose ordinary residence in the territory comprising the EEA and Switzerland has not during any part of the period referred to in paragraph (c) been wholly or mainly for the purpose of receiving full-time education (unless the person is treated as being ordinarily resident in that territory in accordance with paragraph 11(2)).

(2) A person who—

- (a) is an EU national other than a United Kingdom national on the first day of the first academic year of the course,
- (b) is ordinarily resident in Wales on the first day of the first academic year of the course,
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period immediately preceding the first day of the first academic year of the course, and
- (d) in a case where a person's ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the EEA and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).

(3) Where a state accedes to the European Union after the first day of the first academic year of the course and a person is a national of that state, the requirement in sub-paragraph (1)(a) or (2)(a) is treated as being satisfied.

(4) For the purposes of sub-paragraph (1)(a), a United Kingdom national has not exercised a right of residence if that person has not exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or Swiss Agreement in a state other than the United Kingdom.

(5) For the purposes of sub-paragraph (1)(a), a person ("P") is a family member of another person ("Q") if—

- (a) P is Q's spouse or civil partner,
- (b) P is a direct descendant of Q or of Q's spouse or civil partner and P—
 - (i) is under the age of 21, or
 - (ii) is 21 or over and a dependant of Q or of Q's spouse or civil partner, or
- (c) in a case where Q is an EU national who falls within Article 7(1)(b) of Directive 2004/38, P is a dependent direct relative in Q's ascending line or that of Q's spouse or civil partner.

Category 9 – Children of Swiss nationals

9. A person who—

- (a) is the child of a Swiss national who is entitled to support in the United Kingdom by virtue of Article 3(6) of Annex 1 to the Swiss Agreement,
- (b) is ordinarily resident in Wales on the first day of the first academic year of the course,
- (c) has been ordinarily resident in the territory comprising the EEA and Switzerland throughout the three-year period preceding the first day of the first academic year of the course, and
- (d) in a case where the person's ordinary residence referred to in sub-paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the EEA and Switzerland immediately prior to the period of ordinary residence referred to in sub-paragraph (c).

Category 10 – Children of Turkish workers

10.—(1) A person who—

- (a) is the child of a Turkish worker,
- (b) is ordinarily resident in Wales on the first day of the first academic year of the course, and
- (c) has been ordinarily resident in the territory comprising the EEA, Switzerland and Turkey throughout the three-year period preceding the first day of the first academic year of the course.

(2) In this paragraph, “Turkish worker” means a Turkish national who—

- (a) is ordinarily resident in the United Kingdom and Islands, and
- (b) is, or has been, lawfully employed in the United Kingdom.

Ordinary residence – additional provision

11.—(1) For the purpose of this Schedule, a person who is ordinarily resident in England, Wales, Scotland, Northern Ireland or the Islands, as a result of having moved from another of those areas for the purpose of undertaking—

- (a) the designated course, or
- (b) a course which, disregarding any intervening vacation, the person undertook immediately before undertaking the designated course,

is to be considered to be ordinarily resident in the place from which the person moved.

(2) For the purpose of this Schedule, a person (“P”) is to be treated as ordinarily resident in Wales, the United Kingdom and Islands or in the territory comprising the EEA, Switzerland and Turkey if P would have been so resident but for the fact that—

- (a) P,
- (b) P’s spouse or civil partner,
- (c) P’s parent, or
- (d) in the case of a dependent direct relative in the ascending line, P’s child or child’s spouse or civil partner,

is or was temporarily employed outside Wales, the United Kingdom and Islands or the territory comprising the EEA, Switzerland and Turkey.

(3) For the purposes of sub-paragraph (2), temporary employment outside Wales, the United Kingdom and Islands or the territory comprising the EEA, Switzerland and Turkey includes—

- (a) in the case of members of the armed forces, any period which they serve outside the United Kingdom as members of such forces;
- (b) in the case of members of the regular armed forces of an EEA State or Switzerland, any period which they serve outside the territory comprising the EEA and Switzerland as members of such forces;
- (c) in the case of members of the regular armed forces of Turkey, any period which they serve outside of the territory comprising the EEA, Switzerland and Turkey as members of such forces.

(4) For the purposes of this Schedule, an eligible student who is a prisoner is to be considered to be ordinarily resident in the part of the United Kingdom where the prisoner resided prior to sentencing.

(5) For the purposes of this Schedule, an area which—

- (a) was previously not part of the EU or the EEA, but
- (b) at any time before or after these Regulations come into force becomes part of one or other or both of these territories,

is to be considered to have always been a part of the EEA.

Further provision on ordinary residence: care leavers

12.—(1) A care leaver is treated as being ordinarily resident in Wales on the first day of the first academic year of the designated course even if, on that day, the care leaver—

- (a) is looked after outside Wales (in a case where regulation 29(c)(i) applies to the student), or
- (b) is residing outside Wales under a special guardianship order (in a case where regulation 29(c)(ii) applies to the student), under arrangements made by a Welsh local authority.

(2) In paragraph (1)—

“care leaver” (“*person sy’n ymadael â gofal*”) has the meaning given in regulation 29;

“looked after” (“*derbyn gofal*”) has the meaning given in section 74 of the Social Services and Well-being (Wales) Act 2014;

“Welsh local authority” (“*awdurdod lleol Cymreig*”) means a local authority within the meaning given by section 197(1) of that Act.

Interpretation

13. In this Schedule—

“Directive 2004/38” (“*Cyfarwydddeb 2004/38*”) means Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the rights of citizens of the Union and their family members to move and reside freely in the territory of the member States⁽¹⁾;

“EEA” (“*AEE*”) means the European Economic Area, that is to say the territory comprised by the EEA States;

“immigration rules” (“*rheolau mewnfudo*”) means the rules laid before Parliament by the Secretary of State under section 3(2) of the Immigration Act 1971⁽²⁾;

“Islands” (“*Ynysoedd*”) means the Channel Islands and the Isle of Man;

“parent” (“*rhiant*”) includes a guardian, any other person having parental responsibility for a child and any person having care of a child and “child” is to be construed accordingly;

“refugee” (“*ffoadur*”) means a person who is recognised by Her Majesty’s government as a refugee within the meaning of the United Nations

(1) OJ No L158, 30.04.2004, p.77-123.

(2) 1971 c. 77.

Convention relating to the Status of Refugees done at Geneva on 28 July 1951⁽¹⁾ as extended by its 1967 Protocol⁽²⁾;

“right of permanent residence” (*“hawl i breswyllo’n barhaol”*) means a right arising under Directive 2004/38 to reside in the United Kingdom permanently without restriction;

“settled” (*“wedi setlo”*) has the meaning given by section 33(2A) of the Immigration Act 1971⁽³⁾;

“Swiss Agreement” (*“Cytundeb y Swistir”*) means the Agreement between the EU and its member States, of the one part, and the Swiss Confederation of the other, on the Free Movement of Persons signed at Luxembourg on 21 June 1999⁽⁴⁾ and which came into force on 1 June 2002.

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- (1) Cmnd. 9171.
(2) Cmnd. 3906, the Protocol entered into force on 4 October 1967.
(3) 1971 c.77; section 33(2A) was inserted by paragraph 7 of Schedule 4 to the British Nationality Act 1981 (c. 61).
(4) Cm. 4904 and OJ No L114, 30.04.02, p. 6.

SCHEDULE 3 Regulation 28

Calculation of income

PART 1

Introduction

Overview of Schedule

1.—(1) This Schedule is arranged as follows.

(2) Part 2 makes provision about the calculation of an eligible student's household income for the purposes of determining the amount of contribution to costs grant payable to the student.

(3) Part 3 sets out the meaning of "taxable income", which is required in order to calculate a person's residual income.

(4) Part 4 makes provision about the calculation of residual income where—

- (a) Chapter 1 sets out how to calculate the residual income of an eligible student for the purposes of calculating the student's household income, and
- (b) Chapter 2 sets out how to calculate the residual income of an eligible student's parent, eligible student's partner or eligible student's parent's partner for the purposes of calculating the student's household income.

(5) Part 5 defines certain terms used in this Schedule.

PART 2

Household income

Household income of an eligible student

2. This Part makes provision about the calculation of an eligible student's household income.

Calculation of household income

3.—(1) An eligible student's household income is calculated by applying the following steps—

Step 1

If the student is not an independent eligible student (see paragraph 4), aggregate the total residual income of the persons listed in List A.

If the student is an independent eligible student, aggregate the total income of the persons listed in List B.

List A

The persons are—

- (a) the eligible student, plus
- (b) either—
 - (i) each of the eligible student’s parents (subject to paragraph 5), or
 - (ii) where the student’s parents have separated, the parent selected under paragraph 6(3) and that parent’s partner (if that parent has one), (subject to paragraph 7).

List B

The persons are—

- (a) the independent eligible student, plus
- (b) the student’s partner (if the student has one), (subject to paragraphs 7 and 8).

Step 2

Calculate the applicable amount of dependent child deduction (see sub-paragraphs (2) to (4)) and deduct that from the aggregated total calculated under Step 1.

The result is the eligible student’s household income.

(2) A dependent child deduction is a deduction made in respect of each child wholly or mainly financially dependent on—

- (a) the eligible student,
- (b) the eligible student’s partner,
- (c) the eligible student’s parent, or
- (d) the partner of the eligible student’s parent,

where the income of that person is taken into account for the purpose of calculating household income.

(3) But no deduction is to be made in respect of a child of—

- (a) the eligible student’s parent, or
- (b) the partner of the eligible student’s parent,

if the child is the eligible student.

(4) In Table 2, Column 2 sets out the amount of dependent child deduction in respect of the academic year set out in the corresponding entry in Column 1.

Table 2

<i>Column 1</i>	<i>Column 2</i>
<i>Academic year</i>	<i>Amount of dependent child deduction</i>

Beginning on or after 1 £1,130
September 2019

Independent eligible students

4.—(1) An eligible student is an independent eligible student if one of the following cases applies—

Case 1

The student is aged 25 or over on the first day of the current academic year.

Case 2

The student is married or is in a civil partnership before the beginning of the first day of the current academic year, whether or not the marriage or civil partnership continues to subsist after that date.

Case 3

The student has no parent living.

Case 4

The Welsh Ministers are satisfied that—

- (a) neither of the student's parents can be found, or
- (b) it is not reasonably practicable to get in touch with either of the student's parents.

Case 5

Either—

- (a) the student has not communicated with either of the student's parents for a period of one year or more ending on the day before the first day of the current academic year, or
- (b) in the opinion of the Welsh Ministers, the student is irreconcilably estranged from the student's parents on other grounds.

Case 6

The student's parents reside outside the European Union and the Welsh Ministers are satisfied that—

- (a) the assessment of the household income by reference to the parents' income would place those parents in jeopardy, or
- (b) it would not be reasonably practicable for the parents to send funds to the United Kingdom for the purposes of supporting the student.

Case 7

Where paragraph 6 (separation of parents) applies, the parent selected by the Welsh Ministers under subparagraph (3) of that paragraph has died, irrespective of whether that parent had a partner.

Case 8

On the first day of the current academic year, the student has the care of a person under the age of 18.

Case 9

The student has been supported by the student's earnings for any period of three years (or periods which together aggregate at least three years) ending before the first day of the first academic year of the designated course.

Case 10

The student is a care leaver within the meaning given by regulation 29.

(2) For the purposes of Case 9, an eligible student is treated as being supported by the student's earnings if during the period or periods referred to in Case 9 one of the following grounds applies—

Ground 1

The eligible student was participating in arrangements for training unemployed persons under a scheme operated, sponsored or funded by a public body.

Ground 2

The eligible student received a benefit payable by a public body in respect of a person who is available for employment but is unemployed.

Ground 3

The eligible student was available for employment and had complied with any registration requirement of a public body as a condition of entitlement for participation in arrangements for training or the receipt of benefits.

Ground 4

The eligible student held a state studentship or comparable award.

Ground 5

The eligible student received a pension, allowance, or other benefit paid by reason of the student's disability, injury or sickness or for a reason associated with childbirth.

Eligible student's parent dies leaving a surviving parent

5.—(1) Where—

- (a) the parent of an eligible student dies before the current academic year, and
- (b) the parent's income has been or would have been taken into account for the purposes of determining household income,

only the residual income of the surviving parent is aggregated for the purposes of Step 1 in paragraph 3(1).

(2) Where the parent dies during the current academic year, the residual income of the eligible student's parents, for the purposes of Step 1 in paragraph 3(1), is the aggregate of—

- (a) the residual income of both parents for the applicable financial year multiplied by $X/52$, and
- (b) the residual income of the surviving parent for the applicable financial year multiplied by $Y/52$,

where—

X is the number of weeks in the current academic year during which both parents were alive, and

Y is the remaining number of weeks in the current academic year.

Separation of eligible student's parents

6.—(1) Where the eligible student's parents are separated for the duration of the current academic year, only the residual income of the parent selected under sub-paragraph (3) is aggregated for the purposes of Step 1 in paragraph 3(1).

(2) Where the student's parents have separated during the current academic year the residual income of the eligible student's parents, for the purposes of Step 1 in paragraph 3(1), is the aggregate of—

- (a) the residual income of both parents for the applicable financial year multiplied by $X/52$, and
- (b) the residual income of the parent selected under sub-paragraph (3) for the applicable financial year multiplied by $Y/52$,

where—

X is the number of weeks in the current academic year during which the parents were not separated, and

Y is the number of weeks in the current academic year during which the parents were separated.

(3) Where sub-paragraph (1) or (2) applies, the Welsh Ministers must select the parent whose residual income it is the most appropriate to take into account in the circumstances.

Separation of eligible student's parent or independent eligible student from partner

7.—(1) Where—

- (a) the parent of an eligible student, or
- (b) an independent eligible student,

is separated from his or her partner for the duration of the current academic year, the income of the partner is not aggregated under Step 1 in paragraph 3(1).

(2) Where—

- (a) the parent of the eligible student, or
- (b) an independent eligible student,

has separated from his or her partner during the current academic year, the amount of the partner's residual income to be aggregated under Step 1 is calculated by applying the formula in sub-paragraph (3).

(3) The formula to be applied is—

$$X \times \left(\frac{C}{52} \right)$$

Where—

X is the residual income of—

- (a) the eligible student's parent's partner, where List A of Step 1 applies, or
- (b) the independent eligible student's partner where List B of Step 1 applies,

for the applicable financial year;

C is the number of complete weeks of the current academic year during which—

- (a) the eligible student's parent and his or her partner, or
- (b) the independent eligible student and the student's partner,

were not separated.

(4) Where an eligible student has more than one partner in any one academic year, this paragraph and Step 1 of paragraph 3(1) apply in relation to each partner.

Independent eligible student or partner is a parent of an eligible student

8. Where—

- (a) an independent eligible student (“I”) or the partner of the independent eligible student (“PI”) is a parent of an eligible student (“S”), and
- (b) a statutory award payable to S is calculated by reference to the residual income of I or PI, or both,

the residual income of PI is not aggregated under List B of Step 1 in paragraph 3(1) for the purposes of calculating the household income of I.

PART 3

Taxable income

Taxable income

9.—(1) In this Schedule, a person’s taxable income means—

- (a) the aggregate of—
 - (i) the total income on which the person is charged to income tax under Step 1 of section 23 of the Income Tax Act 2007⁽¹⁾, and
 - (ii) if not already a component of total income under sub-paragraph (i), payments and other benefits specified in section 401(1) of the Income Tax (Earnings and Pensions) Act 2003⁽²⁾ received by the person or treated as received by the person (but disregard section 401(2) of that Act for the purposes of this sub-paragraph), or
- (b) where the income tax legislation of another member State applies to the person’s income, the person’s total income from all sources as determined for the purposes of the income tax legislation of that member State.

(2) For the purposes of sub-paragraph (1)(b), where the income tax legislation of more than one member State applies to the person in respect of the year under consideration, the person’s total income from all

(1) 2007 c. 3; section 23 was amended by the Finance Act 2009 (c. 10), Schedule 1, paragraph 6(o)(i), the Finance Act 2013 (c. 29), Schedule 3, paragraph 2(2) and the Finance Act 2014 (c. 26), Schedule 17, paragraph 19.

(2) 2003 c. 1; section 401 was amended by S.I. 2005/3229, S.I. 2011/1037 and S.I. 2014/211.

sources is the amount derived from the determination resulting in the greatest amount of total income, including any income which is required to be taken into account under paragraph 18.

(3) But a person's taxable income does not include income paid to another person under a pension arrangements order.

PART 4

Residual income

CHAPTER 1

Residual income of an eligible student

Calculation of eligible student's residual income

10. For the purposes of calculating an eligible student's household income under Part 2, the student's residual income is calculated as follows—

The eligible student's taxable income in respect of the current academic year.

Plus

Income payable to the eligible student under a pension arrangements order during the current academic year, net of income tax.

Minus

The aggregate of the deductions set out in paragraph 11 (unless already deducted for the purposes of determining the student's taxable income).

Deductions for the purpose of calculating residual income of an eligible student

11. For the purposes of calculating an eligible student's residual income, the deductions are—

Deduction A

Remuneration paid to the eligible student in the current academic year for work done during any academic year of the course, but not remuneration in respect of any—

- (a) period of leave taken by the student, or
- (b) other period during which the student is relieved of a duty to attend work,

so that the student may undertake the course.

Deduction B

The gross amount of any premium or sum paid by the eligible student during the current academic year in relation to a pension in respect of which—

- (a) relief is given under section 188 of the Finance Act 2004⁽¹⁾, or
- (b) where the student's income is computed for the purposes of the income tax legislation of another member State, relief would be given if that legislation made provision equivalent to the Income Tax Acts,

but not including any sum paid as a premium under a policy of life assurance.

Income of eligible student received in currency other than sterling

12.—(1) Where the eligible student receives income in a currency other than sterling, the value of the income is—

- (a) the amount of sterling the eligible student receives for the income, or
- (b) where the student does not convert the income into sterling, the value of the sterling which the income would purchase using the HMRC exchange rate.

(2) The HMRC exchange rate⁽²⁾ is the rate published by Her Majesty's Revenue and Customs for the month corresponding to the month in which the income is received.

CHAPTER 2

Residual income of persons other than an eligible student

Persons to whom this chapter applies

13. This Chapter makes provision for the calculation of a person's ("P's") residual income where P means the following—

- (a) the parent of the eligible student,
 - (b) the eligible student's partner, or
 - (c) the eligible student's parent's partner,
- as the case may be, and where P's income is aggregated under Step 1 in paragraph 3(1) for the purpose of calculating an eligible student's household income.

(1) 2004 c. 12; section 188 was amended by the Finance Act 2007 (c. 11), sections 68 and 114 and Schedules 18, 19 and 27, the Finance Act 2013 (c. 29), section 52 and the Finance Act 2014 (c. 26), Schedule 7.

(2) See <https://www.gov.uk/government/collections/exchange-rates-for-customs-and-vat>.

Calculation of residual income of persons other than eligible student

14. P's residual income is calculated as follows—
P's taxable income for the applicable financial year.

Plus

Income payable to P under a pension arrangements order during the applicable financial year, net of income tax.

Minus

The aggregate of the deductions set out in paragraph 15 (unless already deducted for the purposes of determining P's taxable income).

Deductions for the purpose of calculating residual income of persons other than eligible student

15.—(1) For the purpose of calculating P's residual income, the deductions are—

Deduction A

The gross amount of any premium or sum paid by P in respect of a pension during the applicable financial year, in relation to which—

- (a) relief is given under section 188 of the Finance Act 2004, or
- (b) where P's income is computed for the purpose of the income tax legislation of another member State, relief would have been given if that legislation made provision equivalent to the Income Tax Acts,

but not including any sum paid as a premium under a policy of life assurance.

Deduction B

Where paragraph 18 applies, a sum equivalent to Deduction A provided that this sum does not exceed the deductions which would be made if the whole of P's income were in fact income for the purposes of the Income Tax Acts.

Deduction C

£1,130, where P—

- (a) is an eligible student in respect of the current academic year but is also the parent of an eligible student, or
- (b) holds a statutory award in respect of the same period.

Applicable financial years: calculating residual income of persons other than eligible student

16.—(1) This paragraph specifies the applicable financial year for the purposes of calculating P's residual income.

(2) Unless sub-paragraph (3) applies, the applicable financial year is PY-1.

(3) Where the Welsh Ministers are satisfied that P's residual income for CY is likely to be at least 15% lower than P's residual income for PY-1, the applicable financial year is CY.

Income from business or profession

17.—(1) Sub-paragraph (2) applies where—

- (a) the applicable financial year for the purposes of calculating P's residual income is PY-1, and
- (b) the Welsh Ministers are satisfied that P's income is wholly or mainly derived from the profits of a business or profession carried on by P.

(2) Where this paragraph applies, P's residual income is P's income for the earliest period of twelve months ending in PY-1 in respect of which accounts are kept relating to P's business or profession.

Treatment of income not treated as income for income tax purposes

18.—(1) Sub-paragraph (3) applies where P is in receipt of any income which, for any of the reasons set out in sub-paragraph (2), does not form part of P's income for the purpose of the Income Tax Acts or the income tax legislation of another member State.

(2) The reasons are—

Reason 1

- (a) P is not resident or domiciled in the United Kingdom, or
- (b) P's income is computed for the purposes of the income tax legislation of another member State and P is not resident or domiciled in that member State.

Reason 2

- (a) P's income does not arise in the United Kingdom, or
- (b) P's income does not arise in the member State in which P's income is computed for the purposes of that State's income tax legislation.

Reason 3

The income arises from an office, service or employment, income from which is exempt from tax.

(3) P's taxable income is to be taken to include the income described in sub-paragraph (1) as if it were part of P's income for the purposes of the Income Tax Acts or the income tax legislation of another member State, as the case may be.

P's income in currency other than sterling

19.—(1) Where P's income is computed for the purposes of the income tax legislation of another member State, P's residual income is to be calculated in accordance with this Part in the currency of that member State and is to be taken to be the sterling value of that income determined in accordance with the relevant HMRC rate.

(2) The relevant HMRC rate is the average exchange rate issued by Her Majesty's Revenue and Customs for the calendar year ending immediately before the end of PY-1.

PART 5

Interpretation

Interpretation

20.—(1) In this Schedule, any reference to a person's ("A's") partner means—

- (a) A's spouse or civil partner, or
- (b) a person ordinarily living with A as if the person were A's spouse or civil partner.

(2) In this Schedule—

"applicable financial year" ("*blwyddyn ariannol gymwys*") means the financial year determined in accordance with paragraph 16;

"CY" ("*BG*") means the financial year beginning immediately before the first day of the current academic year;

"financial year" ("*blwyddyn ariannol*") means the period of twelve months in respect of which the income of a person is computed for the purposes of the income tax legislation which applies to it;

"PY" ("*BF*") means the financial year immediately preceding CY;

"PY-1" ("*BF-1*") means the financial year immediately preceding PY;

"pension arrangements order" ("*gorchymyn trefniadau pensiwn*") means an order under which a person pays benefits under a pension arrangement to another person under—

- (a) section 23 of the Matrimonial Causes Act 1973⁽¹⁾ which includes provision made by virtue of section 25B(4) (and including such an order as it may have effect by virtue of section 25E(3) of that Act)⁽²⁾, or
- (b) Part 1 of Schedule 5 to the Civil Partnership Act 2004⁽³⁾ which includes provision made by virtue of Part 6 of that Schedule (and including such an order as it may have effect by virtue of Part 7 of that Schedule);

“public body” (“*corff cyhoeddus*”) means a state authority or agency whether national, regional or local.

(1) 1973 c. 18; section 23 was amended by the Administration of Justice Act 1982 (c. 53), section 16.

(2) Section 25B was inserted by the Pensions Act 1995 (c. 20), section 166(1) and was amended by the Welfare Reform and Pensions Act 1999 (c. 30), Schedule 4. Section 25E was inserted by the Pensions Act 2004 (c. 35), section 319(1), Schedule 12, paragraph 3 and amended by the Pensions Act 2008 (c. 30), Schedule 6, paragraphs 1 and 6 and Schedule 11, Part 4.

(3) 2004 c. 33; paragraph 25 of Schedule 5 was modified by S.I. 2006/1934 and paragraph 30 of Schedule 5 was amended by the Pensions Act 2008 (c. 30), Schedules 6 and 11.

SCHEDULE 4 Regulation 4(2)

Index of defined terms

1. Table 3 lists expressions defined or otherwise explained in these Regulations.

Table 3

<i>Expression</i>	<i>Defined or referred to in...</i>
“the 1998 Act”	Regulation 5
“the 2017 Master’s Degree Loans Regulations”	Regulation 2(3)
“the 2017 Student Support Regulations”	Regulation 7(a)
“the 2018 Doctoral Degree Loans Regulations”	Regulation 7(c)
“the 2018 Student Support Regulations”	Regulation 7(b)
“academic authority”	Schedule 1, paragraph 3(1)
“academic year”	Schedule 1, paragraph 1
“applicable financial year”	Schedule 3, paragraph 20(2)
“base grant”	Regulation 24
“care leaver”	Regulation 29
“close relative”	Schedule 1, paragraph 3(1)
“contribution to costs grant”	Regulation 24
“contribution to costs loan”	Regulation 30
“course”	Schedule 1, paragraph 3(1)
“current academic year”	Schedule 1, paragraph 3(1)
“CY”	Schedule 3, paragraph 20(2)
“designated course”	Chapter 1 of Part 4
“Directive 2004/38”	Schedule 2, paragraph 13
“distance learning course”	Schedule 1, paragraph 3(1)
“EEA”	Schedule 2, paragraph 13
“EEA frontier self-employed person”	Schedule 2, paragraph 6(3)
“EEA frontier worker”	Schedule 2, paragraph 6(3)
“EEA migrant worker”	Schedule 2, paragraph 6(3)
“EEA national”	Schedule 2, paragraph 6(4)
“EEA self-employed person”	Schedule 2, paragraph 6(3)
“eligible prisoner”	Schedule 1, paragraph 3(1)
“eligible student”	Regulation 9(1)
“employed person”	Schedule 2, paragraph 6(4)
“English plan provider”	Schedule 1, paragraph 2(1)(f)
“English regulated institution”	Schedule 1, paragraph 2(1)(d)
“equivalent or higher qualification”	Schedule 1, paragraph 3(1)
“EU national”	Schedule 1, paragraph 3(1)

“family member”	Schedule 2, paragraph 6(3)
“fees”	Schedule 1, paragraph 3(1)
“financial year”	Schedule 3, paragraph 20(2)
“healthcare bursary”	Schedule 1, paragraph 3(1)
“household income”	Schedule 3, Part 2
“immigration rules”	Schedule 2, paragraph 13
“independent eligible student”	Schedule 3, paragraph 4
“information”	Schedule 1, paragraph 3(1)
“Islands”	Schedule 2, paragraph 13
“KESS 2 Scheme”	Schedule 1, paragraph 3(1)
“leave application date” (for the purpose of determining if a person is the family member of a person granted stateless leave)	Schedule 2, paragraph 3(4)(b)
“leave application date” (for the purpose of determining if a person is the family member of a person with leave to enter or remain)	Schedule 2, paragraph 4(5)
“leave application date” (for the purpose of determining if a person is the child of a person with section 67 leave to remain)	Schedule 2, paragraph 5(3)(b)
“loan” (for the purposes of Exceptions 1 and 2 in regulation 10(1))	Regulation 10(2)
“looked after”	Schedule 2, paragraph 12(2)
“member of the armed forces”	Schedule 1, paragraph 3(1)
“new course”	Regulation 17(1)
“Northern Irish funded institution”	Schedule 1, paragraph 2(1)(c)
“parent” and “child” (for the purposes of determining the category of a person under Schedule 2)	Schedule 2, paragraph 13
“partner”	Schedule 3, paragraph 20(1)
“pension arrangements order”	Schedule 3, paragraph 20(2)
“period of eligibility”	Regulation 11
“periods of work experience”	Schedule 1, paragraph 3(1)
“person granted stateless leave”	Schedule 2, paragraph 3(4)(a)
“person with leave to enter or remain”	Schedule 2, paragraph 4(4)
“person with section 67 leave to remain”	Schedule 2, paragraph 5(3)(a)
“prisoner” and “prison”	Schedule 1, paragraph 3(1)

“public body”	Schedule 3, paragraph 20(2)
“public funds”	Schedule 1, paragraph 3(1)
“PY”	Schedule 3, paragraph 20(2)
“PY-1”	Schedule 3, paragraph 20(2)
“refugee”	Schedule 2, paragraph 13
“register”	Schedule 1, paragraph 2(2)
“registered English institution”	Schedule 1, paragraph 2(1)(e)
“residual income”	Schedule 3, Part 4
“right of permanent residence”	Schedule 2, paragraph 13
“Scottish funded institution”	Schedule 1, paragraph 2(1)(b)
“self-employed person”	Schedule 2, paragraph 6(4)
“settled”	Schedule 2, paragraph 13
“statutory award”	Schedule 1, paragraph 3(1)
“student loans legislation”	Schedule 1, paragraph 3(1)
“support”	Schedule 1, paragraph 3(1)
“Swiss Agreement”	Schedule 2, paragraph 13
“Swiss employed person”	Schedule 2, paragraph 6(3)
“Swiss frontier employed person”	Schedule 2, paragraph 6(3)
“Swiss frontier self-employed person”	Schedule 2, paragraph 6(3)
“Swiss self-employed person”	Schedule 2, paragraph 6(3)
“taxable income”	Schedule 3, paragraph 9
“Turkish worker”	Schedule 2, paragraph 10(2)
“Welsh funded institution”	Schedule 1, paragraph 2(1)(a)
“Welsh local authority”	Schedule 2, paragraph 12(2)
“worker”	Schedule 2, paragraph 6(4)

**Explanatory Memorandum to the Education (Student Support)
(Postgraduate Master's Degrees) (Wales) Regulations 2019**

This Explanatory Memorandum has been prepared by the Higher Education Division 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 Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019. I am satisfied that the benefits justify the likely costs.

Kirsty Williams AM
Minister for Education
30 April 2019

1. Description

The Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019, ('the Regulations') provide for the payment of postgraduate Master's degree loans and grants for courses beginning on or after 1 August 2019.

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

None.

3. Legislative background

Section 22 of the Teaching and Higher Education Act 1998 ('the 1998 Act') provides the Welsh Ministers with the power to make regulations authorising or requiring the payment of financial support to students studying courses of higher or further education designated by or under those regulations. In particular, this power enables the Welsh Ministers to prescribe the amount of financial support (grant or loan) and categories of attendance on higher education courses. This provision, together with section 42(6) of the 1998 Act, provide the Welsh Ministers with the power to make the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019.

Section 44 of the Higher Education Act 2004 ('the 2004 Act') provided for the transfer to the National Assembly for Wales of the functions of the Secretary of State under section 22 of the 1998 Act (except insofar as they relate to the making of any provision authorised by subsections (2)(a), (c), (j) or (k), (3)(e) or (f) or (5) of section 22). Section 44 of the 2004 Act also provided for the functions of the Secretary of State in section 22(2)(a), (c) and (k) to be exercisable concurrently with the National Assembly for Wales.

The functions of the Secretary of State under section 42(6) of the 1998 Act were transferred, so far as exercisable in relation to Wales, to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672).

The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c.32).

Each year, a number of functions of the Welsh Ministers in regulations made under section 22 of the 1998 Act are delegated to the Student Loans Company under section 23 of the 1998 Act.

This instrument will follow the Negative Resolution procedure.

4. Purpose and intended effect of the legislation

The Welsh Ministers intend to continue to support students undertaking a postgraduate Master's degree and have introduced a new package of support in response to the *Review of higher education and student finance arrangements in Wales* ('the Diamond Review'). The Diamond Review highlighted the financial barrier for students wishing to access postgraduate education and recommended that such students receive a similar level of support as undergraduate students.

The Regulations provide for the making of grants and loans to students who are ordinarily resident in Wales and those from the EU studying at a Welsh institution for postgraduate Master's degree courses which begin on or after 1 August 2019. To qualify for grants or loans, a student must be an 'eligible student' studying on a 'designated course'. Support under the Regulations is available to full-time students and part-time students studying at 50% or greater intensity.

Support is paid directly to the student and consists of a mixture of grant and loan support as a contribution to costs. A £1,000 non-means tested universal grant is available for all eligible students. The remaining support includes a means-tested grant up to a maximum of £5,885, available to those with a household income of up to £18,370. The grant reduces by £1 for every £6.937 of household income above that threshold. In addition to the grants a non-means tested contribution to costs loan is available to make up the difference between the total amount of grant support available to the student and the maximum total maintenance support of £17,000. Students who are eligible prisoners are in scope for support, including the £1,000 non-means tested universal grant and loan. However, they are not able to access the means-tested grant. Support for prisoners is capped at the fee amount charged which is paid directly to the student's higher education provider.

There is just one application per course, not per academic year. Full-time courses can be one or two years and part-time courses can be up to four years to be eligible for support. Students, who receive either the universal or means-tested grant, do not have to take out a loan. Students can transfer between eligible courses and change duration of the eligible course. No further support is available if a student withdraws, other than for Compelling Personal Reasons (CPR), which will be available only once.

Other key aspects are set out below:

- Available to students settled in the UK and ordinarily resident in Wales; to an EU national or family member of an EU national; to those with residency status as a refugee, a stateless person or with leave to enter

or remain (including leave to remain under section 67 of the Immigration Act 2016); to an EEA migrant worker or a Swiss worker; to a child of a Swiss national; and to a child of a Turkish worker.

- The loan and grant are available to students up to 60 years of age.
- Students must not have an equivalent level postgraduate qualification.
- Students must not have had a postgraduate Master's loan from Welsh Minister's or another UK administration previously.
- Students must not be in receipt of or have bestowed upon them other sources of funding.
- Available for study of postgraduate courses offered by providers based in the UK which meet certain designation criteria.
- Courses must be Master's degrees, including distance learning taught Master's degrees and research degrees leading to a Master's award.
- There is a 50% minimum requirement for courses which have an overseas study element, to be undertaken in the UK.

5. Consultation

The policy was consulted on during the Diamond Review.

6. Regulatory Impact Assessment

Participation in postgraduate higher education

For 2017/18, data from the Higher Education Statistics Authority shows that there were 16,665 Welsh domiciled postgraduate enrolments at UK Higher Education Institutions, an increase of 9% on 2016/17. This increase reverses recent declines to exceed the previous peak of 16,460 in 2010/11. These figures include enrolments on programmes that will be eligible for the support these regulations will provide (i.e. Master's level programmes), as well as those that will not (i.e. postgraduate qualifications below or above Master's level).

Options

Option 1: Do nothing

In the event of the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019 not being made the principal implication is that the existing policy for student support would continue and the changes being proposed would not be implemented.

Currently eligible students in receipt of the postgraduate support are able to apply for a loan up to a maximum of £13,000. In the event of do nothing, postgraduate Master's students would not benefit from receiving an enhanced package of support through a mixture of grant and loan, up to a maximum of £17,000.

Option 2: Do minimum – make the Regulations

Making the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019 ensures that the levels of postgraduate funding which the Cabinet Secretary for Education (now Minister for Education) agreed to following the Diamond Review are implemented in 2019/20 academic year providing parity with undergraduate support.

It is anticipated that this will contribute to maintaining and improving participation levels in postgraduate Master's courses in higher education. This will ensure that postgraduate Master's students benefit from the £1,000 universal grant available to all eligible students. Students then have a choice to be means tested for the remaining grant up to a maximum of £6,885 (including the universal element), depending on household income and a non-means tested contribution to costs loan is available to make up the difference between the maximum support available of £17,000 and the grant provision.

Costs and benefits

Option 1: Do nothing

Leaving the previous regulations in place would mean no additional costs are incurred via the student support system and students would only be able to access loans at the same value as in 2018/19, at £13,000. The recommendation to increase the value of support through a mixture of grant and loan for postgraduate Master's student support made as a result of the Diamond Review would not be implemented. There would be no benefit to Welsh students as a result.

Option 2: Do minimum – make the Regulations

By making the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019 the Welsh Ministers ensure that policy commitments to higher education and students can be met. The Regulations will reflect the policy developed as a result of the Diamond Review by increasing support through grant for the less advantaged and loans for all. This will provide access to postgraduate study for all regardless of income and align with provision of undergraduate support. Students who are ordinarily resident in Wales and those from the EU studying at a Welsh institution will benefit from the changes to support outlined above. The benefits of a higher education to the individual, to the economy and to society are well established. The contribution to the economy is evidenced by statistics on UK graduates from higher education, which demonstrates a clear advantage to postgraduate leavers, compared with undergraduate leavers, with respect to employment and average salaries. Around 80% of 2016/17 postgraduate leavers were in employment (UK or

overseas), compared with around 65% of undergraduates, six months after graduation. This difference largely reflects the higher proportion of other undergraduate leavers that go on to further study, rather than employment. More than two thirds of 2016/17 postgraduate leavers employed full-time were earning an annual salary of at least £25,000, whereas a similar majority of undergraduate leavers were earning an annual salary below £25,000, six months after graduation.

Impact on students aged 60 and over

Those aged 60 and over are currently unable to access Welsh Government loan support for undergraduate and postgraduate degrees. Her Majesty's Treasury made funding available to the Welsh Government for the provision of loans, but stipulated that the net cost of the loan to Government should be zero. This meant that the Welsh Government had to carefully consider the cost of subsidising students who were unlikely to repay their student loan and a decision was made to align the age restriction for consistency with students in England.

The Regulations restrict eligibility for loan support to those under 60 years of age on the first day of the academic year in which the designated course starts. An age limit is discriminatory under the Equality Act 2010 and the European Convention on Human Rights (article 14 – prohibition on discrimination). Age discrimination can be justified if it meets a legitimate aim and is proportionate. The aim of the scheme is to increase, in the context of finite resources, high level skills for the economy. The Welsh Government considers that it is necessary to ensure value for money for the taxpayer and takes the view that the imposition of the age limit is rationally connected to that aim. To ensure value for money, sustainable funding is required and the age limit of 60 mitigates against the risk that loans are disproportionately taken out by older students who will be less likely to repay the loan in full or make significant repayments and who would have a limited number of working years in which their skills would be available to the economy.

Analysis carried out by The Welsh Government suggests that, on average, the older a borrower is, the less of their loan they are likely to repay. On average, younger borrowers are expected to repay more than they borrow (due to repaying the full loan plus interest on their account) while the oldest borrowers are likely to repay little of their loan. Although the data does not indicate a clear age at which to cap loans, less than 10% of any loans advanced to borrowers above the existing age 60 limit would be expected to be repaid. On average, younger borrowers contribute towards the loans that older borrowers (with age approaching the current limit) are unable to repay. Although those aged 60 years and over increasingly remain in work, thereby making an economic contribution, it is nevertheless evident that employment falls off after age 60,

from almost 80% of those aged 50–59, to around 50% for those aged 60–64, to around 10% for those aged 65 and over.

The possibility of a less intrusive measure to achieve the Welsh Government's aim has been considered. The conclusion was that a system which required individual investigation and assessment would create a heavy administrative burden which could consume scarce resources. Such a system might also introduce scope for inconsistent decision-making. Taking into account the evidence concerning not only repayment rates of loans but also employment rates (it is not the purpose of the loan to facilitate the uptake of Master's degree courses by students who have no particular intention to return to the workplace), the Welsh Government considers that the age restriction strikes a fair balance and is justified.

