

# Agenda – Constitutional and Legislative Affairs Committee

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Meeting Venue:

Committee Room 1 – Senedd

Meeting date: 24 June 2019

Meeting time: 14.30

For further information contact:

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Committee Clerk

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- 1 Introduction, apologies, substitutions and declarations of interest**  
14.30
  
- 2 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3**  
14.30–14.35 (Pages 1 – 2)  
**CLA(5)–20–19 – Paper 1 – Statutory instruments with clear reports**  
Negative Resolution Instruments
  - 2.1 SL(5)418 – The Civil Enforcement of Parking Contraventions (County Borough of Blaenau Gwent) Designation Order 2019**
  
  - 2.2 SL(5)419 – The Civil Enforcement of Parking Contraventions (County Borough and City of Newport) Designation Order 2019**
  
  - 2.3 SL(5)420 – The Civil Enforcement of Parking Contraventions (County Borough of Torfaen) Designation Order 2019**
  
- 3 Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3**  
14.35–14.40  
Negative Resolution Instruments



**3.1 SL(5)417 – The School Performance and Absence Targets (Wales)  
(Amendment) Regulations 2019**

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CLA(5)–20–19 – Paper 2 – Report

CLA(5)–20–19 – Paper 3 – Regulations

CLA(5)–20–19 – Paper 4 – Explanatory Memorandum

CLA(5)–20–19 – Paper 5 – Written Statement

**4 Written statements under Standing Order 30C**

14.40–14.45

**4.1 WS–30C(5)133 – The Environment (Legislative Functions from Directives) (EU  
Exit) Regulations 2019**

(Pages 24 – 29)

CLA(5)–19–19 – Paper 6 – Statement

CLA(5)–19–19 – Paper 7 – Commentary

**5 Paper(s) to note**

14.45–14.50

**5.1 Letter from the Rt Hon David Lidington MP to Bruce Crawford MSP:  
Parliamentary scrutiny of intergovernmental relations and common  
frameworks**

(Pages 30 – 31)

CLA(5)–20–19 – Paper 8 – Letter from the Rt Hon David Lidington MP, 11  
June 2019

**5.2 Letter from the Deputy Minister for Health and Social Services: Children  
(Abolition of Defence of Reasonable Punishment) (Wales) Bill**

(Pages 32 – 34)

CLA(5)–20–19 – Paper 9 – Letter from the Deputy Minister for Health and Social  
Services, 18 June 2019

**5.3 Letter from the Counsel General: Legislation (Wales) Bill**

(Pages 35 – 36)

CLA(5)–20–19 – Paper 10 – Letter from the Counsel General, 18 June 2019

**5.4 Letter from the Minister for Education: The Education (Student Support)  
(Postgraduate Master's Degrees) (Wales) (Amendment) (EU Exit) Regulations  
2019**

(Pages 37 – 38)

**CLA(5)–20–19 – Paper 11 – Letter from the Minister for Education, 20 June  
2019**

**Date of the next meeting – 1 July 2019**

## Statutory Instruments with Clear Reports

24 June 2019

### SL(5)418 – The Civil Enforcement of Parking Contraventions (County Borough of Blaenau Gwent) Designation Order 2019

#### **Procedure: Negative**

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This Order designates the area described in the Schedule to this Order as a civil enforcement area for parking contraventions and a special enforcement area for the purposes of Part 6 of the Traffic Management Act 2004. This Order enables Blaenau Gwent County Borough Council to enforce parking contraventions within the area described in the Schedule to this Order through a civil law regime, as opposed to enforcement by police or traffic wardens in a criminal law context.

**Parent Act:** Traffic Management Act 2004

**Date Made:** 05 June 2019

**Date Laid:** 06 June 2019

**Coming into force date:** 30 June 2019

### SL(5)419 – The Civil Enforcement of Parking Contraventions (County Borough and City of Newport) Designation Order 2019

#### **Procedure: Negative**

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This Order designates the area described in the Schedule to this Order as a civil enforcement area for parking contraventions and a special enforcement area for the purposes of Part 6 of the Traffic Management Act 2004. This Order enables the Council of the County Borough and City of Newport to enforce parking contraventions within the area described in the Schedule to



this Order through a civil law regime, as opposed to enforcement by police or traffic wardens in a criminal law context.

**Parent Act:** Traffic Management Act 2004

**Date Made:** 05 June 2019

**Date Laid:** 06 June 2019

**Coming into force date:** 01 July 2019

## SL(5)420 – The Civil Enforcement of Parking Contraventions (County Borough of Torfaen) Designation Order 2019

### **Procedure: Negative**

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This Order designates the area described in the Schedule to this Order as a civil enforcement area for parking contraventions and a special enforcement area for the purposes of Part 6 of the Traffic Management Act 2004. This Order enables Torfaen County Borough Council to enforce parking contraventions within the area described in the Schedule to this Order through a civil law regime, as opposed to enforcement by police or traffic wardens in a criminal law context.

**Parent Act:** Traffic Management Act 2004

**Date Made:** 05 June 2019

**Date Laid:** 06 June 2019

**Coming into force date:** 01 July 2019



# SL(5)417 – The School Performance and Absence Targets (Wales) (Amendment) Regulations 2019

## Background and Purpose

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These Regulations amend the target setting requirements in respect of Key Stage 4 pupils on school governing bodies in the *School Performance and Absence Targets (Wales) Regulations 2011*.

## Procedure

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Negative.

## Technical Scrutiny

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One point is 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 fails to fulfil statutory requirements**

The preamble to the Regulations recites the following enabling powers, sections 19, 54 (3) and (4) of the Education Act 1997 and sections 30 (1) and (2) and 210 of the Education Act 2002.

Section 30 (2) of the Education Act 2002 does not appear to be relevant for the purposes of these Regulations.

Whilst only the relevant sub-sections of section 54 (Orders and Regulations) of the Education Act 1997 are relied on, the entirety of section 210 (Orders and Regulations) of the Education Act 2002 is relied on. It appears to the Committee that subsection (7) is the only subsection in section 210 which needs to be relied upon.

The fifth edition of *Statutory Instrument Practice* at paragraphs 3.11.21- 22 states that:-

“You should cite a provision that specifies whether the power is to be exercised by the making of Rules, Regulations, an Order or some other kind of subordinate legislation.....

You should not cite provisions that merely specify the relevant Parliamentary procedure, or merely provide that the relevant powers are to be exercisable by SI.”

## Merits Scrutiny

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

## Implications arising from exiting the European Union

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

## Government Response

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The Government agrees that the citation of paragraph (2) of section 30 of the Education Act 2002 was not necessary. In other respects, the necessary vires are cited. We do not consider that the citation of paragraph (2) in section 30 will mislead readers of the Regulations and therefore the Government does not propose to take any further action.



In relation to the citation of section 210 of the 2002 Act the Government is satisfied that this is correct, albeit the Government agrees it was only necessary to cite paragraph (7) of that section.

**Legal Advisers**  
**Constitutional and Legislative Affairs Committee**  
**12 June 2019**



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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

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**2019 No. 993 (W. 174)**

**EDUCATION, WALES**

**The School Performance and  
Absence Targets (Wales)  
(Amendment) Regulations 2019**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

The School Performance and Absence Targets (Wales) Regulations 2011 (“the 2011 Regulations”) require governing bodies of maintained schools in Wales to set targets relating to school performance and unauthorised absence rates of pupils.

Regulation 5(4) of the 2011 Regulations (*performance targets for pupils who will be in Year 11*) requires governing bodies to set performance targets for fourth key stage pupils in Year 11 (see the 2011 Regulations for definitions of “Year 11” and the “fourth key stage pupils”). In particular, regulation 5 of the 2011 Regulations requires the governing body to set targets in relation to—

- (a) three achievements to be determined by governing body based on its evaluation of pupils performance (“non-specified targets”); and
- (b) for the percentage of pupils in Year 11 to achieve the level 1 threshold and the level 2 threshold (“specified targets”).

From and including the 2019/2020 school year the specified targets will not be used by schools. Instead school governing bodies will be required to set more non-specified targets. Accordingly these Regulations amend regulation 5(4) of the 2011 Regulations so as to (regulation 4(3))—

- (a) increase the number of non-specified targets from three to six; and
- (b) omit the requirement to set the specified targets.

These Regulations also amend regulation 2(1) of the 2011 Regulations so as to omit some definitions relevant only to the specified targets (regulation 4(2)).



Regulation 8 of the 2011 Regulations (*publication of information*) requires governing bodies to publish in the school's annual report the percentage of pupils in Year 11 who (see the 2011 Regulations for the definition of "school's annual report") (regulation 4(4))—

- (a) achieve the three non-specified targets; and
- (b) achieve the specified targets.

As a consequence of the amendment to regulation 5(4) of the 2011 Regulations these Regulations also amend regulation 8(3) of the 2011 Regulations so that the governing body—

- (a) must report the percentage of pupils in Year 11 who achieve the six non-specified targets; and
- (b) will no longer have to report on the percentage of pupils to achieve the specified targets.

The changes made by these Regulations will take effect for the first time in the school year 2019 to 2020 ("the transitional year"). Therefore governing bodies will not have set targets in the previous school year which can form the basis of its reviewed and final targets in the transitional year. The previous targets will have been set against performance measures which are no longer used. Regulation 3 makes transitional provision which allows the governing body to set provisional and final targets for the transitional year which are not based on targets set in previous school years.

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 Curriculum and Assessment Division in the Department for Education and Public Services in the Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

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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

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**2019 No. 993 (W. 174)**

**EDUCATION, WALES**

**The School Performance and  
Absence Targets (Wales)  
(Amendment) Regulations 2019**

*Made* 5 June 2019

*Laid before the National Assembly for  
Wales* 6 June 2019

*Coming into force* 1 September 2019

The Welsh Ministers in exercise of the powers conferred on the Secretary of State by sections 19 and 54(3) and (4) of the Education Act 1997<sup>(1)</sup> and sections 30(1) and (2) and 210 of the Education Act 2002<sup>(2)</sup> and now vested in them<sup>(3)</sup>, make the following Regulations:

**Title and commencement**

1.—(1) The title of these Regulations is the School Performance and Absence Targets (Wales) (Amendment) Regulations 2019.

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

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(1) 1997 c. 44. Section 19 has been repealed in relation to England by section 66(1) of the Deregulation Act 2015 (c. 20). Subsection (3) of section 19 was substituted by section 140(1) of, and paragraph 213 of Schedule 30 to, the School Standards and Framework Act 1998 (c. 31).

(2) 2002 c. 32.

(3) The functions of the Secretary of State in sections 19 and 54 of the Education Act 1997 were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and then to the Welsh Ministers by section 162 of, and paragraphs 30 and 32 of Schedule 11 to, the Government of Wales Act 2006 (c. 32). The functions of the National Assembly for Wales in the Education Act 2002 were transferred to the Welsh Ministers by section 162 of, and paragraphs 30 and 32 of Schedule 11, to the Government of Wales Act 2006.

### Interpretation

2. In these Regulations, “the 2011 Regulations” means the School Performance and Absence Targets (Wales) Regulations 2011<sup>(1)</sup>.

### Transitional

3. In regulation 5(3) of the 2011 Regulations—

- (a) in sub-paragraph (a), the words “, being the reviewed targets set in the previous school year” are to be treated as if they were omitted for the school year<sup>(2)</sup> 2019 to 2020; and
- (b) in sub-paragraph (b), the words “, being the provisional targets set in the previous school year but revised if the governing body deem it necessary to do so” are to be treated as if they were omitted for the school year 2019 to 2020.

### Amendment

4.—(1) The 2011 Regulations are amended as follows.

(2) In regulation 2—

- (a) in paragraph (1), omit the definitions of “GCSE”, “GCSE examination”, “level 1 threshold”, “level 2 threshold”, “NQF” and “NQF level”; and
- (b) omit paragraph (2).

(3) In regulation 5—

(a) for paragraph (4) substitute—

“(4) The six achievements set by the governing body based on its evaluation of the performance of pupils at the school in relation to the previous school year.”; and

(b) omit paragraph (5).

(4) In regulation 8, for paragraph (3) substitute—

“(3) In this regulation, “pupils’ attainment results” means the percentage who achieve the six achievements set by the governing body in accordance with regulation 5(4).”

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(1) S.I. 2011/1945 (W. 212), amended by S.I. 2016/236 (W. 88) and S.I. 2018/766 (W. 153).

(2) Section 56(2) of the Education Act 1997 (“the 1997 Act”) provides that the 1997 Act must be construed as one with the Education Act 1996 and as such the term “school year” has the meaning given to it in section 579(1) of the Education Act 1996 (c. 56).