Eligible students aged 60 and over studying an undergraduate degree course can access the grant elements of Welsh Government support. It was intended to replicate this for eligible students studying a postgraduate Master's degree course. However, the Welsh Government has been unable to implement the necessary changes to the administrative system in time for the 2019/20 academic year and so interim arrangements are in place. An amount of funding via the Higher Education Funding Council for Wales (HEFCW) will be disseminated to higher education institutions in Wales to provide a non-repayable bursary to eligible students, aged 60 and over, studying postgraduate Master's courses in Wales which begin in the 2019/20 academic year.

The restriction in the Regulations of grant support to those aged under 60 is potentially discriminatory as described above. However, given the administrative restrictions on the student finance system, the only alternative would be not to implement the new package of postgraduate Master's support for any students. This was considered to be disproportionate and would not achieve the Welsh Government's aim. The additional funding provided via HEFCW means that postgraduate Master's students aged 60 and over will still be able to access non-repayable funding and so the Welsh Government consider the age restriction in the Regulations to be proportionate and justified.

The Minister for Education is aware that people are now working longer than they used to and so has made a commitment to keep under review all age limits that are placed on full-time and part-time undergraduate as well as postgraduate Master's student support.

Distributional impact and student debt

Currently postgraduate Master's students accessing support in Wales bear the cost of additional debt through loans. As a result of the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019, the majority of postgraduate Master's degree students will benefit from the universal grant and the means-tested grant based on household income, topped up with loan to the maximum amount. This means that students will have additional support (as a contribution to costs) available to them compared with a student continuing under the existing regulations. Part-time courses can be designated for support for up to four years, which will provide increased flexibility for those that choose this route to qualification.

Eligible postgraduate Master's students starting a designated course on or after 1 August 2019 will have more support available to them compared to a student continuing under the existing regulations. The increase in the maximum support available will amount to £4,000 for all new postgraduate Master's students, which could potentially increase the amount of debt a student incurs. However, this is dependent on household income and those with a lower household income will incur less debt as well as being able to access a grant of up to £6,885. This includes the universal grant of £1,000, which is available to all. Eligible students will continue to have the option to request a loan amount less than the maximum entitlement and do not have to apply for the loan in order to receive any of the grant.

Participation

Postgraduate loans for Welsh resident students were first introduced in 2017/18. Data is available to quantify the effect of providing this support on participation, which has shown that more Welsh residents will have enrolled on eligible programmes. It is anticipated that the new package of student support will at least maintain, and more likely further increase, participation in postgraduate study, particularly those from a low income. Enabling those choosing to study on four year part-time postgraduate Master's courses, which are currently ineligible, to access support may also increase participation.

Cost

The proposed changes to the postgraduate loan for academic year 2019/20 will require the provision of a similar level of cover for loans from Her Majesty's Treasury, compared with the 'do nothing' option. In addition, the Government subsidy on the provision of loans (Resource Accounting and Budgeting (RAB) charge, or non-cash) does not differ markedly from the 'do nothing' option. The provision of the means-tested contribution to costs grant is expected to cost around £12m in the 2019-20 financial year. These estimates are based on latest financial modelling inputs and assumptions, which are subject to routine

review and update as more information becomes available. The costs are very small in the context of overall student loan cover and write-off requirements of Welsh Government.

CONSULTATION

The policy was consulted on extensively as a result of the Diamond Review of higher education and student finance arrangements in Wales. The Review included full consultation with stakeholders both during the Review and following publication of the Report.

COMPETITION ASSESSMENT

The making of these Regulations has no impact on the competitiveness of businesses, charities or the voluntary sector.

POST-IMPLEMENTATION ASSESSMENT

The postgraduate Master's regulations will be subject to detailed review, both by policy officials and delivery partners in their practical implementation of the Regulations.

SUMMARY

The making of these regulations is necessary to update aspects of the higher education postgraduate Master's degree student support system for students ordinarily resident in Wales and EU students. The changes will apply in relation to courses beginning in the 2019/20 academic year.

Agenda Item 4.1

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019

1. This Statutory Instrument Consent Memorandum is laid under Standing Order (“SO”) 30A.2. SO 30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the National Assembly for Wales (“the Assembly”) if a UK Statutory Instrument (SI) makes provision in relation to Wales amending primary legislation within the legislative competence of the Assembly.
2. The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 were laid before Parliament on 15 January and are now being laid before the Assembly. The SI can be found at:

<http://www.legislation.gov.uk/ukdsi/2019/9780111178102/contents>

Summary of the Statutory Instrument and its objective

3. The objective of the SI is to correct deficiencies in legislation arising from the UK leaving the European Union relating to policing, criminal investigations, law enforcement and security.
4. This SI makes a technical correction to the Local Government (Miscellaneous Provisions) Act 1982. This correction is required to ensure that the statute book will continue to operate after exit.

Relevant provision to be made by the SI

5. The provision in question made extremely minor amendments to paragraphs 12(1)(c) and (d) of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982. Currently the Act provides that a licence for a sex establishment (sexual entertainment venues, sex cinemas and sex shops) can only be granted to persons who are resident, or bodies corporate that are incorporated, in an EEA state. The amended version will provide that a licence can only be granted to persons resident, or bodies corporate that are incorporated, in the UK or in an EEA state.
6. It is the view of the Welsh Government that the provisions described in paragraph 5 above fall within the legislative competence of the National Assembly for Wales in so far as they relate to the licensing of sex establishments.

Why it is appropriate for the SI to make this provision

7. There is no divergence between the Welsh Government and the UK Government on the policy for the correction. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary

complication of the statute book. Consenting to a UK wide SI ensures that there is a single legislative framework across the UK, which promotes clarity and accessibility during this period of change. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

Julie James AM
Minister for Housing and Local Government
3 May 2019

Draft Regulations laid before Parliament under section 223(5) and (6) of the Extradition Act 2003 and paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2019 No.

EXITING THE EUROPEAN UNION

ARMS AND AMMUNITION

CRIMINAL LAW

DANGEROUS DRUGS

INVESTIGATORY POWERS

POLICE

PROCEEDS OF CRIME

**The Law Enforcement and Security (Amendment) (EU Exit)
Regulations 2019**

Made - - - -

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The Secretary of State makes these Regulations in exercise of the powers conferred by sections 1(1), 69(1), 71(4), 73(5), 84(7), 86(7) and 223(3) and (8) of the Extradition Act 2003^(a), and by sections 8(1) and 23(1) and (2) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018^(b).

A draft of these Regulations has been laid before Parliament and approved by a resolution of each House, in accordance with section 223(5) and (6) of the Extradition Act 2003 and paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018.

PART 1

Introductory

Citation and commencement

1. These Regulations may be cited as the Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 and come into force on exit day.

(a) 2003 c. 41.

(b) 2018 c. 16.

Extent

2.—(1) Subject to paragraphs (2) and (3), these Regulations extend to England and Wales, Scotland and Northern Ireland.

(2) Any amendment, repeal or revocation made by these Regulations has the same extent within the United Kingdom as the provision to which it relates, except that—

- (a) regulation 107(5) (amendment of the Proceeds of Crime Act 2002(a)) extends to England and Wales and Scotland only;
- (b) regulation 107(8) extends to England and Wales only, and
- (c) regulation 109(1) to (3) (amendment of the Criminal Finances Act 2017(b)) extends to Northern Ireland only.

(3) Any saving or transitional provision in these Regulations has the same extent within the United Kingdom as the provision to which it relates, except that regulation 72 (saving provision – investigation teams operating in the UK after commencement day) extends to England and Wales, Scotland and Northern Ireland.

General interpretation

3. In these Regulations—

“the 1990 Schengen Convention” means the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders(c);

“the CJDP Regulations” means the Criminal Justice and Data Protection (Protocol No 36) Regulations 2014(d);

“commencement day” means the date and time on which these Regulations come into force;

“the Withdrawal Act” means the European Union (Withdrawal) Act 2018.

PART 2

Child Pornography

Amendment of Council Decision 2000/375/JHA

4.—(1) Council Decision 2000/375/JHA of 29 May 2000 to combat child pornography on the internet is amended as follows.

(2) In Article 1—

- (a) in paragraph 1—
 - (i) for “Within the framework of Decision No 276/1999/EC of the European Parliament and of the Council and in” substitute “In”;
 - (ii) for “Member States” substitute “the Secretary of State”;
- (b) in paragraph 2 omit “, and taking account of the administrative structure of each Member State,”;
- (c) in paragraph 3 for “Member States” substitute “The Secretary of State”.

(3) Omit Article 2.

(a) 2002 c. 29.

(b) 2017 c. 22.

(c) OJ L No 239, 23.9.2000, pp. 19-62.

(d) S.I. 2014/3141; as amended by paragraph 380 of Part 2 of Schedule 19 to the Data Protection Act 2018 (c. 12) and by S.I. 2014/3191 and 2016/992.

- (4) In Article 3—
- (a) in the paragraph before sub-paragraph (a)—
 - (i) for “Member States” in the first place where it occurs substitute “The Secretary of State”;
 - (ii) omit the second sentence;
 - (iii) for “they” in the last sentence substitute “the Secretary of State”;
 - (b) in sub-paragraph (c), omit “in accordance with the Council resolution of 17 January 1995 on the lawful interception of telecommunications”.
- (5) In Article 4, for “Member States” substitute “The Secretary of State”.
- (6) Omit Articles 5 to 8.

PART 3

Counter-Terrorism

Amendment of the Terrorism Act 2000

5.—(1) The Terrorism Act 2000(a) is amended as follows.

(2) In section 21E(b) (disclosures within an undertaking or group etc), in subsections (2)(b) and (4)(b), for “an EEA State” substitute “the United Kingdom or an EEA state”.

(3) In section 21F(2)(c)(c) (other permitted disclosures between institutions etc), for “an EEA State” substitute “the United Kingdom or an EEA state”.

(4) In section 123(2)(i) (orders and regulations), for “paragraphs 11A, 25A, 41A and” substitute “paragraph”.

(5) In Schedule 3A(d) (regulated sector and supervisory authorities), in paragraph 1 (business in the regulated sector)—

(a) for sub-paragraph (1)(c), substitute—

“(c) the carrying on of activities by an authorised person (within the meaning of section 31 of the Financial Services and Markets Act 2000) who has permission under Part 4A of that Act to carry out or effect contracts of insurance, where those activities consist of carrying out or effecting contracts of long-term insurance;”;

(b) in sub-paragraph (1)(d), for “(other than a person falling within Article 2 of the Markets in Financial Instruments Directive)” substitute “(other than a person falling within one of the exclusions to the definition of “investment firm” in article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544))”;

(c) in sub-paragraph (1)(g), for “an EEA State” substitute “the United Kingdom”;

(d) in sub-paragraph (2)(b), for “an EEA state” substitute “the United Kingdom”;

(e) after sub-paragraph (2) insert—

“(2A) For the purposes of sub-paragraph (1)(c), “contract of long-term insurance” means any contract falling within Part 2 of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544).”;

(f) for sub-paragraph (5) substitute—

(a) 2000 c. 11.

(b) Section 21E was inserted by S.I. 2007/3398.

(c) Section 21F was inserted by S.I. 2007/3398.

(d) Schedule 3A was inserted by paragraph 6 of Schedule 2 to the Anti-terrorism, Crime and Security Act 2001 (c. 24).

“(5) For the purposes of sub-paragraph (4)(d) “regulated market” has the meaning given by regulation 3(1) (general interpretation) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692).”;

(g) omit sub-paragraph (6).

(6) In Schedule 4 (forfeiture orders)—

- (a) omit paragraphs 11A to 11G, 25A to 25G and 41A to 41G(a) (domestic and overseas freezing orders);
- (b) in paragraph 14(2) (enforcement of orders made in designated countries), omit “(other than an overseas freezing order within the meaning of paragraph 11D)”;
- (c) in paragraph 28(2) (enforcement of orders made in designated countries), omit “(other than an overseas freezing order within the meaning of paragraph 25D)”;
- (d) in paragraph 44(2) (enforcement of orders made in designated countries), omit “(other than an overseas freezing order within the meaning of paragraph 41D)”;
- (e) in paragraph 45 (general), in the definition of “restraint order”, in paragraph (c) omit “or an order which is enforceable in England and Wales, Scotland or Northern Ireland by virtue of paragraph 11G, 25G or 41G”.

(7) In Schedule 6 (financial information), in paragraph 6 (financial institution)—

(a) in sub-paragraph (1), for sub-paragraphs (ha) and (i) substitute—

“(ha) an electronic money institution within the meaning of the Electronic Money Regulations 2011 (S.I. 2011/99) (see regulation 2(1)), and

(i) an authorised person (within the meaning of section 31 of the Financial Services and Markets Act 2000) who has permission under Part 4A of that Act to carry out or effect contracts of insurance, when carrying out or effecting any contract of long-term insurance.”;

(b) after sub-paragraph (1A)(b) insert—

“(1AA) For the purposes of sub-paragraph (1)(i), “contract of long-term insurance” means any contract falling within Part 2 of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544).”.

(8) In Schedule 8A(c) (offence under section 58A: supplementary provisions)—

- (a) in paragraph 1 (introduction), omit sub-paragraph (2);
- (b) omit paragraph 2 (domestic service providers: extension of liability);
- (c) in paragraph 3(1) (non-UK service providers: restriction on proceedings) omit “other than the United Kingdom”;
- (d) in paragraph 7 (interpretation)—
 - (i) in sub-paragraph (1), insert in the relevant place—

““the E-Commerce Directive” means Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce in the Internal Market(d);”;
 - (ii) in sub-paragraph (2)—
 - (aa) in the words before paragraph (a), for “the United Kingdom, or in some other EEA state,” substitute “an EEA state”;
 - (bb) in paragraph (a), for “the United Kingdom, or in a particular EEA state,” substitute “a particular EEA state”;

(a) Paragraphs 11A to 11G, 25A to 25G and 41A to 41G were inserted by paragraphs 3, 5 and 7 of Schedule 4 to the Crime (International Co-operation) Act 2003 (c. 32).

(b) Sub-paragraph (1A) was inserted by paragraph 6(3) of Schedule 2 to the Anti-terrorism, Crime and Security Act 2001 (c. 24).

(c) Schedule 8A was inserted by Schedule 8 to the Counter-Terrorism Act 2008 (c. 28).

(d) O.J. L 178/1, 17.7.2000.

- (cc) in sub-paragraph (i) of paragraph (a), for “the United Kingdom, or that EEA state,” substitute “that EEA state”.

Transitional provision in relation to amendment of Schedule 4 to the Terrorism Act 2000

6. Regulation 5(4) and (6) does not apply in relation to a case where, before commencement day, any of the following has occurred—

- (a) the High Court has made a certificate under paragraph 11B(2) or 41B(2) of Schedule 4 to the Terrorism Act 2000 (domestic freezing orders: certification);
- (b) the Secretary of State has received an overseas freezing order under paragraph 11D, 25D or 41D of that Schedule (overseas freezing orders), or
- (c) the Court of Session has made a certificate under paragraph 25B(2) of that Schedule (domestic freezing orders: certification).

Amendment of the Electronic Commerce Directive (Terrorism Act 2006) Regulations 2007

7.—(1) The Electronic Commerce Directive (Terrorism Act 2006) Regulations 2007(a) are amended as follows.

(2) Omit regulation 3 (internal market: UK service providers).

(3) In regulation 4 (internal market: non-UK service providers)—

- (a) in paragraph (5), omit “and” at the end of paragraph (a) and omit paragraph (b);
- (b) in paragraph (6), omit “and” at the end of paragraph (a) and omit paragraph (b);
- (c) in paragraph (8)—
 - (i) omit paragraph (a);
 - (ii) in paragraph (b) omit “other than the United Kingdom”.

PART 4

Cross-border Surveillance

Revocation of Council Decisions relating to cross-border surveillance

8.—(1) The following Council Decisions are revoked but only so far as they relate to Articles 40, 42 and 43 of the 1990 Schengen Convention—

- (a) Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis;
- (b) Council Decision 2000/586/JHA of 28 September 2000 establishing a procedure for amending Articles 40(4) and (5), 41(7) and 65(2) of the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders;
- (c) Council Decision 2004/926/EC of 22 December 2004 on the putting into effect of parts of the Schengen acquis by the United Kingdom of Great Britain and Northern Ireland.

(2) Council Decision 2003/725/JHA of 2 October 2003 amending the provisions of Article 40(1) and (7) of the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders is revoked.

(a) S.I. 2007/1550.

Consequential amendment of the Regulation of Investigatory Powers Act 2000

9. In section 76A of the Regulation of Investigatory Powers Act 2000(a) (foreign surveillance operations)—

- (a) in each of subsections (3) and (10)—
 - (i) omit paragraph (a) and the “or” at the end of that paragraph;
 - (ii) in paragraph (b), omit “other”;
- (b) in subsection (11), omit the definition of “the Schengen Convention”.

Transitional provision – surveillance which is not completed before commencement day

10.—(1) Regulations 8 (revocation of Council Decisions relating to cross-border surveillance) and 9 (consequential amendment of the Regulation of Investigatory Powers Act 2000) do not apply to relevant surveillance by a relevant foreign police or customs officer which began but which is not completed before commencement day.

(2) In this Regulation—

“relevant foreign police or customs officer” means a police or customs officer who, in relation to a country or territory other than the United Kingdom, is an officer for the purposes of Article 40 of the 1990 Schengen Convention (police co-operation);

“relevant surveillance” means surveillance which is carried out lawfully in the United Kingdom by virtue of section 76A of the Regulation of Investigatory Powers Act 2000 (foreign surveillance operations).

PART 5

Drug Precursors and Psychoactive Substances

CHAPTER 1

Drug precursors

Amendment of the Controlled Drugs (Drug Precursors) (Intra-Community Trade) Regulations 2008

11.—(1) The Controlled Drugs (Drug Precursors) (Intra-Community Trade) Regulations 2008(b) are amended as follows.

- (2) In regulation 3 (competent authorities)—
 - (a) in paragraph (2) for “, 9(3) and 13” substitute “and 9(3)”;
 - (b) in paragraph (4) for “, 9(1) and 10” substitute “and 9(1)”.

Amendment of the Controlled Drugs (Drug Precursors) (Community External Trade) Regulations 2008

12.—(1) The Controlled Drugs (Drug Precursors) (Community External Trade) Regulations 2008(c) are amended as follows.

(2) In regulation 2 (interpretation), omit the definition of “customs territory of the Community” and the word “and” immediately before it.

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- (a) 2000 c. 23. Section 76A was inserted by section 83 of the Crime (International Co-operation) Act 2003 (c. 32), and amended by paragraph 8 of Part 1 of Schedule 6 to the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp. 10), by paragraph 26 of Schedule 12 to the Serious Crime Act 2007 (c. 27), by paragraph 98 of Part 2 of Schedule 8 to the Crime and Courts Act 2013 (c. 22) and by S.I.2013/602.
 - (b) S.I. 2008/295. Regulation 3(3) and (4) was amended by paragraph 190 of Part 4 of Schedule 8 to the Crime and Courts Act 2013 (c. 22).
 - (c) S.I. 2008/296.

- (3) In regulation 3(2) (competent authorities)—
 - (a) after “17” omit “(except references to competent authorities of a third country)”;
 - (b) for “26(5) and 32” substitute “and 26(5)”;
 - (c) omit paragraph (6).
- (4) In regulation 6(2)(a) (requirements, offences and penalties: exports), omit “either” and “or other competent authorities at the point of exit from the customs territory of the European Union”.
- (5) In paragraph (1) and paragraph (2) of regulation 7 (requirements, offences and penalties: imports)(b), for “customs territory of the European Union” substitute “United Kingdom”.

Amendment of Regulation (EC) 273/2004 of the European Parliament and Council

13.—(1) Council Regulation (EC) 273/2004 on drug precursors is amended as follows.

(2) In Article 1 (scope and objectives) for “for the intra-Union” substitute “in the United Kingdom for the”.

(3) In Article 2 (definitions)—

- (a) in point (a), in the definition of “scheduled substance”, for all the words after “economically viable means” to the end of the definition substitute “medicinal products as defined in regulation 2 (medicinal products) of the Human Medicines Regulations 2012(c) and veterinary medicinal products as defined in regulation 2 of the Veterinary Medicines Regulations 2013(d).”;
- (b) in point (c), for “Union” in both places substitute “United Kingdom”.

(4) In Article 3 (requirements for the placing on the market of scheduled substances)—

- (a) in paragraph 2, omit “of the Member State in which they are established”;
- (b) in paragraph 6, omit “of the Member State in which they are established” in both places;
- (c) omit paragraph 7;
- (d) in paragraph 8—
 - (i) for “The Commission shall be empowered to adopt delegated acts in accordance with Article 15a concerning” substitute “The Secretary of State may prescribe by regulations”;
 - (ii) omit sub-paragraph (c).

(5) In Article 4 (customer declaration)—

- (a) in paragraph 1, for “Union” substitute “United Kingdom”;
- (b) in paragraph 3, for “Union” substitute “United Kingdom”;
- (c) for paragraph 4, substitute—

“4. The Secretary of State may prescribe by regulations requirements and conditions for obtaining and using customer declarations.”.

(6) In Article 5 (documentation), for paragraph 7 substitute—

“7. The Secretary of State may prescribe by regulations requirements and conditions for the documentation of mixtures containing scheduled substances.”.

(7) For the second unnumbered paragraph of Article 7 (labelling), substitute—

“The Secretary of State may prescribe by regulations requirements and conditions for the labelling of mixtures containing scheduled substances.”.

(8) In Article 8 (notification of the competent authorities), for paragraph 3 substitute—

(a) “European Union” substituted by S.I. 2011/1043.
 (b) “European Union” substituted by S.I. 2011/1043.
 (c) S.I. 2012/1916.
 (d) S.I. 2013/2033.

“3. The Secretary of State may prescribe by regulations the requirements and conditions for operators to provide information as referred to in paragraph 2 of this Article including, where relevant, the categories of personal data to be processed for that purpose and the safeguards for processing such personal data.”.

(9) In Article 9 (guidelines), in paragraph 1 for “The Commission shall” substitute “The Secretary of State must”.

(10) Omit Articles 10 (powers and obligations of competent authorities), 11 (cooperation between the Member States and the Commission) and 12 (penalties).

(11) For Article 13 (communications from Member States) substitute—

“Article 13

Report to International Narcotics Control Board

1. To permit the necessary adjustments to the arrangements for monitoring trade in scheduled substances and non-scheduled substances, the Secretary of State must draw up a report annually summarising all relevant information on the implementation of the monitoring measures laid down in this Regulation, in particular as regards the substances used for the illicit manufacture of narcotic drugs or psychotropic substances and methods of diversion and illicit manufacture, and their licit trade.

2. The report mentioned in paragraph 1 must be submitted by the Secretary of State to the International Narcotics Control Board in accordance with article 12(12) of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted in Vienna on 19 December 1988.”.

(12) Omit Article 13a (European database on drug precursors).

(13) In Article 13b (data protection)—

(a) omit paragraph 1;

(b) in paragraph 2, for “Without prejudice to Article 13 of Directive 95/46/EC” substitute “Without prejudice to the Data Protection Act 2018(a)”;

(c) omit paragraphs 3 and 4.

(14) Omit Articles 14 (implementing acts) and 14a (committee procedure).

(15) In Article 15 (adaptation of annexes), for “The Commission shall be empowered to adopt delegated acts in accordance with Article 15a in order to adapt” substitute “The Secretary of State may make regulations to amend”.

(16) For Article 15a (exercise of the delegation) substitute—

“Article 15a

Regulations

1. A power of the Secretary of State to make regulations under this Regulation is to be exercised by statutory instrument which may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

2. Regulations may make different provision for different purposes and may include such incidental, supplemental, consequential, transitional, transitory or saving provision as the Secretary of State considers appropriate.”.

(17) Omit Article 16 (information about measures adopted by Member States).

(18) In Article 18 (entry into force), omit the second unnumbered paragraph.

(a) 2018 c. 12.

Amendment of Council Regulation (EC) 111/2005

14.—(1) Council Regulation (EC) 111/2005 of 22 December 2004 laying down rules for the monitoring of trade between the Union and third countries in drug precursors is amended as follows.

(2) In Article 1 for “Union” in both places substitute “United Kingdom”.

(3) In Article 2—

(a) in point (a) in the definition of “scheduled substance”, for all the words after “economically viable means,” substitute “medicinal products as defined in regulation 2 (medicinal products) of the Human Medicines Regulations^(a) and veterinary medicinal products as defined in regulation 2 of the Veterinary Medicines Regulations 2013^(b)”;

(b) for point (c) substitute—

“(c) ‘import’ means any entry of scheduled substances having the status of non-domestic goods into the United Kingdom;”;

(c) for point (d) substitute—

“(d) ‘export’ means any departure of scheduled substances from the United Kingdom;”;

(d) in point (e)—

(i) for “Union” substitute “United Kingdom”;

(ii) for “customs territory of the Union” substitute “United Kingdom”;

(e) after point (k) insert—

“(l) “special Customs procedures” means special Customs procedures within the meaning of section 3 of, and Schedule 2 to, the Taxation (Cross-border Trade) Act 2018^(c) and “a special Customs procedure” is to be construed accordingly.”.

(4) In Article 6—

(a) in paragraph 1—

(i) for “Union” substitute “United Kingdom”;

(ii) omit “of the Member State in which the operator is established”;

(iii) in the second unnumbered sub-paragraph for “The Commission shall be empowered to adopt delegated acts in accordance with Article 30b” substitute “The Secretary of State may make regulations”;

(b) for paragraph 3 substitute—

“3. The Secretary of State must prescribe by regulations a model for licences.”.

(5) In Article 7—

(a) in paragraph 1—

(i) for “Union” substitute “United Kingdom”;

(ii) omit “in the Member State in which the operator is established”;

(b) in the second unnumbered paragraph, for “The Commission shall be empowered to adopt delegated acts in accordance with Article 30b” substitute “The Secretary of State may make regulations”.

(6) In Article 8—

(a) in paragraph 1—

(i) for “customs territory of the Union” substitute “United Kingdom”;

(ii) omit “of control type I or a free warehouse”;

(a) S.I.2012/1916.

(b) S.I.2013/2033.

(c) 2018 c. 22.

- (b) in paragraph 2—
 - (i) for “The Commission shall be empowered to adopt delegated acts in accordance with Article 30b” substitute “The Secretary of State may make regulations”;
 - (ii) for “customs territory of the Union” substitute “United Kingdom”.
- (7) In Article 9—
 - (a) in paragraph 1, for “Union” substitute “United Kingdom”;
 - (b) in paragraph 2—
 - (i) in the first unnumbered sub-paragraph for “The Commission shall be empowered to adopt delegated acts in accordance with Article 30b to determine” substitute “The Secretary of State may set out”;
 - (ii) omit the second unnumbered paragraph.
- (8) In Article 10—
 - (a) for paragraph 1 substitute—

“1. In order to facilitate cooperation between the competent authorities, operators established in the United Kingdom and the chemical industry, in particular as regards non-scheduled substances, the Secretary of State must draw up and update guidelines.”;
 - (b) in paragraph 4 for “the competent authorities of the Member State and the Commission may propose to” substitute “the Secretary of State may”;
 - (c) in paragraph 5—
 - (i) for “Commission may” substitute “Secretary of State may by regulations”;
 - (ii) omit “by means of delegated acts in accordance with Article 30b”.
- (9) In Article 11—
 - (a) in paragraph 1—
 - (i) omit “in the Union”;
 - (ii) for “The Commission shall be empowered to adopt delegated acts in accordance with Article 30b of this Regulation to” substitute “The Secretary of State may make regulations”;
 - (b) in the unnumbered sub-paragraph below omit “of the Member State of export”;
 - (c) in paragraph 2—
 - (i) omit “of the Member State concerned”;
 - (ii) for “authority” in the first place where it occurs in the unnumbered sub-paragraph substitute “Secretary of State”;
 - (d) in paragraph 3, for “The Commission shall be empowered to adopt delegated acts in accordance with Article 30b” substitute “The Secretary of State may make regulations”.
- (10) In Article 12—
 - (a) in paragraph 1—
 - (i) for “customs territory of the Union” substitute “United Kingdom”;
 - (ii) for “in a free zone of control type I or free warehouse” substitute “under a special customs procedure”;
 - (b) in the unnumbered sub-paragraph below, for “suspensive procedure or under a free zone of control type II,” substitute “special customs procedure”;
 - (c) in paragraph 2, omit “of the Member State where the exporter is established”.
- (11) In Article 13, in paragraph 1(d) for “customs territory of the Union” substitute “United Kingdom”.
- (12) In Article 14, in paragraph 1—
 - (a) for “customs territory of the Union” substitute “United Kingdom”;

- (b) after that paragraph omit the unnumbered paragraph;
- (c) in paragraph 2 and in the unnumbered paragraph after it, for “customs territory of the Union” substitute “United Kingdom”.

(13) For Article 17 substitute—

“Article 17

Whenever, under an agreement between the United Kingdom and a third country, exports are not to be authorised unless an import authorisation has been issued by the competent authorities of that third country for the substances in question, the competent authorities in the United Kingdom shall satisfy themselves as to the authenticity of such import authorisation, if necessary by requesting confirmation from the competent authority of the third country.”.

(14) In Article 18, for “customs territory of the Union” substitute “United Kingdom”.

(15) In Article 19, for “The Commission shall be empowered to adopt delegated acts in accordance with Article 30b to” substitute “The Secretary of State may”.

(16) In Article 20—

- (a) in the first unnumbered paragraph—
 - (i) for “Union” substitute “United Kingdom”;
 - (ii) omit “of the Member State where the importer is established”;
- (b) in the second unnumbered paragraph—
 - (i) before “stored in a free zone” insert “or”;
 - (ii) omit “of control type I or a free warehouse, or placed under the external Union transit procedure”.

(17) In Article 22—

- (a) in the first unnumbered paragraph for “customs territory of the Union” substitute “United Kingdom”;
- (b) omit the last paragraph.

(18) In Article 25, for “customs territory of the Union” substitute “United Kingdom”.

(19) In Article 26—

- (a) in paragraph 1—
 - (i) omit “of each Member State”;
 - (ii) for “customs territory of the Union” substitute “United Kingdom”;
- (b) omit paragraph 3;
- (c) in paragraph 3a—
 - (i) omit “of each Member State”;
 - (ii) for “customs territory of the Union” substitute “United Kingdom”;
 - (iii) omit the first unnumbered sub-paragraph;
- (d) omit paragraph 3b;
- (e) omit paragraph 4.

(20) Omit Chapter IV.

(21) In Article 28—

- (a) for “Commission shall be empowered to lay down, where necessary, by means of implementing acts, measures” substitute “Secretary of State may by regulations make provision”;
- (b) for “Union” substitute “United Kingdom”;
- (c) omit the last sentence.

(22) Omit Article 30.

(23) In Article 30a, for “The Commission shall be empowered to adopt delegated acts in accordance with Article 30b of this Regulation in order to adapt” substitute “The Secretary of State may by regulations make provision to amend”.

(24) For Article 30b substitute—

“Article 30b

A power of the Secretary of State to make regulations under this Regulation is to be exercisable by statutory instrument which may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. Regulations may make different provision for different purposes and may include such incidental, supplemental, consequential, transitional, transitory or saving provision as the Secretary of State considers appropriate.”.

(25) Omit Article 31.

(26) For Article 32 substitute—

“Article 32

The Secretary of State must draw up a report annually summarising all relevant information on the implementation of the monitoring measures laid down in this Regulation, in particular as regards the substances used for the illicit manufacture of narcotic drugs or psychotropic substances and methods of diversion and illicit manufacture, and their licit trade. The report must be submitted by the Secretary of State to the International Narcotics Control Board in accordance with Article 12(12) of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted in Vienna on 19 December 1988.”.

(27) Omit Article 32a.

(28) In Article 33—

- (a) in paragraph 1, omit “in the Member States”;
- (b) omit paragraph 2;
- (c) omit paragraph 5.

(29) In Article 35, omit the third unnumbered paragraph.

Amendment of Commission Delegated Regulation (EU) 2015/1011

15.—(1) Commission Delegated Regulation (EU) 2015/1011 of 24 April 2015 supplementing Regulation (EC) No 273/2004 of the European Parliament and of the Council on drug precursors and Council Regulation (EC) 111/2005 laying down rules for the monitoring of trade between the Union and third countries in drug precursors, and repealing Commission Regulation (EC) 1277/2005 is amended as follows.

(2) In Article 2 (definitions), after the definition of “business premises”, add as an unnumbered paragraph—

““Special Customs procedures” means special Customs procedures within the meaning of section 3 of, and Schedule 2 to, the Taxation (Cross-border Trade) Act 2018 and “a special Customs procedure” is to be construed accordingly.”.

(3) In Article 3 (conditions for granting licences), in paragraph 7 for “Union” substitute “United Kingdom”.

(4) In Article 9 (information required to monitor trade), in paragraph 2, in sub-paragraph (b), for “a free zone of control type II, placed into a suspensive procedure,” substitute “a special customs procedure”.

(5) In Article 10 (conditions for determining the lists of the countries of destination for exports of scheduled substances of Categories 2 and 3)—

- (a) in paragraph (a) for “Union” substitute “United Kingdom”;
- (b) in the last sentence for “Commission” substitute “Home Office”.

(6) In Article 12 (criteria for determining simplified procedures for export authorisations), in paragraph 1, for “Union” substitute “United Kingdom”.

(7) Omit Article 13 (conditions and requirements concerning the information to be provided on the implementation of the monitoring measures).

(8) After Article 15 (entry into force and application) omit the unnumbered paragraph.

(9) In Annex II (form for declaration on the entry of scheduled substances)—

(a) in the form—

(i) omit the European Union flag;

(ii) in the heading, for “European Union” substitute “United Kingdom”;

(iii) in the text below the heading, for “customs territory of the Union” substitute “United Kingdom”;

(b) in the notes to the form, in the paragraphs under the heading “Personal data protection”—

(i) omit the first unnumbered paragraph;

(ii) omit the second unnumbered paragraph;

(iii) in the third unnumbered paragraph, for “Union” in both places substitute “United Kingdom”;

(iv) in the fourth unnumbered paragraph omit “national” and the second sentence and the hyperlink immediately after it;

(v) in the fifth unnumbered paragraph for “Union” in both places substitute “United Kingdom” and for “the Commission and the competent authorities of the Member States” substitute “competent authorities”;

(vi) in the sixth unnumbered paragraph for “or the national laws implementing Directive 95/46/E” substitute “or the Data Protection Act 2018”;

(vii) omit from the tenth unnumbered paragraph to the end of the notes.

(10) In Annex III (form for multilateral chemical reporting notification)—

(a) in the form, omit the flag of the European Union;

(b) in the notes to the form, in the paragraphs under the heading “Personal data protection”—

(i) omit the first unnumbered paragraph;

(ii) omit the second unnumbered paragraph;

(iii) in the third unnumbered paragraph for “Union” in both places substitute “United Kingdom”;

(iv) in the fourth unnumbered paragraph omit “authority” and the second sentence and hyperlink immediately after it;

(v) in the fifth unnumbered paragraph for “Union” in both places substitute “United Kingdom” and for “the Commission and the competent authorities of the Member States” substitute “competent authorities”;

(vi) in the sixth unnumbered paragraph for “or the national laws implementing Directive 95/46/E” substitute “or the Data Protection Act 2018”;

(vii) omit from the tenth unnumbered paragraph to the end of the notes.

Amendment of Commission Implementing Regulation (EU) 2015/1013

16.—(1) Commission Implementing Regulation (EU) 2015/1013 of 25 June 2015 laying down rules in respect of Regulation (EC) No 273/2004 of the European Parliament and of the Council on drug precursors and of Council Regulation (EC) No 111/2005 laying down rules for the monitoring of trade between the Union and third countries in drug precursors is amended as follows.

(2) In Article 3 (licence granting procedure), in paragraph 2, for “Authorised Economic Operator” to the end of that paragraph substitute “Authorised Economic Operator for customs

simplification (AEOC), to the extent they are relevant for the examination of the conditions for granting a licence.”.