*Kirsty Williams*

Minister for Education, one of the Welsh Ministers

5 June 2019

## **Explanatory Memorandum to the School Performance and Absence Targets (Wales) (Amendment) Regulations 2019.**

This Explanatory Memorandum has been prepared by Education and Public 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

### **Cabinet Secretary's Declaration**

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

Kirsty Williams AC/AM  
**Cabinet Secretary for Education**

6 June 2019

## **PART 1**

### **1. Description**

The School Performance and Absence Targets (Wales) (Amendment) Regulations 2019 (“the 2019 Regulations”) amend the target setting requirements in respect of key stage 4 pupils on school governing bodies in *the School Performance and Absence Targets (Wales) Regulations 2011 (“The Target Setting Regulations”)*.to:

The amendments provide greater flexibility to school governing bodies to determine suitable targets focused on the real priorities for improvement in their own individual context.

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

None.

### **3. Legislative background**

These Regulations are made under the following powers:

- Sections 19 and 54(3) and (4) of the Education Act 1997.
- Sections 30(1) and (2) and 210 of the Education Act 2002.

The Welsh Ministers’ functions in section 19 and 54 of the Education Act 1997 were conferred on the Secretary of State and were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999. The functions in section 30 and 210 of the Education Act 2002 were conferred directly on the National Assembly for Wales. All of the above functions of the National Assembly for Wales were vested in the Welsh Ministers by paragraphs 30 of Schedule 11 to the Government of Wales Act 2006.

These Regulations are being made under the negative resolution procedure.

### **4. Purpose and intended effect of the legislation**

Working with the teaching profession, local government, regional consortia, Estyn, unions and international experts, the Welsh Government has been undertaking a fundamental review of the current accountability system. Our ongoing reforms of the education system play an important part in *Our National Mission* - to raise standards for and extend opportunities for all our young people.

The place of school target setting requirements and the extent to which they

are managed and/or legislated by the Welsh Government within the future Evaluation and Improvement arrangements is part of the wider discussions and reform development that is ongoing. It is our intention that these arrangements will be tested and in place ready for the new curriculum. In the meantime, the current Target Setting Regulations do not align with imminent transitional performance reporting arrangements in schools.

Our National Mission sets out our vision for an education accountability system that is fair, coherent, proportionate, transparent, and based on our shared values for Welsh education. As part of our Action Plan, we committed to agree transitional evaluation arrangements with schools in order to support deeper collaborations between schools and secure the raising of standards for all learners – we have already made a number of changes to support this:

The Education (Amendments Relating to Teacher Assessment Information) (Wales) Regulations 2018 amended, a number of Regulations to stop the routine publication of Teacher Assessment data and National and Numeracy Tests data at a school, local authority and regional level – this is helping to ensure that schools can now focus on assessment of the pupil, rather than using data as part of a high stakes accountability system.

In addition to the above changes, in May 2018 the Cabinet Secretary for Education announced a suite of new Key Stage 4 'interim performance measures' for secondary schools, which have been co-developed with the education sector. These interim measures will replace the current (2018) suite of Key Stage 4 performance measures, including the Level 2 inclusive<sup>1</sup>, Level 2 and Level 1 threshold measures, from 2019 (i.e. the results for pupils reaching the end of year 11 in summer 2019).

The current Target Setting Regulations do not align with the implementation of these interim measures (those regulations refer specifically to current Key Stage 4 measures that will soon become obsolete). This does not make sense as such targets would no longer be realistic or measureable and therefore would not support effective self-evaluation and improvement.

It is also unreasonable to expect schools to set targets for the achievement of measures that will not be reported for that academic year. A more immediate change is therefore needed for the interim period, prior to the implementation of the new Evaluation and Improvement arrangements, and any necessary revisions to statutory target setting requirements.

The purpose of the 2019 Regulations is to amend the Key Stage 4 target setting requirements in the Target Setting Regulations to remove the requirement for school governing bodies to set performance measure-specific targets in favour of increasing the number of non-specified targets that must be set based on school self-evaluation. The policy objectives of this approach are to:

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<sup>1</sup> The Level 2 inclusive is the Level 2 threshold including an approved relevant qualification in English or Welsh first language and Mathematics

- i. Remove the requirement for school governing bodies to set targets for the achievement of what will soon become obsolete school performance measures at Key Stage 4; and
- ii. Move to a more flexible target setting system at Key Stage 4 which provides greater autonomy for schools to set genuine targets focused on the real priorities for improvement in the school's own context.

## **5. Consultation**

Details of the consultation to be undertaken are included in section 8 within the RIA below.



## 6. PART 2 – REGULATORY IMPACT ASSESSMENT

### Introduction

This Regulatory Impact Assessment (RIA) has been developed to consider the regulatory implications of proposed changes to the target setting requirements on schools in Wales.

The Target Setting Regulations require school governing bodies to set, and submit to the Local Authority, targets in every school year for achievements relating to the performance of pupils in Key Stage 2, Key Stage 3 and Key Stage 4.

In summary, current requirements are that these targets must be set against the following prescribed achievements:

Key Stage 2	Key Stage 3	Key Stage 4
Percentage of pupils to achieve level 4 or above for each of the core subjects	Percentage of pupils to achieve level 5 or above for each of the core subjects	Percentage of pupils to achieve the level 1 threshold
		Percentage of pupils to achieve the level 2 threshold including an approved relevant qualification in English or Welsh first language and Mathematics  <i>(this is commonly known as the 'Level 2 inclusive' and is referred to as such throughout this RIA)</i>
The <b>three</b> achievements (at each Key Stage) set by the governing body based on its evaluation of the performance of pupils at the school in teacher assessments as set out in the data for that school in relation to the previous school year		

The 'interim' Key Stage 4 performance measures announced by the Cabinet Secretary for Education in May 2018 will replace the current (2018) suite of Key Stage 4 performance measures, including the Level 2 inclusive, Level 2 and Level 1 threshold measures, from 2019. The Welsh Government will no longer be publishing information for the 'old' measures from 2019 i.e. the results for pupils reaching the end of year 11 in summer 2019.

The current target setting requirements do not align with these interim measures as they require targets for year 11 pupils at Key Stage 4 to be set against what will soon become obsolete performance measures (namely the Level 2 inclusive and Level 1 threshold measures). In addition, Schedule 2 of the regulations

specifies publication requirements in relation to 'the Level 2 threshold' which will also no longer be reported from 2019.

In view of the above changes, the requirements set out in the Target Setting Regulations no longer make sense. This is because any such targets set by school governing bodies would no longer be realistic or measureable and therefore would not fulfil their purpose in supporting effective self-evaluation and improvement.