- (3) In the unnumbered paragraph after paragraph 2, for “AEO” substitute “AEOC”.
- (4) In Article 10 (information required to monitor trade), in paragraph 1 and 2 for “as prescribed by the Member State concerned” substitute “as specified by the Secretary of State”.
- (5) In Article 11 (export and import authorisations)—
 - (a) in paragraph 2, for “customs territory of the Union” substitute “United Kingdom”;
 - (b) in paragraph 3, for “customs territory of the Union” substitute “United Kingdom”;
 - (c) in paragraph 5—
 - (i) omit the first sentence;
 - (ii) in the next sentence, for “it” in the first place where it occurs substitute “an authorisation”;
 - (d) in paragraph 6—
 - (i) for “A Member State” substitute “The Secretary of State”;
 - (ii) omit “itself”;
 - (iii) for “it” substitute “the Secretary of State”;
 - (e) omit paragraph 7;
 - (f) in paragraph 9, omit the second sentence.
- (6) Omit Article 12 (listing of operators and users in the European database on drug precursors).
- (7) In the text following Article 13 (entry into force and application), omit “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.
- (8) In Annex I (form for licence)—
 - (a) in the form—
 - (i) omit the European Union flag;
 - (ii) in the heading to the form, for “European Union” substitute “United Kingdom”;
 - (b) in the notes to the form—
 - (i) omit paragraph 4;
 - (ii) in the paragraphs under the heading “Personal data protection”—
 - (aa) omit the first unnumbered paragraph;
 - (bb) omit the second unnumbered paragraph;
 - (cc) in the third unnumbered paragraph for “Union” in both places substitute “United Kingdom”;
 - (dd) in the fourth unnumbered paragraph omit “national” and the second sentence and the hyperlink immediately after it;
 - (ee) in the fifth unnumbered paragraph for “Union” in both places substitute “United Kingdom” and for “the Commission and the competent authorities of the Member States” substitute “competent authorities”;
 - (ff) in the sixth unnumbered paragraph for “or the national laws implementing Directive 95/46/E” substitute “or the Data Protection Act 2018”;
 - (gg) in the tenth unnumbered paragraph omit the second sentence and the hyperlink immediately after it;
 - (hh) omit the eleventh unnumbered paragraph.
- (9) In Annex II (registration form)—
 - (a) in the form—
 - (i) omit the European Union flag;
 - (ii) omit the heading “European Union”;

- (b) in the notes to the form—
 - (i) omit paragraph 4;
 - (ii) in the paragraphs under the heading “Persona data protection”—
 - (aa) omit the first unnumbered paragraph;
 - (bb) omit the second unnumbered paragraph;
 - (cc) in the third unnumbered paragraph, for “Union” in both places substitute “United Kingdom”;
 - (dd) in the fourth unnumbered paragraph, omit “national” and the second sentence and the hyperlink immediately after it;
 - (ee) in the fifth unnumbered paragraph, for “Union” in both places substitute “United Kingdom” and for “the Commission and the competent authorities of the Member States” substitute “competent authorities”;
 - (ff) in the sixth unnumbered paragraph, for “or the national laws implementing Directive 95/46/E” substitute “or the Data Protection Act 2018”;
 - (gg) in the tenth unnumbered paragraph, omit the second sentence;
 - (hh) omit the eleventh unnumbered paragraph.
- (10) In Annex III (forms for grant of export authorisation)—
- (a) in each of the forms—
 - (i) in the heading, for “EUROPEAN UNION” substitute “UNITED KINGDOM”;
 - (ii) in box 22—
 - (aa) for “EU” substitute “UK”;
 - (bb) for “customs territory of the Union” substitute “United Kingdom”;
 - (b) in the notes to the forms—
 - (i) omit paragraph 1;
 - (ii) in paragraph 2, for “customs territory of the Union” substitute “United Kingdom”;
 - (iii) in paragraph 7, omit “Member State,”;
 - (iv) in paragraph 14, in the second sub-paragraph, omit “, according to the modalities provided for by the Member State concerned,” and “in the Member States”;
 - (v) in the paragraphs under the heading “Personal data protection”—
 - (aa) omit the first unnumbered paragraph;
 - (bb) omit the second unnumbered paragraph;
 - (cc) in the third unnumbered paragraph, for “Union” in both places substitute “United Kingdom”;
 - (dd) in the fourth unnumbered paragraph, omit “national” and the second sentence and the hyperlink immediately after it;
 - (ee) in the fifth unnumbered paragraph, for “Union” in both places substitute “United Kingdom” and for “the Commission and the competent authorities of the Member States” substitute “competent authorities”;
 - (ff) in the sixth unnumbered paragraph, for “or the national laws implementing Directive 95/46/E” substitute “or the Data Protection Act 2018”;
 - (gg) in the tenth unnumbered paragraph, omit the second sentence;
 - (hh) omit the eleventh unnumbered paragraph.
- (11) In Annex IV (forms for grant of import authorisation)—
- (a) in each of the forms—
 - (i) for the heading “EUROPEAN UNION” substitute “UNITED KINGDOM”;
 - (ii) in box 9, for “customs territory of the Union” substitute “United Kingdom”;

- (b) in the notes to the forms—
 - (i) omit paragraph 1;
 - (ii) in paragraph 2, for “customs territory of the Union” substitute “United Kingdom”;
 - (iii) in paragraph 7, omit “the Member State and”;
 - (iv) in the second subparagraph under paragraph 12, omit “, according to the modalities provided for by the Member State concerned,” and “in the Member States”;
 - (v) in the paragraphs under the heading “Personal data protection”—
 - (aa) omit the first unnumbered paragraph;
 - (bb) omit the second unnumbered paragraph;
 - (cc) in the third unnumbered paragraph, for “Union” in both places substitute “United Kingdom”;
 - (dd) in the fourth unnumbered paragraph, omit “national” and the second sentence and the hyperlink immediately after it;
 - (ee) in the fifth unnumbered paragraph, for “Union” in both places substitute “United Kingdom” and for “the Commission and the competent authorities of the Member States” substitute “competent authorities”;
 - (ff) in the sixth unnumbered paragraph, for “or the national laws implementing Directive 95/46/E” substitute “or the Data Protection Act 2018”;
 - (gg) in the tenth unnumbered paragraph, omit the second sentence;
 - (hh) omit the eleventh unnumbered paragraph.

CHAPTER 2

Psychoactive substances

Amendment of the Psychoactive Substances Act 2016

17.—(1) The Psychoactive Substances Act 2016^(a) is amended as follows.

(2) In Schedule 1 (exempted substances), in paragraph 7 (food)—

- (a) before the definition of “food” insert—
 - ““enactment” includes—
 - (a) an enactment contained in subordinate legislation;
 - (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;
 - (c) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales;
 - (d) an enactment contained in, or in an instrument made under, Northern Ireland legislation;”;
- (b) in paragraph (b) of the definition of “prohibited ingredient”, for “by an EU instrument” substitute “by an enactment”.

(3) In Schedule 4 (providers of information society services)—

- (a) omit paragraph 1 (domestic service providers: extension of liability);
- (b) in paragraph 2(3) (non-UK service providers: restriction on institution of proceedings), in the definition of “non-UK service provider” omit “other than the United Kingdom”;
- (c) omit paragraph 6 (domestic service providers: extension of liability);
- (d) in paragraph 7 (non-UK service providers: restriction on including terms in prohibition notice or order)—

^(a) 2016 c.2.

- (i) in sub-paragraph (5), omit paragraph (b) and the “and” immediately preceding that paragraph;
- (ii) omit sub-paragraph (6);
- (iii) in sub-paragraph (7)—
 - (aa) omit “or notification”;
 - (bb) for “referred to in sub-paragraph (6)(b)” substitute “for the order or variation”;
- (iv) in sub-paragraph (8), in the definition of “non-UK service provider” omit “other than the United Kingdom”;
- (e) in paragraph 8(1) (protections for service providers of intermediary services), at the end insert “, reading those Articles as if the requirements imposed on a Member State were imposed on the person giving the notice or the court making the order.”;
- (f) in paragraph 8(2), for “covered by” substitute “falling within the descriptions contained in”;
- (g) in paragraph 11(1) (establishment of a service provider)—
 - (i) in the words before paragraph (a), for “in a particular part of the United Kingdom, or in a particular EEA state,” substitute “in a particular EEA state”;
 - (ii) in paragraph (a), for “that part of the United Kingdom, or that EEA state,” substitute “that EEA state”.

Revocation of Regulation (EC) No 1920/2006

18. Regulation (EC) No 1920/2006 of the European Parliament and of the Council of 12 December 2006 on the European Monitoring Centre for Drugs and Drug Addiction (recast) is revoked.

Revocation of Regulation (EU) 2017/2101

19. Regulation (EU) 2017/2101 of the European Parliament and of the Council of 15 November 2017 amending Regulation (EC) No 1920/2006 as regards information exchange on, and an early warning system and risk assessment procedure for, new psychoactive substances is revoked.

PART 6

Eurojust

Interpretation

20. In this Part, “Eurojust Council Decision” means Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime.

Revocation of Eurojust Council Decision

21. Subject to regulation 22 (saving provisions – personal data received before commencement day), the Eurojust Council Decision is revoked.

Saving provisions – information received before commencement day

22.—(1) Article 22(1) of the Eurojust Council Decision (data security) continues to have effect in relation to personal data provided by Eurojust to the United Kingdom before commencement day with the following modifications—

- (a) omit “Eurojust and.”;

- (b) the reference to “each Member State” is to be treated as a reference to “any person or body having functions of a public nature that received personal data provided by Eurojust prior to commencement day, or successor thereto,”.

(2) Article 25 of the Eurojust Council Decision (confidentiality) continues to have effect with the following modifications—

- (a) in paragraph 1, the reference to “the national members” is to be treated as a reference to “any former national member of the United Kingdom”;
- (b) in paragraph 4, after “all information received by Eurojust”, add “before commencement day”.

PART 7

European Agency for Law Enforcement Training (CEPOL)

Revocation of The European Police College (Immunities and Privileges) Order 2004

23. The European Police College (Immunities and Privileges) Order 2004(a) is revoked.

Revocation of Council Decision 2005/681/JHA

24. Council Decision 2005/681/JHA of 20 September 2005 establishing the European Police College (CEPOL) and repealing Decision 2000/820/JHA is revoked.

PART 8

European Criminal Record Information System (ECRIS)

CHAPTER 1

Amendment of legislation extending to England and Wales, Scotland and Northern Ireland

Interpretation

25. In this Chapter—

“the Framework Decision” means Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States;

“UK Central Authority” means the authority designated as the “central authority” for the United Kingdom in regulation 63 of the CJPD Regulations as in force immediately before commencement day.

Revocation of Part 6 of the CJDP Regulations

26. Subject to regulations 27 (saving provisions - information transmitted to the UK Central Authority before commencement day) and 28 (transitional provisions - requests made before commencement day for information from the UK Central Authority), Part 6 of the CJDP Regulations (exchange of information relating to criminal convictions) is revoked.

(a) S.I. 2004/3334. Article 13 was amended by S.I. 2011/1043. S.I. 2004/3334 has not been commenced.

Saving provisions – information transmitted to the UK Central Authority before commencement day

27.—(1) This regulation applies in relation to information transmitted to the UK Central Authority before commencement day in accordance with Article 4(2), (3) or (4) of the Framework Decision (obligations of the convicting Member State) or Article 7(1), (2) or (4) of the Framework Decision (reply to a request for information on convictions).

(2) The following provisions of the CJD P Regulations continue to have effect in relation to information to which this regulation applies, subject to the modifications set out in paragraph (3)—

- (a) regulation 62 (interpretation);
- (b) regulation 63 (designation as a “central authority”);
- (c) regulation 68 (replies to a request for information by a third country);
- (d) regulation 72 (conditions for the use of personal data).

(3) The modifications are that—

- (a) the definition of “central authority” in regulation 62 is to be read as if, after “Framework Decision”, there were inserted “or, for the United Kingdom, the authority designated under regulation 63”;
- (b) the heading of regulation 68 is to be read as if the words “under Article 6 of the Framework Decision” were omitted.

(4) The provisions referred to in paragraph (2) are to be construed as if the United Kingdom continued to be a Member State.

Transitional provisions – requests made before commencement day for information from the UK Central Authority

28.—(1) This regulation applies where—

- (a) a request referred to in regulation 67(1) or (2) (replies to a request for information under Article 6 of the Framework Decision in relation to criminal proceedings and proceedings other than criminal proceedings) or regulation 69 (replies to a request for information under Article 6 of the Framework Decision to a central authority of a member State other than the member State of the person’s nationality) of the CJD P Regulations was made to the UK Central Authority before commencement day, and
- (b) the requested information was not transmitted before commencement day.

(2) The following provisions of the CJD P Regulations continue to have effect in relation to that request, so far as relevant, subject to the modification set out in paragraph (3)—

- (a) regulation 62 (interpretation);
- (b) regulation 63 (designation as a “central authority”);
- (c) regulation 67;
- (d) regulation 69.

(3) The modification is that the definition of “central authority” in regulation 62 is to be read as if, after “Framework Decision”, there were inserted “or, for the United Kingdom, the authority designated under regulation 63”.

(4) The provisions referred to in paragraph (2) are to be construed as if the United Kingdom continued to be a member State.

Revocation of Council Decision 2009/316/JHA

29. Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA is revoked.

CHAPTER 2

Amendment of legislation extending to England and Wales and Northern Ireland only

Interpretation

30. In this Chapter, “the 2013 Regulations” means the Working with Children (Exchange of Criminal Conviction Information) (England and Wales and Northern Ireland) Regulations 2013(a).

Revocation of the Working with Children (Exchange of Criminal Conviction Information) (England and Wales and Northern Ireland) Regulations 2013

31. Subject to regulation 32 (transitional provision – requests made before commencement day), the 2013 Regulations 2013 are revoked.

Transitional provision – requests made before commencement day

32.—(1) This regulation applies where —

- (a) a request referred to in regulation 3(1) of the 2013 Regulations (exchange of conviction and disqualification information) was made before commencement day, and
- (b) the requested information was not transmitted before commencement day.

(2) The 2013 Regulations continue to have effect in relation to the request, subject to the modification set out in paragraph (3).

(3) The modification is that regulation 3(1) of the 2013 Regulations is to be read as if the words “in accordance with the procedures set out in the Framework Decision” were omitted.

PART 9

European Judicial Network

Revocation of Council Decision 2008/976/JHA

33. Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network is revoked.

PART 10

EU-LISA

Revocation of Regulation (EU) 2018/1726

34. Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011 is revoked.

Revocation of Council Decisions 2010/779/EU and (EU) 2018/1600

35. The following Council Decisions are revoked—

(a) S.I. 2013/2945.

- (a) Council Decision 2010/779/EU of 14 December 2010 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* relating to the establishment of a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice;
- (b) Council Decision (EU) 2018/1600 of 28 September 2018 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* relating to the establishment of a European Union Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA).

PART 11

Europol

Interpretation

36. In this Part—

“Europol” means the European Union Agency for Law Enforcement Cooperation, as established by the Europol Regulation;

“Europol Regulation” means Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA.

Revocation of the Europol Regulation

37. Subject to regulation 40 (saving provisions – information provided before commencement day), the Europol Regulation is revoked.

Revocation of Europol Council Decisions

38. The following Council Decisions are revoked in so far as they are retained EU law—

- (a) Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol);
- (b) Council Decision 2009/934/JHA of 30 November 2009 adopting the implementing rules governing Europol’s relations with partners, including the exchange of personal data and classified information;
- (c) Council Decision 2009/935/JHA of 30 November 2009 determining the list of third States and organisations with which Europol shall conclude agreements;
- (d) Council Decision 2009/936/JHA of 30 November 2009 adopting the implementing rules for Europol analysis work files;
- (e) Council Decision 2009/968/JHA of 30 November 2009 adopting the rules on the confidentiality of Europol information.

Revocation of Commission Decision (EU) 2017/388

39. Commission Decision (EU) 2017/388 of 6 March 2017 confirming the participation of the United Kingdom of Great Britain and Northern Ireland in Regulation (EU) 2016/794 of the European Parliament and of the Council on the European Union Agency for Law Enforcement Cooperation (Europol) is revoked.

Saving provisions – information provided before commencement day

40.—(1) The following provisions of the Europol Regulation continue to have effect in relation to information provided by Europol to the United Kingdom before commencement day, with the modifications specified below—

(a) paragraph 3 of Article 20 (access by Member States and Europol’s staff to information stored by Europol), with the modification that the reference to “Member States” is to be treated as a reference to “any person or body having functions of a public nature that received information provided by Europol prior to commencement day, or successor thereto,”;

(b) for paragraph 7 of Article 23 (common provisions), substitute—

“7. Onward transfers of personal data held by Europol by any person or body having functions of a public nature that received information provided by Europol prior to commencement day, or successor thereto, shall be prohibited, unless Europol has given its prior explicit authorisation.”;

(c) Article 30 (processing of special categories of personal data and of different categories of data subjects), with the following modifications—

(i) omit paragraphs 3 and 6;

(ii) in paragraph 4, omit “or Union”;

(iii) in paragraph 5, the reference to “Chapter V” is to be treated as a reference to “national law”;

(d) Article 32 (security of processing), with the following modifications—

(i) omit paragraph 1;

(ii) in paragraphs 2 and 3, omit “Europol and”;

(iii) in paragraph 2, the reference to “each Member State” is to be treated as a reference to “any person or body having functions of a public nature that received information provided by Europol prior to commencement day, or successor thereto,”;

(iv) in paragraph 3, the reference to “Member States” is to be treated as a reference to “any person or body having functions of a public nature that received information provided by Europol prior to commencement day, or successor thereto,”.

(2) Article 42 of the Europol Regulation (supervision by the national supervisory authority) continues to have effect, with the modifications specified below—

(a) for paragraph 1, substitute—

“1. The Information Commissioner’s Office shall have the task of monitoring independently, in accordance with national law, the permissibility of the transfer, the retrieval and any communication to Europol before the date on which regulation 37 of the Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (revocation of the Europol Regulation) commenced of personal data by the United Kingdom, and of examining whether such transfer, retrieval or communication violates the rights of the data subjects concerned. For that purpose, the Information Commissioner’s Office shall have access to data submitted by the United Kingdom to Europol in accordance with the relevant national procedures.”;

(b) omit paragraphs 2 and 3;

(c) for paragraph 4, substitute—

“4. Any person shall have the right to request the Information Commissioner’s Office to verify the legality of any transfer or communication to Europol before the date on which regulation 37 of the Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (revocation of the Europol Regulation) commenced of data concerning him or her in any form and of access to those data by the United Kingdom. That right shall be exercised in accordance with national law.”.

Revocation of additional legislation

41. The following Orders are revoked—

- (a) The European Police Office (Legal Capacities) Order 1996**(a)**;
- (b) The European Communities (Immunities and Privileges of the European Police Office) Order 1997**(b)**;
- (c) The European Communities (Immunities and Privileges of the European Police Office) (Amendment) Order 2004**(c)**.

PART 12

Exchange of Information and Intelligence between Law Enforcement Authorities and Disclosure in Foreign Proceedings

CHAPTER 1

Exchange of information and intelligence between law enforcement authorities

Introductory

42.—(1) In this Part, the expressions which are defined in regulation 53 of the CJDP Regulations (interpretation) have the meanings given in that regulation (disregarding for this purpose the revocation made by regulation 43 (revocation of Part 5 of the CJDP Regulations)).

(2) Regulation 53 of the CJDP Regulations continues to apply for the purposes of any provision of Part 5 of the CJDP Regulations**(d)** (exchange of information and intelligence between law enforcement authorities) which is continued by this Part.

Revocation of Part 5 of the CJDP Regulations

43. Subject to regulations 44 to 47 (transitional and saving provisions), Part 5 of the CJDP Regulations is revoked.

Transitional provision – requests for information or intelligence received before commencement day

44.—(1) This regulation applies where—

- (a) a request referred to in regulation 54(1) of the CJDP Regulations (duty to provide information or intelligence) was made to a UK competent authority before commencement day, and
- (b) the information or intelligence was not provided before commencement day.

(2) The following provisions of the CJDP Regulations continue to have effect in relation to the request, subject to the modification in paragraph (3)—

- (a) regulation 54;
- (b) regulation 58(2) and (6) (requirements for the sharing of information or intelligence);
- (c) regulation 59 (reasons to withhold information or intelligence).

(3) The modifications are that—

- (a) paragraph (2) of regulation 58 is to be read as if the words “in accordance with the Framework Decision” were omitted;

(a) S.I. 1996/3157. S.I. 1997/2973 provides for the revocation of S.I. 1996/3157 but neither S.I. has been commenced.
(b) S.I. 1997/2973. S.I. 2004/3330 provides for the amendment of S.I. 1997/2973 but neither S.I. has been commenced.
(c) S.I. 2004/3330.
(d) Part 5 was amended by S.I. 2014/3191.

- (b) paragraphs (3) and (4) of regulation 59 (reasons to withhold information or intelligence) are to be read as if the words “under the Framework Decision” in each paragraph were omitted.

(4) The provisions referred to in paragraph (2) are to be construed as if the United Kingdom continued to be a member State.

Saving provision – information and intelligence supplied before commencement day

45.—(1) This regulation applies in relation to information or intelligence supplied to a UK competent authority before commencement day in accordance with the Framework Decision.

(2) The following provisions of the CJDP Regulations continue to have effect in relation to the information or intelligence, subject to the modification in paragraph (3)—

- (a) regulation 58(1), (4) and (5) (requirements for the sharing of information or intelligence);
(b) regulation 59 (reasons to withhold information or intelligence), in so far as it applies for the purposes of regulation 58(5).

(3) The modification is that paragraphs (3) and (4) of regulation 59 are to be read as if the words “under the Framework Decision” in each paragraph were omitted.

(4) The provisions referred to in paragraph (2) are to be construed as if the United Kingdom continued to be a member State.

Saving provision – representations concerning use of information or intelligence

46.—(1) This regulation applies where the UK competent authority has imposed conditions on the use of information or intelligence under regulation 58(2) of the CJDP Regulations (requirements for the sharing of information or intelligence), whether before commencement day or (in a case to which regulation 44 (transitional provision) applies) on or after commencement day.

(2) Regulation 58(3) continues to have effect with the omission of sub-paragraph (b) in relation to the use of the information or intelligence.

Saving provision – information obtained by a UK member of an international joint investigation team

47.—(1) This regulation applies in relation to information referred to in regulation 61(2) of the CJDP Regulations (joint investigation teams) which was lawfully obtained by a UK member (within the meaning of that regulation) before commencement day.

(2) Regulation 61 of the CJDP Regulations continues to have effect in relation to the information.

(3) The provision referred to in paragraph (2) is to be construed as if the United Kingdom continued to be a member State.

CHAPTER 2

Disclosure in foreign proceedings.

Amendment of the Anti-terrorism, Crime and Security Act 2001

48. In section 18(4)(b) of the Anti-terrorism, Crime and Security Act 2001(a) (restriction on disclosure of information for overseas purposes), for “an EU obligation” substitute “a retained EU obligation”.

(a) 2001 c. 24. Section 18 was amended by S.I. 2011/1043.

PART 13

Explosive Precursors

Amendment of the Control of Explosives Precursors etc. Regulations (Northern Ireland) 2014

49.—(1) The Control of Explosives Precursors etc. Regulations (Northern Ireland) 2014(a) are amended as follows.

(2) In regulation 2(1) (interpretation)—

- (a) omit the definition of “EEA State”;
- (b) omit the definition of “member State”;
- (c) in the definition of “the Precursors Regulation” omit “, as amended from time to time”.

(3) In regulation 12 (supply of tier 1 substances)—

- (a) in paragraph (5) for “another” substitute “a”;
- (b) in paragraph (6)(b) for “another” substitute “a”.

(4) In regulation 13(2)(c) (supply of tier 2 substances), for “another” substitute “a”.

(5) In regulation 14(1)(b) (supply of tier 1 substances for despatch or export: consent), for “another” substitute “a”.

(6) In regulation 18(1) (application of enforcement provisions in the 1978 Order), after “competent authority” insert “, the United Kingdom”.

(7) In regulation 24(1)(c) (guidance), omit “(incorporating any guidance issued by the European Commission in accordance with those Articles)”.

Amendment of the Control of Poisons and Explosives Precursors Regulations 2015

50.—(1) The Control of Poisons and Explosives Precursors Regulations 2015(b) are amended as follows.

(2) In regulation 2(3) (supplies of substances involving despatch to Northern Ireland or export from the UK: modification of section 3A of the Act), for “another member State” substitute “a member State”.

Amendment of Regulation (EU) No 98/2013

51.—(1) Regulation (EU) No 98/2013 of the European Parliament and of the Council of 15 January 2013 on the marketing and use of explosives precursors is amended as follows.

(2) In Article 1 (subject matter), omit the second paragraph.

(3) In Article 2 (scope), for paragraph 1 substitute—

“1. This Regulation applies—

- (a) in England and Wales and Scotland, in relation to the substances listed in Part 1 (regulated explosives precursors) and Part 3 (reportable explosives precursors) of Schedule 1A to the Poisons Act 1972(c), and to mixtures and substances containing them;
- (b) in Northern Ireland, in relation to the substances listed in the Annexes, and to mixtures and substances containing them.

(a) S.R. 2014 No. 224.

(b) S.I. 2015/966.

(c) 1972 c. 66. Schedule 1A was inserted by paragraph 16 of Schedule 21 to the Deregulation Act 2015 (c. 20), and Parts 1 and 3 were amended by S.I. 2018/451.

- 1A. In relation to England and Wales and Scotland, any reference in this Regulation to—
- (a) “the Annexes” is to be read as a reference to Parts 1 and 3 of Schedule 1A to the Poisons Act 1972;
 - (b) “Annex I” is to be read as a reference to Part 1 of Schedule 1A to that Act;
 - (c) “Annex II” is to be read as a reference to Part 3 of Schedule 1A to that Act.”.
- (4) In Article 3(5) (definitions), for “a Member State whether from another Member State or from a third country” substitute “the United Kingdom”.
- (5) In Article 4 (making available, introduction, possession and use)—
- (a) in paragraph 2—
 - (i) for “a Member State” substitute “the Secretary of State”;
 - (ii) for “a competent authority of the Member State” substitute “the Secretary of State”;
 - (b) in paragraph 3, for “a Member State” substitute “the Secretary of State”;
 - (c) omit paragraph 4;
 - (d) omit paragraph 5;
 - (e) for paragraph 6 substitute—

“6. Where a member of the general public intends to introduce a restricted explosives precursor into the territory of the United Kingdom, that person shall obtain and, if requested present to the Secretary of State, a licence issued in accordance with rules laid down in Article 7.”;
 - (f) in paragraph 7, for “the Member State” to the end, substitute “the Secretary of State”.
- (6) In Article 6 (free movement)—
- (a) for “Without prejudice to the second paragraph of Article 1 and to Article 13, and unless” substitute “Unless”;
 - (b) for “or in other legal acts of the Union, Member States” substitute “the Secretary of State”.
- (7) In Article 7 (licences)—
- (a) in paragraph 1—
 - (i) for “Each Member State” to “restricted explosives precursors” substitute “The Secretary of State”;
 - (ii) for “competent authority of the Member State” substitute “Secretary of State”;
 - (b) in paragraph 2, for “competent authority” in both places where it occurs substitute “Secretary of State”;
 - (c) in paragraph 3, for “competent authorities” substitute “Secretary of State”;
 - (d) in paragraph 4, for “competent authority” substitute “Secretary of State”;
 - (e) omit paragraph 5;
 - (f) for paragraph 6 substitute—

“6. Licences granted by the competent authorities of a Member State or of any other country may be recognised in the United Kingdom.”.
- (8) In Article 8(3) (registration of transactions), for “competent authorities” substitute “Secretary of State”.
- (9) In Article 9 (reporting of suspicious transactions, disappearances and thefts)—
- (a) in paragraph 2, for “Each Member State” substitute “The Secretary of State” and omit “national”;
 - (b) in paragraph 3, for “the national contact point of the Member State where the transaction was concluded or attempted” substitute “a contact point established under Article 9(2)”;

- (c) in paragraph 4, for “the national contact point of the Member State” substitute “a contact point established under Article 9(2)”;
 - (d) in paragraph 5—
 - (i) for the first sentence substitute “The Secretary of State shall draw up guidelines to assist the chemical supply chain.”;
 - (ii) for “The Commission shall update” substitute “The Secretary of State shall update”;
 - (e) in paragraph 6, for “competent authorities”, in both places where it occurs, substitute “Secretary of State”.
- (10) In Article 10 (data protection)—
- (a) for the first reference to “Member States” substitute “The Secretary of State”;
 - (b) for the second reference to “Member States” substitute “the Secretary of State”;
 - (c) for “Articles 8 and 17” substitute “Article 8”.
- (11) Omit Article 11 (penalties).
- (12) For Article 12 (amendments to the annexes) substitute—

“Article 12

Amendments to the Annexes

1. In relation to Northern Ireland, the Secretary of State may by regulations amend the Annexes (whether to add, vary or remove a substance or concentration limit or make any other change).

2. In determining the distribution of substances as between Annex I and Annex II, the Secretary of State must have regard to the desirability of restricting Annex II to substances that meet each of the following criteria—

- (a) they are in common use, or are likely to come into common use, for purposes other than the treatment of human ailments, and
- (b) it is reasonably necessary to include them in Annex II if members of the general public are to have adequate facilities for obtaining them.

3. The power to make regulations under paragraph 1 includes power—

- (a) to make different provision for different purposes,
- (b) to make consequential, incidental or supplemental provision, and
- (c) to make transitional, transitory or saving provision.

4. The power to make regulations under paragraph 1 is exercisable by statutory instrument.

5. An instrument containing regulations made under paragraph 1 is subject to annulment in pursuance of a resolution of either House of Parliament.”.

(13) Omit Articles 13 to 18.

(14) In the text following Article 19 (entry into force), omit “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.

PART 14

Extradition

Interpretation

52. In this Part “the 2003 Act” means the Extradition Act 2003(a).

Amendment of the 2003 Act

53.—(1) The 2003 Act is amended as follows.

(2) In section 204 (transmission of warrant by electronic means)(b)—

(a) in subsection (1)—

(i) in paragraph (a), omit the words from “in a case” until the end;

(ii) in paragraph (b), for “and the alert are” substitute “is”;

(b) omit subsection (2);

(c) in subsection (5), omit paragraph (a);

(d) in subsection (6), omit paragraph (a) together with the word “and” immediately after it.

(3) Omit section 212 (article 95 alerts)(c).

(4) In section 215 (European framework list), omit subsections (2) and (3).

(5) In section 223 (orders and regulations)(d), in subsection (6)(a), omit “section 215(2)”.

Amendment of the Anti-social Behaviour, Crime and Policing Act 2014

54. In section 157 of the Anti-social Behaviour, Crime and Policing Act 2014 (proportionality)(e), omit subsection (4).

Amendment of the Extradition Act 2003 (Designation of Part 1 Territories) Order 2003

55.—(1) The Extradition Act 2003 (Designation of Part 1 Territories) Order 2003(f) is amended as follows.

(2) For article 2 (designated territories) substitute—

“Gibraltar is designated for the purposes of Part 1 of the Extradition Act 2003.”.

Amendment of the Extradition Act 2003 (Designation of Part 2 Territories) Order 2003

56.—(1) The Extradition Act 2003 (Designation of Part 2 Territories) Order 2003(g) is amended as follows.

(2) In article 2(2) insert, in the appropriate places, the territories listed in paragraph (4).

(3) In article 3(2) insert, in the appropriate places, the territories listed in in paragraph (4).

(4) The territories are—

Austria;

Belgium;

(a) 2003 c. 41.

(b) Section 204 was amended by section 67 of the Policing and Crime Act 2009 (c. 26) and by section 170 of, and paragraph 120 of Schedule 11 to, the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12).

(c) Section 212 was amended by section 68 of the Policing and Crime Act 2009 (c. 26).

(d) Section 223 was amended but the amendments are not relevant for the purposes of this instrument.

(e) 2014 c. 12.

(f) S.I. 2003/3333, as amended by S.I. 2004/1898, 2005/365, 2005/2036, 2006/3451, 2007/2238, and 2013/1583.

(g) S.I. 2003/3334, as amended by section 43(1) of the Police and Justice Act 2006 (c. 48) and S.I. 2004/1898, 2005/365, 2005/2036, 2006/3451, 2007/2238, 2008/1589, 2010/861, 2013/1583, and 2015/992.

Bulgaria;
Croatia;
Cyprus;
Czech Republic;
Denmark;
Estonia;
Finland;
France;
Germany;
Greece;
Hungary;
Ireland;
Italy;
Latvia;
Lithuania;
Luxembourg;
Malta;
The Netherlands;
Poland;
Portugal;
Romania;
Slovakia;
Slovenia;
Spain;
Sweden.

Transitional provision

- 57.** Regulations 53(2), 55, and 56 do not apply in a case where, before commencement day—
- (a) a person has been arrested under a Part 1 warrant (within the meaning of the 2003 Act);
 - (b) a person has been arrested under section 5 of the 2003 Act (provisional arrest)(a), or
 - (c) a person has been extradited to or from the UK.

(a) Section 5 was amended by section 378 of, and Schedule 16 to, the Armed Forces Act 2006 (c.52).

PART 15

Firearms

CHAPTER 1

Amendment of legislation extending to England and Wales, Scotland and Northern Ireland

Amendment of Commission Implementing Regulation (EU) No 2015/2403

58.—(1) Commission Implementing Regulation (EU) No 2015/2403 of 15 December 2015 establishing common guidelines on deactivation standards and techniques for ensuring that deactivated firearms are rendered irreversibly inoperable is amended as follows.

(2) In Article 1 (scope), in paragraph 2—

- (a) for “the date of its application” substitute “8 April 2016”;
- (b) for “to another Member State” substitute “outside of the United Kingdom”.

(3) In Article 3 (verification and certification of deactivation of firearms)—

- (a) in paragraph 1 for “Member States” substitute “The appropriate authority”;
- (b) in paragraph 2 for “Member States” substitute “the appropriate authority”;
- (c) omit paragraph 3;
- (d) in paragraph 4—
 - (i) for “a deactivation certificate in accordance with the template set out in Annex III” substitute “certification in writing in accordance with the relevant legislation”;
 - (ii) omit the final sentence;
- (e) in paragraph 6 for “Member States” substitute “The appropriate authority”;
- (f) after paragraph 6 insert—

“7. In this Article—

“the appropriate authority” means, in relation to England and Wales and Scotland, the Secretary of State and, in relation to Northern Ireland, the Department of Justice in Northern Ireland;

“the relevant legislation” means, in relation to England and Wales and Scotland, section 8(b) of the Firearms (Amendment) Act 1988^(a) and, in relation to Northern Ireland, Article 2(7) of the Firearms (Northern Ireland) Order 2004.”.

(4) Omit Article 4 (requests for assistance).

(5) In Article 5 (marking of deactivated firearms)—

- (a) the existing provision becomes paragraph 1;
- (b) for “the template set out in Annex II” substitute “the relevant legislation”;
- (c) omit sub-paragraph (b);
- (d) after sub-paragraph (c), insert—

“2. In this Article, “the relevant legislation” means, in relation to England and Wales and Scotland, section 8(a) of the Firearms (Amendment) Act 1988 and, in relation to Northern Ireland, Article 2(7) of the Firearms (Northern Ireland) Order 2004.”.

(6) Omit Article 6 (additional deactivation measures).

(7) Omit Article 7 (transfer of deactivated firearms within the Union).

(8) Omit Article 8 (notification requirements).

(a) 1988 c. 45.

(9) After Article 9 (entry into force), omit “This Regulation shall be binding in its entirety and directly applicable in all Member States”.

(10) In Annex I (technical specifications for the deactivation of firearms)—

- (a) omit “as defined in Directive 91/477/EC”;
- (b) omit “In order to ensure a correct and uniform application of the deactivation operations of firearms, the Commission shall elaborate definitions in cooperation with the Member States.”.

(11) Omit Annex II (template for marking of deactivated firearms).

(12) Omit Annex III (model certificate for deactivated firearms).

CHAPTER 2

Amendment of legislation extending to England and Wales and Scotland

Amendment of the Firearms Act 1968

59.—(1) The Firearms Act 1968(a) is amended as follows.

(2) In section 5A(b) (exemptions from requirement of authority under s.5), omit subsection (3).

(3) In section 22 (acquisition and possession of firearms by minors), omit subsection (1A)(c).

(4) In section 27 (special provisions about firearm certificates), omit subsection (1A)(d).

(5) In section 28 (special provisions about shot gun certificates), omit subsection (1C)(e).

(6) Omit section 32A (documents for European purposes)(f) and the italic cross-heading before that section.

(7) Omit section 32B (renewal of European firearms pass)(g).

(8) Omit section 32C (variation, endorsement etc. of European documents)(h).

(9) In section 42A (information as to transactions under visitors’ permits)(i)—

(a) in subsection (1)(b)—

- (i) omit “or (d)”;
- (ii) omit “or purchases or acquisitions by collectors etc”;
- (iii) for “the member States” substitute “Great Britain”;

(b) in subsection (2)(b), for “the member State” substitute “Great Britain”.

(10) In section 48 (production of certificates)(j) —

(a) omit subsection (1A);

(b) in subsection (2) omit “or document”;

(c) omit subsection (4).

(11) In section 57 (interpretation)—

(a) in subsection (4)(k), omit the following definitions—

(a) 1968 c. 27.

(b) Section 5A was inserted by S.I. 1992/2823. Relevant amendments were made by sections 108(5) and 109(2)(a) of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12).

(c) Section 22(1A) was inserted by S.I. 1992/2823.

(d) Section 27(1A) was inserted by S.I. 1992/2823.

(e) Section 28(1C) was inserted by S.I. 1992/2823 and amended by S.I. 2010/1759.

(f) Section 32A was inserted by S.I. 1992/2823 and amended by paragraph 6 of Schedule 2 to the Firearms (Amendment) Act 1997 (c. 5).

(g) Section 32B was inserted by S.I. 1992/2823.

(h) Section 32C was inserted by S.I. 1992/2823 and amended by paragraph 6 of Schedule 2 to the Firearms (Amendment) Act 1997 (c. 5).

(i) Section 42A was inserted by S.I. 1992/2823 and amended by S.I. 2011/713.

(j) Section 48(1A) was inserted by S.I. 1992/2823.

(k) Section 57(4) was amended by S.I. 1992/2823.

- (i) “another member State” and “other member States”;
- (ii) “Article 7 authority”;
- (iii) “European firearms pass”;

(b) omit subsection (4A)(a).

(12) In Part 1 of Schedule 6 (prosecution and punishment of offences)(b), in the table, omit the entries relating to sections 32B(5), 32C(6) and 48(4) of that Act.

Saving provision – exemptions from requirement of authority under section 5 of the Firearms Act 1968

60.—(1) This regulation applies if, immediately before commencement day—

- (a) a person has in the person’s possession a prohibited weapon or prohibited ammunition within the meaning of the Firearms Act 1968, and
- (b) subsection (3) of section 5A of that Act (exemptions from requirement of authority under section 5) applies in relation to that person’s possession of the weapon or ammunition.

(2) Despite the repeal of that subsection by regulation 59 (amendment of the Firearms Act 1968), that subsection continues to have effect on and after commencement day in relation to the possession by that person of the weapon or ammunition.

Amendment of the Firearms (Amendment) Act 1988

61.—(1) The Firearms (Amendment) Act 1988(c) is amended as follows.

(2) In section 8A(d) (controls on defectively deactivated weapons), in each of subsections (2) and (3), for “the EU” in each place those words occur substitute “the United Kingdom”.

(3) In section 17(e) (visitors’ permits)—

- (a) in subsection (1A)(f)—
 - (i) in paragraph (b), omit “to a place outside the member States without first being taken to another member State”;
 - (ii) at the end of paragraph (b) insert “or”;
 - (iii) omit paragraph (d) and the “or” immediately preceding that paragraph;
- (b) omit subsection (3A)(g).

(4) In section 18(h) (firearms acquired for export)—

- (a) omit subsection (1A)(i);
- (b) in subsection (4)(j) omit “and, in a case where the transaction is one for the purposes of which a document such as is mentioned in subsection (1A)(a) above is required to be produced, particulars of the agreement contained in that document”;
- (c) omit subsection (6)(k).

(5) Omit section 18A(l) (purchase or acquisition of firearms in other member States).

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- (a) Section 4A was inserted by S.I. 1992/2823.
 - (b) The table in Part 1 of Schedule 6 was amended by S.I. 1992/2823.
 - (c) 1988 c. 45.
 - (d) Section 8A was inserted by section 128 of the Policing and Crime Act 2017 (c. 3).
 - (e) Relevant amendments made by S.I. 1992/2823.
 - (f) Section 17(1A) was inserted by S.I. 1992/2823.
 - (g) Section 17(3A) was inserted by S.I. 1992/2823 and amended by S.I. 2011/2175.
 - (h) Relevant amendments made by S.I. 1992/2823.
 - (i) Section 18(1A) was inserted by S.I. 1992/2823.
 - (j) Section 18(4) was amended by S.I. 1992/2823.
 - (k) Section 18(6) was inserted by S.I. 1992/2823.
 - (l) Section 18A was inserted by S.I. 1992/2823 and amended by S.I. 2011/713.

- (6) In section 18B(a) (permitted electronic means), in subsection (1)—
- (a) in the opening words omit “or 18A”;
 - (b) in paragraph (a), for “the section concerned” substitute “that section”.