The place of target setting requirements and the extent to which they are managed and/or legislated by the Welsh Government within the future Evaluation and Improvement arrangements is part of the wider discussions and reform development that is ongoing. It is our intention that these arrangements will be tested and in place ready for the new curriculum. In the meantime, the current target setting requirements do not align with imminent transitional performance reporting arrangements in schools

The target setting requirements will therefore need to be changed for the interim period prior to the implementation of the new Evaluation and Improvement arrangements. This will require the Target Setting Regulations to be amended.

It would not be appropriate to simply replace the current performance measure-specific targets at Key Stage 4 with equally specific targets relating to the interim performance measures, particularly given their interim nature. Moreover, it is acknowledged that the current requirements are overly specific in nature, placing a disproportionate emphasis on the achievement of quantitative performance measures. This can limit the school's ability to set genuine targets focused on the real priorities for improvement in their own context, and raising aspiration for all learners. Feedback from the sector points to a need for greater autonomy for schools.

In order to address the above issues, the Welsh Government proposes new regulations to amend the existing target setting requirements in relation to Key Stage 4 only. The proposal is to remove the requirement for school governing bodies to set performance measure-specific targets whilst also increasing the required number of non-specified targets that school governing bodies are required to set based on school self-evaluation.

At Key Stages 2 and 3, the requirements are still very much aligned with existing assessment arrangements. As such, and whilst the curriculum reform is ongoing, it would be prudent not to rush into making similar changes to requirements for Key Stages 2 and 3. This document therefore focusses solely on changes to Key Stage 4 with requirements for Key Stages 2 and 3 remaining unchanged.

This Regulatory Impact Assessment reviews the proposal, focusing on changes through proposed new regulations, *'The School Performance and Absence Targets (Wales) (Amendment) Regulations 2019'*.

## **7. Options**

Two options have been considered in the analysis of the costs and benefits. These are:

## **Option 1 - Keep the status quo**

The option of doing nothing would mean all current target setting requirements in the Target Setting Regulations remain in place. School governing bodies would continue to be required to set targets each year for year 11 pupils at Key Stage 4 in relation to:

- The percentage of pupils to achieve the Level 1 threshold;
- The percentage of pupils to achieve the Level 2 threshold including an approved relevant qualification in English or Welsh first language and Mathematics (Level 2 inclusive);
- Three achievements based on the school governing body's evaluation of the performance of pupils at the school in teacher assessments as set out in the data set for that school in relation to the previous school year.

As we will no longer be reporting on these measures at a sub national level, this would be a waste of effort and resources.

## **Costs and benefits of Option 1**

### **Costs**

Avoiding change would risk a direct opportunity being lost in improving outcomes for children and young people in Wales, and an indirect opportunity cost upon the economic gains of our future generations.

The direct financial costs of the 'Do Nothing' approach should not, by definition, change, as processes would continue as normal. Those costs that are already incurred under the 'Do Nothing' approach are due to the administrative burdens and resource requirements needed to comply with current regulations. The burden of these costs are to be found upon school governing bodies, teachers, headteachers and other school practitioners, as well as Local Authorities, regional Consortia, inspection authorities etc. However, as no additional costs have been identified as part of the 'Do Nothing' option, this assessment reviews qualitative information only.

However, as the current performance measures referred to in the regulations will no longer be reported at a sub national level by Welsh Government after 2018, schools would need to use their own data to set and measure achievements against the targets which have been set. This is likely to result in additional financial burden on schools.

### **Benefits**

When used correctly, target setting is an important tool in school improvement, focussing on how schools are currently doing, what more they should aim to achieve and what they must do to make it happen. The actions that flow from an effective target setting process should lead to raised educational standards and improved outcomes for all pupils.

The 'interim' Key Stage 4 performance measures announced by the Cabinet Secretary for Education will replace the current (2018) suite of Key Stage 4 performance measures, including the Level 2 inclusive, Level 2 and Level 1 threshold measures, from 2019<sup>2</sup>. The Welsh Government will no longer be publishing information for the 'old' measures from 2019.

The current target setting requirements do not align with these interim measures as they require targets at Key Stage 4 to be set against what will soon become obsolete performance measures (namely the Level 2 inclusive and Level 1 threshold measures). Schedule 2 of the Regulations also refers to the Level 2 threshold which will also no longer be reported.

Therefore, whilst the target requirements themselves would not have changed under the 'Do Nothing' approach, it would nevertheless become more difficult for schools to set meaningful targets, to monitor their progress and effectively evaluate their success. This undermines the purpose of target setting for self-evaluation, with potential consequential social costs impacting upon current and future learners receiving education.

It is acknowledged that the current requirements are overly specific, placing a disproportionate emphasis on the achievement of quantitative performance measures. This can limit the school's ability to set genuine targets focused on the real priorities for improvement in their own context. Feedback from the sector points to a need for greater autonomy for schools.

In *Successful Futures*, Professor Donaldson cites a 2014 OECD report which found weaknesses in the current approach to accountability processes in Wales, such that the balance between accountability and improvement has been poor and that there is scope for a greater emphasis on improvement. A key benefit of the alternative option (Option 2) is creating a more flexible target setting system better aligned with the general direction of travel towards subsidiarity and increased autonomy of schools and with a greater focus on self-evaluation and improvement.

## **Option 2 - Amend the Target Setting Regulations (*preferred option*)**

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<sup>2</sup> Welsh Government will be reporting on the new 'interim' school performance measures in autumn 2019 for those who will have reached the end of Key Stage 4 in the preceding summer i.e. the year 11 finishing in summer 2019.

The second option is to amend the Target Setting Regulations to:

- i) remove the requirement on school governing bodies to set performance measure-specific targets for year 11 pupils at Key Stage 4;
- ii) increase the required number of non-specified targets that must be set by school governing bodies for year 11 pupils at Key Stage 4 based on school self-evaluation.

This would mean school governing bodies would no longer be required to set targets against specified performance measures. Instead, school governing bodies would be required to set six targets (up from the current three) based on school self-evaluation including its evaluation of the performance of pupils at the school in teacher assessments as set out in the data set for that school in relation to the previous school year. In practice, this means school governing bodies would no longer have to set targets in relation to the following prescribed achievements:

- Percentage of pupils to achieve the Level 1 threshold
- Percentage of pupils to achieve the Level 2 threshold including an approved relevant qualification in English or Welsh first language and Mathematics (Level 2 inclusive).

Instead, they would need to set additional non-specified targets based on school self-evaluation including their evaluation of the performance of pupils at the school in teacher assessments as set out in the data set for that school in relation to the previous school year. The Target Setting Regulations already require school governing bodies to set three targets in this way and this proposal would increase that requirement to six targets with additional flexibility for targets to be based on wider school self-evaluation, not solely limited to an evaluation of teacher assessments

## **Costs and benefits of option 2**

### **Costs**

There are potential costs associated with the time required for teachers, head teachers and other school practitioners to become familiarised with the new targets. However, this cost is expected to be limited due to the simple nature and limited extent of the change.