Amendment to the Firearms Acts (Amendment) Regulations 1992

62. In the Firearms Acts (Amendment) Regulations 1992(b), omit regulation 10 (exchange of information).

Amendment to the Firearms (Amendment) Act 1988 (Amendment) Regulations 2011

63. In the Firearms (Amendment) Act 1988 (Amendment) Regulations 2011(c), omit regulation 3 (review).

CHAPTER 3

Amendment of legislation extending to Northern Ireland

Amendment to the Firearms (Northern Ireland) Order 2004

- 64.**—(1) The Firearms (Northern Ireland) Order 2004(d) is amended as follows.
- (2) In Article 2(2) (interpretation), omit the following definitions—
 - (a) “another member State”;
 - (b) “Article 7 authority”;
 - (c) “European firearms pass”.
 - (3) In Article 15 (visitor’s firearm permit)(e), omit paragraph (6).
 - (4) Omit Article 19 (issue of European firearms pass) and the italic cross-heading before Article 19.
 - (5) Omit Article 20 (duration of European firearms pass).
 - (6) Omit Article 21 (renewal of European firearms pass).
 - (7) Omit Article 22 (Article 7 authorities).
 - (8) Omit Article 23 (variation, endorsement, etc. of European documents)(f).
 - (9) Omit Article 43 (purchase or acquisition of firearms in other member States).
 - (10) In Article 44 (firearms acquired for export)—
 - (a) omit paragraph (2);
 - (b) in paragraph (5), omit sub-paragraph (b) and the “and” immediately preceding that sub-paragraph.
 - (11) In Article 46 (exemptions from requirement of authority under Article 45), omit paragraph (4).
 - (12) In Article 55 (production of certificates, etc.)—
 - (a) omit paragraphs (2) and (5);
 - (b) in paragraph (3)(a) omit “or document”.
 - (13) In Schedule 5 (table of punishments) omit the entries relating to—
 - (a) Article 21(4);

(a) Section 18B was inserted by S.I. 2011/713 and amended by paragraphs 6 and 7(b) of Schedule 14 to the Policing and Crime Act 2017 and by S.I. 2013/602.

(b) S.I. 1992/2823.

(c) S.I. 2011/2175.

(d) S.I. 2004/702 (N.I. 3).

(e) Article 15 was amended by regulation 2 of S.R. 2012 No. 395.

(f) Article 23 was amended by S.I. 2010/976.

- (b) Article 23(6);
- (c) Article 43(5);
- (d) Article 55(5).

Saving provision – exemptions from requirement of authority under Article 45 of the Firearms (Northern Ireland) Order 2004

65.—(1) This regulation applies if, immediately before commencement day—

- (a) a person has in the person’s possession a prohibited weapon or prohibited ammunition within the meaning of the Firearms (Northern Ireland) Order 2004, and
- (b) paragraph (4) of Article 46 of that Order (exemptions from requirement of authority under Article 45) applies in relation to that person’s possession of the weapon or ammunition.

(2) Despite the revocation of that paragraph by regulation 64 (amendment of the Firearms (Northern Ireland) Order 2004), that paragraph continues to have effect on and after commencement day in relation to the possession by that person of the weapon or ammunition.

PART 16

Football Disorder

Revocation of retained law relating to football disorder

66. The following Decisions are revoked—

- (a) Council Decision 2002/348/JHA of 25 April 2002 concerning security in connection with football matches with an international dimension;
- (b) Council Decision 2007/412/JHA of 12 June 2007 amending Decision 2002/348/JHA concerning security in connection with football matches with an international dimension.

PART 17

Joint Investigation Teams

Amendment of the Police Act 1996

67.—(1) The Police Act 1996(a) is amended as follows.

(2) In section 88 (liability for wrongful acts of constables), in subsection (7), omit paragraphs (a) and (b) (together with the “or” at the end of paragraph (b)).

(3) In section 89 (assaults on constables), in subsection (5), omit paragraphs (a) and (b) (together with the “or” at the end of paragraph (b)).

Amendment of the Police (Northern Ireland) Act 1998

68.—(1) The Police (Northern Ireland) Act 1998(b) is amended as follows.

(2) In section 29 (liability for wrongful acts of constables), in subsection (7), omit paragraphs (a) and (b) (together with the “or” at the end of paragraph (b)).

(a) 1996 c. 16. Section 88(7) was inserted by section 103(1) of the Police Reform Act 2002 (c. 30) (“the PRA 2002”) and amended by S.I. 2012/1809, and section 89(5) was inserted by section 104(1) of the PRA 2002 and amended by S.I. 2012/1809.

(b) 1998 c. 32. Section 29(7) was inserted by section 103(5) of the PRA 2002 and amended by S.I. 2010/976, and section 66(6) was inserted by section 104(3) of the PRA 2002 and amended by S.I. 2010/976.

(3) In section 66 (assaults on, and obstruction of constables, etc.), in subsection (6), omit paragraphs (a) and (b) (together with the “or” at the end of paragraph (b)).

Amendment of the Police and Fire Reform (Scotland) Act 2012

69. In the Police and Fire Reform (Scotland) Act 2012(**a**), in section 99 (interpretation of Part 1), in subsection (1), in the definition of “international joint investigation team” omit paragraphs (a) to (c).

Amendment of the Crime and Courts Act 2013

- 70.** In Schedule 4 to the Crime and Courts Act 2013(**b**), in paragraph 5 (interpretation)—
- (a) in sub-paragraph (1), omit paragraphs (a) and (b) (together with the “or” at the end of paragraph (b));
 - (b) omit sub-paragraph (2).

Revocation of the International Joint Investigation Teams (International Agreement) Order 2004

71. The International Joint Investigation Teams (International Agreement) Order 2004(**c**) is revoked.

Saving provision – investigation teams operating in the UK on or after commencement day

72. Regulations 67 to 69 and 71 do not apply in a case to which regulation 10 (transitional provision – surveillance which is not completed before commencement day) applies.

PART 18

Mutual Legal Assistance in Criminal Matters

CHAPTER 1

Interpretation

Interpretation

73. In this Part—

- “the 2003 Act” means the Crime (International Co-operation) Act 2003(**d**);
- “the 2017 Regulations” means the Criminal Justice (European Investigation Order) Regulations 2017(**e**);
- “central authority” has the same meaning as in the 2017 Regulations;
- “country” has the same meaning as in Part 1 of the 2003 Act;
- “EU prisoner” has the same meaning as in the 2017 Regulations;
- “participating State” has the same meaning as in the 2017 Regulations;
- “prisoner” has the same meanings as in the 2017 Regulations.

(a) 2012 asp 8.
(b) 2013 c. 22.
(c) S.I. 2004/1127.
(d) 2003 c. 32.
(e) S.I. 2017/730 as amended by S.I. 2018/378.

CHAPTER 2

Revocation of the 2017 Regulations

Revocation of the 2017 Regulations

74. The 2017 Regulations are revoked.

CHAPTER 3

Amendment of primary legislation consequential upon amendments made by this Part

Amendment of the Criminal Justice Act 1987

75.—(1) The Criminal Justice Act 1987(a) is amended as follows.

(2) In section 2 (Director’s investigation powers)(b)—

(a) in subsection (1A), for paragraph (b) substitute—

“(b) the Secretary of State acting under section 15(2) of the Crime (International Co-operation) Act 2003, in response to a request received from a person mentioned in section 13(2) of that Act (an “overseas authority”).”;

(b) in subsection (18), omit the definition of “overseas authority”.

(3) In section 3(6) (disclosure of information)(c), in paragraph (n), for “the Treaty on European Union or any other” substitute “a”.

Amendment of the Criminal Justice Act 1988

76. In Schedule 13 to the Criminal Justice Act 1988 (evidence before service courts)(d), in paragraph 6 (letters of request etc.), in sub-paragraph (1), omit “, and no order shall be made or validated under Part 2 of the Criminal Justice (European Investigation Order) Regulations 2017.”.

Amendment of the Criminal Procedure (Scotland) Act 1995

77.—(1) The Criminal Procedure (Scotland) Act 1995(e) is amended as follows.

(2) In section 210(1) (consideration of time spent in custody)(f), in paragraph (c), omit “or regulation 20 or 54 of the Criminal Justice (European Investigation Order) Regulations 2017”.

(3) In section 267A (citation of witnesses for precognition)(g), omit subsection (1A).

(4) In section 272 (evidence by letter of request or on commission)(h), omit subsection (14).

(5) In section 273 (television link evidence from abroad)(i), omit subsection (5).

(a) 1987 c. 38.

(b) Section 2(1A) was inserted by section 164(2)(c) of the Criminal Justice and Public Order Act 1994 (c. 33) and amended by S.I. 2017/730. Section 2(18) was amended by S.I. 2017/730. There are other amendments not relevant to this instrument.

(c) Section 3(6) was amended by section 80(b) of the Crime (International Co-operation) Act 2003 (c. 32). There are other amendments not relevant to this instrument.

(d) 1988 c. 33. Paragraph 6 of Schedule 13 was amended by paragraph 6 of Schedule 4 to the Criminal Justice (International Co-operation) Act 1990 (c. 5), by paragraph 16 of Schedule 5 to the Crime (International Co-operation) Act 2003, and by S.I. 2017/730.

(e) 1995 c. 46.

(f) Section 210 was amended by section 12 of the Crime and Punishment (Scotland) Act 1997 (c. 48), by paragraph 8(14) of Schedule 4 and Part 1 of Schedule 5 to the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), by paragraph 65 of Schedule 5 to the Crime (International Co-operation) Act 2003, by section 172 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12) and by S.I. 2017/730.

(g) Section 267A was inserted by section 22 of the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5) and by S.I. 2017/730.

(h) Section 272 was amended by section 35(4) of the Criminal Proceedings etc (Reform) (Scotland) Act 2007 (asp 6) and by S.I. 2017/730.

(i) Section 273 was amended by section 91(2) of the Criminal Justice and Licensing (Scotland) Act 2010 asp 13 and by S.I. 2017/730.

Amendment of the Criminal Law (Consolidation) (Scotland) Act 1995

78. In section 27 of the Criminal Law (Consolidation) Scotland Act 1995 (Lord Advocate’s direction)(a), for subsection (2) substitute—

“(2) The Lord Advocate may also give a direction under this section by virtue of section 15(4) of the Crime (International Co-operation) Act 2003 or on a request made by the Attorney-General of the Isle of Man, Jersey or Guernsey acting under legislation corresponding to this Part of this Act.”.

Amendment of the Criminal Justice and Police Act 2001

79.—(1) Part 1 of Schedule 1 to the Criminal Justice and Police Act 2001 (powers of seizure to which the additional powers in section 50 of that Act apply)(b) is amended as follows.

(2) In paragraph 73C(c), for “sections 17 and 22” substitute “section 17”.

(3) Omit paragraph 73R(d).

Amendment of the Criminal Justice Act 2003

80. In section 117 of the Criminal Justice Act 2003 (hearsay evidence: business and other documents)(e), in subsection (4)(b)(iii) omit “an order under Part 2 of the Criminal Justice (European Investigation Order) Regulations 2017”.

Amendment of the Criminal Justice (Evidence) (Northern Ireland) Order 2004

81. In article 21 of the Criminal Justice (Evidence) (Northern Ireland) Order 2004 (hearsay evidence: business and other documents)(f), in paragraph (4)(b)(iii) omit “an order under Part 2 of the Criminal Justice (European Investigation Order) Regulations 2017”.

Amendment of the Investigatory Powers Act 2016

82.—(1) The Investigatory Powers Act 2016(g) is amended as follows.

(2) In section 10 (restriction on requesting assistance under mutual assistance agreements etc.)(h)—

(a) in subsection (1), omit paragraph (a) and the “and” at the end of that paragraph;

(b) in subsection (3), omit the definition of “EU mutual assistance instrument”.

(3) In section 15(4) (warrants that may be issued under Chapter 1 of Part 2)—

(a) in paragraph (a), omit “an EU mutual assistance instrument or”;

(b) in paragraph (b), omit “instrument or”.

(4) In section 18(1)(h) (persons who may apply for issue of a warrant), omit “an EU mutual assistance instrument or”.

(5) In section 20(3)(a) (grounds on which warrants may be issued by Secretary of State), omit “an EU mutual assistance instrument or”.

(6) In section 21(4)(b)(i) (power of Scottish Ministers to issue warrants), omit “an EU mutual assistance instrument or”.

(a) 1995 c. 39. Section 27 was amended by paragraph 62 of Schedule 5 to the Crime (International Co-operation) Act 2003 and by S.I. 2017/730.

(b) 2001 c. 16.

(c) Paragraph 73C was inserted by section 26(3)(b) of the Crime (International Co-operation) Act 2003.

(d) Paragraph 73R was inserted by S.I. 2017/730.

(e) 2003 c.44. Section 117 was amended by S.I. 2017/730.

(f) S.I. 2004/1501 (N.I. 10) was amended by S.I. 2017/730.

(g) 2016 c. 25.

(h) Section 10 was amended by S.I. 2017/730.

- (7) In section 40 (special rules for certain mutual assistance warrants)—
- (a) in subsection (1)(a), omit “an EU mutual assistance instrument or”;
 - (b) in subsections (3)(a) and (5)(a), omit “an EU mutual assistance instrument or” and “(as the case may be)”.
- (8) In section 60(1) (Part 2: interpretation), omit the definition of “EU mutual assistance instrument”.

CHAPTER 4

Saving provisions relating to European investigation orders

Outgoing European investigation orders (other than relating to the temporary transfer of a prisoner or EU prisoner)

83.—(1) This regulation applies in relation to a European investigation order transmitted under regulation 9 (transmission of a European investigation order) or 10 (variation or revocation of a European investigation order) of the 2017 Regulations before commencement day.

(2) Regulations 77(4) and (5) (amendment of the Criminal Procedure (Scotland) Act 1995), 80 (amendment of the Criminal Justice Act 2003), 81 (amendment of the Criminal Justice (Evidence) (Northern Ireland) Order 2004) and 82 (amendment of the Investigatory Powers Act 2016) of these Regulations do not apply.

(3) The following provisions of the 2017 Regulations continue to have effect—

- (a) regulation 10 (variation or revocation of a European investigation order), but modified to read as if—
 - (i) the words “vary or” where they appear in each of paragraphs (1) and (2) were omitted;
 - (ii) paragraphs (6) and (7) were omitted;
- (b) regulation 12 (use of evidence);
- (c) regulations 2 and 5 (interpretation), Part 1 of Schedule 1 (designated public prosecutors) and Schedule 2 (participating States), but only for the purposes of the provisions which continue to have effect by virtue of sub-paragraphs (a) and (b).

(4) In this regulation, “European investigation order” has the meaning given by regulation 5(1)(a) of the 2017 Regulations.

Incoming European investigation order (other than relating to a request for the temporary transfer of a prisoner)

84.—(1) This regulation applies in relation to a European investigation order received before commencement day by a central authority in the United Kingdom, to the extent that the order does not relate to a request for the temporary transfer of a prisoner or an EU prisoner.

(2) Regulations 75 (amendment of the Criminal Justice Act 1987), 77(3) (amendment of the Criminal Procedure (Scotland) Act 1995), 78 (amendment of the Criminal Law (Consolidation) (Scotland) Act 1995) and 79(3) (amendment of the Criminal Justice and Police Act 2001) of these Regulations do not apply.

(3) The following provisions of the 2017 Regulations continue to have effect—

- (a) Part 3 (recognition and execution of a European investigation order made in a participating State), except Chapter 7 of that Part;
- (b) regulation 59 (designation for the purposes of the Investigatory Powers Act 2016);
- (c) Part 4 of Schedule 1 (designated executing authorities);
- (d) Schedule 4 (general grounds for refusal), Schedule 5 (receiving evidence before a nominated court), and Schedule 6 (hearing a person by video-link or telephone conference);

- (e) regulation 2 (general interpretation) and Schedule 2 (participating States), but only for the purpose of the provisions which continue to have effect by virtue of sub-paragraphs (a) to (d).

(4) In this regulation “European investigation order” has the meaning given by regulation 25 of the 2017 Regulations (interpretation).

European investigation order made in the United Kingdom relating to the temporary transfer of a prisoner or EU prisoner

85.—(1) In relation to a prisoner temporarily transferred to a participating State pursuant to a European investigation order made and transmitted under regulation 22 of the 2017 Regulations (European investigation order for the temporary transfer of a prisoner) before commencement day—

- (a) regulation 77(2) (amendment of the Criminal Procedure (Scotland) Act 1995) of these Regulations does not apply;
- (b) the following provisions of the 2017 Regulations continue to have effect—
 - (i) regulation 20 (temporary transfer of UK prisoner to participating State for the purpose of UK investigation);
 - (ii) regulation 24 (time spent by UK prisoner in custody overseas);
 - (iii) regulations 2 and 5 (interpretation) and Schedule 2 (participating States), but only for the purpose of the other provisions which continue to have effect by virtue of this this sub-paragraph.

(2) In relation to an EU prisoner temporarily transferred to the United Kingdom pursuant to a European investigation order made and transmitted under regulation 22 of the 2017 Regulations before commencement day, the following provisions of those Regulations continue to have effect—

- (a) regulation 21 (temporary transfer of EU prisoner to the UK for the purposes of UK investigation or proceedings);
- (b) regulation 23 (restrictions on prosecution and detention for other matters);
- (c) regulations 2 and 5 and Schedule 2, but only for the purpose of the provisions which continue to have effect by virtue of sub-paragraphs (a) and (b).

(3) In this regulation, “European investigation order” has the meaning given by regulation 5(1)(a) of the 2017 Regulations.

European investigation order made in a participating State relating to the temporary transfer of a prisoner or EU prisoner

86.—(1) In relation to a prisoner temporarily transferred to a participating State pursuant to a warrant issued by the Secretary of State or Scottish Ministers under regulation 54 of the 2017 Regulations (temporary transfer of UK prisoner to issuing State for the purpose of issuing State’s investigation or proceedings) before commencement day—

- (a) regulation 77(2) (amendment of the Criminal Procedure (Scotland) Act 1995) of these Regulations does not apply;
- (b) the following provisions of the 2017 Regulations continue to have effect—
 - (i) regulation 54;
 - (ii) regulation 57 (time spent by UK prisoner in custody overseas);
 - (iii) regulations 2 and 25 (interpretation) and Schedule 2 (participating States), but only for the purpose of the other provisions which continue to have effect by virtue of this sub-paragraph.

(2) In relation to an EU prisoner temporarily transferred to the United Kingdom pursuant to a warrant issued by the Secretary of State or Scottish Ministers under regulation 55 of the 2017 Regulations (temporary transfer of EU prisoner to the UK for the purpose of issuing State’s

investigation) before commencement day, the following provisions of those Regulations continue to have effect—

- (a) regulation 55;
- (b) regulation 56 (restrictions on prosecution and detention for other matters);
- (c) regulations 2 and 25 (interpretation) and Schedule 2 (participating States), but only for the purpose of the provisions which continue to have effect by virtue of sub-paragraphs (a) and (b).

CHAPTER 5

Amendment of the 2003 Act

Amendment of the 2003 Act

- 87.**—(1) The 2003 Act is amended as follows.
- (2) In section 1 (service of overseas process)—
 - (a) in subsection (1)—
 - (i) omit “or other document”;
 - (ii) omit “or document”;
 - (b) in subsection (2), omit paragraphs (b), (c) and (d);
 - (c) in subsections (3) and (4), omit “or document”.
 - (3) In section 7 (requests for assistance in obtaining evidence abroad), omit subsection (7).
 - (4) In section 8(3) (sending requests for assistance), omit paragraph (b) and the “or” immediately before it.
 - (5) Omit the following—
 - (a) section 10 (domestic freezing orders);
 - (b) section 11 (sending freezing orders);
 - (c) section 12 (variation or revocation of freezing orders);
 - (6) In section 13(3) (requests for assistance from overseas authorities), omit paragraph (b).
 - (7) In section 14 (powers to arrange for evidence to be obtained)—
 - (a) in subsection (1), omit paragraphs (b) and (c);
 - (b) in subsection (2)—
 - (i) omit “or (b)”;
 - (ii) omit “An offence includes an act punishable in administrative proceedings.”.
 - (8) Omit the following—
 - (a) section 20 (overseas freezing orders);
 - (b) section 21 (considering overseas freezing orders);
 - (c) section 22 (giving effect to overseas freezing orders);
 - (d) section 23 (postponement);
 - (e) section 24 (evidence seized by or produced to a constable);
 - (f) section 25 (release of evidence held);
 - (9) In section 26 (powers under warrants)—
 - (a) in subsection (1) omit “or 22”;
 - (b) omit subsection (2).
 - (10) In section 28 (interpretation of Chapter 2)—
 - (a) in subsection (1), omit the following definitions—

- (i) “domestic freezing order”;
- (ii) “overseas freezing order”;
- (iii) “the relevant Framework Decision”;
- (b) omit subsections (5) to (8).
- (11) Omit Chapter 4 of Part 1 (information about banking transactions).
- (12) In section 50(5) (subordinate legislation)(a), omit “designating a country other than a member State”.
- (13) In section 51 (general interpretation)(b)—
 - (a) in subsection (1), omit the following definitions—
 - (i) “the 2001 Protocol”;
 - (ii) “administrative proceedings”;
 - (iii) “clemency proceedings”;
 - (iv) “criminal proceedings”;
 - (v) “the Mutual Legal Assistance Convention”;
 - (vi) “the Schengen Convention”;
 - (b) in subsection (2)—
 - (i) omit paragraph (a) and the “and” at the end of that paragraph;
 - (ii) in paragraph (b), omit “other”.

CHAPTER 6

Amendment and revocation of subordinate legislation made under the 2003 Act

Amendment of the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) Order 2009

88.—(1) The Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) Order 2009(c) is amended as follows.

(2) For article 3 substitute—

“3. Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Latvia, Lithuania, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden are designated as participating countries under section 51(2)(b) of the 2003 Act for the purposes of sections 31, 47 and 48 of, and paragraph 15 of Schedule 2 to, that Act.”.

(3) Omit article 4.

Amendment of the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) (No. 2) Order 2009

89.—(1) The Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales, and Northern Ireland) (No. 2) Order 2009(d) is amended as follows.

(2) In article 3—

- (a) for “Iceland and Norway are designated as participating countries” substitute “Norway is designated as a participating country”;
- (b) omit “32, 35, 43, 44, 45,”.

(a) There are amendments to section 50 not relevant for the purposes of this instrument.

(b) Section 51 was amended by S.I. 2013/602 and 2017/730.

(c) S.I. 2009/613 as amended by SI 2017/730.

(d) S.I. 2009/1764.

(3) Omit article 4.

Amendment of the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) Order 2009

90.—(1) The Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) Order 2009(a) is amended as follows.

(2) For article 2 substitute—

“2. Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Latvia, Lithuania, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden are designated as participating countries under section 51(2)(b) of the 2003 Act for the purposes of sections 31, 47 and 48 of, and paragraph 15 of Schedule 2 to, that Act.”.

(3) Omit article 3.

Amendment of the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) (No. 2) Order 2009

91.—(1) The Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) (No. 2) Order 2009(b) is amended as follows.

(2) In article 2—

- (a) for “Iceland and Norway are designated as participating countries” substitute “Norway is designated as a participating country”;
- (b) omit paragraph (b);
- (c) omit paragraph (c);
- (d) omit paragraph (d);
- (e) omit paragraph (e);
- (f) omit paragraph (f).

(3) Omit article 3.

Amendment of the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) (No. 3) Order 2009

92.—(1) The Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) (No. 3) Order 2009(c) is amended as follows.

(2) In article 3, omit “Croatia”.

(3) Omit article 4.

Amendment of the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) Order 2010

93. In the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) Order 2010(d), omit article 5.

(a) S.S.I. 2009/106 as amended by S.I. 2017/730.

(b) S.S.I. 2009/206.

(c) S.S.I. 2009/441 as amended by S.I. 2017/730.

(d) S.I. 2010/36 as amended by S.I. 2017/730.

Revocation of the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) Order 2011

94. The Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) Order 2011(a) is revoked.

Revocation of the Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) (No. 2) Order 2011

95. The Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) (No. 2) Order 2011(b) is revoked.

CHAPTER 7

Saving provisions relating to the amendment of the Crime (International Co-operation) Act 2003 and subordinate legislation

Freezing orders

96.—(1) Despite regulation 87(5) (amendment of the 2003 Act), section 12 of the 2003 Act (variation or revocation of freezing orders) continues to have effect in relation to a domestic freezing order made under section 10 of that Act (domestic freezing orders) and forwarded by the Secretary of State or the Lord Advocate under section 11 of that Act (sending freezing orders) before commencement day, but as if the words “vary or” in subsection (1) of section 12 were omitted.

(2) Despite regulations 87(8)(b) to (10), the provisions of the 2003 Act mentioned in paragraph (3) continue to have effect in relation to an overseas freezing order (within the meaning of section 20 of the 2003 Act (overseas freezing orders) received by the Secretary of State or Lord Advocate before commencement day.

(3) Those provisions are—

- (a) sections 21 to 25;
- (b) section 26 without the amendments made by regulation 87(9);
- (c) section 28 without the amendments made by regulation 87(10).

(4) A provision mentioned in paragraph (3) has effect by virtue of paragraph (2) as if the country from which the overseas freezing order was received continued to be a participating country within the meaning of the 2003 Act.

Requests for information about financial accounts and transactions

97.—(1) Despite regulation 87(11) (amendment of the 2003 Act), sections 32 to 34 (customer information (England and Wales and Northern Ireland) and offences) and 42 (offence of disclosure) of the 2003 Act continue to have effect in relation to a request for customer information received by the Secretary of State under section 32 of that Act before commencement day.

(2) Despite regulation 87(11), sections 37 to 39 (customer information (Scotland) and offences) and 42 (offence of disclosure) of the 2003 Act continue to have effect in relation to a request for customer information received by the Lord Advocate under section 37 of that Act before commencement day.

(3) Despite regulation 87(11), sections 35 (account information: England and Wales and Northern Ireland), 36 (account monitoring orders: England and Wales and Northern Ireland) and 42 (offence of disclosure) of the 2003 Act continue to have effect in relation to a request for

(a) S.S.I. 2011/7.
(b) S.I. 2011/229.

account information received by the Secretary of State under section 35 of that Act before commencement day.

(4) Despite regulation 87(11), sections 40, 41 (account monitoring orders: Scotland) and 42 (offence of disclosure) of the 2003 Act continue to have effect in relation to a request for account information received by the Lord Advocate under section 40 of that Act before commencement day.

(5) A provision mentioned in this regulation has effect by virtue of this regulation as if the country from which the request was received continued to be a participating country within the meaning of the 2003 Act.

Certain mutual legal assistance requests from Iceland

98.—(1) Paragraph (2) applies where, before commencement day, by virtue of an agreement with the competent authority of Iceland—

- (a) a person has been transferred to that country from the United Kingdom pursuant to a warrant issued under section 47 of the 2003 Act (transfer of UK prisoner to assist investigation abroad)(a), or
- (b) a person has been transferred from that country to the United Kingdom pursuant to a warrant issued under section 48 of the 2003 Act (transfer of EU etc prisoner to assist UK investigation)(b).

(2) The provisions of the 2003 Act mentioned in paragraph (1) continue to have effect in relation to the person as if Iceland continued to be a participating country within the meaning of the 2003 Act.

(3) Paragraph (4) applies where, before commencement day, a request under section 31 of the 2003 Act (hearing witnesses in the UK by telephone) is received from an authority in Iceland.

(4) Section 31 of, and Part 2 of Schedule 2 to, the 2003 Act (evidence given by telephone link) continue to have effect in relation to the request as if Iceland continued to be a participating country within the meaning of the 2003 Act.

CHAPTER 8

Other retained EU law relating to mutual legal assistance in criminal matters and certain aspects of police cooperation

Provisions of the 1990 Schengen Convention relating to police cooperation and mutual legal assistance in criminal matters

99. The following decisions are revoked but only so far as they relate to Articles 39, 46 to 49 and 51 of the 1990 Schengen Convention—

- (a) Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis;
- (b) Council Decision 2004/926/EC of 22 December 2004 on the putting into effect of parts of the Schengen acquis by the United Kingdom of Great Britain and Northern Ireland;
- (c) Council Decision 2014/857/EU of 1 December 2014 concerning the notification of the United Kingdom of Great Britain and Northern Ireland of its wish to take part in some of the provisions of the Schengen acquis which are contained in acts of the Union in the field of police cooperation and judicial cooperation in criminal matters and amending Decisions 2000/365/EC and 2004/926/EC.

(a) Section 47 of the Crime (International Co-operation) Act 2003 (c. 32) was amended by paragraph 237 of Schedule 16 to the Armed Forces Act 2006 (c. 52).

(b) Section 48 of the Crime (International Co-operation) Act 2003 was amended by paragraph 52 of Part 2 of Schedule 26 to the Criminal Justice and Immigration Act 2008 (c. 4).

Third Pillar Conventions

100.—(1) The following conventions established by the Council of the European Union under former Article 34 of the Treaty on European Union are revoked, to the extent that they have been saved by the Withdrawal Act—

- (a) the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (Council Act of 29 May 2000);
- (b) the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (Council Act of 16 October 2001).

(2) Reference in this regulation to former Article 34 of the Treaty on European Union are references to that Article as it had effect at any time before the coming into force of the Treaty of Lisbon.

Consequential amendment of the Investigatory Powers (Consequential Amendments etc.) Regulations 2018

101. Regulation 5 of the Investigatory Powers (Consequential Amendments etc.) Regulations 2018 (designation of a relevant international agreement)(a) is omitted.

Saving provision: requests for the interception of telecommunications under the 2000 MLA Convention

102. Regulation 101 (consequential amendment of the Investigatory Powers (Consequential Amendments etc.) Regulations 2018) does not apply in relation to a request made under Article 18 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (Council Act of 29 May 2000) (requests for interception of telecommunications) received by the Secretary of State before commencement day.

PART 19

Passenger Name Record Data

Amendment of the Immigration and Police (Passenger, Crew and Service Information) Order 2008

103.—(1) The Immigration and Police (Passenger, Crew and Service Information) Order 2008(b) is amended as follows.

(2) In regulation 7 (form and manner in which passenger and service information to be provided: police)—

- (a) in paragraph (2), for “which conforms to the data formats and transmission protocols provided for in Article 1 of the Implementing Decision”, substitute “that is compatible with the technology used by the recipient of the information”;
- (b) omit paragraph (7).

Amendment of the Passenger Name Record Data and Miscellaneous Amendments Regulations 2018

104.—(1) The Passenger Name Record Data and Miscellaneous Amendments Regulations 2018(c) are amended as follows.

(2) In regulation 2 (interpretation)—

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- (a) S.I. 2018/682.
 - (b) S.I. 2008/5. This instrument was amended by S.I. 2015/859 and 2018/598.
 - (c) S.I. 2018/598.

- (a) at the appropriate places insert—
 - ““serious crime” has the meaning given in the Passenger Name Record Directive;”;
 - ““terrorist offences” has the meaning given in the Passenger Name Record Directive;”;
 - (b) omit the following definitions—
 - (i) “European Commission”;
 - (ii) “Europol”;
 - (iii) “non-UK PIU”;
 - (c) for the definition of “non-UK competent authority”, substitute—
 - ““non-UK competent authority” means an authority based in a third country that is competent for the prevention, detection, investigation or prosecution of terrorist offences or serious crime;”;
 - (d) in the definition of “PNR data”, for “Annex I to the Passenger Name Record Directive” substitute “Schedules 2 or 4 to the 2008 Order”;
 - (e) in the definition of “third country”, for “a Member State” substitute “the United Kingdom”;
 - (f) in the definition of “UK competent authority”, omit all the words that appear after “serious crime”;
 - (g) omit paragraph (2).
- (3) In regulation 3 (designation of passenger information unit)—
- (a) in paragraph (1), omit “for the United Kingdom”;
 - (b) in paragraph (2), for sub-paragraph (d) substitute—
 - “(d) where appropriate, exchanging PNR data and the result of processing that data with a non-UK competent authority”.
- (4) In regulation 6 (processing of PNR data by the PIU), in paragraph (3)—
- (a) for sub-paragraph (a) substitute—
 - “(a) carrying out an assessment of passengers prior to their scheduled arrival in, or departure from, the UK to identify persons who require further examination by a UK competent authority in view of the fact that such persons may be involved in a terrorist offence or serious crime;”;
 - (b) in sub-paragraph (b) omit “or, where appropriate, Europol”.
- (5) Omit regulations 8 to 10 (exchange of data).
- (6) In regulation 11 (requests for PNR data made by a UK competent authority to another Member State)—
- (a) in the heading, for “another Member State” substitute “a non-UK competent authority”;
 - (b) in paragraph (1), for “non-UK PIU” substitute “non-UK competent authority”;
 - (c) in paragraph (2), for “non-UK PIU” substitute “non-UK competent authority”;
 - (d) for paragraph (3) substitute—
 - “(3) The conditions are that—
 - (a) the request is made solely for the purposes of the prevention, detection, investigation or prosecution of terrorist offences or serious crime;
 - (b) the request is made in respect of a specific case;
 - (c) the request is duly reasoned, and
 - (d) a copy of the request is sent to the PIU.”.
- (7) In regulation 12 (transfers of PNR to third countries)—
- (a) in the heading, for “third countries” substitute “non-UK competent authorities”;
 - (b) for paragraphs (1) and (2) substitute—

“(1) The PIU may transfer PNR data or the result of processing that data to a non-UK competent authority if either of the conditions set out in paragraph (2) or (2A) is met.

(2) The first condition is that—

- (a) the request from the non-UK competent authority is duly reasoned;
- (b) the PIU is satisfied that the transfer is necessary for the prevention, investigation, detection or prosecution of terrorist offences or serious crime, and
- (c) the non-UK competent authority agrees to transfer the data to another non-UK competent authority only where it is strictly necessary for the purposes described in sub-paragraph (b).

(2A) The second condition is that—

- (a) following the assessment referred to in regulation 6(3)(a), a person is identified by the PIU as requiring further examination, and
- (b) the PIU considers it necessary for the prevention, detection, investigation or prosecution of terrorist offences or serious crime for a non-UK competent authority to be notified of that fact.”;

(c) in paragraph (4), for “third country” substitute “non-UK competent authority”.

(8) In regulation 13(8)(b) (period of data retention and depersonalisation), for “non-UK PIU” substitute “non-UK competent authority”.

(9) In regulation 14(3)(c) (protection of personal data) omit “and non-UK PIUs”.

(10) Omit regulation 15 (supervisory authority).

Revocation of Council Decisions 2012/381/EU and 2012/472/EU

105. The following Council Decisions are revoked—

- (a) Council Decision 2012/381/EU of 13 December 2011 on the conclusion of the Agreement between the European Union and Australia on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the Australian Customs and Border Protection Service;
- (b) Council Decision 2012/472/EU of 26 April 2012 on the conclusion of the Agreement between the United States of America and the European Union on the use and transfer of passenger name records to the United States Department of Homeland Security.

Revocation of Commission Implementing Decision 2017/759

106. Commission Implementing Decision (EU) 2017/759 of 28 April 2017 on the common protocols and data formats to be used by air carriers when transferring PNR data to Passenger Information Units is revoked.

PART 20

Proceeds of Crime

Amendment of the Proceeds of Crime Act 2002

107.—(1) The Proceeds of Crime Act 2002(a) is amended as follows.

(2) In section 67(b) (seized money: England and Wales)—

- (a) in subsection (9), omit paragraph (c);

(a) 2002 c. 29.

(b) Section 67 was amended by section 14(1) to (3) of the Serious Crime Act 2015 (c. 9) and section 26 of the Criminal Finances Act 2017 (c. 22).

- (b) in subsection (10), omit “or firm” in both places where those words occur.
- (3) In section 131ZA(a) (seized money: Scotland)—
 - (a) in subsection (10), omit paragraph (c);
 - (b) in subsection (11), omit “or firm” in both places those words occur.
- (4) In section 282D(b) (evidence overseas: interim receiver or interim administrator), in subsection (10), omit paragraph (b) and the “or” immediately preceding that paragraph.
- (5) In section 303Z7(c) (“bank”)—
 - (a) in subsection (2), omit paragraph (c);
 - (b) in subsection (3), omit “or firm” in both places those words occur.
- (6) In section 333B(d) (disclosures within an undertaking or group etc), in subsections (2)(b) and (4)(b), for “an EEA State” substitute “the United Kingdom or an EEA state”.
- (7) In section 333C(e) (other permitted disclosures between institutions etc), in subsection (2)(c), for “an EEA State” substitute “the United Kingdom or an EEA state”.
- (8) In section 362B(f) (requirements for making of unexplained wealth order), in subsection (7)(a), for “the United Kingdom or another EEA State,” substitute—

“—

- (i) the United Kingdom, or
- (ii) an EEA state,”.

(9) In section 375A(g) (evidence overseas), in subsection (9), omit paragraph (b) and the “or” immediately preceding that paragraph.

(10) In section 396B(h) (requirements for making of unexplained wealth order), in subsection (7)(a), for “the United Kingdom or another EEA State,” substitute—

“—

- (i) the United Kingdom, or
- (ii) an EEA state,”.

(11) In section 408A(i) (evidence overseas), in subsection (9), omit paragraph (b) and the “or” immediately preceding that paragraph.

(12) In Schedule 3 (administrators: further provision), in paragraph 6—

- (a) omit sub-paragraph (4)(c);
- (b) in sub-paragraph (5), omit “or firm” in both places those words occur.

(13) In Schedule 9 (regulated sector and supervisory authorities), in paragraph 1 (business in the regulated sector)—

(a) for sub-paragraph (1)(c) substitute—

“(c) the carrying on of activities by an authorised person (within the meaning of section 31 of the Financial Services and Markets Act 2000(j)) who has permission under Part 4A of that Act to carry out or effect contracts of insurance, where those activities consist of carrying out or effecting contracts of long-term insurance;”;

(a) Section 131ZA was inserted by section 28 of the Criminal Finances Act 2017.
 (b) Section 282D was inserted by paragraph 6 of Schedule 18 to the Crime and Courts Act 2013 (c. 22).
 (c) Section 303Z7 was inserted by section 16 of the Criminal Finances Act 2017.
 (d) Section 333B was inserted by S.I. 2007/3398.
 (e) Section 333C was inserted by S.I. 2007/3398.
 (f) Section 362B was inserted by section 1 of the Criminal Finances Act 2017.
 (g) Section 375A was inserted by paragraph 26 of Schedule 19 to the Crime and Courts Act 2013.
 (h) Section 396B was inserted by section 4 of the Criminal Finances Act 2017.
 (i) Section 408A was inserted by paragraph 28 of Schedule 19 to the Crime and Courts Act 2013.
 (j) 2000 c.8.

- (b) in sub-paragraph (1)(d), for “(other than a person falling within Article 2 of the Markets in Financial Instruments Directive)” substitute “(other than a person falling within one of the exclusions to the definition of “investment firm” in article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544))”;
- (c) in sub-paragraph (1)(g), for “an EEA State” substitute “the United Kingdom”;
- (d) in sub-paragraph (2)(b), for “an EEA state” substitute “the United Kingdom”;
- (e) after sub-paragraph (2) insert—
 - “(2A) For the purposes of sub-paragraph (1)(c), “contract of long-term insurance” means any contract falling within Part 2 of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544).”.
- (f) for sub-paragraph (5) substitute—
 - “(5) For the purposes of sub-paragraph (4)(d) “regulated market” has the meaning given by regulation 3(1) (general interpretation) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692).”;
- (g) omit sub-paragraph (6).

Amendment of the Serious Organised Crime and Police Act 2005

- 108.**—(1) The Serious Organised Crime and Police Act 2005(a) is amended as follows.
- (2) Omit section 96 (mutual assistance in freezing property or evidence).
 - (3) In section 172 (orders and regulations), in subsection (5), omit paragraph (h).

Amendment of the Criminal Finances Act 2017

- 109.**—(1) The Criminal Finances Act 2017(b) is amended as follows.
- (2) In section 1(c) (unexplained wealth orders: England and Wales and Northern Ireland), in the text to be inserted as section 362B(7)(a) of the Proceeds of Crime Act 2002, for “the United Kingdom or another EEA State,” substitute—
 - “—
 - (i) the United Kingdom, or
 - (ii) an EEA state.”.
 - (3) In section 16(d) (forfeiture of money held in bank and building society accounts), in the text to be inserted as section 303Z7 of the Proceeds of Crime Act 2002—
 - (a) in subsection (2), omit paragraph (c);
 - (b) in subsection (3), omit “or firm” in both places those words occur.
 - (4) In section 27 (seized money: Northern Ireland)—
 - (a) in the text to be inserted as subsection (9) of section 215 of the Proceeds of Crime Act 2002, omit paragraph (c);
 - (b) in the text to be inserted as subsection (10) of that section, omit “or firm” in both places those words occur.

Amendment of the CJDP Regulations

- 110.**—(1) Subject to regulation 111 (transitional provisions in relation to the amendment of the CJDP Regulations), the CJDP Regulations are amended as follows.

(a) 2005 c. 15.
 (b) 2017 c. 22.
 (c) Section 1 extends to England and Wales and Northern Ireland and was commenced in England and Wales only by S.I. 2018/78.
 (d) Section 16 extends to the United Kingdom and was commenced in England and Wales and Scotland by S.I. 2018/78.

- (2) Part 2 (proceeds of crime (foreign property and foreign orders)) is revoked.
- (3) Schedule 1 (proceeds of crime (foreign property and foreign orders): Scotland) is revoked.
- (4) Schedule 2 (proceeds of crime (foreign property and foreign orders): Northern Ireland) is revoked.

Transitional provisions in relation to amendment of the CJDP Regulations

111. Regulation 110 does not apply in relation to a case where, before commencement day, any of the following has occurred—

- (a) the Crown Court makes a certificate under regulation 6(2) of the CJDP Regulations (domestic restraint orders: certification);
- (b) a relevant prosecutor receives an overseas restraint order under regulation 8(1) of the CJDP Regulations (sending overseas restraint orders to the court);
- (c) the Crown Court makes a certificate under regulation 11(2) of the CJDP Regulations (domestic confiscation orders: certification);
- (d) a relevant prosecutor receives an overseas confiscation order under regulation 13(1) of the CJDP Regulations (sending overseas confiscation orders to the court);
- (e) the court makes a certificate under paragraph 2(2) of Schedule 1 to the CJDP Regulations (domestic restraint orders: certification);
- (f) the Lord Advocate receives an overseas restraint order under paragraph 4(1) of Schedule 1 to the CJDP Regulations (sending overseas restraint orders to the court);
- (g) the court makes a certificate under paragraph 7(2) of Schedule 1 to the CJDP Regulations (domestic confiscation orders: certification);
- (h) the Lord Advocate receives an overseas confiscation order under paragraph 9(1) of Schedule 1 to the CJDP Regulations (sending overseas confiscation orders to the court);
- (i) the court makes a certificate under paragraph 2(2) of Schedule 2 to the CJDP Regulations (domestic restraint orders: certification);
- (j) the relevant prosecutor receives an overseas restraint order under paragraph 4(1) of Schedule 2 to the CJDP Regulations (sending overseas restraint orders to the court);
- (k) the court makes a certificate under paragraph 7(2) of Schedule 2 to the CJDP Regulations (domestic confiscation orders: certification), or
- (l) the relevant prosecutor receives an overseas confiscation order under paragraph 9(1) of Schedule 2 to the CJDP Regulations (sending overseas confiscation orders to the court).

Revocation of Council Decision 2000/642/JHA and Council Decision 2007/845/JHA

112. Subject to regulation 113 (saving provision), the following are revoked—

- (a) Council Decision 2000/642/JHA of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information;
- (b) Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime.

Saving provision

113.—(1) Article 5 of Council Decision 2000/642/JHA (use of information or documents) continues to have effect in relation to information or documents obtained under Article 1 of that Council Decision (cooperation of financial intelligence units) before commencement day.

(2) Article 5 of Council Decision 2007/845/JHA (data protection) continues to have effect in relation to information exchanged under Article 3 (exchange of information between Asset

Recovery Offices on request) or 4 (Spontaneous exchange of information between Asset Recovery Offices) of that Council Decision before commencement day.

PART 21

Prüm – Exchange of Data Relating to DNA, Fingerprints and Vehicle Registration

Interpretation

114. In this Part, “the Prüm Decision” means Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime.

Revocation of the Prüm Decision and related Council Decisions

115. The following are revoked—

- (a) the Prüm Decision;
- (b) Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime;
- (c) Council Decision 2014/836/EU of 27 November 2014 determining certain consequential and transitional arrangements concerning the cessation of the participation of the United Kingdom of Great Britain and Northern Ireland in certain acts of the Union in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Treaty of Lisbon;
- (d) Council Decision 2014/837/EU of 27 November 2014 determining certain direct financial consequences incurred as a result of the cessation of the participation of the United Kingdom of Great Britain and Northern Ireland in certain acts of the Union in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Treaty of Lisbon.

Revocation of Commission Decision (EU) 2016/809

116. Commission Decision (EU) 2016/809 of 20 May 2016 on the notification by the United Kingdom of Great Britain and Northern Ireland of its wish to participate in certain acts of the Union in the field of police cooperation adopted before the entry into force of the Treaty of Lisbon and which are not part of the Schengen acquis is revoked.

Revocation of Council Implementing Decisions

117. The following are revoked—

- (a) Council Implementing Decision (EU) 2015/2009 of 10 November 2015 on the launch of automated data exchange with regard to dactyloscopic data in Poland;
- (b) Council Implementing Decision (EU) 2015/2049 of 10 November 2015 on the launch of automated data exchange with regard to dactyloscopic data in Sweden;
- (c) Council Implementing Decision (EU) 2015/2050 of 10 November 2015 on the launch of automated data exchange with regard to dactyloscopic data in Belgium;
- (d) Council Implementing Decision (EU) 2016/254 of 12 February 2016 on the launch of automated data exchange with regard to vehicle registration data (VRD) in Latvia;
- (e) Council Implementing Decision (EU) 2016/2047 of 18 November 2016 on the launch of automated data exchange with regard to DNA data in Denmark;

- (f) Council Implementing Decision (EU) 2016/2048 of 18 November 2016 on the launch of automated data exchange with regard to dactyloscopic data in Denmark;
- (g) Council Implementing Decision (EU) 2017/617 of 27 November 2017 on the launch of automated data exchange with regard to DNA data in Greece;
- (h) Council Implementing Decision (EU) 2017/618 of 27 March 2017 on the launch of automated data exchange with regard to vehicle registration data in Denmark;
- (i) Council Implementing Decision (EU) 2017/943 of 18 May 2017 on the automated data exchange with regard to vehicle registration data in Malta, Cyprus and Estonia, and replacing Decisions 2014/731/EU, 2014/743/EU and 2014/744/EU;
- (j) Council Implementing Decision (EU) 2017/944 of 18 May 2017 on the automated data exchange with regard to dactyloscopic data in Latvia, and replacing Decision 2014/911/EU;
- (k) Council Implementing Decision (EU) 2017/945 of 18 May 2017 on the automated data exchange with regard to DNA data in Slovakia, Portugal, Latvia, Lithuania, Czech Republic, Estonia, Hungary, Cyprus, Poland, Sweden, Malta and Belgium and replacing Decisions 2010/689/EU, 2011/472/EU, 2011/715/EU, 2011/887/EU, 2012/58/EU, 2012/299/EU, 2012/445/EU, 2012/673/EU, 2013/3/EU, 2013/148/EU, 2013/152/EU and 2014/410/EU;
- (l) Council Implementing Decision (EU) 2017/946 of 18 May 2017 on the automated data exchange with regard to dactyloscopic data in Slovenia, Bulgaria, France, Czech Republic, Lithuania, the Netherlands, Hungary, Cyprus, Estonia, Malta, Romania and Finland and replacing Decisions 2010/682/EU, 2010/758/EU, 2011/355/EU, 2011/434/EU, 2011/888/EU, 2012/46/EU, 2012/446/EU, 2012/672/EU, 2012/710/EU, 2013/153/EU, 2013/229/EU and 2013/792/EU;
- (m) Council Implementing Decision (EU) 2017/947 of 18 May 2017 on the automated data exchange with regard to vehicle registration data in Finland, Slovenia, Romania, Poland, Sweden, Lithuania, Bulgaria, Slovakia and Hungary and replacing Decisions 2010/559/EU, 2011/387/EU, 2011/547/EU, 2012/236/EU, 2012/664/EU, 2012/713/EU, 2013/230/EU, 2013/692/EU and 2014/264/EU;
- (n) Council Implementing Decision (EU) 2017/1020 of 8 June 2017 on the launch of automated data exchange with regard to vehicle registration data in Croatia;
- (o) Council Implementing Decision (EU) 2017/1866 of 12 October 2017 on the launch of automated data exchange with regard to vehicle registration data in the Czech Republic;
- (p) Council Implementing Decision (EU) 2017/1867 of 12 October 2017 on the launch of automated data exchange with regard to dactyloscopic data in Portugal;
- (q) Council Implementing Decision (EU) 2017/1868 of 12 October 2017 on the launch of automated data exchange with regard to dactyloscopic data in Greece;
- (r) Council Implementing Decision (EU) 2018/1035 of 16 July 2018 on the launch of automated data exchange with regard to DNA data in Croatia.

PART 22

Schengen Information System (SIS II)

Introductory

118.—(1) In the provisions to which this regulation applies, the expressions which are referred to in Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) have the same meanings as they have in that decision (disregarding for this purpose the revocation of that decision by regulation 119 (revocation of retained EU law relating to SIS II)).

(2) This regulation applies to—

- (a) regulations 120 (saving provision – SIS II data and national files) and 121 (saving provision – supplementary information and national files);
- (b) any provision of Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) which is continued by this Part.

Revocation of retained EU law relating to the Schengen information system (SIS II)

119.—(1) The following Decisions are revoked but only so far as they relate to the Schengen information system—

- (a) Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis;
- (b) Council Decision 2004/926/EC of 22 December 2004 on the putting into effect of parts of the Schengen acquis by the United Kingdom of Great Britain and Northern Ireland;
- (c) Council Decision 2014/857/EU of 1 December 2014 concerning the notification of the United Kingdom of Great Britain and Northern Ireland of its wish to take part in some of the provisions of the Schengen acquis which are contained in acts of the Union in the field of police cooperation and judicial cooperation in criminal matters and amending Decisions 2000/365/EC and 2004/926/EC.

(2) Subject to regulations 120 (saving provisions – SIS II data and national files) and 121 (saving provisions – supplementary information and national files), the following Decisions are revoked—

- (a) Commission Decision 2007/171/EC of 16 March 2007 laying down the network requirements for the Schengen Information System II (3rd pillar);
- (b) Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II);
- (c) Commission Implementing Decision 2013/115/EU of 26 February 2013 on the Sirene Manual and other implementing measures for the second generation Schengen Information System (SIS II);
- (d) Council Decision 2013/157/EU of 7 March 2013 fixing the date of application of Decision 2007/533/JHA on the establishment, operation and use of the second generation Schengen Information System (SIS II);
- (e) Council Implementing Decision (EU) 2015/215 of 10 February 2015 on the putting into effect of the provisions of the Schengen acquis on data protection and on the provisional putting into effect of parts of the provisions of the Schengen acquis on the Schengen Information System for the United Kingdom of Great Britain and Northern Ireland;
- (f) Commission Implementing Decision (EU) 2015/450 of 16 March 2015 laying down test requirements for Member States integrating into the second generation Schengen Information System (SIS II) or changing substantially their directly related national systems;
- (g) Commission Implementing Decision (EU) 2016/1345 of 4 August 2016 on minimum data quality standards for fingerprint records within the second generation Schengen Information System (SIS II).

(3) In this regulation, “Schengen information system” means any information system established under Title IV of the 1990 Schengen Convention, or any system established in its place in pursuance of any EU obligation.

Saving provisions – SIS II data and national files

120.—(1) This regulation applies in relation to—

- (a) SIS II data in connection with which action was taken on the territory of the United Kingdom before commencement day;
- (b) data contained in a particular alert issued in SIS II by the United Kingdom before commencement day.

(2) Subject to the modifications in paragraph (3), the following provisions of Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) continue to have effect in relation to the data referred to in paragraph (1)—

- (a) Article 46(1), (5), (6) and (7) (processing of SIS II data);
- (b) Article 47 (SIS II data and national files);
- (c) Article 54 (transfer of personal data to third parties).

(3) The modifications are that—

- (a) Article 46 is to be read as if—
 - (i) in paragraph 1—
 - (aa) for the words “The Member States” there were substituted “The United Kingdom”;
 - (bb) after the words “and 38” there were inserted “of Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) as it applied in the European Union immediately before commencement day”;
 - (ii) in paragraph 5, for the words “this Decision” there were substituted “Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) as it applied in the European Union immediately before commencement day”;
 - (iii) in paragraph 7—
 - (aa) for the words “paragraphs 1 to 6” there were substituted “paragraphs 1, 4 and 5”;
 - (bb) for the words “each Member State” there were substituted “the United Kingdom”;
- (b) Article 47 is to read as if—
 - (i) for the words “Article 46(2) shall not prejudice the right of a Member State to” (in each place) there were substituted “The United Kingdom may”;
 - (ii) in paragraph 2, for the words “that Member State” there were substituted “the United Kingdom”;
- (c) Article 54 is to be read as if for the words “this Decision” there were substituted “Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) as it applied in the European Union before commencement day”.

Saving provisions – supplementary information and national files

121.—(1) This regulation applies in relation to data relating to—

- (a) an alert which the United Kingdom issued before commencement day, or
- (b) an alert in connection with which action was taken on the territory of the United Kingdom before commencement day.

(2) Subject to the modifications in paragraph (3), the following provisions of Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) continue to have effect in relation to the data referred to in paragraph (1)—

- (a) Article 8(2) (exchange of supplementary information);

- (b) Article 53(3) (purpose and retention period of supplementary information);
 - (c) Article 54 (transfer of personal data to third parties).
- (3) The modifications are that—
- (a) Article 53(3) is to be read as if—
 - (i) for the words “Paragraph 2 shall not prejudice the right of a Member State” there were substituted “The United Kingdom may”;
 - (ii) for the words “that Member State” there were substituted “the United Kingdom”;
 - (b) Article 54 is to be read as if for the words “this Decision” there were substituted “Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) as it applied in the European Union before commencement day”.

PART 23

Serious Crime and Fraud

Amendment of the Serious Crime Act 2007

- 122.**—(1) The Serious Crime Act 2007(**a**) is amended as follows.
- (2) In section 34 (providers of information society services)—
- (a) in subsection (1) omit “other than the United Kingdom”;
 - (b) in subsection (3) omit paragraph (b) and the “and” immediately preceding that paragraph;
 - (c) in subsection (4) omit “or notification”;
 - (d) in subsection (5), at the end insert “, reading those Articles as if the requirements imposed on a Member State were imposed on the court making the order”;
 - (e) in subsection (6), for “covered by” substitute “falling within the descriptions contained in”.
- (3) In section 54 (institution of proceedings etc for an offence under Part 2), in subsection (5) omit “other than the United Kingdom”.
- (4) In section 69(2)(d) (offence for certain further disclosures of information), for “an EU obligation” substitute “a retained EU obligation”.

Revocation of Council Regulation (EU) No 331/2014

123. Council Regulation (EU) No 331/2014 of the European Parliament and of the Council of 11 March 2014 establishing an exchange, assistance and training programme for the protection of the euro against counterfeiting (the ‘Pericles 2020’ programme) and repealing Council Decisions 2001/923/EC, 2001/924/EC, 2006/75/EC, 2006/76/EC, 2006/849/EC and 2006/850/EC is revoked.

(a) 2007 c. 27. Section 34 was amended by paragraph 24 of Schedule 1 to the Serious Crime Act 2015 (c. 9), and by S.I. 2011/1043 and 2012/1809.

PART 24
Miscellaneous
CHAPTER 1

Miscellaneous amendments to police legislation

SECTION 1

Amendment of primary legislation

Amendment of the Local Government (Miscellaneous Provisions) Act 1982

124. In Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982(a) (control of sex establishments), in paragraph 12(1)(c) and (d)(b), after “in” insert “the United Kingdom or”.

Amendment of the Licensing Act 2003

125. In section 120 of the Licensing Act 2003(c) (determination of application for grant), in subsection (8)(c) omit “(other than the United Kingdom)”.

Amendment of the Anti-social Behaviour, Crime and Policing Act 2014

126.—(1) Schedule 6A to the Anti-social Behaviour, Crime and Policing Act 2014(d) (anonymity of victims of forced marriage) is amended as follows.

(2) Omit paragraph 4 (domestic service providers: extension of liability).

(3) In paragraph 9 (interpretation)—

(a) in sub-paragraph (1)—

(i) omit the definition of “domestic service provider”;

(ii) in the definition of “non-UK service provider” omit “other than the United Kingdom”;

(b) in sub-paragraph (3)—

(i) in the words before paragraph (a), for “definitions of “domestic service provider” and “non-UK service provider”” substitute “definition of “non-UK service provider””;

(ii) in paragraph (a), for “in a particular part of the United Kingdom, or in a particular EEA state,” substitute “in a particular EEA state”;

(iii) in sub-paragraph (i) of paragraph (a), for “that part of the United Kingdom, or that EEA state,” substitute “that EEA state”.

Amendment of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015

127.—(1) Schedule 3A to the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015(e) (anonymity of victims of forced marriage) is amended as follows.

(2) Omit paragraph 4 (special rules for providers of information society services).

(3) In paragraph 9 (interpretation)—

(a) in sub-paragraph (1)—

(a) 1982 c. 30.

(b) Paragraph 12(1)(c) and (d) was amended by S.I. 2009/2999.

(c) 2003 c. 17. Section 120 was amended by paragraph 15(2) to (9) of Part 3 of Schedule 4 to the Immigration Act 2016 (c. 19).

(d) 2014 c. 12. Schedule 6A was inserted by section 173(2) of the Policing and Crime Act 2017 (c. 3).

(e) 2015 c. 2 (N.I.). Schedule 3A was inserted by section 174(2) of the Policing and Crime Act 2017 (c. 3).

- (i) omit the definition of “domestic service provider”;
- (ii) in the definition of “non-UK service provider” omit “other than the United Kingdom”;
- (b) in sub-paragraph (3)—
 - (i) in the words before paragraph (a), for “definitions of “domestic service provider” and “non-UK service provider”” substitute “definition of “non-UK service provider””;
 - (ii) in paragraph (a), for “in a particular part of the United Kingdom, or in a particular EEA state,” substitute “in a particular EEA state”;
 - (iii) in sub-paragraph (i) of paragraph (a), for “that part of the United Kingdom, or that EEA state,” substitute “that EEA state”.

Amendment of the Policing and Crime Act 2017

128. In the Policing and Crime Act 2017(a), omit section 144 (powers to create offences under section 2(2) ECA 1972: maximum term of imprisonment).

SECTION 2

Amendment of secondary legislation

Amendment of the Police Pensions (Additional Voluntary Contributions) Regulations 1991

129.—(1) The Police Pensions (Additional Voluntary Contributions) Regulations 1991(b) are amended as follows.

- (2) In regulation 2(3)(interpretation), in the definition of “insurance company”(c)—
 - (a) at the end of paragraph (a) omit “or”;
 - (b) omit paragraph (b).

Amendment of the Electronic Commerce Directive (Trafficking People for Exploitation) Regulations 2013

130.—(1) The Electronic Commerce Directive (Trafficking People for Exploitation) Regulations 2013(d) are amended as follows.

- (2) In regulation 2 (interpretation)—
 - (a) in paragraph (1) omit the definition of “UK national”;
 - (b) in paragraph (2)—
 - (i) in the words before paragraph (a), for “in England and Wales or in an EEA state other than the United Kingdom” substitute “in an EEA state”;
 - (ii) in paragraph (a), for “in England and Wales, or in a particular EEA state other than the United Kingdom,” substitute “in a particular EEA state”;
 - (iii) in sub-paragraph (i) of paragraph (a), for “in England Wales, or that EEA state,” substitute “in that EEA state”.
- (3) Omit regulation 3 (internal market: England and Wales service providers).
- (4) In regulation 4(1) (internal market: non-UK service providers), omit “other than the United Kingdom”.

(a) 2017 c. 3.

(b) S.I. 1991/1304.

(c) The definition of “insurance company” was inserted in relation to England and Wales by S.I. 2003/27 and in relation to Scotland by SSI 2003/406.

(d) S.I. 2013/817 as amended by S.I. 2015/1472.

(5) In regulation 8 (review), omit paragraph (2).

Amendment of the Police Pensions Regulations 2015

131.—(1) The Police Pensions Regulations 2015^(a) are amended as follows.

(2) In regulation 2(1) (interpretation), in the definition of “duly qualified medical practitioner”, omit “or the equivalent EEA qualification”.

CHAPTER 2

Miscellaneous amendments to investigatory powers legislation

Amendment of the Investigatory Powers Act 2016

132.—(1) The Investigatory Powers Act 2016^(b) is amended as follows.

(2) In section 19 (power of Secretary of State to issue warrants), omit subsection (5).

(3) In section 102 (power to issue warrants to intelligence services: the Secretary of State), omit subsection (9).

Amendment of the Investigatory Powers (Interception by Businesses etc. for Monitoring and Record-keeping Purposes) Regulations 2018

133.—(1) The Investigatory Powers (Interception by Businesses etc. for Monitoring and Record-keeping Purposes) Regulations 2018^(c) are amended as follows.

(2) In regulation 2 (interpretation), in the definition of “regulatory or self-regulatory practices or procedures”, in paragraph (a)—

(a) in sub-paragraph (i), for the words from “provision” to “Area” substitute “enactment”;

(b) in sub-paragraph (ii), for the words “a member” to “Area” substitute “the United Kingdom”.

(3) In regulation 4 (restrictions on the lawful interception of communications), omit paragraph (2).

CHAPTER 3

International agreements

Revocation of rights etc.

134.—(1) Subject to regulation 135 (saving provision), to the extent that any rights, powers, liabilities, obligations, restrictions, remedies and procedures—

(a) continue by virtue of section 4(1) of the Withdrawal Act, and

(b) are derived from one of the international agreements to which this regulation applies,

those rights, powers, liabilities, obligations, restrictions, remedies and procedures cease to be recognised and available in domestic law.

(2) This regulation applies to—

(a) the Agreement concluded by the Council of the European Union, the Republic of Iceland and the Kingdom of Norway on the association of these two states to the implementation, to application and to the development of the *acquis de Schengen* – final Act^(d);

(b) the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway on the establishment of rights and obligations

(a) S.I. 2015/445.

(b) 2016 c. 25.

(c) S.I. 2018/356.

(d) OJ L No 176, 10.07.1999, p.36.

- between Ireland and the United Kingdom of Great Britain and Northern Ireland, on the one hand, and the Republic of Iceland and the Kingdom of Norway, on the other, in areas of the Schengen acquis which apply to these States(a);
- (c) the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union and the 2001 Protocol thereto(b);
 - (d) the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis(c);
 - (e) the Agreement between the European Union and Iceland and Norway on the application of certain provisions of Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime and Council Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, and the Annex thereto(d);
 - (f) the Agreement between the European Union and Japan on mutual legal assistance in criminal matters(e);
 - (g) the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis(f).

Saving provision

135.—(1) This regulation applies to the extent that—

- (a) a transitional or saving provision of these Regulations preserves a right, power, liability, obligation, restriction, remedy or procedure conferred or imposed by legislation which these Regulations revoke or amend, and
- (b) a corresponding right, power, liability, obligation, restriction, remedy or procedure is derived from an instrument listed in regulation 134(2) and continues by virtue of section 4(1) of the Withdrawal Act.

(2) To the extent that this regulation applies, regulation 134(1) does not.

CHAPTER 4

Atlas – cooperation between special intervention units

Introductory

136. In this Chapter—

- (a) “the Atlas Council Decision” means Council Decision 2008/617/JHA of 23 June 2008 on the improvement of cooperation between the special intervention units of the Member States of the European Union in crisis situations(g);

(a) OJ L No 15, 20.01.2000, p. 2.

(b) OJ L No 26, 29.01.2004, p.3.

(c) OJ L No 53, 27.02.2008, p. 52.

(d) OJ L No 353, 31.12.2009, p.3.

(e) OJ L No 39, 12.02.2010, p. 20.

(f) OJ L No 160, 18.06.2011, p.3.

(g) “Atlas” is the name given to the network of special intervention units established in 2001 and formalised by the Atlas Council Decision.

- (b) the expressions which are defined in Article 2 of the Atlas Council Decision (interpretation) have the meanings given in that provision (disregarding for this purpose the revocation of that decision by regulation 2).

Revocation of the Atlas Council Decision

137. Subject to regulations 138 (transitional provisions – assistance provided to member States on or after commencement day) and 139 (transitional provisions – assistance provided to the United Kingdom after commencement day), the Atlas Council Decision is revoked.

Transitional provisions – assistance provided to member States after commencement day

138.—(1) This regulation applies to a relevant case.

(2) For the purposes of this regulation, a “relevant case” is one in which, before commencement day—

- (a) a member State made a request for assistance under Article 3(1) of the Atlas Council Decision (assistance to another member State) to the competent authority of the United Kingdom, and—
- (b) either—
 - (i) the competent authority of the United Kingdom did not respond in relation to that request, or
 - (ii) the competent authority of the United Kingdom accepted the request for assistance or proposed a different kind of assistance, but some or all of the assistance has not been provided before commencement day.

(3) The following provisions of the Atlas Council Decision continue to have effect in relation to a relevant case (in so far as relevant in the circumstances of the case), subject to the modifications set out in paragraph (4)—

- (a) Article 2 (definitions), in so far as relevant to the provision referred to in sub-paragraph (b);
- (b) Article 3.

(4) The modifications are—

- (a) paragraph 1 of Article 3 is to be read as if—
 - (i) the first sentence were omitted;
 - (ii) for the words “such a request” there were substituted “a request made by a Member State under Article 3(1)”;
 - (iii) for the words “the requested Member State” there were substituted “the United Kingdom”;
- (b) paragraph 3 of Article 3 is to be read as if the words “be authorised to operate in a supporting capacity on the territory of the requesting Member State and” were omitted.

(5) The provisions referred to in paragraph (3) are to be construed (so far as necessary) as if the United Kingdom continued to be a member State.

Transitional provisions – assistance provided to the United Kingdom after commencement day

139.—(1) This regulation applies to a relevant case.

(2) For the purposes of this regulation, a “relevant case” is one in which—

- (a) the competent authority of the United Kingdom made a request for assistance under Article 3(1) of the Atlas Council Decision (assistance to another member State) before commencement day, and

- (b) the requested member State is willing to provide assistance of the kind referred to in Article 3(2) of the Atlas Council Decision in relation to that request on or after commencement day.

(3) The following provisions of the Atlas Council Decision continue to have effect in relation to a relevant case (in so far as relevant in the circumstances of the case), subject to the modifications set out in paragraph (4)—

- (a) Article 2 (definitions), in so far as relevant to the provisions referred to in sub-paragraphs (b) to (d);
- (b) Article 3(3);
- (c) Article 4 (civil and criminal liability);
- (d) Article 6 (costs).

(4) The modifications are—

- (a) paragraph 3 of Article 3 is to be read as if—
 - (i) in the words before sub-paragraph (a), for the words “the requesting Member State” (in each place) there were substituted “the United Kingdom”;
 - (ii) in sub-paragraph (a)—
 - (aa) for the words “the requesting Member State”, in the first place it occurs, there were substituted “the competent authority of the United Kingdom”;
 - (bb) for the words “the requesting Member State”, in the second place it occurs, there were substituted “the United Kingdom”;
- (b) Article 4 is to be read as if—
 - (i) for the words “another Member State” there were substituted “the United Kingdom”;
 - (ii) the words “under this Decision” were omitted;
- (c) Article 6 is to be read as if for the words “The requesting Member State” there were substituted “The United Kingdom”.

(5) The provisions referred to in paragraph (3) are to be construed (so far as necessary) as if the United Kingdom continued to be a member State.

Date

Name
Minister of State
Home Office

EXPLANATORY NOTE

(This note is not part of these Regulations)

These Regulations are made in exercise of the powers conferred by sections 8(1) and 23(1) and (2) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (c. 16) (“the Withdrawal Act”) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(a) to (d) and (g)) arising from the withdrawal of the UK from the European Union (“the EU”). Part 14 of these Regulations (extradition) is also made in part in reliance on various powers in the Extradition Act 2003 (c. 41) (“the 2003 Act”).

Part 2 of these regulations amends the provisions of the Council Decision 2000/375/JHA of 29 May 2000 to combat child pornography on the internet which remain appropriate for the UK after the date and time on which these Regulations come into force (“commencement day”) and revokes those which provide for continued cooperation between member States after commencement day.

In Part 3, regulation 5 makes amendments to the Terrorism Act 2000 (c.11) (“TACT”). Minor amendments are made to sections 21E and 21F to reflect the fact that the UK will not be an EEA state after commencement day. Amendments are made to Schedule 3A which mirror those made by Part 20 of these Regulations to Schedule 9 to the Proceeds of Crime Act 2002 (c. 29)

("POCA"), to amend the definition of businesses in the "regulated sector" to appropriate domestic law-defined categories. Paragraphs 11A to 11G, 25A to 25G and 41A to 41G of Schedule 4 to TACT are omitted; these paragraphs collectively provide a mechanism to allow freezing orders to be sent to, and received from, Member States under Framework Decision 2003/577/JHA of 22nd July 2003 on the execution in the European Union of orders freezing property or evidence (OJ L 196, 2.8.200 p.45-55) ("Framework Decision 2003/577/JHA") (see below), and transitional provision is made to preserve these paragraphs in respect of any requests sent or received prior to commencement day. The definition of "financial institution" in paragraph 6 of Schedule 6 to TACT is amended to replace reference to certain EU definitions with domestic definitions. Amendments are also made to Schedule 8A to TACT, to maintain certain exemptions to liability for the section 58A offence (eliciting, publishing or communicating information about members of the armed forces etc) for information service providers where those exemptions would otherwise have been required to be in place had the "E-Commerce Directive" (Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce in the Internal Market) continued to bind the UK. Similar amendment is made by regulation 7 to the Electronic Commerce Directive (Terrorism Act 2006) Regulations 2007 (S.I. 2007/1550), to preserve those liability exemptions in relation to the offences of encouraging terrorism and disseminating terrorist publications. Provisions in Schedule 8A and the 2007 Regulations which implemented requirements in Article 3 of the E-Commerce Directive to extend domestic courts' jurisdiction to service providers engaged in conduct in other EEA states have been omitted because such requirement represents a reciprocal arrangement which no longer works in a no-deal scenario.

Part 4 makes changes to retained EU law governing reciprocal arrangements for carrying out cross-border surveillance, including the limited circumstances under which law enforcement officers from another Member State can carry out surveillance here without prior authority. The principal source of EU law in this area is the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders ("the 1990 Schengen Convention"), applicable in part in the United Kingdom under Protocol 22 to the Treaties, and under Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis (which was made under Article 4 of that Protocol). In the absence of an agreement with the EU providing for continued cooperation under these instruments, on commencement day the UK will no longer need these arrangements.

Chapter 1 of Part 5 amends retained EU law which relates to, or was enacted to implement, the requirements of Regulation (EC) 273/2004 and (EC) 111/2005, which establishes processes and rules governing trade in drug precursors within the European Union (intra-community trade) and between the European Union and third countries (extra-community trade). Amendments deal with deficiencies arising in legislation, in particular by adjusting references to the UK as a Member State and to transfer powers from the Commission to the Secretary of State to amend annexes containing regulated drug precursors and to set out requirements and conditions relating to trade in the same. In the absence of an agreement with the EU providing for continued participation of the UK in intra-community trade, on commencement day differing rules governing trade with EU Member States are no longer appropriate and are amended so that trade in drug precursors with all countries is treated in the same way.

In Chapter 2 of Part 5, regulation 17(3) amends Schedule 4 to the Psychoactive Substances Act 2016 to remove the extension of liability in respect of the offences of supplying, of offering to supply, a psychoactive substance. Certain exemptions from liability for the offences are maintained where those exemptions would otherwise have been required to be in place had the E-Commerce Directive continued to bind the UK. Amendments are made to remove the extension of liability in respect of the offence of failing to comply with a prohibition order or premises. The restriction on a person's ability to impose conditions in a prohibition notice or order which is inconsistent with the liability exemptions in that Directive will also be maintained.

Regulation 18 revokes Regulation (EC) 1920/2006 of the European Parliament and of the Council of 12 December 2006 providing for the European Monitoring Centre for Drugs and Drug

Addiction (recast) and Regulation (EU) 2017/2101 of the European Parliament and of the Council of 15 November 2017 amending Regulation (EC) No 1920/2006 as regards information exchange on, and an early warning system and risk assessment procedure for, new psychoactive substances. In the absence of an agreement with the EU providing for continued UK co-operation with, or participation in, the EMCDDA on commencement day the UK will no longer need these arrangements.

Part 6 of these Regulations revokes Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, subject to certain savings provisions relating to information received prior to commencement day. This measure establishes a unit, referred to as “Eurojust”, as a body of the Union. Eurojust’s objectives are: to stimulate and improve the coordination, between competent authorities of the Member States; to improve cooperation between the competent authorities of the Member States, in particular by facilitating the execution of requests for, and decisions on, judicial cooperation; and to further support the competent authorities of the Member States in order to render their investigations and prosecutions more effective. In the absence of an agreement with the EU providing for continued cooperation under this instrument, on commencement day the UK will no longer need these reciprocal arrangements.

Part 7 of these Regulations revokes retained EU law concerning the European Police College (“CEPOL”), which was established to train senior officers of police forces of Member States. Regulation 23 revokes the European Police College (Immunities and Privileges) Order 2004, which remains uncommenced. Regulation 24 revokes Council Decision 2005/681/JHA of 20 September 2005 establishing the European Police College (CEPOL) and repealing Decision 2000/820/JHA. In the absence of an agreement with the EU providing for continued cooperation under this instrument, on commencement day the UK will no longer need these arrangements.

Part 8 of these Regulations revokes retained EU law which relates to the European Criminal Records Information System (“ECRIS”), a system for the exchange of information extracted from criminal records between Member States. Chapter 1 of Part 8 revokes Part 6 of the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 (S.I. 2014/3141) (“the CJDP Regulations”), which was enacted to implement the requirements of Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States, and Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA. Chapter 1 also makes saving provision in relation to information provided to the UK Central Authority before commencement day and transitional provision in relation to requests for information made before commencement day. Chapter 2 of Part 8 revokes the Working with Children (Exchange of Criminal Conviction Information) (England and Wales and Northern Ireland) Regulations 2013 (S.I. 2013/2945), which was enacted to implement Article 10(3) of Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA. This imposed additional information-sharing requirements via ECRIS. Chapter 2 also makes transitional provision in relation to requests for information made before commencement day. In the absence of an agreement with the EU providing for continued cooperation under ECRIS, on commencement day the UK will no longer need these arrangements.

Part 9 revokes Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network. This measure provides for a network of judicial contact points to improve judicial cooperation between EU Member States particularly in actions to combat forms of serious crime. In the absence of an agreement with the EU providing for continued cooperation under this instrument, on commencement day the UK will no longer need these reciprocal arrangements. Part 10 revokes retained EU law relating to the establishment of a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice. In the absence of an agreement with the EU providing for continued cooperation under this instrument, on commencement day the UK will no longer need these arrangements.

Part 10 revokes retained EU law relating to the establishment of a European Union Agency for the operational management of large-scale IT systems in the area of freedom, security and justice. In the absence of an agreement with the EU providing for continued cooperation under this instrument, on commencement day the need for these arrangements will cease to exist in so far as the UK is concerned.

Part 11 revokes Regulation 2016/794/EU of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA, subject to certain saving provisions relating to information provided prior to commencement day. This Part also revokes a number of previous Europol measures to the extent they still apply in UK law. Europol is mandated to support cooperation among law enforcement authorities in the Union. Its objectives include to support Member States in the fight against serious crime, terrorism and other forms of crime such as drug trafficking, trafficking in human beings and forgery. In the absence of an agreement with the EU providing for continued cooperation under this instrument, on commencement day the UK will no longer need these reciprocal arrangements.

Chapter 1 of Part 12 revokes retained EU law which was originally enacted to implement Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union and Council Framework Decision of 13 June 2002 on joint investigation teams (2002/465/JHA). In the absence of an agreement with the EU providing for continued cooperation under this instrument, on commencement day the UK will no longer need these reciprocal arrangements.

Regulations 44 to 47 make transitional and saving provision. These regulations provide: for requests for information or intelligence received by a UK competent authority, but not responded to, before commencement day to be responded to after commencement day (regulation 44); for the UK competent authority to make representations concerning the use of information or intelligence provided before or after commencement day (regulation 45); for information and intelligence supplied to a UK competent authority before commencement day to remain subject to existing conditions on use (regulation 46); and for information obtained by a UK member of an international joint investigation team to remain subject to conditions on use (regulation 47).

Chapter 2 of Part 12 amends a provision in the Anti-terrorism, Crime and Security Act 2001 (c. 24) to ensure that certain disclosure in overseas proceedings will not be prohibited if required because of a retained EU obligation.

Part 13 of these Regulations makes amendments to deal with deficiencies arising in legislation regulating of access by members of the public to explosive precursors, in particular, by adjusting references to the UK as a Member State and to transfer a power for the Commission to amend annexes containing regulated explosive precursors to the Secretary of State for Northern Ireland (there is already a power for Ministers to amend such lists in the regime that applies to Great Britain).

Part 14 amends legislation in the field of extradition. The provisions in this Part make changes to primary legislation, including the 2003 Act and to secondary legislation made under that Act, namely the Extradition Act 2003 (Designation of Part 1 Territories) Order 2003 (S.I. 2003/3333) (“the Part 1 Order”) and the Extradition Act 2003 (Designation of Part 2 Territories) Order 2003 (“the Part 2 Order”) (S.I. 2003/3334).

It is necessary to make changes to the domestic framework relating to extradition between the UK and other member States as, from commencement day, the UK will cease to participate in the European arrest warrant scheme (“EAW”), a reciprocal arrangement based on the mutual recognition of judicial decisions and governed by EU law. Accordingly, regulation 55 amends the Part 1 Order to remove member States as territories for the purposes of Part 1 of the 2003 Act, which implements the EAW scheme. Regulation 56 makes corresponding changes to the Part 2 Order necessary to designate the member States under Part 2 of the 2003 Act. Designation under Part 2 will enable the UK to comply with its obligations under the European Convention on

Extradition 1957, which will provide the basis for extradition between the UK and the member States once the EAW scheme ceases to apply. Re-categorisation of the member States is subject to the transitional provision in regulation 57. That provision will mean, for example, in the case of a person arrested under a Part 1 warrant prior to commencement day, a decision will be taken by the courts on that person's extradition in accordance with the Part 1 regime.