This potential cost is expected to be incurred in 2018-19. Officials have followed similar costing methods for familiarisation of similar amending regulations - The Education (Amendments Relating to Teacher Assessment Information) (Wales) Regulations 2018<sup>3</sup>. We have allowed 1.5 hours for headteachers to read and disseminate information, coming to an estimated one-off cost as follows:

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<sup>3</sup> <http://www.legislation.gov.uk/wsi/2018/766/contents/made>

- 1,391 head teachers and 186 acting head teachers. Totalling 1,577.
- 1.5 hours time at £34.68 per hour<sup>4</sup>
- Total estimated cost of familiarisation, £82,030

It has been identified that the removal of consistent measures to set targets against could lead to short term social costs to local authorities, consortia and Elected Members, due to a reduced ability to aggregate pupil level targets to cohort, school and Local Authority targets. However, the practice of aggregating targets in this way has been misused for accountability purposes and to make judgements about individual schools, Local Authorities or regional consortia. Welsh Government has made our expectation clear that school targets should only be used to support self-evaluation and should not be aggregated up in this way. This practice is an additional source of pressure on providers that can prevent the most appropriate curriculum being offered to an individual due to the external judgment on performance based solely on one or more quantitative performance measures viewed out of context.

The greater flexibility and potential wider variation in targets under Option 2 should help deter this behaviour and result in more effective target setting and improved monitoring, which is predicted to offset this cost.

## **Benefits**

This option would remove the requirement for schools to set targets for the achievement of soon-to-be obsolete school performance measures, thereby addressing the additional burden on school governing bodies and Local Authorities, which was discussed as a cost under the alternative option at Option 1.

By removing the specific nature of school target setting requirements in favour of requiring more non-specified alternatives, this will result in a more flexible approach to target setting, providing schools with greater autonomy to set genuine targets, focused on the real priorities for improvement in their own context. This addresses feedback from the sector regarding a need for greater autonomy for schools.

Improving the target setting system in this way is intended to lead to raised educational standards and ultimately result in social (educational) benefits. Whilst targets will not, on their own, raise standards or bring about improvements, effective self-evaluation, and the actions that flow from it, should deliver educational improvement and improved outcomes for all pupils.

In addition, by removing the specific nature of targets, this better aligns the target setting requirements with the emerging Evaluation and Improvement arrangements committed to in *Our National Mission*, towards subsidiarity and increased autonomy for schools to self-improve and manage their own journeys.

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<sup>4</sup> Estimated resource costs for headteachers have been calculated using hourly pay Senior professionals of educational establishments in Wales, from the provisional 2016 Annual Survey of Hours and Earnings (ASHE).

Under this option, target setting is refocused on its intended purpose to support effective self-evaluation and away from accountability.

This option should not result in any additional resource, and therefore cost, burden for governing bodies or Local Authorities given the parallel removal of the prescribed targets and their familiarity with target setting in this way.

### **Chosen Option**

Based on an analysis of the costs and benefits of each option, Option 2 has been determined as the preferred option. Whilst there are potential costs to the sector with regards to familiarisation, these are significantly outweighed by the benefits combined with the prevention of additional costs and missed opportunities that which would otherwise occur under Option 1.

The qualitative benefits of the preferred option also significantly outweigh those of Option 1. The preferred option removes an unreasonable duty on schools, is expected to lead to an improved system of target setting, providing greater autonomy to schools encouraging genuine targets focussed on improving outcomes for learners.

### **8. Consultation**

A full consultation was undertaken with a broad range of stakeholders seeking views on the policy approach. The consultation was launched on 21 January and closed on 8 March (6 weeks). A consultation report has been drafted and will be published shortly. There was a low response to the consultation with a total of only 15 responses from stakeholders including local authorities, schools, and teaching unions. Overall it is clear that stakeholders are generally in support of the proposals and policy intentions. There were some individual concerns about inconsistency with KS2 and KS3 target setting requirements as well as requests for further guidance on target setting. These concerns have been addressed as the Welsh Government Response included in the consultation report. Please see below:

<https://gov.wales/changes-target-setting-requirements-schools>

### **9. Competition Assessment**

A full competition assessment has not been completed in the case of this proposal, because the proposed legislative changes do not affect businesses, charities or the voluntary sector. There is not likely to be any detrimental effects on competition, as the proposed 2019 Regulations are intended to affect the public sector alone. A competition filter test is shown below.

<b>The competition filter test</b>	
<b>Question</b>	<b>Y/N</b>

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





Llywodraeth Cymru  
Welsh Government

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## **WRITTEN STATEMENT BY THE WELSH GOVERNMENT**

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**TITLE**            **The School Performance and Absence Targets (Wales)  
(Amendment) Regulations 2019**

**DATE**            **20 June 2019**

**BY**                **Kirsty Williams, Minister for Education**

In May last year, I announced new interim Key Stage 4 performance measures for secondary schools for 2019. The new measures shift the focus from ‘average’ to raising our aspirations for all learners. They also remove the emphasis on the Level 2 inclusive measure for GCSE and the narrow focus on borderline grades that the past use of threshold measures cultivated. As set out in our draft Evaluation and Improvement arrangements that I published in February, there will be a greater focus on school self-evaluation. In our reformed system, every child will count and schools will be evaluated according to the difference they make to the progress of every child.

Following the introduction of the interim Key Stage 4 performance measures, amendments are being made to the School Performance and Absence Targets (Wales) Regulations 2011. The revised regulations are due to come into force on 1 September 2019 and will reflect the recent changes to Key Stage 4 performance measures. As such, the amendments will only apply to target setting arrangements for pupils at Key Stage 4. The amended regulations will require the number of non-specific targets to be increased from 3 to 6 and the requirement for governing bodies to set measure-specific targets will be removed.

I believe these changes will provide greater autonomy for schools to self-improve and develop genuine targets that contribute to raising the quality of education in schools and standards of learners’ achievements. Targets are at their most powerful when they are used alongside teachers’ own assessment and monitoring of pupils’ progress to inform what needs to happen in the classroom. It is important to retain some level of reassurance to ensure targets are appropriate. Local authorities will, therefore, still be required to approve targets. However, I want to be absolutely clear that school targets should only be used to support self-evaluation and should not be aggregated up to a local authority measure of performance to hold schools to account.