Part 15 amends legislation in the field of firearms. Chapter 1 makes amendments to Commission Implementing Regulation (EU) 2015/2403 of 15 December 2015 establishing common guidelines on deactivation standards and techniques for ensuring that deactivated firearms are rendered irreversibly inoperable, in particular by amending references to member States, to reflect the fact that the UK will no longer be a member State after commencement day, and to make changes which ensure the continuation of deactivation standards and techniques through domestic legislation. The amendments also omit Articles 4, 6, 7 and 8 of that Regulation as they will no longer have practical application in the UK after commencement day.

Regulation 59 amends the Firearms Act 1968 (c. 27) to remove references to European Weapons Directive and authorisations which are dependent on complying with the law of a Member State. References to the European Firearms Pass have also been removed. Where appropriate, references to Member states have been amended to references to Great Britain. Firearms Law is devolved to Northern Ireland.

Regulation 60 creates a saving provision in relation to the amendment to section 5A(3) of the Firearms Act 1968. Section 5A(3) provides that the authority of the Secretary of State or Scottish Ministers under section 5 of the Firearms Act 1968 is not required for any person to have in his possession, or to purchase or acquire certain weapons and ammunition, etc. if that person is recognised, for the purposes of the law of another member State relating to firearms, as a collector of firearms or a body concerned in the cultural or historical aspects of weapons. The saving provision will mean that individuals in lawful possession of such items before commencement day are able to continue to be in lawful possession afterwards. It will not apply in relation to the purchase and acquisition of such items on or after commencement day.

Regulation 61 amends the Firearms (Amendment) Act 1988 (c. 45) to change references to EU to United Kingdom. Section 17 is amended to remove references to member States. Section 18 is amended to omit subsection (1A) which dealt with restrictions on the purchase of a firearm which falls within category B for the purposes of Annex I to the European weapons directive, as well as omitting references to that subsection. Section 18A is omitted as are references to it in section 18B.

Regulation 62 amends the Firearms Acts (Amendment) Regulations 1992 (S.I. 1992/2823) to omit regulation 10 concerning the exchange of information. Regulation 63 amends the Firearms (Amendment) Act 1988 (Amendment) Regulations 2011 (S.I. 2011/2175) to omit regulation 3 concerning review.

Chapter 3 of Part 15 makes amendments to deal with deficiencies arising in the Firearms (Northern Ireland) Order 2004 (S.I. 2004/702 (N.I. 3)) to reflect the fact that the UK will no longer be a member of the EU after commencement day. In particular it removes the provisions in relation to the European firearms pass and creates a saving provision in relation to the amendment to Article 46, similar to the saving provision made in respect of section 5A(3) of the Firearms Act 1968.

Part 16 of these Regulations revokes Council Decision 2002/348/JHA concerning security in connection with football matches with an international dimension and related legislation. In the absence of an agreement with the EU providing for continued cooperation under this instrument, on commencement day the UK will no longer need these arrangements.

Part 17 of these Regulations revokes EU retained law relating to joint investigation teams. Regulations 67 to 69 revoke provisions in the laws of England and Wales, Northern Ireland and Scotland respectively which defined 'international joint investigation team' as teams formed in accordance with various EU instruments, namely under Article 34 of the Treaty on the European Union and the Convention on Mutual Assistance in Criminal Matters between the Member States

of the European Union (including the Protocol to that Convention). In the absence of an agreement with the EU providing for continued cooperation under these instruments, on commencement day the UK will no longer need these arrangements.

Regulation 70 makes similar provision in relation to the Crime and Courts Act 2013 (c. 22) amending the definition of ‘international joint investigation team’ for the purpose of that legislation. Regulation 71 makes consequential amendments revoking an Order specifying the Convention Implementing the Schengen Agreement for the purposes of section 88(7)(c) of the Police Act 1996 (c. 16). Regulation 72 makes saving provision with respect to regulations 67 to 69 and 71, so that they continue to apply in relation to investigation teams operating in the UK after commencement day pursuant to regulation 10 in Part 4 of these Regulations.

Part 18 makes amendments to deal with deficiencies in retained EU law relating to mutual legal assistance in criminal matters and some aspects of police cooperation. Chapter 2 revokes the Criminal Justice (European Investigation Order) Regulations 2017 (S.I. 2017/730), which transpose Directive 2014/41/EU on the European investigation order. The Directive creates a system for the mutual recognition of judicial decisions relating to evidence gathering for the purposes of criminal investigations and prosecutions. On commencement day, in the absence of an agreement with the EU providing for continued cooperation in relation to the European investigation order, the UK will no longer be obliged to recognise such decisions issued by other member States (and vice versa) and it is therefore no longer appropriate to maintain domestic law implementing the regime. Other regulations in this Part make consequential amendments to primary legislation (Chapter 3) and save aspects of the regime in order to allow the UK to give effect to orders received from other member States before commencement day and to allow UK courts to continue to revoke orders transmitted to other member States before commencement day (Chapter 4).

Chapter 5 of Part 18 makes amendments to parts of the Crime (International Co-operation) Act 2003 (c. 32) which implement existing EU law obligations in the field of mutual legal assistance and are therefore retained EU law for the purposes of the Withdrawal Act. The obligations include the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (Council Act of 29 May 2000) (“the 2000 EU MLA Convention”), the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (Council Act of 16 October 2001) (“the 2001 Protocol”), provisions of the 1990 Schengen Convention and Council Framework Decision 2003/577/JHA. Whilst these measures have to a large extent been replaced by the EIO Directive, they continue to apply, in some circumstances, to member States which do not participate in the Directive and to third countries to whom they have been extended by international agreement between the EU and the country concerned. All of these arrangements involve reciprocal rights and obligations which will no longer apply to the UK after commencement day. Accordingly, it is no longer appropriate to retain the relevant provision in domestic law. Regulations in Chapter 6 amend subordinate legislation made under the 2003 Act designating countries for the purposes of specific provisions in the Act. Where a member State has been designated solely on the basis of the UK’s participation in one of the measures referred to above, the designations have been removed. Chapter 7 makes saving provision for various types of requests for assistance which may have been received, but not responded to, prior to commencement day.

Chapter 8 of Part 18 revokes retained EU law applying provisions of the 1990 Schengen Convention relating to mutual legal assistance and police cooperation to the United Kingdom, and any provisions of the 2000 EU MLA Convention or the 2001 Protocol which may, under the Withdrawal Act, be retained EU law. Regulation 101 removes the designation of the EU MLA Convention for the purposes of the Investigatory Powers Act 2016 (c. 25), subject to the saving provision in regulation 102.

Part 19 amends retained EU law which relates to, or was enacted to implement, the requirements of Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record data for the prevention, detection investigation and prosecution of terrorist offences and serious crime. This Directive establishes processes and rules for the processing of passenger name record data. In the absence of an agreement with the EU providing

for the continued operation of this instrument, on commencement day, data sharing obligations with EU Member States are no longer appropriate and are amended so that data sharing with all countries is treated in the same way.

In Part 20, regulation 107 makes the following amendments to POCA: the term “EEA Firms” is removed from the definition of “bank” in sections 67, 131ZA and 303Z7 of, and in paragraph 6 of Schedule 3 to, POCA. In sections 282D, 375A and 408A, which relate to the procedure by which assistance can be requested from overseas countries, references to individuals authorised under “EU Treaties” to receive such requests are removed. In sections 333B and 333C, which provide a defence to the offence of “tipping off” under section 333A, amendments are made to references to groups of companies to ensure that the defence will capture companies in the UK after commencement day. In sections 362B and 396B, which make provision for unexplained wealth orders, minor amendments are made to reflect the fact that the UK will not be an “EEA state” after commencement day. The amendments made to Schedule 9 to POCA are all made to ensure that the definition of a business operating in the “regulated sector” (which are subject to the offence in section 330 of failing to report suspicions of money laundering) cross-refers, where possible, to categories of business defined in domestic law rather than categories defined in EU law which will remain frozen in their meaning as of commencement day.

Regulation 108 omits section 96 of the Serious Organised Crime and Police Act 2005 (c.15). That section provides a power to allow the Secretary of State to make provision to give effect to rights and obligations arising under Framework Decision 2003/577/JHA). The UK will not participate in that Framework Decision after commencement day. For the same reason, regulation 110 revokes Part 2 of, and Schedules 1 and 2 to, the CJD Regulations, which contain provisions allowing for freezing orders and confiscation orders to be sent to Member States, and for such orders received from Member States to be given effect in the UK, under that Framework Decision and Framework Decision 2006/783/JHA of 6th October 2006 on the application of the principle of mutual recognition to confiscation orders (OJ L 328, 24.11.2006, p. 59-78). After commencement day, the UK will not send or process any new requests under this mechanism, but transitional provision is made in Regulation 111 makes provision to ensure that the procedure in domestic law continues to apply where any request was sent or received prior to commencement day, or received prior to commencement day (regardless of whether the overseas restraint or overseas confiscation order has been registered by a domestic court).

Regulation 109 amends section 1 of the Criminal Finances Act 2017 (c. 22) to reflect the fact that the UK will not be an “EEA state” after commencement day. In addition, references to “EEA Firms” are removed from the definitions of “bank” in sections 16 and 27 of that Act; those sections make amendments to POCA which have not yet been commenced in Northern Ireland. Regulation 113 revokes Council Decisions 2000/642/JHA concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information and 2007/845/JHA concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime. Regulation 114 makes saving provision to ensure that the provisions relating to the use of information (including personal data) in those Council Decisions is preserved in respect of any information provided under those procedures prior to commencement day.

Part 21 of these Regulations revokes Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (“the Prüm Decision”) and related legislation. The Prüm Decision facilitates the exchange of DNA, fingerprints and vehicle registration data among EU Member States. In the absence of an agreement with the EU providing for continued cooperation under this instrument, on commencement day these reciprocal arrangements will not be needed by the UK.

Part 22 revokes retained EU law relating to the Schengen information system, a real time system for circulating alerts relating to persons and objects of interest to law enforcement and other authorities in other states which participate in the system, subject to saving provisions. Most of the rules relating to the use of the Schengen information system are currently found in Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II), which is directly applicable in the UK. In the

absence of an agreement with the EU providing for continued cooperation under this instrument, on commencement day the UK will cease to have access to the system and it is therefore no longer appropriate for rules governing its use to continue to form part of domestic law.

In Part 23, regulation 122 makes amendments to the Serious Crime Act 2007 (c. 27) to ensure that notwithstanding the fact that the E-Commerce Directive will not bind the UK upon commencement day, the courts cannot impose conditions in Serious Crime Prevention Orders that are inconsistent with the liability exemptions in that Directive had it continued to bind the UK. Amendments are also made so as to omit provisions which implement a requirement in Article 3 of the E-Commerce Directive to extend domestic courts' jurisdiction to service providers engaged in conduct in other EEA states. These provisions have been omitted because such requirement represents a reciprocal arrangement which no longer works in a no-deal scenario. Regulation 122 also ensures that an offence of disclosing information received from anti-fraud agencies is not committed if the disclosure was required by a retained EU obligation. Regulation 123 revokes an EU Regulation which establishes an exchange, assistance and training programme for the protection of the euro against counterfeiting. This EU Regulation has no practical application in relation to the UK in a no-deal scenario.

Chapters 1 and 2 of Part 24 of these Regulations make miscellaneous amendments to retained EU law relating to the police (Chapter 1) and investigatory powers (Chapter 2). Chapter 3 of Part 24 revokes rights and obligations in a number of international agreements in the law enforcement and security sphere, to the extent that these are retained by the Withdrawal Act. The international agreements in question involve reciprocal rights and obligations which will no longer apply to the UK after commencement day. Accordingly, to the extent that these rights and obligations are retained by the Withdrawal Act, it is no longer appropriate to retain them in domestic law. Regulation 135 of Chapter 3 has the effect of preserving any rights and obligations which correspond to rights preserved elsewhere in these Regulations.

Chapter 4 of Part 23 revokes Council Decision 2008/617/JHA on the improvement of cooperation between the special intervention units of the Member States of the European Union in crisis situations (commonly referred to as "the Atlas Council Decision"). In the absence of an agreement with the EU providing for continued cooperation under this instrument, on commencement day these reciprocal arrangements will no longer be needed by the UK. Regulations 138 and 139 make transitional provision with respect to requests for assistance made to and from the UK before commencement day.

An impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the Home Office, 2 Marsham Street, London, SW1P 4DF and is published with the Explanatory Memorandum alongside this instrument at www.legislation.gov.uk.

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UK201901091025 01/2019 19585

<http://www.legislation.gov.uk/id/ukdsi/2019/9780111178102>

EXPLANATORY MEMORANDUM TO
THE LAW ENFORCEMENT AND SECURITY (AMENDMENT) (EU EXIT)
REGULATIONS 2019

2019 No. [XXXX]

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1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Act.

2. Purpose of the instrument

2.1 The United Kingdom (UK) currently participates in around 40 European Union (EU) measures that support and enhance security, law enforcement and judicial cooperation in criminal matters. A number of these measures, and the tools they establish, work together to support the identification, pursuit and prosecution of criminals and terrorists. The UK also participates in a number of security-related EU regulatory systems.

2.2 Should the UK leave the EU without an agreement in March 2019 (a ‘no deal’ scenario), the UK’s access to EU security, law enforcement and criminal justice tools and measures would cease, and the UK would no longer be bound by EU regulatory regimes. This would happen as a result of the UK having ceased to be an EU Member State, following the Article 50 notification made by the UK. This instrument plays no part in the UK leaving the EU, which will happen with or without it.

2.3 The overarching purpose of this instrument (‘the Regulations’) is to make amendments to the UK’s domestic statute book, including retained EU legislation¹, to address deficiencies which arise from the UK ceasing to be an EU Member State. The instrument will do three main things:

- First, the Regulations will revoke or amend retained directly applicable EU legislation and domestic legislation in the area of security, law enforcement, criminal justice and some security-related regulatory systems to ensure that the statute book continues to function effectively in a no deal scenario. Amendments of this nature are made by all of the provisions included in this instrument;
- Second, where necessary, the Regulations include transitional or saving provisions to address ‘live’ or ‘in flight’ cases – i.e. how cases ‘live’ on exit day should be dealt with; or how data received before exit should be treated. Provisions of this nature are included in Parts 3, 4, 6, 8, 11, 12, 14, 15, 17, 18, 20, 22 and 24 of this instrument²; and
- Third, in the case of extradition, the Regulations ensure that the UK has the correct legal underpinning to operate the ‘no deal’ contingency arrangement (the 1957 Council of Europe Convention on Extradition) that would be used in lieu of the European Arrest Warrant (EAW). These changes are made in Part 14 of this instrument.

2.4 In summary, the instrument covers three linked policy areas:

¹ As retained by the European Union (Withdrawal) Act 2018.

² Part 3 – Counter-Terrorism (Regulation 6); Part 4 – Cross-border Surveillance (Regulation 10); Part 6 – Eurojust (Regulation 22); Part 8 – European Criminal Record Information System (ECRIS) (Regulations 27, 28, and 32); Part 11- Europol (Regulation 40); Part 12 – Exchange of information and intelligence between law enforcement authorities and disclosure in foreign proceedings (Regulations 44 - 47); Part 14 – Extradition (Regulation 57); Part 15 – Firearms (Regulations 60, and 65); Part 17 – Joint Investigation Teams (Regulation 72); Part 18 – Mutual Legal Assistance in Criminal Matters (Regulations 83-86, 96-98, and 102); Part 20 – Proceeds of Crime (Regulations 111 and 113); Part 22 – Schengen Information System (SIS II) (Regulations 120-121); and Part 24 – Miscellaneous (Regulations 135, 138, and 139).

- security, law enforcement and judicial cooperation in criminal matters currently underpinned by EU legislation in Parts 2-4, 6-12, 14, 16-23, and Chapters 3 and 4 of Part 24;
- security-related EU regulatory systems for which the Home Office is responsible (drug precursors and psychoactive substances, explosive precursors, and firearms) in Parts 5, 13 and 15; and
- domestic legislation affecting the police and affecting investigatory powers made deficient by EU exit, in Chapters 1 and 2 of Part 24.

Security, law enforcement and judicial cooperation in criminal matters currently underpinned by EU legislation (Parts 2-4, 6-12, 14, 16-23, and Chapters 3 and 4 of Part 24)

- 2.5 Parts 2-4, 6-12, 14, 16-22 and Chapters 3 and 4 of Part 24 of the Regulations address deficiencies in connection with EU measures made under Chapters 4 and 5 of Title V of the Treaty on the Functioning of the European Union. These measures are often referred to as having a Justice and Home Affairs or “JHA” legal base. They all relate in some way to law enforcement and security in their subject matter, and in many cases interact with each other at an operational level.
- 2.6 The effect of the UK’s withdrawal from the EU is that the arrangements provided for in these EU measures – for example, extradition under the EAW – would no longer be available. Once the UK ceases to be an EU Member State, and in the absence of any alternative agreement (i.e. in a ‘no deal’ scenario) the UK would no longer have access to practical cooperation measures like the European Investigation Order (EIO), databases like the Schengen Information System (SIS II), or agencies like Europol, nor could the UK continue to expect reciprocal action from Member States on the terms set out in those EU measures.
- 2.7 The appropriate legislative response is therefore to revoke the relevant retained EU law to ensure that the domestic statute book operates effectively following the UK’s withdrawal from the EU. Transitional or saving provisions are also established where necessary to address ‘live’ or ‘in flight’ cases – i.e. how cases ‘live’ on exit day should be dealt with; or how data received under EU measures before exit should be treated. These transitional and saving provisions are found in Parts 3, 4, 6, 8, 11, 12, 14, 17, 18, 20, 22 and 24 of the instrument in respect of security, law enforcement and judicial cooperation matters.³
- 2.8 There are exceptions to this general position on revocation, in particular:
- Part 2 (Child Pornography) of the Regulations makes amendments to the retained EU legislation, so as to confirm that obligations to take measures to prevent and combat sexual abuse of children continue to apply within the UK.

³ Part 3 – Counter-Terrorism (Regulation 6); Part 4 – Cross-border Surveillance (Regulation 10); Part 6 – Eurojust (Regulation 22); Part 8 – European Criminal Record Information System (ECRIS) (Regulations 27, 28, and 32); Part 11- Europol (Regulation 40); Part 12 – Exchange of information and intelligence between law enforcement authorities and disclosure in foreign proceedings (Regulations 44 - 47); Part 14 – Extradition (Regulation 57); Part 17 – Joint Investigation Teams (Regulation 72); Part 18 – Mutual Legal Assistance in Criminal Matters (Regulations 83-86, 96-98, and 102); Part 20 – Proceeds of Crime (Regulations 111 and 113); Part 22 – Schengen Information System (SIS II) (Regulations 120-121); and Part 24 – Miscellaneous (Regulations 135, 138, and 139).

- Part 19 (Passenger Name Record Data) of the Regulations will amend the retained Passenger Name Record (PNR) Directive Regulations to maintain most of the legislative framework governing the way the UK would treat PNR data from other countries. This includes retaining the data protection safeguards provided for in the PNR Directive but removing data sharing obligations that apply among EU Member States, as the latter represents a reciprocal arrangement which will lapse when the UK withdraws from the EU. This will enable the UK Passenger Information Unit to cooperate with EU Member States on the same terms as they would cooperate with the UK as a non-EU third country.
- 2.9 Additionally, Part 14 (Extradition) of the Regulations provides the necessary legislative underpinning to operate the ‘no deal’ contingency arrangement for extradition with EU Member States in a ‘no deal’ scenario, namely use of the 1957 Council of Europe Convention on Extradition. This will allow extradition requests from EU Member States to be administered based on extradition arrangements under the 1957 European Convention on Extradition.
- 2.10 Part 18 (Mutual Legal Assistance in Criminal Matters) of the Regulations will revoke the Criminal Justice (European Investigation Order) Regulations 2017 (‘the EIO Regulations’), but also reverse a series of consequential amendments that were made when the EIO Regulations were implemented, in order to restore the ability to execute investigative measures (e.g. hearing witnesses in the UK by telephone) in response to requests from EU Member States.
- 2.11 Part 23 (Serious Crime and Fraud) makes amendments to revoke legislation which implemented another type of EU measure in the law enforcement sphere, the EU Regulation which establishes an exchange, assistance and training programme for the protection of the euro against counterfeiting – a programme that would cease to be available to the UK after exit in a ‘no deal’ scenario.
- 2.12 In addition, some of the Parts in this first group also contain minor and technical amendments to domestic legislation, to ensure that the relevant law continues to operate effectively after the UK has withdrawn from the EU.

Security-related EU regulatory systems (drug precursors and psychoactive substances, explosive precursors, and firearms) in Parts 5, 13 and 15.

- 2.13 Amendments concerning security-related EU regulatory systems (drug precursors and psychoactive substances, explosive precursors, and firearms) are covered in Parts 5, 13 and 15 of this instrument.
- 2.14 The effect of the UK’s withdrawal from the EU is that the UK would no longer be bound by EU regulatory regimes, and the UK can no longer expect reciprocal action from Member States on the terms provided for in those regimes.
- 2.15 The Regulations will maintain the existing regulatory regimes in the UK in significant part, while making amendments to address deficiencies in the statute book resulting from the UK’s withdrawal from the EU. This includes:
- Part 5 (Drug Precursors and Psychoactive Substances) will make minor amendments to the regulatory regime governing psychoactive substances to ensure that the definition of a prohibited ingredient no longer refers to

substances prohibited by EU legislation, but to substances prohibited under domestic legislation.

- Part 13 (Explosive Precursors) will make amendments which ensure that the existing regulatory regime continues to operate in substantially the same manner as before exit day, but adjusts terminology which assumes that the UK is an EU Member State. In the case of Northern Ireland, the Regulations will transfer a power for the European Commission to amend annexes containing regulated explosive precursors to the Secretary of State for Northern Ireland (powers for Ministers to amend such lists in Great Britain already exist).
 - Part 15 (Firearms) will retain necessary safeguards and controls on the possession etc, of firearms and shotguns, while removing provisions reflecting reciprocal arrangements which will no longer apply once the UK has withdrawn from the EU, such as those relating to the European Firearms Pass (EFP).
- 2.16 Part 5 (Drug Precursors and Psychoactive Substances) amends the retained EU law which governs the trade in drug precursors within the EU (intra-community trade), and between the EU and third countries (extra-community trade). The Regulations amend the existing regime so that trade in drug precursors with EU Member States is governed in the same way as the rest of the world (as in a ‘no deal’ scenario, the UK will no longer be able to participate in intra-community trade). The intra-community trade rules are retained in amended form for internal UK purposes. The Regulations also transfer powers from the European Commission to the Secretary of State to amend the lists of regulated drug precursors and makes technical amendments to adjust references to the UK as an EU Member State.

Domestic legislation affecting the police and affecting investigatory powers made deficient by EU exit in Chapters 1 and 2 of Part 24

- 2.17 Chapter 1 (Miscellaneous amendments to police legislation) and Chapter 2 of (Miscellaneous amendments to investigatory powers) of Part 24 of the Regulations constitute a miscellaneous group of amendments that seek to ensure that legislation in this area remains operable on exit. In the main, the deficiencies are not linked to a particular EU measure but derive from the assumption that the UK is an EU Member State or a member of the EEA. The amendments in Regulation 126 and Regulation 130 are a notable exception, because they relate to the UK’s implementation of a particular instrument, namely the Electronic Commerce Directive.

Explanations

What did any relevant EU law do before exit day?

- 2.18 The UK currently participates in around 40 EU measures that support and enhance security, law enforcement and judicial cooperation in criminal matters, and in a number of security-related EU regulatory systems. A body of EU law, including Council Decisions, Directives, and EU Regulations, mostly but not exclusively with a ‘Justice and Home Affairs’ legal base, governs cooperation on these matters among participating countries.

Why is it being changed?

- 2.19 Should the UK leave the EU without an agreement in March 2019 (a ‘no deal’ scenario), the UK’s access to EU security, law enforcement and criminal justice tools and measures would cease, and the UK would no longer be bound by EU regulatory regimes. The overarching purpose of this instrument is to make amendments to the UK’s domestic statute book to reflect this.

What will it now do?

- 2.20 The Regulations make amendments to the UK’s domestic statute book, including retained EU legislation, to address deficiencies which arise from the UK ceasing to be an EU Member State. This includes revoking or amending retained directly applicable EU legislation and domestic legislation in the area of security, law enforcement, criminal justice and some security-related regulatory systems.
- 2.21 The practical effect of these amendments is summarised in Section 12 (Impacts) of this Explanatory Memorandum.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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

- 3.2 The territorial application of this instrument varies between provisions.
- 3.3 Please see paragraphs 4.3 and 4.4 below for further details of the application of the provisions in this instrument.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales, Scotland and Northern Ireland.
- 4.2 The territorial application of this instrument is England and Wales, Scotland and Northern Ireland.
- 4.3 The precise extent of each provision of this instrument varies, as set out in regulation 2 (Extent), and the territorial application of this instrument is not limited. In most cases, any amendment, repeal or revocation made by this instrument has the same extent within the UK as the provision to which it relates, with the exception of certain provisions relating to the Proceeds of Crime Act 2002 (‘POCA’) and the Criminal Finances Act 2017 (‘CFA’). Regulation 107(5) and (8) of this instrument relates to provisions in POCA which were inserted by the CFA, but which have not yet commenced in Northern Ireland; accordingly, regulation 107(5) and (8) extends and applies to England and Wales and Scotland only. Similarly, the provisions in the CFA 2017 which are amended by regulation 109(1) to (3) of this instrument make changes to POCA but are not yet commenced in Northern Ireland. Accordingly, Regulation 109(1) and (3) of this instrument extends and applies to Northern Ireland only. Regulation 109(4) makes amendments to section 27 of the CFA, which itself only extends to Northern Ireland, so no further provision is required.

4.4 Any saving or transitional provision in this instrument has the same extent within the UK as the provision to which it relates, with the exception that regulation 72 (saving provision – investigation teams operating in the UK after exit day) extends and applies to England and Wales, Scotland and Northern Ireland.

5. European Convention on Human Rights

5.1 The Rt Hon Nick Hurd MP, Minister of State for Policing and the Fire, has made the following statement regarding Human Rights:

‘In my view the provisions of The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights.’

6. Legislative Context

6.1 On 29 March 2019 the UK will cease to be an EU Member State, as a result of the Article 50 notification made by the UK.

6.2 The EU (Withdrawal) Act 2018 (‘the Act’) was introduced to ensure that the UK has a functioning statute book on exit day. The Act ends the supremacy of EU law in UK law, retains EU law (as it stands at exit) into domestic law, and preserves laws made in the UK to implement EU obligations.

6.3 The Act also created temporary powers to make secondary legislation, including the power in section 8, which enables corrections to be made to legislation that would otherwise fail to operate effectively or other legislative deficiencies arising from the withdrawal of the UK from the EU.

6.4 This instrument will utilise the power contained in section 8 of the Act in order to address failures of retained EU law to operate effectively or other legislative deficiencies arising from the withdrawal of the UK from the EU. It will also rely upon other relevant powers in the European Union (Withdrawal) Act 2018 and the Extradition Act 2003.

6.5 If the Regulations are made, failure of retained EU law to operate effectively, and other legislative deficiencies arising from the UK’s withdrawal from the EU without an agreement (a ‘no deal’ scenario), would be addressed and rectified. In the case of extradition, the Regulations would also provide the correct legislative underpinning to operate the ‘no deal’ contingency arrangement for extradition with EU Member States (use of the 1957 Council of Europe Convention on Extradition).

6.6 The practical impact of making these Regulations would be to remove legal and operational uncertainty for the public sector, reduce legal uncertainty for business, provide the correct legal underpinning for extradition arrangements with EU Member States post-exit, and provide for transitional and saving provisions. For further detail please see Section 12 (Impacts) of this Explanatory Memorandum.

7. Policy background

7.1 The Government’s view remains that withdrawing from the EU with an agreement is in the UK’s best interests. However, the Government is preparing for all scenarios relating to the UK’s withdrawal from the EU, including the scenario in which the UK leaves the EU without a deal in March 2019.

7.2 As part of these preparations, the Government is implementing a cross-Government programme of secondary legislation, which will ensure that, without prejudice to the

outcome of negotiations, there is an effectively functioning statute book on exit day. This instrument is part of that programme of secondary legislation, making amendments to the UK's domestic statute book, including retained EU legislation, to address the deficiencies which arise from the UK ceasing to be an EU Member State.

- 7.3 The practical impact of a 'no deal' exit on security, law enforcement and criminal justice cooperation with EU Member States is outside the scope of the provisions found in this instrument. The Government has separately published '*EU Exit: Assessment of the security partnership*'⁴ providing its assessment of the implications of a 'no deal' scenario in this policy area compared against the proposed Future UK-EU Security Partnership (as set out in the Political Declaration). Should the UK leave the EU without an agreement in March 2019 (the 'no deal' scenario), the UK's access to EU security, law enforcement and criminal justice tools would cease. This loss of access would be by virtue of the UK having ceased to be an EU Member State, following the Article 50 notification made by the UK.
- 7.4 The assessment outlined that in a 'no deal' scenario there would not be an implementation period, and the UK would no longer be able to cooperate with the EU using EU law enforcement and criminal justice mechanisms such as the European Arrest Warrant (EAW) or the Schengen Information System (SIS II), a Europe-wide IT system which enables the sharing of alerts on wanted/missing persons and objects for law enforcement purposes. The UK would rely instead on alternative, non-EU mechanisms, where they exist. The assessment concludes that these mechanisms, which include Interpol and Council of Europe Conventions, would not provide the same level of capability as those envisaged in a deal scenario, and would risk increasing pressure on UK security, law enforcement and judicial authorities.
- 7.5 For the most part, contingency arrangements for security, law enforcement and criminal justice cooperation with EU Member States in a 'no deal' scenario do not require amendments to the UK's domestic legislation, as the relevant non-EU mechanisms that would be reverted to – such as Council of Europe Conventions, Interpol and bilateral channels – are already in use, including with non-EU countries. However, this instrument does legislate to ensure that the correct legal underpinning is in place to support use of the contingency arrangement for extradition to and from EU Member States (use of the 1957 Council of Europe Convention on Extradition). The impacts of reverting to this contingency arrangement (which already exists and is in use with countries outside the EU) are summarised in Section 12 (Impacts) of the Explanatory Memorandum, and in the Impact Assessment⁵ published alongside this instrument.

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

- 8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the UK from the EU. The instrument also relies on the powers in section 23(1) and (2) of, and paragraph 21

⁴ 'EU Exit: Assessment of the security partnership (November 2018) - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759760/28_November_EU_Exit_-_Assessment_of_the_security_partnership_2.pdf

⁵ Impact Assessment for The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 - <https://www.legislation.gov.uk/ukdsi/2019/9780111178102/impacts>

of Schedule 7 to, the Withdrawal Act 2018. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

- 8.2 Alongside the EU (Withdrawal) Act 2018 powers the instrument is also being made under sections 1(1), 69(1), 71(4), 73(5), 84(7), 86(7) and 223(3) and (8) of the Extradition Act 2003. These powers are being used in relation to changes made in Part 14 of the Regulations, concerning extradition.

9. Consolidation

- 9.1 There are no plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

- 10.1 For security, law enforcement and criminal justice, the Home Office has fully engaged with operational partners and the Devolved Administrations on preparations for a scenario in which the UK withdraws from the EU without a deal in March 2019.
- 10.2 For the most part, the Regulations make changes to address failures of retained EU law to operate effectively, or to address other legislative deficiencies arising from the UK's withdrawal from the EU. For extradition, the Regulations will provide the legislative underpinning for the UK to transition its cooperation with EU Member States to a non-EU mechanism, and partners have been consulted on this as part of wider preparations for a 'no deal' scenario.
- 10.3 For the regulatory systems (drug precursor chemicals, firearms and explosive precursors) the Regulations are also seeking to address failures of retained EU law to ensure it operates effectively. As there is not a significant impact on businesses, the Home Office has not undertaken a formal consultation exercise. In addition, the impact of 'no deal' was communicated to licence holders and other stakeholders via Technical Notices published in September. As relevant, the Devolved Administrations and other government departments were consulted during the drafting of the Regulations. The Home Office will continue to informally engage with stakeholders and licence holders after this instrument comes into force.

11. Guidance

- 11.1 Guidance is not being provided in relation to this instrument.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies may arise from some amendments made by this instrument, which may require (in some cases) changes to guidance, with associated costs for training and communication.
- 12.2 The impact on the public sector may arise from amendments made by this instrument, which may require changes to guidance, with associated costs for training and communication.
- 12.3 This instrument will also enable the implementation of the 'no deal' contingency arrangement for extradition to and from EU Member States (use of the 1957 Council of Europe Convention on Extradition).

- 12.4 A full Impact Assessment was submitted with the original Explanatory Memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.
- 12.5 The main ‘real-world’ effect of this instrument, in the context of Justice and Home Affairs cooperation, will be to ensure that the correct legal underpinning - the 1957 Council of Europe Convention on Extradition - is in place for extraditions to and from EU Member States in a ‘no deal’ scenario. For this purpose, Part 14 of the Regulations adjusts the designation of EU Member States under the Extradition Act 2003 from Part 1 to Part 2. This change will give the UK the domestic legal basis to handle European Convention requests in the way set out in that Convention. Were this change not to be made, it is not clear that new incoming extradition requests from EU Member States could be lawfully processed. This could in turn put pressure on the system for outgoing extradition requests (from the UK to EU Member States) – if the UK is unable to cooperate reciprocally. In 2017/18, the UK arrested over 1,400 individuals on the basis of European Arrest Warrants (EAWs) issued by the other 27 EU Member States. In the same period, EU Member States arrested 183 individuals on the basis of EAWs issued by the UK.
- 12.6 Operating extradition arrangements with EU Member States under Part 2 of the Extradition Act 2003 would see the cost per incoming extradition case rising compared to the present operation of the European Arrest Warrant (EAW) under Part 1. However, in a ‘no deal’ scenario, the UK would not be able to use the EAW in any event, by virtue of the UK having withdrawn from the EU.
- 12.7 The Regulations also have a ‘real-world’ effect where they establish transitional provisions, ensuring that there is clarity over whether, and on what terms, cases or requests that are ‘live’ or ‘in flight’ on exit day should proceed. Again, this is particularly significant for extradition (Part 14) where the Regulations confirm that cases will proceed under Part 1 of the Extradition Act 2003 if the requested individual has been arrested before exit day. Further examples of areas where transitional provisions are being put in place by these Regulations include: criminal records requests received through the European Criminal Records Information System (ECRIS), requests from EU Member States for Mutual Legal Assistance in Criminal Matters, asset freezing and confiscation orders issued by EU Member States, and cross-border surveillance operations. In each case, the underlying policy objective is to provide clarity on the conditions under which requests received or cooperation commenced before exit can be completed (usually linked to having reached a particular procedural stage in an ongoing process), and thus to provide legal certainty. Were these amendments not to be made, operational partners who currently operate the relevant EU tools and measures would face uncertainty over how to treat cases and requests that are ‘live’ or ‘in flight’ at the point of exit, and would also face a higher risk of legal challenge.
- 12.8 A number of saving provisions are included in the Regulations for a similar reason – to put beyond doubt that certain obligations persist in a ‘no deal’ scenario. The saving provisions in the Regulations mostly relate to data protection - i.e. confirming that the data protection rules under which information was received by the UK pre-exit will continue to apply to that information post-exit. For example, provisions of this nature are included in relation to data and information received via Europol, Eurojust, Schengen Information System (SIS II), ECRIS, and Financial Intelligence Units (FIU’s), as well the Swedish Initiative and the Passenger Name Record (PNR)

Directive. The ‘real-world’ effect of these saving provisions may in practice be limited, as the UK’s Data Protection Act 2018 would in many cases impose equivalent obligations in any event. Including them in these Regulations will nonetheless ensure that no unintended ‘gaps’ arise and put the legal position beyond doubt. This will in turn provide clarity for operational partners and reduce the risk of successful legal challenge.

- 12.9 Where the Regulations address deficiencies in domestic law or retained EU law arising from the UK’s withdrawal from the EU, they do so with the underlying policy objective of providing continuity as far as possible, and thus the ‘real-world’ effect of such changes is limited. To illustrate, the Regulations make a series of amendments to ensure that definitions are no longer tied to EU law (for example, in Part 5 (Drug Precursors and Psychoactive Substances), the definition of ‘prohibited ingredients’ used in food in respect of psychoactive substances). They also amend EEA references to reflect that the UK is no longer a member of the EEA (for example in amendments to the Serious Crime Act 2007, the Local Government (Miscellaneous Provisions) Act 1982, the Licensing Act 2003, the Police Pensions (Additional Voluntary Contributions) Regulations 1991 and the Police Pensions Regulations 2015) and remove references to the European Communities Act 1972 (for example in the Policing and Crime Act 2017 and in the Investigatory Powers Act 2016). Examples of more substantive corrections include ensuring that, as part of the licensing regime for explosive precursors in Northern Ireland, the Secretary of State can make amendments to the list of controlled substances and limit values (Part 13 - Explosive Precursors), and ensuring that the UK cooperates with EU Member States on the same terms as they would cooperate with the UK as a third country (for example in respect of PNR data in Part 19 (Passenger Name Record Data), and in respect of Drug Precursors in Part 5 (Drug Precursors and Psychoactive Substances)). In these cases, the real-world effect is not so much from making the changes in the Regulations, but from what the effect of not addressing those deficiencies would be (e.g. leaving a ‘gap’ in the licensing regime).
- 12.10 Where the Regulations revoke retained EU law or connected domestic law, this is not expected to have a ‘real-world’ effect, because the underlying EU instruments would cease to be available to the UK upon withdrawal from the EU in any event. For example, in a ‘no deal’ scenario, the UK’s membership of Europol would cease on 29 March 2019 by virtue of the UK having ceased to be an EU Member State (i.e. as a result of the Article 50 notification). Relevant ‘retained’ EU law on the UK’s domestic statute book would then become obsolete in the sense that even if, for example, the ‘retained’ Europol Regulation were left on the UK statute book, this would not preserve the UK’s membership of Europol. By way of further illustration, the same principle applies to the revocation of the Council Decision establishing the European Criminal Records Information System (ECRIS) (Part 8) or the Council Implementing Decision which currently delivers the UK’s access to the Schengen Information System (SIS II) (Part 22). Where revocation could have a ‘real-world’ effect on cases and requests that are ‘live’ or ‘in flight’ at the point of exit, this is addressed through the transitional and saving provisions described above.

13. Regulating small business

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

13.2 See paragraph 12.1 concerning the impacts on businesses. The changes made by the instrument applies to small businesses in the same way that it applies to other businesses.

14. Monitoring & review

14.1 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Rachel Vickerstaff at the Home Office Telephone: 0207 035 3267 or rachel.vickerstaff@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Rob Jones at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Nick Hurd MP, Minister of State for Policing and the Fire Service at the Home Office, can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/ESIC
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9, and 23(1)	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

	7	23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising clauses 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Sch 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s.2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s.2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s.2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

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

1. Sifting statement(s)

- 1.1 Not applicable. The instrument is being made under the draft affirmative procedure.

2. Appropriateness statement

- 2.1 The Minister of State for Policing and the Fire Service, the Rt Hon Nick Hurd MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

‘In my view The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 does no more than is appropriate.’

- 2.2 This is the case because the instrument is being made to address deficiencies in retained EU law and makes appropriate transitional and saving provisions as detailed.

3. Good reasons

- 3.1 The Minister of State for Policing and the Fire Service, the Rt Hon Nick Hurd MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

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

- 3.2 These are that the instrument is being made to address deficiencies in retained EU law and makes appropriate transitional and saving provisions as detailed.

4. Equalities

- 4.1 The Minister of State for Policing and the Fire Service, the Rt Hon Nick Hurd MP has made the following statement(s)

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

- 4.2 The Minister of State for Policing and the Fire Service, the Rt Hon Nick Hurd MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

‘In relation to the draft instrument, I, the Minister of State for Policing and the Fire Service, the Rt Hon Nick Hurd MP, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.’.

5. Explanations

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

6. Criminal offences

6.1 Not applicable. The instrument does not create a new criminal offence or penalty.

7. Legislative sub-delegation

7.1 Not applicable. The instrument does not create a sub-delegated power.

8. Urgency

8.1 Not applicable. The instrument is not being made under the urgent procedure, provided for in paragraphs 4 or 14, Schedule 7 of the European Union (Withdrawal) Act 2018.

Julie James AC/AM
Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government



Llywodraeth Cymru
Welsh Government

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

2 May 2019

Dear Mick

I am writing in regards to an EU Exit SI laid in Parliament, The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019, to inform you of the reasons why the Welsh Ministers gave retrospective consent to this SI.

It came to my attention after the SI was laid that regulation 124 made an amendment of the Local Government (Miscellaneous Provisions) Act 1982, which we would consider to be within the legislative competence of the National Assembly for Wales. Therefore under the Intergovernmental Agreement the consent of the Welsh Ministers should have been sought for this SI. My officials discussed this SI with their counterparts in the Home Office, and have confirmed that the UK Government did not seek Welsh Ministers consent on the basis that the UK Government considers this SI to be reserved.

The provision in question made extremely minor amendments to paragraph 12(1)(c) and (d) of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982. Currently the Act provides that a licence for a sex establishment (sexual entertainment venues, sex cinemas and sex shops) can only be granted to a person resident, or a body corporate that has been incorporated, in an EEA state. The amended version will provide that a licence can only be granted to a person resident, or a body corporate that has been incorporated in the UK or in an EEA state. This is a continuation of the current policy, which is also the policy of the Welsh Government. The amendment is a sensible way to continue the existing licensing requirements beyond exit day.

For the avoidance of doubt, I wrote to Nick Hurd MP, Minister of State for Police and the Fire Service, to give the consent of the Welsh Ministers retrospectively to this SI.

The licensing of the provision of entertainment is reserved to the UK Parliament under the Government of Wales Act 2006. However, as the licensing of sex establishments is not governed by the Licensing Act 2003, I do not consider that the provision in regulation 124

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Gohebiaeth.Julie.James@llyw.cymru
Correspondence.Julie.James@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.

would fall within this reservation. As a result, I consider that the consent of the Welsh Ministers should have been sought in respect of this provision.

We recognise the unprecedented pressures under which the EU Exit SIs were made, which did not allow for the usual time in considering more subjective elements of the devolution settlement. On that basis I am content that the UK Government has acted in good faith under the Intergovernmental Agreement and has abided by its own interpretation of the devolution settlement in this case. Consent was given without prejudice to our position on legislative competence and I do not intend to take further action at this stage.

As this SI amends primary legislation within a devolved area, I have laid a Statutory Instrument Consent Memorandum in the National Assembly for Wales as required by Standing Order 30A (SO30A). However, in light of the extremely minor nature of the correction I will not be laying a motion to debate the SICM. It remains open to any member to lay a motion for debate under SO30A, should any member feel that a debate is merited on this correction.

Yours sincerely



Julie James AC/AM
Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019**

DATE **3 May 2019**

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

The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019

The Law which is being amended:

Primary legislation

- Terrorism Act 2000
- Regulation of Investigatory Powers Act 2000
- Psychoactive Substances Act 2016
- Anti-terrorism, Crime and Security Act 2001
- Anti-social Behaviour, Crime and Policing Act 2014
- Firearms Act 1968
- Firearms (Amendment) Act 1988
- Police Act 1996
- Police (Northern Ireland) Act 1998
- Police and Fire Reform (Scotland) Act 2012
- Crime and Courts Act 2013
- Criminal Justice Act 1987
- Criminal Justice Act 1988
- Criminal Procedure (Scotland) Act 1995
- Criminal Law (Consolidation) (Scotland) Act 1995
- Criminal Justice and Police Act 2001
- Criminal Justice Act 2003
- Investigatory Powers Act 2016
- Proceeds of Crime Act 2002
- Serious Organised Crime and Police Act 2005
- Criminal Finances Act 2017
- Serious Crime Act 2007

- Local Government (Miscellaneous Provisions) Act 1982
- Licensing Act 2003
- Anti-social Behaviour, Crime and Policing Act 2014
- Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015
- Policing and Crime Act 2017

Secondary Legislation

- Electronic Commerce Directive (Terrorism Act 2006) Regulations 2007
- Controlled Drugs (Drug Precursors) (Intra-Community Trade) Regulations 2008
- Controlled Drugs (Drug Precursors) (Community External Trade) Regulations 2008
- The European Police College (Immunities and Privileges) Order 2004
- Criminal Justice and Data Protection (Protocol No 36) Regulations 2014
- Working with Children (Exchange of Criminal Conviction Information) (England and Wales and Northern Ireland) Regulations 2013
- Control of Explosives Precursors etc. Regulations (Northern Ireland) 2014
- Control of Poisons and Explosives Precursors Regulations 2015
- Extradition Act 2003 (Designation of Part 1 Territories) Order 2003
- Extradition Act 2003 (Designation of Part 2 Territories) Order 2003
- Firearms Acts (Amendment) Regulations 1992
- Firearms (Amendment) Act 1988 (Amendment) Regulations 2011
- Firearms (Northern Ireland) Order 2004
- International Joint Investigation Teams (International Agreement) Order 2004
- Criminal Justice (Evidence) (Northern Ireland) Order 2004
- Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) Order 2009
- Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) (No. 2) Order 2009
- Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) Order 2009
- Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) (No. 2) Order 2009
- Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) (No. 3) Order 2009
- Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) Order 2010
- Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) Order 2011
- Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) (No. 2) Order 2011
- Investigatory Powers (Consequential Amendments etc.) Regulations 2018
- Immigration and Police (Passenger, Crew and Service Information) Order 2008
- Passenger Name Record Data and Miscellaneous Amendments Regulations 2018
- Police Pensions (Additional Voluntary Contributions) Regulations 1991
- Electronic Commerce Directive (Trafficking People for Exploitation) Regulations 2013

- Police Pensions Regulations 2015
- Investigatory Powers (Interception by Businesses etc. for Monitoring and Record-keeping Purposes) Regulations 2018

EU Decisions

- Council Decision 2005/681/JHA of 20 September 2005 establishing the European Police College (CEPOL) and repealing Decision 2000/820/JHA
- Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA
- Council Decision 2010/779/EU of 14 December 2010 concerning the request of the
- United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis relating to the establishment of a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice;
- Council Decision (EU) 2018/1600 of 28 September 2018 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis relating to the establishment of a European Union
- Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA).
Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network
- Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol);
- Council Decision 2009/934/JHA of 30 November 2009 adopting the implementing rules governing Europol's relations with partners, including the exchange of personal data and classified information;
- Council Decision 2009/935/JHA of 30 November 2009 determining the list of third States and organisations with which Europol shall conclude agreements;
- Council Decision 2009/936/JHA of 30 November 2009 adopting the implementing rules for Europol analysis work files;
- Council Decision 2009/968/JHA of 30 November 2009 adopting the rules on the confidentiality of Europol information.
- Commission Decision (EU) 2017/388 of 6 March 2017 confirming the participation of the United Kingdom of Great Britain and Northern Ireland in Regulation (EU) 2016/794 of the European Parliament and of the Council on the European Union Agency for Law Enforcement Cooperation (Europol)
- Council Decision 2000/375/JHA of 29 May 2000 to combat child pornography on the internet
- Council Decision 2002/348/JHA of 25 April 2002 concerning security in connection with football matches with an international dimension;
- Council Decision 2007/412/JHA of 12 June 2007 amending Decision 2002/348/JHA concerning security in connection with football matches with an international dimension.
- Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United

- Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis;
- Council Decision 2004/926/EC of 22 December 2004 on the putting into effect of parts of the Schengen acquis by the United Kingdom of Great Britain and Northern Ireland;
- Council Decision 2014/857/EU of 1 December 2014 concerning the notification of the
- United Kingdom of Great Britain and Northern Ireland of its wish to take part in some of the provisions of the Schengen acquis which are contained in acts of the Union in the field of police cooperation and judicial cooperation in criminal matters and amending Decisions 2000/365/EC and 2004/926/EC.
- Council Decision 2012/381/EU of 13 December 2011 on the conclusion of the
- Agreement between the European Union and Australia on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the Australian Customs and Border Protection Service;
- Council Decision 2012/472/EU of 26 April 2012 on the conclusion of the Agreement between the United States of America and the European Union on the use and transfer of passenger name records to the United States Department of Homeland Security.
- Commission Implementing Decision (EU) 2017/759 of 28 April 2017 on the common protocols and data formats to be used by air carriers when transferring PNR data to Passenger Information Units is revoked.
- Council Decision 2000/642/JHA of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information;
- Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime.
- Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime.
- Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision
- 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime;
- Council Decision 2014/836/EU of 27 November 2014 determining certain consequential and transitional arrangements concerning the cessation of the participation of the United Kingdom of Great Britain and Northern Ireland in certain acts of the Union in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Treaty of Lisbon;
- Council Decision 2014/837/EU of 27 November 2014 determining certain direct financial consequences incurred as a result of the cessation of the participation of the United Kingdom of Great Britain and Northern Ireland in certain acts of the Union in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Treaty of Lisbon.
- Commission Decision (EU) 2016/809 of 20 May 2016 on the notification by the United Kingdom of Great Britain and Northern Ireland of its wish to participate in certain acts of the Union in the field of police cooperation

- Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis;
- Council Decision 2004/926/EC of 22 December 2004 on the putting into effect of parts of the Schengen acquis by the United Kingdom of Great Britain and Northern Ireland;
- Council Decision 2014/857/EU of 1 December 2014 concerning the notification of the United Kingdom of Great Britain and Northern Ireland of its wish to take part in some of the provisions of the Schengen acquis which are contained in acts of the Union in the field of police cooperation and judicial cooperation in criminal matters and amending Decisions 2000/365/EC and 2004/926/EC.
- Commission Decision 2007/171/EC of 16 March 2007 laying down the network requirements for the Schengen Information System II (3rd pillar);
- Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II);
- Commission Implementing Decision 2013/115/EU of 26 February 2013 on the Sirene
- Manual and other implementing measures for the second generation Schengen Information System (SIS II);
- Council Decision 2013/157/EU of 7 March 2013 fixing the date of application of Decision 2007/533/JHA on the establishment, operation and use of the second generation Schengen Information System (SIS II);
- Council Implementing Decision (EU) 2015/215 of 10 February 2015 on the putting into effect of the provisions of the Schengen acquis on data protection and on the provisional putting into effect of parts of the provisions of the Schengen acquis on the Schengen Information System for the United Kingdom of Great Britain and Northern Ireland;
- Commission Implementing Decision (EU) 2015/450 of 16 March 2015 laying down test requirements for Member States integrating into the second generation Schengen Information System (SIS II) or changing substantially their directly related national systems;
- Commission Implementing Decision (EU) 2016/1345 of 4 August 2016 on minimum data quality standards for fingerprint records within the second generation Schengen Information System (SIS II).
- Council Decision 2008/617/JHA of 23 June 2008 on the improvement of cooperation between the special intervention units of the Member States of the European Union in crisis situations

EU Regulations

- Council Regulation (EC) 273/2004 on drug precursors
- Council Regulation (EC) 111/2005 of 22 December 2004 laying down rules for the monitoring of trade between the Union and third countries in drug precursors
- Commission Delegated Regulation (EU) 2015/1011 of 24 April 2015 supplementing Regulation (EC) No 273/2004 of the European Parliament and of the Council on drug precursors and Council Regulation (EC) 111/2005 laying down rules for the monitoring of trade between the Union and third countries in drug precursors, and repealing Commission Regulation (EC) 1277/2005

- Commission Implementing Regulation (EU) 2015/1013 of 25 June 2015 laying down rules in respect of Regulation (EC) No 273/2004 of the European Parliament and of the Council on drug precursors and of Council Regulation (EC) No 111/2005 laying down rules for the monitoring of trade between the Union and third countries in drug precursors
- Regulation (EC) No 1920/2006 of the European Parliament and of the Council of 12
- December 2006 on the European Monitoring Centre for Drugs and Drug Addiction (recast)
- Regulation (EU) 2017/2101 of the European Parliament and of the Council of 15 November 2017 amending Regulation (EC) No 1920/2006 as regards information exchange on, and an early warning system and risk assessment procedure for, new psychoactive substances
- Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011
- Regulation (EU) 2016/794 of the European Parliament and of the
- Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA
- Regulation (EU) No 98/2013 of the European Parliament and of the Council of 15
- January 2013 on the marketing and use of explosives precursors
- Commission Implementing Regulation (EU) No 2015/2403 of 15 December 2015 establishing common guidelines on deactivation standards and techniques for ensuring that deactivated firearms are rendered irreversibly inoperable
- Council Regulation (EU) No 331/2014 of the European Parliament and of the Council of 11 March 2014 establishing an exchange, assistance and training programme for the protection of the euro against counterfeiting (the 'Pericles 2020' programme) and repealing Council Decisions 2001/923/EC, 2001/924/EC, 2006/75/EC, 2006/76/EC, 2006/849/EC and 2006/850/EC

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

This SI does not have any impact on the Assembly's legislative competence or the Welsh Ministers' executive competence

The purpose of the amendments

The primary legislation and directly applicable EU law amended by this SI contain provisions which would be deficient following the United Kingdom's departure from the European Union. This legislation relates to policing, criminal investigations, law enforcement and security.

The purpose of these amendments is to correct these deficiencies. The instrument also includes transitional provisions and savings provisions to ensure the legislation operates effectively after exit day.

The SI and accompanying Explanatory Memorandum, setting out the effect of the SI, are available here:

<https://www.legislation.gov.uk/ukdsi/2019/9780111178102/contents>

Matters of special interest to the Constitutional and Legislative Affairs Committee

The UK Government is of the view that the entire SI is reserved, and therefore did not seek the consent of the Welsh Ministers in bringing forward this SI. However, Welsh Ministers are of the opinion that amendments to the Local Government (Miscellaneous Provisions) Act 1982 do fall within devolved competence, and therefore the consent of the Welsh Ministers should have been sought for this SI. The Minister for Housing and Local Government has written to the UK Government on this point, and has written a letter to CLAC setting out the Welsh Government's views. Although consent was not sought at the time, Welsh Ministers are content with the SI and would not withhold consent.

Why consent was given

There is no policy divergence between the Welsh Government and the UK Government on the policy for the amendments and the substance of the amendments are not considered politically sensitive. Making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting to a UK wide SI ensures that there is a single legislative framework across the UK which promotes clarity and accessibility during this period of change. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

A Statutory Instrument Consent Memorandum has also been laid in the National Assembly in respect of the amendments to the Local Government (Miscellaneous Provisions) Act 1982

UK MINISTERS ACTING IN DEVOLVED AREAS

131 - The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019

Laid in the UK Parliament: 15 January 2019

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Draft 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	18/02/2019
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 11
SICM under SO 30A (because amends primary legislation)	Paper 7

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	30/01/2019
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	18/02/2019

Commentary

These Regulations are proposed to be made by the UK Government pursuant to sections 1(1), 69(1), 71(4), 73(5), 84(7), 86(7) and 223(3) and (8) of the Extradition Act 2003, and sections 8(1) and 23(1) and (2) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

The UK currently participates in around 40 EU measures that are designed to support and enhance security, law enforcement and judicial cooperation in criminal matters. The UK also participates in a number of security-related EU regulatory systems.

Should the UK leave the EU without an agreement, the UK's access to EU security, law enforcement and criminal justice tools and measures would cease, and the UK would no longer be bound by EU regulatory regimes.

The overarching purpose of this instrument is to make amendments to the UK's domestic statute book, including retained EU legislation, to

address deficiencies which arise from the UK ceasing to be an EU Member State. The instrument will do three main things:

- Revoke or amend retained directly applicable EU legislation and domestic legislation in the area of security, law enforcement, criminal justice and some security-related regulatory systems to ensure that the statute book continues to function effectively in a no deal scenario;
- Make transitional or saving provisions to address 'live' cases, i.e. how cases 'live' on exit day should be dealt with; or how data received before exit day should be treated;
- In the case of extradition, ensure that the UK has the correct legal underpinning to operate the 'no deal' contingency arrangement (the 1957 Council of Europe Convention on Extradition) that would be used in lieu of the European Arrest Warrant.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 3 May 2019 regarding the effect of these Regulations:

The Welsh Government, in its written statement, indicates that the UK Government is of the view that the entire SI is reserved, and therefore did not seek the consent of the Welsh Ministers in bringing forward this instrument. However, Welsh Ministers are of the opinion that amendments to the Local Government (Miscellaneous Provisions) Act 1982 do fall within devolved competence, and therefore the consent of the Welsh Ministers should have been sought for this instrument. The Minister for Housing and Local Government has written to the UK Government on this point and has written a letter to CLAC setting out the Welsh Government's view. Although consent was not sought at the time, Welsh Ministers are content with the SI and would not withhold consent.

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

In relation to paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks, Legal Advisers draw the Committee's attention to the commentary above on the statement by the Welsh Government.

However, Legal Advisers note the comments from the Minister for Housing and Local Government in her letter to the Committee of 2 May 2019, in which she highlights the unprecedented pressures under which the EU Exit SIs have been made, which did not allow for the usual time in considering more subjective elements of the devolution settlement. On

that basis, the Minister has indicated that she is content that the UK Government has acted in good faith under the Intergovernmental Agreement and has abided by its own interpretation of the devolution settlement in this case. Consent has been given by the Welsh Ministers without prejudice to the Welsh Government's position on legislative competence and they do not intend to take further action at this stage.

The Statutory Instrument Consent Memorandum states that amendments made by this instrument to the Local Government (Miscellaneous Provisions) Act 1982 are extremely minor, and there is no divergence between Welsh Government and UK Government policy for the correction.

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

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

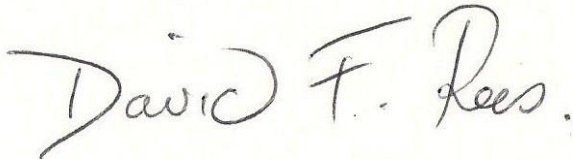
30 April 2019

Dear Mick,

**Correspondence from the First Minister regarding the attendance of Ministers at
Committee on a Monday**

I have received correspondence from the First Minister regarding the attendance of Ministers at Committee on a Monday. As the Constitutional and Legislative Affairs Committee also meets on a Monday you might find the content of the letter useful, so I enclose a copy for your information.

Yours sincerely,



David Rees AM

Chair of the External Affairs and Additional Legislation Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.





David Rees AM
Chair
External Affairs & Additional Legislation Committee
National Assembly for Wales
Cardiff Bay
SeneddEAAL@assembly.wales

12 April 2019

Dear David

I wanted to write to clarify my position regarding the attendance of Ministers at Committee on a Monday.

As you know I hold Cabinet meetings in Cathays Park every Monday afternoon starting at 3pm. I expect Ministers to prioritise attendance at Cabinet wherever possible and it is clearly set out in the Ministerial Code that Cabinet meetings take precedence over all other business, although there may occasionally be *exceptional* circumstances which mean that a Minister may have to be absent.

Requests for Ministers to attend Committee meetings on a Monday at times that mean they will miss Cabinet, or be late arriving, are becoming more frequent. We will do our best to accommodate requests from Committees, but it is not practicable for Ministers to arrange government business around Committee timetables, particularly at short notice.

You will know that I have rearranged my diary and changed the timing and venue of Cabinet meetings occasionally in order for me to attend EAAL Committee but it will not always be possible for me to do that.

I can assure you that we will continue to be as flexible as possible but when Ministers are required to attend on a Monday, it would be helpful if the Committee would consider starting at 1.30pm so Ministers can be away after an hour.

You have invited me to attend the Committee meeting on Monday 29 April. In order to attend I am arranging for the Cabinet meeting that day to be moved to the Bay but I will need to be finished in Committee by 3pm.

With give and take on both sides I am sure that we can continue to find ways to accommodate the different diary pressures we all face.

Yours sincerely

MARK DRAKEFORD

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

English Enquiry Line 0300 060 3300
Llinell Ymholiadau Cymraeg 0300 060 4400
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.



Ein cyf/Our ref: MA-L/CG/0379/19

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

3 May 2019

Dear Mick

LEGISLATION (WALES) BILL

During the Stage 1 debate on 2 April, I said that I would write to the Committee responding in detail to your report on the Bill. This letter sets out the Government's response to those recommendations in the Committee's report that were for the Government.

Recommendation 1

The Committee recommended that I should update the National Assembly on the progress of discussions with the UK Government in relation to the National Assembly's ability to make the Bill. I provided an update in my opening remarks in support of the motion to approve the general principles of the Bill (see paragraphs 364 and 365 of the Record of Proceedings). Since then, the Committee will have received a copy of a letter I have been sent by the Solicitor General on the Bill. We are now considering this.

Recommendations 3 and 4

I accept both of these recommendations.

The "non-legislative measures" that the Government will bring forward under an accessibility programme will vary depending on the needs at the relevant time, and will be a matter for the Government of the day. As I have previously set out, we intend to consult with users of legislation on the actual projects which should form part of the accessibility programmes. I confirm I would expect the programmes to include measures in the three areas mentioned by the Committee in its report.

They would include digital accessibility projects, such as maintaining and improving the Law Wales/Cyfraith Cymru website, developing the subject organised database of devolved Welsh legislation, and working with The National Archives to ensure that Welsh legislation on the legislation.gov.uk website is available in an up-to-date form in both languages. Our initial focus will be on these digital projects leading up to the first programme.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

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

PSCGBM@gov.wales/YPCCGB@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.

We see a significant role for the Cyfraith Cymru/Law Wales website in helping the public to understand the law and in raising awareness of significant changes in the law. Our ambition is to publish explanatory material on key areas of Welsh law alongside easy-read versions of the law, and leaflets focussing on particular aspects of legislation of relevance to people's daily lives (for example, local authority responsibilities for school breakfast clubs).

We also wish to promote the Cyfraith Cymru/Law Wales website as a home for academic and practitioner commentary on Welsh law. My officials have had discussions with some legal practitioners and academics to encourage them to write for the site, but further work needs to be done to encourage content. This will form part of our work during the "user research" phase of the website redesign which is taking place this year, as well as our longer term strategy for ensuring the website remains up to date and relevant.

Programmes would also include activities to facilitate the use of the Welsh language, over and above the benefits for the language from consolidating the law bilingually and improving digital accessibility. These could include making more glossaries for legislation available and further initiatives to develop agreed terminology where this is helpful.

I note the comments of the Welsh Language Commissioner in her evidence to the Committee, and I am clear that developing Welsh language expertise needs to form part of wider workforce planning both within and outside the Government. The *Cymraeg 2050* strategy commits the Welsh Government to "lead by example" by promoting the use of Welsh within its own workforce. The Welsh Language Standards also place a duty on us to publish a policy on promoting the language in the workplace. Work on this is ongoing, and the Permanent Secretary has commissioned a further paper on best practice in other public sector organisations.

Recommendation 5

I accept this recommendation.

Discussions with academics in Wales have already begun about how they could contribute to the explanatory material that will be published on the Cyfraith Cymru/Law Wales website. We hope to strengthen these relationships in the coming months and years, and hope that academics will play a vital part in improving understanding of Welsh law.

HEFCW currently funds higher education and research in Wales. The Welsh Government has announced its intention for a new Tertiary Education and Research Commission, which is intended to include a statutory committee responsible for research and innovation. However, in our efforts to increase academic research on the law we must continue to respect and support academic independence.

Recommendations 6 and 10

Recommendation 6 of the Committee's report was that the Government should commit to a review of the legislation at the mid-way point of the first Assembly term in which the legislation takes effect, i.e. by the end of 2023. As I mentioned during the Stage 1 debate, I accept this recommendation.

We also accept recommendation 10 of the Committee and I have tabled an amendment to the Bill which, if accepted, would provide for annual reports on progress under a programme.

For the mid-way review the intention would be for the Counsel General's annual report in 2023 to be expanded to include a review of the effectiveness of Part 1 of the Bill itself. This report would also respond to recommendation 2 of the Finance Committee's report (and would therefore cover resourcing and financial implications).

The Government would also support the National Assembly reviewing the legislation at any time it considered it appropriate to do so.

Recommendation 7

The Committee recommended that I should, during the Stage 1 debate, provide a clear explanation of what is meant by "the accessibility of Welsh law". I was happy to accept that recommendation, and sought to provide an explanation in my opening remarks during the Stage 1 debate: see paragraphs 365 to 368 of the Record of Proceedings. I have also indicated that, subject to the Bill being passed, I intend to publish a position statement on consolidation and codification this summer, which will set out my thinking on these questions in more detail.

Recommendation 8

The Committee recommended that the Bill should be amended so that the Welsh Ministers and Counsel General are required to implement a programme of accessibility prepared under section 2(1).

As I mentioned in the Stage 1 debate, whether the accessibility of Welsh law has improved will inevitably be a matter of subjective judgment on which opinions may differ. A statutory duty to achieve improvements in accessibility would therefore be problematic. Rather, questions about whether enough progress has been made should be subject to a political process (for example, through reporting to the National Assembly) not a legal one.

The purpose of Part 1 is to ensure that the Government considers accessibility and sets out the steps that should be taken to improve it. We do not consider that a statutory obligation to then take all of those steps would be appropriate, for a number of reasons.

As things stand the Government is already taking a very unusual step in imposing a clear and transparent duty on itself and subjecting itself to criticism if it doesn't achieve it. Exposing itself to a legal process would be going beyond this for a purpose that is uncertain.

In my view a situation in which a court could be asked to determine what steps or how many steps have been taken – or how quickly they were taken – to tackle a multi dimensional and often subjective problem like the accessibility of the law should be avoided. It is probably inappropriate to ask a court to deal with what is ostensibly a political process and I question what suitable remedy could be sought or imposed. Is it intended that this should be a strict liability obligation such that a Court could require each step to be delivered to the letter? What if the programme sets out an ambition to deal with a particular problem or outcome but does not specify exactly how it will be undertaken – what would the court be asked to determine?

It should be borne in mind that the measures set out in a programme will, in the most part, be improvements that are not in the gift of the Government alone, because they require assistance or agreement from others. Most obviously the Government will be able to propose consolidation Bills but it will be for the National Assembly to decide whether to pass them. In evidence to the Committee I touched upon the approach that has been taken in New Zealand. Section 30 of their Legislation Act 2012 requires a draft programme that is

specific to “revision Bills” which consolidate the law. The draft revision programme laid before the New Zealand Parliament must set out what revisions are “proposed to be started” and “expected to be enacted”. The references to “proposed” and “expected” revisions reflect the constitutional position that it is the Parliament which decides whether to pass revision Bills.

In addition, to use a non-legislative example, any improvements in the publication of legislation will involve the Government working with The National Archives. Deciding on how publication should be improved is not something that the Welsh Government can do by itself.

In practice the most likely effect of imposing such a duty on the Government would be the opposite of what was intended. As the initial content of the programme would remain something that is within the Government’s discretion, a duty of this kind would inevitably lead to future governments acting cautiously and limiting their ambitions. Something that should be aspirational and challenging would be passive and easy, containing only those things the Government could be confident it could fulfil.

It is appropriate for the Government to be required to commit to a programme of activity and be held to account in that respect, including by the courts if it fails to do this. But the secondary, subjective question of *how well* that programme has been delivered should be a political question not a legal one.

Recommendation 9

The Committee recommended that section 2 of the Bill should be amended so that a programme must include proposed activities that are intended to promote awareness and understanding of Welsh law. I confirmed during the Stage 1 debate that the Government accepted this recommendation and I have now tabled amendments to the Bill in order to give effect to this (see amendments 1 and 2).

Recommendation 11

The Committee recommended that I should issue a statement clarifying my proposals and intentions for codifying Welsh law. I accept this recommendation. If the Assembly passes the Bill, I have committed to publishing a position statement on consolidation and codification, and further details on Codes of Welsh law, in the summer.

Recommendation 14

The Committee saw no reason to disagree with my proposal that the Bill should restate section 156(1) of the Government of Wales Act 2006 concerning the equal status of the Welsh and English language texts of legislation. However, it recommended that I should give more information about the proposal. I accept the recommendation.

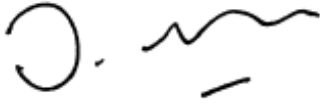
I have now tabled amendments which show how the Government proposes that the Bill should deal with this issue: see amendments 4, 5, 7 and 11 which I tabled on 4 April. The Minister for Finance and Trefnydd wrote to all Assembly Members on 5 April enclosing a detailed explanation of the purpose and effect of each of the Government’s amendments.

The Committee recommended that the information I provided should cover my intentions for guidance on the restated provision. I had mentioned in correspondence with the Committee that guidance might be given in the Explanatory Note to the restated section 156(1), and during the Stage 1 debate I committed to provide a draft Explanatory Note to accompany

the new provisions. Annex A to this letter sets out the text that I propose to add to the Explanatory Notes to the Bill, after Stage 2, if the Government's amendments are agreed.

I would like to take this opportunity to reiterate my remarks in the Stage 1 debate, and thank the Committee for their scrutiny of the Bill and their helpful report, and the Committee's support staff.

Yours sincerely

A handwritten signature in black ink, consisting of a large 'J' followed by a series of wavy lines and a short horizontal stroke at the end.

Jeremy Miles AM

Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister

Annex A – draft Explanatory Notes for restatement and amendment of section 156

After the existing paragraph 45 of the Explanatory Notes to the Bill:

Section [5] – Equal status of Welsh and English language texts

46. Section [5] provides that, where an Assembly Act or Welsh subordinate instrument is enacted in both Welsh and English, the two language texts have equal status for all purposes. This means that the full expression of the law is that contained in both texts, not merely one.
47. The practice of legislating bilingually for Wales is well established. In particular, Assembly Acts must be in both Welsh and English, and subordinate legislation made by the Welsh Ministers is, almost without exception, made in both languages¹.
48. Section 156(1) of the Government of Wales Act 2006 currently provides for the equal status of the Welsh and English language texts of bilingual legislation. Section [5] of the Bill restates that provision, so far as it applies to Assembly Acts and Welsh subordinate instruments to which Part 2 of the Bill applies.
49. Like section 156(1) of the 2006 Act, section [5] of the Bill applies for all purposes and not only for the purpose of interpretation. However, the equal status of the texts has a number of implications for the interpretation of bilingual legislation. These were considered by the Law Commission in its consultation paper and final report on *Form and Accessibility of the Law Applicable in Wales*². It is particularly important to appreciate that if there is any doubt about the meaning of Welsh legislation, it will be necessary to take both language versions into account to determine what the legislation means. This is something that affects all those concerned with the making, implementation, administration and interpretation of Welsh legislation.
50. The effect of section [5] is not subject to the exception in section 4(1) of the Bill. In other words, the Bill does not provide for the rule in section [5] to be excluded in cases where provision is made to the contrary or the context requires otherwise.
51. Section [5] restates section 156(1) of the 2006 Act only for legislation to which Part 2 of the Bill applies. Section 156(1) will continue to apply to Assembly Measures, and to Assembly Acts and Welsh subordinate instruments to which Part 2 of the Bill does not apply (principally those enacted before Part 2 is fully in force). Part 4 of the Bill amends section 156(1) of the 2006 Act to avoid any overlap with section [5] of the Bill.

Section 39 and Schedule 2 – Consequential amendments and repeals

In place of the existing paragraph 190:

¹ An Assembly Bill must be in both languages when it is introduced and when it is passed: see Standing Orders 26.5 and 26.50 of the National Assembly for Wales, and section 111(5) of the Government of Wales Act 2006. For statutory instruments which are laid before the Assembly, a failure to produce in instrument in both languages is a ground for drawing it to the attention of the Assembly: see Standing Order 21.2(ix).

² See chapter 12 of Law Commission Consultation Paper No 223 (July 2015), and chapter 12 of Law Commission Report Law Com No 336 (October 2016).

190. Paragraph 2 of Schedule 2 makes several amendments to the Government of Wales Act 2006.
191. The first amendment is consequential on section [5] of the Bill, which provides for the equal status of the texts of bilingual Welsh legislation. Section [5] restates section 156(1) of the 2006 Act in relation to legislation to which Part 2 of the Bill applies. Paragraph 2(2)(a) of Schedule 2 therefore amends section 156 of the 2006 Act so that subsection (1) does not apply to legislation to which Part 2 of the Bill applies. Section 156(1) will continue to apply to other bilingual Welsh legislation (principally legislation enacted before Part 2 comes fully into force).
192. Paragraph 2(2)(b) of Schedule 2 repeals section 156(2) to (5) of the 2006 Act. Those provisions enable the Welsh Ministers to make orders providing that, when particular Welsh words and phrases are used in Welsh legislation, they are to have the same meaning as the English words and phrases specified in the order. This power has never been used, and there are no plans to use it³. It could also be said that these provisions are inconsistent with the general proposition that precedes them – namely that both languages have equal status. Schedule 1 to the Bill now makes general provision about the meaning of various Welsh words and phrases in Welsh legislation, which can be amended if additional words and phrases need to be defined; and an individual Assembly Act or Welsh subordinate instrument can make its own provision about the meaning of words and phrases in the particular Act or instrument.
193. Paragraph 2(3) of Schedule 2 repeals a reference to section 156(2) to (5) of the 2006 Act which is spent as a result of the repeal of section 156(2) to (5).
194. Paragraph 2(4) of Schedule 2 repeals the provision of the 2006 Act which originally inserted section 23B into the 1978 Act, because paragraph 1 of Schedule 2 is replacing all of section 23B.

³ The power in section 156 was based on a previous power in section 122 of the Government of Wales Act 1998, which was also never used.



Our Ref: CDL/2962

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

3 May 2019

Dear Mick,

I believe that the regular and ongoing engagement between the four UK administrations is vital for effective intergovernmental working. I am pleased to provide an overview of the recent Ministerial engagement with the devolved administrations and an update on the review of intergovernmental relations.

Review of intergovernmental relations

At the Joint Ministerial Committee (Plenary) on 14 March 2018, Ministers from the UK Government and devolved administrations agreed to review the existing intergovernmental structures. The review of intergovernmental relations is a joint review between all four administrations, with leads from each administration charged with taking forward each of the five thematic workstreams.

On 19 December 2018, the Joint Ministerial Committee (Plenary) reviewed the progress made so far on the review. They remitted work back to officials from the four administrations to make progress against the five workstreams. It was agreed that the governments will continue to work together to:

1. Develop a set of **principles** to provide the context for future relations, which in turn will continue to shape the work of the review;
2. Ensure that the **governance of common frameworks** is being developed to ensure they can function effectively. Governance structures are being designed to facilitate agreement and provide clarity on the roles and responsibilities of each party, and to strengthen intergovernmental working on a substantial number of policy areas;

3. Ensure that the existing **dispute resolution** mechanism in the overarching MoU on Devolution is adapted to manage the range of policy differences that may arise as the UK leaves the EU, including those involving third parties. The majority of our differences are resolved through dialogue rather than detailed procedures, which we believe is the best way to conduct effective intergovernmental relations. We expect the principle of dispute avoidance to remain central to managing disputes in the future and we are supporting common frameworks teams to bolster their dispute avoidance processes.
4. Maintain and build upon existing **machinery**, including the Joint Ministerial Committees, reflecting the range of views on the effectiveness of the current arrangements. We are considering the machinery required in relation to:
 - a. The coordination of relevant domestic issues, particularly the governance of future common frameworks;
 - b. Ongoing EU business and the UK's future partnership with the EU; and
 - c. The UK's wider international interests.
5. Ensure that there are effective arrangements for **engagement on international matters**. This work continues to be informed by further thinking on the machinery and principles for effective intergovernmental working.

This is a live body of work that has many interdependencies. In many areas, the four administrations are already taking significant steps to outline new processes for the devolved administrations, such as the enhanced role of the devolved administrations in the next phase of EU negotiations and the work on establishing common frameworks. The revised version of the frameworks analysis published on 4 April 2019 demonstrates the significant progress made jointly by the four administrations on common frameworks. As mentioned above, this joint work includes the arrangements needed to govern common frameworks in the future to facilitate agreement and promote effective intergovernmental working.

Joint Ministerial Committee (EU Negotiations)

The Joint Ministerial Committee (EU Negotiations) (JMC(EN)) has met once since our last correspondence for the sixteenth time, on 7 February 2019. At the meeting, the Secretary of State for Exiting the European Union provided an update on the progress of the EU exit negotiations as well as developments in Parliament. The Committee also discussed domestic issues, including updates on operational readiness, the EU (Withdrawal Agreement) Bill and common frameworks. They also noted the publication of the second EU Withdrawal Act and Common Frameworks report.

The next meeting of JMC(EN) is currently being organised. As well as the formal JMC(EN) meeting, the Chancellor of the Duchy of Lancaster has also kept in close contact with his counterparts in the devolved administrations to keep them updated on the latest EU exit developments.

Joint Ministerial Committee (Europe)

The Joint Ministerial Committee (Europe) (JMC(E)) has continued to meet quarterly, mainly ahead of European Council meetings. The meetings are chaired by the DExEU Minister of State, Lord

Callanan, and provide an opportunity for ministers from the devolved administrations to provide input on UK positions on ongoing EU business. There have been two meetings since our last letter.

A meeting was held on 28 January 2019 where the Chair gave an update on the December European Council, and the Committee was joined by Her Majesty's Ambassador to Romania for a discussion on priorities for the Romanian Presidency. Ministers also discussed a paper on Blue Growth as well as the role of the forum during the Implementation Period. In line with this and in preparation for the March meeting, the Committee commissioned officials to jointly develop a Common Priorities Framework that could be used to identify shared priority areas with the intention of developing joint campaigns to informally influence the EU once the UK is no longer a Member State.

The most recent meeting of JMC(E) took place on 18 March 2019. As well as the standing agenda item of the UK's priorities for the European Council, the forum also received an update on the Multiannual Financial Framework from a representative from Her Majesty's Treasury. The Committee also discussed preparations for the UK being a third country, in addition to the work commissioned at the January JMC(E) on developing a Common Priorities Framework. The next JMC(E) is due to take place in early June and will consider the progress on this work as well as the priorities for the Finnish Presidency.

Ministerial Forum (EU Negotiations)

The Ministerial Forum (EU Negotiations) (MF(EN)), co-chaired by the Parliamentary Under Secretary of State at the Department for Exiting the European Union, Robin Walker MP, and the Minister for the Constitution, Chloe Smith MP, has now met eight times since it was established in May 2018. Since our last correspondence, there have been two further meetings of MF(EN), on 31 January and 25 February 2019.