I think it would be premature to try to implement any more significant target setting changes during this stage of curriculum reform, and I do not propose to make any immediate changes to Key Stage 2 or 3 target setting requirements, as they are still very much aligned with current assessment arrangements.

Links to the consultation on the changes to school target setting requirements in Wales and summary of responses, can be found below:

[https://gov.wales/sites/default/files/consultations/2019-01/consultation-document-proposed-changes-to-the-target-setting-requirements-on-schools\\_0.pdf](https://gov.wales/sites/default/files/consultations/2019-01/consultation-document-proposed-changes-to-the-target-setting-requirements-on-schools_0.pdf)

<https://gov.wales/changes-target-setting-requirements-schools>



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## WRITTEN STATEMENT BY THE WELSH GOVERNMENT

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**TITLE**            **The Environment (Legislative Functions from Directives) (EU Exit) Regulations 2019**

**DATE**            **07 June 2019**

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

### **The Environment (Legislative Functions from Directives) (EU Exit) Regulations 2019**

#### **Policy Overview of the SI**

The 2019 Regulations address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the European Union.

#### European Directly Applicable Instruments amended by the 2019 Regulations

- Council Directive 2004/42/CE of the European Parliament and of the Council on the limitation of emissions of VOCs, which aims to reduce VOCs in certain paints and varnishes, and vehicle refinishing products, in order to prevent or reduce air pollution resulting from the contribution of VOCs to the formation of tropospheric ozone.
- Council Directive 2008/50/EC of the European Parliament and of the Council on ambient air quality and cleaner air for Europe, which sets legally binding limits for concentrations in outdoor air of major air pollutants that impact public health, such as particulate matter (PM) and nitrogen dioxide (NO<sub>2</sub>).
- Council Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control), which lays down rules on integrated prevention and control of pollution arising from certain industrial activities.
- Council Directive 2015/2193/EU of the European Parliament and of the Council on the limitation of emissions of certain pollutants into the air from medium combustion plants, which lays down rules to control emissions of sulphur dioxide (SO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>) and dust into the air from medium combustion plants, and rules to monitor emissions of carbon monoxide (CO).

- Council Directive 2016/2284/EU of the European Parliament and the Council on the reduction of national emissions of certain atmospheric pollutants, which establishes the emission reduction commitments for the Member States' anthropogenic atmospheric emissions of specified pollutants, requires that national air pollution control programmes be drawn up, adopted and implemented, and that emissions of specified pollutants, as well as their impacts, be monitored and reported.
- Council Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise, which defines a common approach intended to avoid, prevent or reduce on a prioritised basis the harmful effects, including annoyance, due to exposure to environmental noise.
- Council Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE), which lays down general rules aimed at the establishment of INSPIRE, for the purposes of Community environmental policies and policies or activities which may have an impact on the environment.
- Council Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy, which establishes a framework within which Member States are to take the necessary measures to achieve or maintain good environmental status in the marine environment by the year 2020 at the latest.
- Council Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, which aims to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater.
- Council Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration, which establishes specific measures to prevent and control groundwater pollution and depletion.
- Council Directive 2008/105/EC of the European Parliament and of the Council of 16 December 2008 on environmental quality standards in the field of water policy, which lays down environmental quality standards (“EQS”) for priority substances and certain other pollutants as provided for in the Water Framework Directive (the “EQS Directive”), with the aim of achieving good surface water chemical status.
- Council Directive 2006/7/EC of the European Parliament and of the Council of 15 February 2006 concerning the management of bathing water quality, which aims to preserve, protect and improve the quality of bathing waters.

- Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption, which aims to protect human health from the adverse effects of any contamination of water intended for human consumption by ensuring that it is wholesome and clean.
- Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment, which concerns the collection, treatment and discharge of urban waste water and the treatment and discharge of waste water from certain industrial sectors and aims to protect the environment from the adverse effects of such waste water discharges.
- Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources, which has the objective of reducing water pollution caused or induced by nitrates from agricultural sources and preventing further such pollution.
- Council Directive 86/278/EEC of 12 June 1986 on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture.

### **Purpose of the amendments**

This instrument transfers a series of legislative functions that are currently conferred by European Union (“EU”) Directives upon the European Commission (“the Commission”), to public authorities in the United Kingdom (“UK”), so that they can be exercised at national level after the UK leaves the EU.

The 2019 Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments are available here: <https://beta.parliament.uk/work-packages/01V7glYC>

### **Any impact the SI may have on the legislative competence of the National Assembly for Wales and/or the Welsh Ministers’ executive competence**

#### **Marine**

Welsh Ministers have some executive marine functions in the Welsh Zone, and as a result, their consent will be required where this executive competence is, or is likely to be affected by regulations made by the Secretary of State under Part 6 to the Marine Strategy Regulations 2010.

The National Assembly for Wales has some legislative competence within the marine area in relation to Wales, subject to reservations such as shipping, oil and gas. As a result, prior to making regulations under the new Part 6 of the Marine Strategy Regulations 2010, the Secretary of State must obtain the consent of the Welsh Ministers where regulations apply in relation to Wales (as defined in section 158(1) of the Government of Wales Act 2006 (GoWA 2006)). Functions transferred to the Secretary of State constitute functions of a Minister of the Crown for the purposes of Schedule 7B to GoWA 2006. A future Assembly

Bill seeking to remove or modify these functions could trigger a requirement to consult the UK Government.

### **Air Quality, Water and environmental noise**

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

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

### **Why consent was given**

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

## UK MINISTERS ACTING IN DEVOLVED AREAS

### 133 - The Environment (Legislative Functions from Directives) (EU Exit) Regulations 2019

*Laid in the UK Parliament: 6 June 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	N/A
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 6
SICM under SO 30A (because amends primary legislation)	Not required

#### **Scrutiny procedure**

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

#### **Commentary**

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of, and paragraph 2(1) of Schedule 7 to, the European Union (Withdrawal) Act 2018.

These Regulations amend a number of EU Directives to transfer a series of legislative functions that are currently conferred upon the European Commission, to be exercisable instead by the Secretary of State, and in relation to matters devolved to Wales, the Welsh Ministers. This is to ensure that such functions can be exercised at national level after the UK leaves the EU. In most cases, where a power is to be exercised by the Welsh Ministers, it will also be possible for the Secretary of State to exercise the powers on their behalf, but only with the consent of the Welsh Ministers.

The functions being conferred on the Secretary of State and, where appropriate, the Welsh Ministers, generally gives a limited power to update legislation to reflect technical and scientific developments.