On 31 January, MF(EN) met in Edinburgh to discuss the UK Government's proposal for a future security partnership, led by Kwasi Kwarteng MP from the Department for Exiting the European Union; internal security, led by Nick Hurd MP from the Home Office; and civil judicial cooperation, led by Lucy Frazer MP from the Ministry of Justice. This followed Minister Walker's regular update on negotiations in Brussels. In addition to the regular ministerial attendees from the devolved administrations, Graeme Dey MSP, Minister for Parliamentary Business and Veterans for the Scottish Government and Jeremy Miles AM, Counsel General and Brexit Minister for the Welsh Government, Ash Denham MSP, Minister for Community Safety for the Scottish Government, was also in attendance. Senior officials from the Northern Ireland Civil Service attended in the continued absence of a Northern Ireland Executive.

MF(EN) also met on 25 February in Cardiff to discuss data protection in the context of our future relationship with the EU, led by Margot James MP from the Department for Digital, Culture, Media and Sport. Ministers also discussed a review of the work of the Forum to date and the role of the devolved administrations in the next phase of negotiations, following the commitment the Prime Minister made in the House of Commons on 21 January 2019 to an enhanced role for the devolved administrations in the next phase.

Underpinning this ministerial engagement, there is ongoing official-level engagement to discuss the policy detail behind topics relating to the future relationship with the EU; there have been over 30 such meetings to date. These discussions continue to highlight policy areas and issues for discussion at future meetings of MF(EN).

We hope that this provides a useful summary of recent engagement with the devolved administrations.

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

Rt Hon David Lidington CBE MP

Eluned Morgan AM
Minister for International Relations and the Welsh Language

7 May 2019

Dear Eluned,

Trade Bill - legislative consent

Thank you for your letter dated 25 April 2019, which the Committee considered at its meeting on 29 April 2019.

We are grateful for your analysis of the amendments made at Report Stage in the House of Lords. In particular, your assessment of the amendments' interaction with the legislative consent granted by the Assembly is particularly useful.

In relation to amendment 14, you state that:

"One of the effects of amendment 14 is to widen devolved powers under the Bill and as a result I do not think this change is covered by the Assembly's original consent. Ordinarily I would lay an LCM for an amendment of this kind but realistically I do not see that there would be time for the LCM procedures to be complied with. For this reason I do not intend to do so."

We agree with your assessment of the need for the Assembly's legislative consent to be sought in these circumstances.

Our view differs from yours in that we believe a further Supplementary Legislative Consent Memorandum should be laid as a matter of urgency.

As no date has been allocated for the consideration of Lords amendments in the Commons, it may be possible for the Assembly to debate an associated legislative consent motion prior to the conclusion of the Parliamentary scrutiny process.

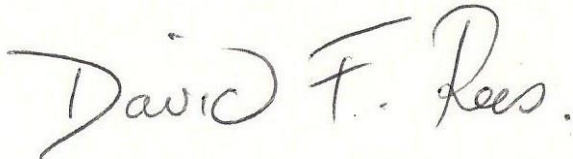


Even in circumstances where UK Parliamentary timescales might not allow the Assembly's legislative consent procedures to be complied with in full, we believe that a Legislative Consent Memorandum should be laid and, if possible, debated.

We note that this is the second occasion on which Westminster Brexit-related legislation has proceeded with the need for legislative consent arising at the final stages of the legislative process.

We have copied this letter to the Chair of the Constitutional and Legislative Affairs Committee.

Yours sincerely,

A handwritten signature in black ink that reads "David F. Rees." The signature is written in a cursive style with a large 'D' and 'R'.

David Rees AM

Chair of the External Affairs and Additional Legislation Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.





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

Your ref:
Our ref: EJ/AJ

07 May 2019

Dear Mick,

Thank you for your letter regarding the application of Standing Order 30A.

As you are aware, it is a long-established convention that the UK Parliament will not normally legislate with regard to devolved matters without the consent of the Assembly. Within that context, Standing Orders 29 and 30A set out the Assembly's procedures for signifying consent to provisions in Bills and Statutory Instruments before the UK Parliament that make provision either within, or modifying, the Assembly's legislative competence.

While the practical operation of the convention relies much on inter-governmental working, the convention is fundamentally an inter-Parliamentary one in that it is the Assembly that gives consent for the UK Parliament to legislate within its competence. That inter-Parliamentary dimension is reflected in the fact that since 2013 the Clerk of the Assembly has notified her peers in the Commons and Lords when the Assembly has passed or rejected a consent motion, so that Members of Parliament can be informed of the Assembly's decision via the order paper.

While neither Standing Order 29 nor 30A require a member of the government, nor anyone else, to table a consent motion in relation to relevant provisions in any UK Bill or Statutory Instrument, the tabling and passing of such a motion is the only way that the Assembly's consent to such provisions can be sought and given. If no such motion has been considered – let alone passed – by the Assembly in relation to a relevant provision in a UK Bill or Statutory Instrument, the Assembly cannot be said to have given its consent to that provision. I would be concerned if the UK Parliament were proceeding to legislate in those circumstances, as it would seem to me to breach the convention of only legislating with the Assembly's express consent.



Elin Jones AC, Llywydd

Cynulliad Cenedlaethol Cymru

Elin Jones AM, Presiding Officer

National Assembly for Wales

On your final point, the provision for a Member other than a member of the government to table a consent motion was introduced in 2013 alongside removing the requirement for the government to table a motion in relation to each and every memorandum laid. The procedure was designed to be used in circumstances where the government's memorandum indicated that the government does not consider it appropriate for consent to be given, and enables other Members then to make the opposite case and to table a consent motion to that effect. It was not anticipated it would be needed in situations where the government supports the proposed UK legislation, as in those circumstances the expectation is that government would table their own motion seeking the Assembly's consent for the legislation to proceed.

I hope that provides clarity for the Committee on my interpretation of the relevant Standing Orders.

Yours sincerely,

Elin Jones AM
Llywydd

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

Elin Jones AM
Llywydd

25 March 2019

Annwyl Lywydd

Standing Order 30A – Consent in Relation to Statutory Instruments made by UK Ministers

I am writing in relation to Standing Order 30A. This Standing Order requires a member of the Welsh Government to lay a statutory instrument consent memorandum (a memorandum) before the National Assembly in relation to any relevant statutory instrument that is laid before the UK Parliament by UK Minister which amends primary legislation within the legislative competence of the Assembly.

As detailed in our recent report *Scrutiny of regulations made under the European Union (Withdrawal) Act 2018: progress report* (progress report), the Welsh Government has not tabled any motions seeking the consent of the National Assembly to the regulations that are the subject of statutory instrument consent memoranda.

The Welsh Government has provided a range of explanations for this approach in correspondence with us:

- not believing a debate on the relevant memoranda would be a productive use of “valuable plenary time”;
- the relevant Regulations are restricted to making corrections to deficiencies in law that will arise as a result of the UK leaving the European Union;
- the provisions of the relevant Regulations are technical in nature, and there is no divergence in policy between the Welsh and UK governments.



In our progress report we noted our concerns that the Welsh Government is not using the Standing Order 30A process as we consider it should be. We also stated that we have not, to date, commented on whether memoranda should be subject to a consent motion because we do not believe that it should become a matter for routine decision by us. We said:

We believe that all Brexit-related Statutory Instrument Consent Memorandums should be subject to a consent motion tabled by the Welsh Government. As matters currently stand, the Statutory Instrument Consent Memorandum process is being used as a means for the Welsh Ministers to provide consent by default. To use a relatively familiar analogy, the consent process has taken on the features of the negative procedure process for the consideration of statutory instruments; consent is deemed to have been given unless an Assembly Member intervenes. That is neither appropriate nor within the spirit of Standing Order 30A.

We also concluded that, if the Welsh Government has established the principle with the UK Government that the consent of the National Assembly is not generally required, then it is not clear what effect a decision of the National Assembly to vote down a consent motion would have.

In his 11 March 2019 letter to us, responding to our progress report, the First Minister said:

I have noted that the Committee would prefer the Welsh Ministers to lay motions for all Statutory Instrument Consent Memorandums.

Standing Orders make it clear that it is the choice of Ministers or Members to lay a motion. That Suzy Davies AM was able to lay a motion to debate the Marine Environment SICM indicates that the Standing Orders are operating as intended. As I indicated above, as your report states that the Assembly would, if necessary, have been able "to manage any increase in workload" arising from Brexit, I am encouraged that Assembly Members would have the resources at their disposal to draft a memorandum and lay a motion in the Assembly if they felt that this was essential.

As a Committee, we now feel it is appropriate to seek your views and your interpretation of Standing Order 30A.



I would also like to take the opportunity to respectively suggest that the First Minister's response (as set out above) to our concerns about the Welsh Government's approach to the Standing Order 30A process does not accurately reflect our comments on the way in which business of the Assembly is conducted.

As a result of the Welsh Government's approach to the Standing Order 30A process, Suzy Davies AM did table a motion in respect of one statutory instrument consent memorandum. On this occasion, the Member did not disagree with the Welsh Government's own memorandum, only the Government's refusal not to bring forward the associated motion under Standing Order 30A.10. However, the Standing Orders as currently drafted still required her to table her own memorandum (Standing Order 30A.3). In our view, it would seem unnecessary for an Assembly member to be required to table their own memorandum in these circumstances, where they are in agreement with the Welsh Government.

In light of the above, I would welcome your views on how Standing Order 30A is being used and interpreted.

Yours sincerely



Mick Antoniw AM

Chair

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



Agenda Item 5.6

Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister



Llywodraeth Cymru
Welsh Government

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

08 May 2019

Dear Mick,

I am writing to inform you that the Joint Ministerial Committee (European Negotiations) will meet in London on 9 May.

The agenda will cover the negotiations with the EU on the UK's exit, the role of the devolved administrations and progress on Common Frameworks.

I will report to the Committee on the outcome of the meeting.

Yours sincerely,



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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
PSCGBM@gov.wales / YPCCGB@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.

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE Welsh Government Interim Response to the Law Commission's Report on Planning Law in Wales

DATE 09 May 2019

BY Julie James AM, Minister for Housing and Local Government

The Law Commission for England and Wales was commissioned by the Welsh Government to undertake a detailed review of planning law in Wales, with the aim of simplifying and consolidating the legislation. The review concluded on 30 November 2018 with the submission of their report 'Planning Law in Wales: Final Report' for consideration by the Welsh Government. The final report was also laid in front of the National Assembly for Wales and published on the Law Commission's website.

In accordance with the protocol agreed between the Welsh Ministers and the Law Commission on 2 July 2015, an interim Government response on the Report is to be provided to the Law Commission within 6 months of its submission and publication. A more detailed response is to be provided within 12 months.

Today, I am pleased to have issued and published the Welsh Government's interim response to the Report, which focuses on the core conclusions set out in Part 1 of the Consultation Paper (issued in November 2017) and of the Final Report. In particular it sets out the Government's response to the Law Commission's views on:

- the need to simplify and consolidate planning law;
- the case for a planning code; and
- the scope of the initial consolidation exercise.

The interim response can be accessed at:

<https://gov.wales/interim-response-law-commission-report-planning-law-wales>

We continue to consider the 192 recommendations set out in Part 2 of the Report, which will be the focus of our detailed response to be issued later this year.



The Right Honourable Lord Justice Green
Chairman
Law Commission
1st Floor Tower
52 Queen Anne's Gate
London
SW1H 9AG

Nicholas.Green@lawcommission.gov.uk

9 May 2019

Dear Nicholas

INTERIM RESPONSE TO THE REPORT ON PLANNING LAW IN WALES

On behalf of the Welsh Government, I am grateful to you, Nicholas Paines QC and the Public Law Team for the work undertaken to produce your detailed report on planning law in Wales. It is clear significant work and robust analysis has been undertaken to establish a comprehensive evidence base to inform the report and to engage with a wide range of stakeholders.

This letter is the Welsh Government's Interim Response to the Report, issued in accordance with the Protocol between the Law Commission and the Welsh Ministers (July 2015).

It is not my intention to respond to the 192 recommendations set out in Part 2 of your report, as our detailed analysis and consideration of them continue. This will be the subject of our formal response later this year.

This response focuses instead on the core conclusions set out in Part 1 of the Consultation Paper (November 2017) and of the Final Report (November 2018), in particular the Law Commission's views on:

- the need to simplify and consolidate planning law;
- the case for a planning code; and,
- the scope of the initial consolidation exercise.

These points are addressed in turn below.

The need to simplify and consolidate planning law

The report clearly demonstrates planning legislation is an area of law that needs urgent attention in terms of simplification and consolidation. It reinforces the Welsh Government's

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Gohebiaeth.Julie.James@llyw.cymru
Correspondence.Julie.James@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.

long held view about the complexity of the legislative framework underpinning the planning system.

Our work on the Planning (Wales) Act 2015 and the supporting evidence base provided by an Independent Advisory Group highlighted this issue, which led to our collaboration with the Law Commission to undertake this detailed review. I also note that issues of complexity and accessibility of the law more widely were considered by the Law Commission in the report, *Form and Accessibility of the Law Applicable to Wales* (June 2016), which also touched upon aspects of planning law.

The recent review of the planning system in England undertaken by the Town and Country Planning Association¹ also reinforces the conclusions of your report by recommending the simplification and consolidation of planning legislation in England. This demonstrates the problem is not unique to Wales. However, the Law Commission's comprehensive and detailed review for the Welsh Government puts us ahead of the general thinking on this important issue.

Having practised in planning law, I recognise and agree with the difficulties of the current legislative framework identified in your review. Current planning legislation is voluminous and fragmented, with the report highlighting around 30 pieces of interlocking primary legislation (in whole or part) relating to this area of law. This clearly affects accessibility to the law, in addition to its quality in term of complexity and clarity.

The problems caused by this are significant. Difficulties or errors in the operation and interpretation of the legislation leading to the potential of legal challenge can result in delays to the delivery of sustainable development and the achievement of sustainable places for our communities. The increasing need for legal advice in order to operate, use or engage in the planning system and the associated costs are also of concern. How effectively the planning system functions or communities engage with the system should not depend on whether legal advice can be accessed or afforded.

The evidence clearly highlights that the difficulties identified with the current legislative framework can frustrate the planning system. We believe the simplification and consolidation of the law is essential in order to address these issues. It is important that all stakeholders operating, using or engaging in the system can clearly access and understand the law directly affecting them. It is also essential to the achievement of an efficient, effective and simple planning system that works for the specific needs of Wales.

Simplified and consolidated planning legislation will produce real practical benefits to all stakeholders in the planning system – from those who operate and use it to those who wish to access the law to engage in the system. Importantly, as planning law becomes more accessible and clearer, it will assist in increasing public participation in the system.

This is an important project that the Counsel General and Brexit Minister and I are committed to take forward. As you will be aware, the Legislation (Wales) Bill is currently being scrutinised by the National Assembly for Wales. This Bill places a duty on the Counsel General and the Welsh Ministers to bring forward a programme aimed at improving the accessibility of Welsh law. The first programme will begin in the next Assembly subject to the Bill receiving Royal Assent, but I am pleased to say that ahead of any formal programme being set, work has already begun on a Planning Consolidation Bill.

¹ Planning 2020: Raynsford Review of Planning in England, Final Report, November 2018

The case for a planning code

As you are aware, the codification of Welsh law is currently under consideration by the Counsel General and Brexit Minister. He has already set out our vision of what a Legislative Code will contain and is currently considering how Welsh law should be organised in those Codes.

I support the Law Commission's view that there is a particular need for a Code bringing together the legislation relating to land use planning. Having the legislation in a single place will assist in addressing the dispersed nature of the current legislative framework. This in itself will make the law more accessible to stakeholders.

This view is also shared by the Counsel General and Brexit Minister. The *Draft Taxonomy for Codes of Welsh Law* published to accompany the introduction of the Legislation (Wales) Bill to the National Assembly currently identifies a "Planning, Land and Building Code". This reflects the need for land use planning legislation to be brought together in a single place for the benefit of those who operate, use and engage in the planning system. Importantly, it also reflects that land use planning is a key and significant area of devolved law.

I note the Law Commission's views and those of stakeholders on the other areas of law associated with land use planning that could benefit from being included in a planning related Code, or benefit from future codification and consolidation exercises to form separate Codes. I also note the views and queries expressed by stakeholders about the principles and general operation of Legislative Codes.

These important views will inform the Counsel General and Brexit Minister's ongoing discussions and refinement of the future structure and taxonomy. Subject to the National Assembly passing the Legislation (Wales) Bill, the Counsel General intends to publish further information on consolidation and codification of Welsh law in the summer.

The scope of the initial consolidation exercise

As the Report identifies, the consolidation of planning law and related legislation to create a Code of Welsh law will need to be undertaken in a phased approach. This is a sensible approach given the extent of the task and limited resources available to undertake this exercise.

I welcome the Law Commission's consideration of this matter and its view that the scope of the initial consolidation exercise and resulting Bill should include, as far as possible, all planning related primary legislation relating to:

- the planning and management of development;
- the provision of infrastructure and other improvements;
- outdoor advertising and work to trees;
- public sector led improvements and regeneration (insofar as currently within the Town and Country Planning Act 1990 (TCPA 1990)); and
- supplementary and miscellaneous provisions.

The suggested content to be included under these five topic areas, as set out in Table 3.1 of the consultation paper, indicates that the scope of this initial exercise should result in the replacement of the main pieces of primary legislation underpinning the system in Wales. In particular, the TCPA 1990 and the Planning and Compulsory Purchase Act 2004 (PCPA

2004) as they apply to Wales; in addition to those that amend these principal Acts, such as the Planning and Compensation Act 1991, Planning Act 2008 and Planning (Wales) Act 2015.

We agree that this is a sensible approach and this will form the basis of our initial consolidation exercise and resulting Bill. It supports our view that the initial exercise needs to cover the core functions of the planning system, especially those used frequently by operators and users of the system. However, our ability to fully remove Wales from the scope of the TCPA 1990 and relevant parts of the PCPA 2004 will depend on a number of factors, in particular the extent of the National Assembly's legislative competence. This will only become fully apparent during the preparation and drafting of the planning consolidation Bill.

The possible scope and structure of an initial planning consolidation Bill suggested by the Law Commission also reflect your recommendations to unify listed building and conservation area consents with planning permission. Whether the scope of the initial exercise will accommodate such proposals is yet to be determined as we continue to carefully consider your recommendations on this particular matter.

In addition to the above, I note the report also makes recommendations for other areas of planning law to be included within the scope of this initial exercise. I support the view set out in Recommendation 10.1 that the provisions relating to Community Infrastructure Levy (CIL) should be included in the initial consolidation exercise and resulting Bill. As highlighted in the report, legislative competence relating to CIL has only recently been devolved through the Wales Act 2017. Our future policy approach to CIL and planning obligations will need to be considered as part of the Welsh Government's wider and long-term discussions on the taxation of development land, such as our investigations into the introduction of a vacant land tax.

It is sensible to carry forward these provisions unaltered into the initial piece of consolidated planning legislation whilst this policy area is being reviewed. Given the close relationship between CIL and planning obligations, there is benefit to users and operators of the system in bringing these provisions together under a single piece of legislation rather than having them in separate Acts, as is currently the case.

The report also considers whether the statutory provisions relating to compulsory purchase should be included as part of this initial exercise. It suggests the general statutory provisions on compulsory purchase and compensation should not be included in the initial exercise and resulting Bill, but recommends that the power to acquire land for planning purposes in Part 9 of TCPA 1990 should be (Recommendation 16.14). I believe that it would be sensible to include those provisions of the TCPA 1990 with a view to replacing the TCPA 1990 in its entirety for Wales. However, the wider consolidation of compulsory purchase legislation would need to be the subject of a future exercise given the size of the task and the complexity of this area of law.

The Law Commission report has provided a clear direction and scope for the initial planning consolidation exercise. To deliver a planning consolidation Bill that is focused in the manner set out above will deliver significant benefits to our stakeholders.

In taking forward a planning consolidation Bill, I also note and welcome the Law Commission's conclusions that the balance between primary and secondary legislation in the current planning legislative framework is broadly correct. We will respond in due course to the small number of recommendations where the Law Commission has questioned this balance.

Detailed recommendations

While I am not in a position to provide a detailed response to the recommendations set out in Part 2 of the report, it is clear from our initial consideration they generally fall under three categories:

- the majority constitute minor technical reforms with little or no changes in policy, to aid consolidation;
- some propose policy reforms with the aim of achieving greater simplification of the law and operation of the planning system, which range from minor to substantial changes in policy effect; and,
- some propose changes to subordinate legislation and guidance.

You will be aware the Business Committee of the National Assembly has agreed to develop a Standing Order for the scrutiny of consolidation Bills. Clearly the final form of that procedure will influence what can be taken forward through consolidation. I anticipate the planning consolidation Bill will be the main delivery mechanism for those recommendations we accept to take forward and comprise minor technical reforms.

However, where we may agree with those recommendations that constitute more substantial policy reforms, they are unlikely to be taken forward within the scope of a consolidation Bill. These changes may need to be accommodated in a law reform Bill for greater scrutiny by the National Assembly.

The delivery mechanisms for the recommendations will become clearer following our detailed consideration of them, and the agreement of any Standing Order by the National Assembly.

Delivering any consolidation project is a substantial and technical exercise that can take considerable time and effort to do well. We are committed to developing accessible and well thought through legislation. As we begin to prepare the planning consolidation Bill for Wales, I am grateful to the Law Commission for its continued support and assistance in its delivery.

Yours sincerely



Julie James AC/AM

Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government

cc. Counsel General and Brexit Minister

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 2)

Agriculture Bill

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of, the National Assembly.
2. The Agriculture Bill (the “Bill”) was introduced in the House of Commons on 12 September 2018 and has completed Public Bill Committee stage. This Memorandum sets out the relevant amendments to the Bill made during Public Bill Committee and updates the position in respect of the clause on the WTO Agreement on Agriculture (Part 7). The latest version of the Bill, as amended in Committee , can be found at:

[Bill documents — Agriculture Bill 2017-19 — UK Parliament](#)

3. The Bill will now move to Report stage and Third Reading in the Commons before entering the House of Lords.

Policy Objective(s)

4. The UK Government’s stated policy objectives are to provide, for England, a new system of paying farmers “public money for public goods” – principally their work to enhance and protect the environment – and to phase out Direct Payments under the rules of the Common Agricultural Policy (CAP).

Summary of the Bill

5. The Bill is sponsored by the Department for Environment, Food and Rural Affairs.
6. The key provisions of the Bill provide the legal framework for the United Kingdom (UK) to leave the Common Agricultural Policy (CAP) and, in England, establish a new system based on public money for public goods for the next generation of farmers and land managers.
7. In addition, at the request of the Welsh Government, the Bill provides powers for the Welsh Ministers.

Supplementary provisions in the Bill for which consent is required

8. The Welsh Government laid a Legislative Consent Memorandum in relation to the Agriculture Bill (as introduced on 12 September 2018) on 4 October. It noted two outstanding concerns which had not been resolved to our

satisfaction relating to the World Trade Organisation (WTO) Agreement on Agriculture and the Red Meat Levy and that work to resolve our outstanding concerns would continue during the Bill's passage through Parliament. Since the publication of the first Memorandum, the Bill has been amended during scrutiny in the House of Commons and agreement has been reached with the UK Government on the two outstanding issues of disagreement.

9. This Supplementary Memorandum sets out those changes to the Bill made at Commons Committee stage which require the consent of the Assembly. It also explains the agreement reached with UK Government on how the Secretary of State will exercise the powers relating to Part 7 (WTO Agreement on Agriculture) so that the interests of all parts of the UK are fully considered. The amendments made and the agreement reached together address the two concerns highlighted in paragraph 23 of our first Legislative Consent Memorandum. However, we anticipate further changes could be made to the Bill at House of Commons Report stage and as it progresses through the Lords. The first and Supplementary Memorandum must be considered together (with any further Supplementary Memorandums which may be laid before the Assembly to cover any future amendments) when deciding on consent.
10. The provisions for which consent is sought are contained in Part 7 (WTO Agreement on Agriculture); Part 8 (Red Meat Levy); Schedule 3 (Provision relating to Wales), and Part 10 of the Bill (Final Provisions). The clause numbers below relate to the version of the Bill ordered to be printed on 20 November and published on 21 November (the version as amended in Committee).

Part 7: WTO Agreement on Agriculture

11. The Cabinet Secretary for Energy, Planning and Rural Affairs' statement of 12 September noted the Welsh Government's view that these provisions require consent because of the strong and self-evident relationship between WTO powers and devolved responsibilities for agriculture support. The Legislative Consent Memorandum laid on 4 October also explained the Welsh Government's view "that consent is required for the provisions of Clause 26 [the WTO clause, now clause 28], because they fall within the legislative competence of the National Assembly for Wales as they relate to agriculture and the observation and implementation of international obligations, namely the Agreement on Agriculture". The UK Government believes the powers to be reserved, however, on the basis that they relate to international trade.
12. The Welsh and UK Governments have agreed a governance mechanism for use of these powers so that the interests of all parts of the UK are fully taken into account. We have agreed the following:
 - the UK Government will consult the devolved administrations, guided by the principles set out in the Intergovernmental Agreement before bringing forward regulations under the WTO clause;

- Ministers will seek to proceed by agreement but in the event of a dispute relevant material will be made available to both Houses of Parliament before Parliament vote on the regulations;
- the Welsh Ministers will be responsible for proposing the initial classification of Welsh agricultural support schemes, consistent with any regulations made under the WTO clause; and
- there will normally be a role for independent advice should the governments disagree on the appropriate classification of schemes or other relevant matters. The Secretary of State should have regard to this advice before making any decision and will share with the devolved administrations the advice, the decision and reason for decision.

13. In summary, the clear onus is on seeking agreement. However, where that is not feasible there are strong mechanisms for the Welsh Ministers to exert their views. These arrangements will be codified in a Memorandum of Understanding and the Secretary of State will put this on record in a statement on the floor of the House of Commons. This is a good outcome providing a strong role and flexibility for the Welsh Ministers following extensive and highly collaborative working between Governments. It provides a valuable model which could be used in other areas where intergovernmental cooperation is needed and demonstrates both governments' commitment to collaboration.

Part 8: Red Meat Levy

14. The Great Britain red meat levy boards (Agriculture and Horticulture Development Board (AHDB), Quality Meat Scotland, and Hybu Cig Cymru) each separately impose levies on red meat producers and processors in, respectively, England, Scotland and Wales. Those levies can only be imposed to enable each body to meet its expenses in supporting the red meat industry in the country in which the levy is raised. Levies are therefore based on the geographical location of abattoirs rather than the origin of the livestock and do not take into account the trading patterns that exist across GB borders. As a result, the levy paid by producers who are operating in one part of Britain may be used to fund promotional and developmental activities in another.
15. A new clause 29 (Red Meat levy: payments between levy bodies in Great Britain), enables Ministers to establish a scheme that requires agricultural boards within Great Britain to redistribute levy between themselves. It is intended that this will enable those who invest in breeding and rearing livestock to benefit from the levy collected in relation to their livestock, even if the levy is collected by a slaughter house in another jurisdiction. The Welsh Government is content the new clause provides appropriate means to resolve this issue.

Schedule 3, Part 2: Financial Support after exiting the EU

16. Part 2 of Schedule 3 of the Bill makes provision about the Welsh Ministers' powers to modify, after exiting the EU, retained EU law relating to the financing, management and monitoring of payments to farmers. It also makes provision about an agricultural transition period for Wales which can be extended by regulations made by the Welsh Ministers.
17. A new paragraph 7 (Power to reduce the direct payments ceilings for Wales in 2020 by up to 15%) confers a power on the Welsh Ministers to make regulations to reduce the direct payment ceiling for Wales in 2020 by up to 15%. That power will mean that the Welsh Ministers can maintain direct payments in 2020 at the same level as in 2019. The power cannot be exercised after the end of 2020. This power to make regulations is subject to the affirmative resolution procedure (as defined by clause 32(7)(b)).
18. A new paragraph 8 (Power to provide for the continuation of the basic payment scheme beyond 2020) provides the Welsh Ministers with a power to make regulations to continue the basic payments scheme after 2020, during the agricultural transition period for Wales. This includes power to prescribe by regulations the method by which direct payment ceilings will be determined after 2020. The Direct Payments Regulation (1307/2013) contains ceilings (the method for calculating payments to farmers) up to the end of the 2020 scheme year only. Without ceilings or a replacement for determining an amount the basic payments scheme could not continue. This power to make regulations is subject to the affirmative resolution procedure (as defined by clause 32(7)(b)).
19. Paragraph 9 (Power to provide for phasing out direct payments and delinked payments), is amended as follows:
- a) Sub-paragraph (1)(b) is amended so that there is no longer a requirement to terminate direct payments. This is a technical amendment in respect of the Welsh Ministers' powers to make by regulations provision for delinked payments in place of payments under the basic payment scheme. The amendment also makes clear that delinked payments cannot be made alongside direct payments under the basic payment scheme.
 - b) Sub-paragraph (8) is amended to correct a drafting error. Text is included to clarify that paragraph 9(8) applies if provision for terminating greening payments is made under paragraph 6(2) whether before or after the start of the agricultural transition period for Wales. The amendment brings the provision for Wales into line with that for England.

Schedule 3, Part 4: Intervention in Agricultural Markets

20. Part 4 of Schedule 3 allows the Welsh Ministers to take action to declare a period of exceptional market conditions, and, during the period for which the declaration has effect, to give, or agree to give financial assistance to support agricultural producers in Wales whose incomes are being, or are likely to be adversely affected by the exceptional market conditions described in the

declaration. Part 4 also allows the Welsh Ministers to make such use as they consider appropriate of any available powers under retained direct EU legislation which provides for the operation of public intervention and aid for private storage mechanisms in response to the declaration.

21. Paragraph 18 (Declaration relating to exceptional market conditions), is amended as follows:
- a) Sub-paragraph (2) is amended so as to clarify that provision is intended to set out the only circumstances in which the Welsh Ministers may make a declaration stating that there are exceptional market conditions. The amendment brings the provision for Wales into line with that for England.
 - b) Sub-paragraph (3)(c) is amended to reflect a drafting error. The text of the Bill should have referred to “conditions” (not “decisions”).

Part 10: Final Provisions

22. Part 10 of the Bill provides for different types of ancillary provision which could be made in regulations made under the Bill.
23. Clause 32 (Regulations), is amended so that a new sub-clause (5) provides that regulations under section 32(3)(c) which make supplementary, incidental, consequential, transitional or saving provision modifying primary legislation will be subject to the affirmative resolution procedure. This enhances legislative scrutiny when regulations made under section 32(3)(c) modify primary legislation. Pointers to clause 32(5) are inserted into the provisions to make regulations using the negative resolution procedure at paragraphs 6(3), 11(5), 12(4), 20(3) and 22(3) of Schedule 3, to use the affirmative procedure instead if the relevant power is used, by virtue of section 32(3)(c), to make supplementary, incidental, consequential, transitional or saving provision modifying primary legislation.
24. Clause 33 (Interpretation) is amended to clarify that the definition of “subordinate legislation” includes legislation made under primary legislation by the devolved legislatures.

Consent

25. It is the Welsh Government’s view that the provisions in respect of the WTO Agreement on Agriculture (Part 7) require consent because they fall within the legislative competence of the National Assembly for Wales as they relate to agriculture and concern the domestic implementation of international obligations.
26. It is the Welsh Government’s view that the provisions in respect of the Red Meat Levy (Part 8), the amendments to Schedule 3 (Provision relating to Wales) and the amendments to Part 10 (Final Provisions) require consent

because they fall within the legislative competence of the National Assembly for Wales as they relate to agriculture and do not relate to reserved matters.

27. It is noted that the Memorandum laid on 4 October contained a minor drafting error. It stated that certain provisions extend and apply in relation to Wales (paragraph 18 of that original Memorandum refers). The relevant provisions extend to both England and Wales (and apply to Wales, as correctly stated).

Powers to create subordinate legislation

28. The Annex describes a consolidated list of subordinate legislation making powers conferred on the Welsh Ministers, updated from the Memorandum laid on 4 October to take account of the amendments made at House of Commons Committee stage as described in this Memorandum. 'Affirmative resolution procedure' and 'negative resolution procedure' are defined in Clause 32(7)(b) and (8)(b) of the Bill respectively as those terms apply to subordinate legislation made by the Welsh Ministers under the Bill.

Reasons for making these provisions for Wales in the Agriculture Bill

29. As set out in the first Memorandum, the Welsh Government considers that legislation is necessary to provide a legal basis for future support to farmers after Brexit, as we transition away from the Common Agricultural Policy. By including provisions now in the UK Agriculture Bill the Welsh Ministers can support farmers in Wales, and will be able to implement what is best for Wales.
30. A new power is also included in the Bill to redistribute red meat levy to resolve current anomalies. The Agriculture Bill provides an ideal opportunity to gain the necessary powers to bring forward an appropriate scheme to correct this imbalance.

Welsh Government position on the Bill as amended

31. Welsh Government is content with the amendments tabled by UK Government Ministers during Commons Committee in respect of the Red Meat Levy (Part 8), the amendments to Schedule 3 (Provision relating to Wales) and the amendments to Part 10 (Final Provisions). It is also content with the provisions in respect of the WTO Agreement on Agriculture in view of the agreement reached with the Secretary of State on the exercise of those regulation making powers. 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 Committee scrutiny in the National Assembly, in which case further Memoranda will be laid before the Assembly as appropriate. A final recommendation in respect of the National Assembly's consent will be provided once all amendments to the Bill have been made.

Financial implications

32. There are no direct financial implications for the Welsh Government or the Assembly as a result of taking these powers in this Bill.

Conclusion

33. This supplementary memorandum describes the relevant changes made to the Bill since introduction requiring Assembly consent. The Welsh Government is supportive of the Bill as drafted. It should be noted however, that it is not possible to give an unequivocal recommendation to the Assembly to consent to the Bill until we are closer to the end of the Lords stage, since there may be more amendments to come. In the event of future amendments within the legislative competence of the Assembly then further Supplementary Legislative Consent Memoranda will be laid before the Assembly as appropriate, with a recommendation from Welsh Government in respect of the Assembly's consent at the appropriate time.

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

Annex

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM: AGRICULTURE BILL – CONSOLIDATED LIST OF PROVISIONS WHICH CONTAIN POWERS FOR WELSH MINISTERS TO MAKE SUBORDINATE LEGISLATION AS AMENDED AT HOUSE OF COMMONS COMMITTEE STAGE

Paragraph of Schedule 3	Description of Power	Legislative procedure
2(7)	Power for Welsh Ministers by regulations to make provision for or in connection with requiring the Welsh Ministers or another person to publish specified information about financial assistance which has been given under Paragraph 1 of Schedule 3	Affirmative resolution procedure
3(1)	Powers for the Welsh Ministers by regulations to make provision for or in connection with checking, enforcing and monitoring compliance where financial assistance is to be or has been given under Paragraph 1 of Schedule 3	Affirmative resolution procedure
5(2)	Powers for the Welsh Ministers by regulations to extend the agricultural transition period for Wales set out in Paragraph 5(1) of Schedule 3	Affirmative resolution procedure
6(1)	Powers for the Welsh Ministers to modify legislation governing the basic payment scheme	Negative resolution procedure (unless section 32(5) applies, in which case affirmative resolution procedure)
7(1)	Powers for the Welsh Ministers by regulations to make provision for or in connection with reducing the national and net direct payments ceilings for Wales that would otherwise apply in 2020 by up to 15%.	Affirmative resolution procedure
8(1)	Powers for the Welsh Ministers by regulations to modify legislation governing the basic payment scheme to make provision for or in connection with securing that the basic payment scheme continues to operate in relation to Wales for one or more years beyond 2020 (subject to any provision made under paragraph 9)	Affirmative resolution procedure

9(1)	Powers for the Welsh Ministers by regulations to make provision for or in connection with either or both the phasing out of direct payments under the basic payment scheme in relation to Wales over the whole or part of the agricultural transition period for Wales, or the termination of direct payments under that scheme in relation to Wales and instead the making of delinked payments in relation to Wales in respect of the whole or part of the agricultural transition period for Wales.	Affirmative resolution procedure
11(1)	Powers for the Welsh Ministers by regulations to modify retained direct EU legislation relating to the financing, management and monitoring of the common agricultural policy and subordinate legislation relating to that legislation.	Negative resolution procedure (unless section 32(5) applies, in which case affirmative resolution procedure)
12(1)	Powers for the Welsh Ministers by regulations to modify retained direct EU legislation relating to support for rural development and subordinate legislation relating to that legislation	Negative resolution procedure (unless section 32(5) applies, in which case affirmative resolution procedure)
13(2)	Powers for the Welsh Ministers by regulations to require persons in or closely connected with an agri-food supply chain to provide information about matters connected with any of the person's activities connected with the supply chain so far as the activities are in Wales.	Affirmative resolution procedure
17(1)	Powers for the Welsh Ministers by regulations to make provision for enforcement of a requirement imposed under paragraph 13(1) or (2) of Schedule 3 (agri-food supply chains: requirement to provide information)	Affirmative resolution procedure
20 (1)	Powers for the Welsh Ministers by regulations to modify retained direct EU legislation relating to public market intervention or aid for private storage for the purposes of altering the operation of provisions of such legislation, so far as they have effect in relation to Wales in connection with exceptional market conditions which are the subject of a	Negative resolution procedure (unless section 32(5) applies, in which case affirmative resolution

	declaration under paragraph 18 of Schedule 3 (declaration relating to exceptional market conditions)	procedure)
20(2)	Powers for the Welsh Ministers by regulations to modify retained direct EU legislation relating to public market intervention or aid for private storage for specified purposes	Negative resolution procedure (unless section 32(5) applies, in which case affirmative resolution procedure)
21(1)	Powers for the Welsh Ministers by regulations in relation to products which fall within a specified sector and are marketed in Wales, to make provisions about the standards with which those products must conform	Affirmative resolution procedure
21(3)	Powers for the Welsh Ministers to make provision about the classification, identification and presentation of bovine, pig and sheep carcasses by slaughterhouses in Wales	Affirmative resolution procedure
22(2)	Powers for the Welsh Ministers by regulations to amend the list of agricultural sectors in paragraph 22(1) of Schedule 3 to add or remove a sector and to set out products that fall within each sector or otherwise give further detail on the sectors	Negative resolution procedure (unless section 32(5) applies, in which case affirmative resolution procedure)
29	Powers for the Welsh Ministers (acting jointly with the Secretary of State and/or the Scottish Ministers) to make a scheme to make provision for amounts of red meat levy collected by the levy body for one country in Great Britain to be paid to the levy body for another such country.	No procedure

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Lesley Griffiths AC/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.

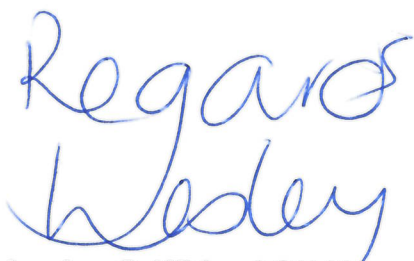
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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

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

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