The Directives which are amended by the Regulations deal with air quality, environmental noise, infrastructure for spatial information, marine and water quality.

These Regulations also apply to Scotland and Northern Ireland. Legal Advisers make the following comments in relation to the Welsh Government's statement dated 7 June 2019 regarding the effect of these Regulations:

1. The Statement is not specific enough to enable Legal Advisers to ascertain the impact that the Regulations may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence. For example, the paragraphs under the heading "Air Quality, Water and environmental noise" confirm the law as set out in the Government of Wales Act 2006 but do not contain an assessment of the specific impact of the Regulations on competence in those policy areas.

Save for the point made at 1 above, the above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect. We are satisfied that the Regulations are making corrections rather than new policy in devolved areas.

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



# Agenda Item 5.1



Cabinet Office

Rt Hon David Lidington CBE MP  
Chancellor of the Duchy of Lancaster  
Minister for the Cabinet Office  
70 Whitehall  
London  
SW1A 2AS

Web [www.cabinetoffice.gov.uk](http://www.cabinetoffice.gov.uk)

Our Ref: CDL/3125

Bruce Crawford MSP  
Convener of the Finance and Constitution Committee  
The Scottish Parliament  
Edinburgh  
EH99 1SP

11 June 2019

Dear Bruce,

Thank you for your letter of 26 April on Parliamentary scrutiny of intergovernmental relations (IGR) and common frameworks. Parliamentary scrutiny is indeed essential to achieving accountability and I am grateful for your recommendations on the subject.

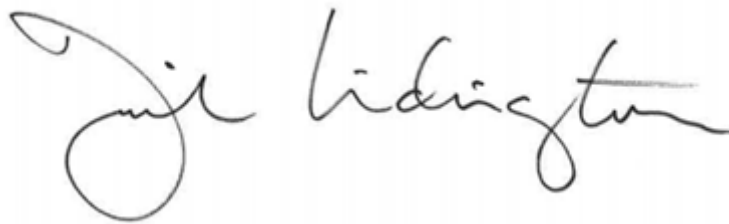
In your letter, you identify transparency, accountability and respect for the confidentiality of discussions as the three main principles governing the relationships between governments and their respective legislatures. The UK Government deeply values these core principles and remains fully committed to them.

You also highlight that both the Scottish and Welsh governments have reached agreements with their legislatures to commit to these principles and to report on IGR meetings, decision-making and the content of agreements. The UK Government acknowledges the importance of information-sharing between the executive and legislative and is currently investigating how to improve Parliamentary scrutiny. As you know, I regularly provide UK Parliamentary committees with updates on IGR. I most recently wrote on 3 May and, on this occasion, extended my updates to relevant committees of the devolved legislatures. Officials from all four administrations are working to develop a set of principles to underpin relations in the future, including transparency and effective communication. We will continue to promote collaboration and build close working relationships between the UK Government and the devolved administrations.

I welcome your recommendations on the role of Parliaments in the scrutiny of common frameworks. The UK Government acknowledges the key scrutiny role played by the devolved legislatures and has made clear we welcome increased Parliamentary scrutiny as this programme of work moves forward. Under the terms of the EU(Withdrawal) Act, we publish quarterly updates on progress in developing common frameworks, which are

laid before the UK Parliament. The most recent of these was published on 16 May. We also recently responded to the report of the Scottish Parliament Finance and Constitution Committee, and we recognise the contribution they are making to our work on common frameworks. As you note, different frameworks will be implemented according to the specific needs of the policy area and through different types of vehicle including primary and secondary legislation, Memoranda of Understanding, concordats or other mechanisms depending on the particular context. Officials from all administrations are currently developing more detailed proposals relating to the agreement and scrutiny of frameworks.

I welcome your continued interest in IGR and common frameworks and remain open to your suggestions on shaping the final IGR agreement as well as ensuring an appropriate level of parliamentary scrutiny of common frameworks.

A handwritten signature in black ink, reading "David Lidington". The signature is written in a cursive style with a large initial 'D' and a long, sweeping tail.

**Rt Hon David Lidington CBE MP**

# Agenda Item 5.2

Y Dirprwy Weinidog Iechyd a Gwasanaethau Cymdeithasol  
Deputy Minister for Health and Social Services



Llywodraeth Cymru  
Welsh Government

Our ref : MA L JM 451 19

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

18 June 2019

Dear Mick

I would like to thank the Constitutional and Legislative Affairs Committee for their scrutiny of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill to date.

During the evidence session I undertook to write to confirm the burden of proof in a criminal trial for battery following the removal of the defence, this is set out in Annex A. I have also taken the opportunity to address two other points that arose during the session, namely consideration of civil-based legislation and why ECHR considerations were not set out in the legislative competence section of the Explanatory Memorandum.

I trust the attached information is helpful.

**Julie Morgan AC/AM**

Y Dirprwy Weinidog Iechyd a Gwasanaethau Cymdeithasol  
Deputy Minister for Health and Social Services

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

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

## Annex A:

### **Burden of proof in a criminal trial for battery following the removal of the defence**

In a criminal trial the Crown will bear the legal burden of proving the offence against the defendant (if they fail to do so the defendant is acquitted). The defendant will often bear an evidential burden in relation to defences he/she wishes to run. The evidential burden does not oblige the defendant to prove the particular defence but simply to raise evidence of the defence and it is the Crown that has the legal burden to prove beyond reasonable doubt that the defence is not applicable on the facts.

The Charging Standard on Offences Against the Person is regularly updated to reflect changes in law and practice. It was amended following the change in the law resulting from section 58 of the Children Act 2004, which outlines that the defence of reasonable punishment would no longer be available for charges of actual or grievous bodily harm or child cruelty. The Crown Prosecution Service agree that the Charging Standard will require further updating to address the removal of the defence of reasonable punishment in Wales. There are operational issues to be agreed and resolved by the Implementation Group before the Standard can be updated.

During the evidence session to the Children Young People and Education Committee on the 6 June, Barry Hughes Chief Crown Prosecutor for Wales was asked about this matter. He explained that *“There's no change whatsoever to the burden of proof, nor to the standard of proof”* he went on to say that *“if we remove the defence of reasonable chastisement, ... it doesn't alter the basic responsibility of the prosecution, which is to establish its case beyond a reasonable doubt. And if the defence raise an argument and say, “Well look, that was a lawful act; I was only doing what I thought was reasonable in the circumstances”, it's for the Crown to disprove that to the criminal standard which is beyond a reasonable doubt.”*

I thought it would also be helpful to add the following points:

#### **Civil-based legislation**

Suzy Davies AM asked about *“leaving the criminal law as it is and introducing some new civil-based legislation to try and achieve the same culture change”*.

This course of action would not fulfil the aim of the legislation in helping to protect children's rights by giving children legal protection from physical punishment, as the defence would still exist in criminal law. In addition, those working in unregulated settings would still be able to rely on the defence if they used physical punishment – unlike in regulated settings where physical punishment is already prohibited.

Detailed information setting out why the legislation is necessary is included in paragraphs 3.37 to 3.56 of the Explanatory Memorandum alongside the Equality Impact Assessment, the Children's Rights impact assessment and the Justice Impact assessment.

#### **Explanatory memorandum and ECHR article 8**

There was a question about why the legislative competence section of the Explanatory Memorandum did not contain more information on the Human Rights analysis.

The 14<sup>th</sup> November 2018 letter to you from the former First Minister Carwyn Jones AM confirmed that *“due to the change to reserved powers and there no longer being a need to*

*refer to conferred subjects, the legislative competence section of Explanatory Memoranda in the future are more likely to accord with the statement in the Fees Bill (Renting Homes (Fees etc.) (Wales) Act) Explanatory Memorandum.“*

In the case of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill the Equality Impact Assessment explicitly addresses article 8 as well as other relevant articles of the European Convention on Human Rights.



Ein cyf/Our ref: MA-L/CG/0475/19

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

18 June 2019

Dear Mick,

## LEGISLATION (WALES) BILL

The purpose of this letter is to inform the Committee that I have today laid a revised Explanatory Memorandum to the Legislation (Wales) Bill before the National Assembly. The Memorandum reflects the changes made to the Bill by the Committee during the Stage 2 proceedings.

One of those changes was to section 2(7) which now provides for an annual report to the National Assembly on progress made under programmes to improve the accessibility of Welsh law. Paragraph 161 of the Explanatory Memorandum (and Table 6) covers the annual report, but I also draw your attention to new paragraphs 217 and 218 which cover post-implementation review. You will see this reflects commitments already given by the Government to review the effectiveness of the Bill mid-way through the first programme to be brought forward under Part 1 (i.e. in 2023).

During the Stage 2 proceedings I was invited to write to the Committee with our views on how Assembly Members could influence the content of the mid-term review. I strongly support the role of the Assembly in considering and evaluating reports made to it by the Counsel General under section 2(7), and indeed the mid-term review report. Similarly, I encourage the Assembly to review the legislation at any time it chooses to.

Assembly Members have already begun to influence the shape and content of the mid-term review, in the Stage 1 reports of both this Committee and of the Finance Committee. For example, you will see from paragraph 217 of the revised Explanatory Memorandum, that the mid-term review will include details of the resourcing and financial implications of delivering the first programme. The evidence that this Committee took during Stage 1 also covered reporting, and we will take account of that as we develop the approach to reporting.

Thought now needs to be given to the nature of the review, so that we can ensure any baseline information can start to be collected or any particular kind of engagement with stakeholders can be planned effectively. The views of the Committee would be welcome in helping to develop that early thinking.

Bae Caerdydd • Cardiff Bay  
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

I envisage that the mid-term review would primarily do two things: firstly, it would report on the progress of implementing the programme to improve the accessibility of Welsh law and to consider whether the proposed content of it should be changed; and secondly (and more generally) it will provide post-legislative scrutiny of the Bill itself, including the Parts 2 and 3.

I would like to make my officials available to the Committee – perhaps once the Bill has been passed and my position statement on consolidation and codification has been published – to understand what the Committee would consider important, and to gain a fuller appreciation of how current Members could envisage a future Assembly engaging in the process of the mid-term review. I hope that these conversations could help shape any views this Committee may want to pass on to its successor towards the end of this Assembly.

Please be assured that in the meantime I will continue to take account of the work of the Committee in scrutinising this Bill, to help shape how the post-implementation review should be undertaken.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jeremy Miles', with a stylized flourish at the end.

**Jeremy Miles AM**

Y Cwnsler Cyffredinol a Gweinidog Brexit  
Counsel General and Brexit Minister

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

20 June 2019

Dear Mick,

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

I intend to lay the above regulations in the National Assembly on or around 24 June 2019. The regulations will ensure support for all students, including EU students, under the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019 ("the Master's Regulations") continues uninterrupted after the UK leaves the EU. The regulations will be subject to the negative procedure and will be made using powers under the Teaching and Higher Education Act 1998 rather than the European Union (Withdrawal) Act 2018 ("the Withdrawal Act"). I thought a note in advance of the regulations being laid setting out the reasons why these regulations are being made under those powers rather than under the Withdrawal Act would assist you. The same approach was taken for the Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019, which I wrote to you about on 21 February 2019.

Student support has been made available by the Welsh Ministers to postgraduate Master's students from the EU since 2017. A student who falls into certain residence categories will, subject to meeting other criteria, be eligible for support from the Welsh Ministers. The policy of the Welsh Ministers to support these students is not directly affected by the UK's exit from the EU. I issued a Written Statement on 2 July 2018 to announce a continuation of existing policy for the 2019/20 academic year.

The Master's Regulations employ various territorial descriptions and references to the EU and EEA and nationals of both. As the UK exits the EU, technical amendments are required

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

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



to ensure the language of the legislation will continue to implement existing policy effectively.

Paragraph 1(1) of Schedule 2 to the Withdrawal Act contains a power for the Welsh Ministers to make regulations to “prevent, remedy or mitigate” any failure of “retained EU law” to operate effectively arising from the UK’s withdrawal from the EU. There is an argument to be made that the proposed amendment regulations should be made under this power. However, I believe that the usual education law powers cited above are more appropriate for these purposes.

No new policy is being introduced and the proposed regulations will not do anything to recreate or replace EU law in domestic legislation. These amendments are in line with other technical amendments routinely made to student finance legislation using the cited powers.

An important consideration in this decision was accessibility of the law. The Committee noted the importance of maintaining the accessibility of the law in the EU Exit SI programme in its report on scrutiny of legislation to leave the EU. Student support legislation is extremely complex and often amended. Regulations made under the Withdrawal Act will not be directly connected to education legislation, making discovery of the appropriate legislation more difficult than it ought to be for the public. Equally, in terms of accessibility, the title of the regulations will include “EU Exit” therefore making it clear that there is a link to the departure of the UK from the EU.

I hope this assists your Committee.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kirsty Williams', is centered on the page. The signature is written in a cursive, flowing style.

**Kirsty Williams AC/AM**  
Y Gweinidog Addysg  
Minister for Education