

# Agenda – Constitutional and Legislative Affairs Committee

---

Meeting Venue:

Committee Room 1 – Senedd

Meeting date: 1 July 2019

Meeting time: 14.30

For further information contact:

Gareth Williams

Committee Clerk

0300 200 6362

[SeneddCLA@assembly.wales](mailto:SeneddCLA@assembly.wales)

---

- 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)–21–19 – Paper 1 – Statutory instruments with clear reports  
Negative Resolution Instruments
  - 2.1 SL(5)422 – The Town and Country Planning (Blight Provisions) (Wales) Order  
2019  
  
Affirmative Resolution Instruments
  - 2.2 SL(5)423 – The Prescribed Objects for Intimate Piercing (Wales) Regulations  
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)421 – The Electricity (Offshore Generating Stations) (Miscellaneous  
Amendments) (Wales) Regulations 2019  
  
(Pages 3 – 11)

CLA(5)–21–19 – Paper 2 – Report



CLA(5)-21-19 – Paper 3 – Regulations

CLA(5)-21-19 – Paper 4 – Explanatory Memorandum

#### **4 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3 but have implications as a result of the UK exiting the EU**

14.40-14.45

##### **4.1 SL(5)424 – The Education (Student Support) (Postgraduate Master’s Degrees) (Wales) (Amendment) (EU Exit) Regulations 2019**

(Pages 12 – 23)

CLA(5)-21-19 – Paper 5 – Report

CLA(5)-21-19 – Paper 6 – Regulations

CLA(5)-21-19 – Paper 7 – Explanatory Memorandum

#### **5 Written statements under Standing Order 30C**

14.45-14.50

##### **5.1 WS-30C(5)134 – The European Grouping of Territorial Cooperation (EU Exit) Regulations 2019**

(Pages 24 – 27)

CLA(5)-21-19 – Paper 8 – Statement

CLA(5)-21-19 – Paper 9 – Commentary

##### **5.2 WS-30C(5)135 – The Reach etc. (Amendment etc.) (EU Exit) (No. 3) Regulations 2019**

(Pages 28 – 31)

CLA(5)-21-19 – Paper 10 – Statement

CLA(5)-21-19 – Paper 11 – Commentary

#### **6 Paper(s) to note**

14.50-14.55

##### **6.1 Letter from the First Minister: British-Irish Council**

(Page 32)

CLA(5)-21-19 – Paper 12 – Letter from the First Minister, 24 June 2019

##### **6.2 Letter from the Counsel General: Senedd and Elections (Wales) Bill**

(Pages 33 – 35)

CLA(5)-21-19 – Paper 13 – Letter from the Counsel General, 25 June 2019

**6.3 Letter from the Counsel General to the Solicitor General: Legislation (Wales) Bill**

(Pages 36 – 40)

CLA(5)-21-19 – Paper 14 – Letter from the Counsel General, 26 June 2019

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

14.55

**8 Forward Work Programme – discussion**

14.55–15.10

**Date of the next meeting – 8 July.**

## Statutory Instruments with Clear Reports

01 July 2019

### SL(5)422 – The Town and Country Planning (Blight Provisions) (Wales) Order 2019

#### **Procedure: Negative**

---

This Order applies in relation to sections 149 to 171 of the Town and Country Planning Act 1990. These sections allow the holders of certain interests in categories of land to require an appropriate authority to acquire their interest. One such interest is the interest of an owner-occupier of a hereditament (in this context, land which can be inherited), where the annual value of the hereditament does not exceed such amount as set by the Welsh Ministers. This Order increases the value limit from £34,800 to £36,000 in relation to Wales.

**Parent Act:** Town and Country Planning Act 1990

**Date Made:** 11 June 2019

**Date Laid:** 13 June 2019

**Coming into force date:** 05 July 2019

### SL(5)423 – The Prescribed Objects for Intimate Piercing (Wales) Regulations 2019

#### **Procedure: Affirmative**

---

Part 5 of the Public Health (Wales) Act 2017 makes it an offence for a person in Wales to perform (or make arrangements to perform) an intimate piercing on a person under the age of 18. Currently, however, that prohibition only relates to intimate body piercings involving items of jewellery.



These Regulations prescribe “any object that is not jewellery” as an object for the purposes of paragraph (b) in the definition of “body piercing” in section 94(1) of the 2017 Act, but only insofar as that definition applies for the purposes of the offence in Part 5.

These Regulations will therefore bring within the scope of the offence in section 95 of the 2017 Act an intimate piercing involving any object that is not jewellery.

**Parent Act:** Public Health (Wales) Act 2017

**Date Made:**

**Date Laid:**

**Coming into force date:**



# SL(5)421 – The Electricity (Offshore Generating Stations) (Miscellaneous Amendments) (Wales) Regulations 2019

## Background and Purpose

These Regulations make amendments to the Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019, the Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019 and the Electricity (Offshore Generating Stations) (Inquiries Procedure) (Wales) Regulations 2019.

The Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019 and the Electricity (Offshore Generating Stations) (Variations of Consent) Regulations 2019 are amended to:

- replace the term ‘national newspaper’ with ‘a newspaper circulating in Wales, England and Northern Ireland’; and
- remove reference to the Department of the Environment and replace it with district council in Northern Ireland, where applicable.

The Electricity (Offshore Generating Stations) (Inquiries Procedure) (Wales) Regulations 2019 are amended to:

- specify a period in which publication of the notice of inquiry must take place; and
- provide for the publication of the notice of inquiry by local advertisement.

## Procedure

Negative.

## Technical Scrutiny

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

## Merits Scrutiny

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

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

The Committee raised concerns about the use of the term ‘national newspaper’ during technical scrutiny as it was not clear whether ‘national’ referred to a Welsh national newspaper or a UK newspaper. The Committee welcomes the amendment to the term and appreciates the Welsh Government addressing its concerns.

## 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 not required.

### **Legal Advisers**

**Constitutional and Legislative Affairs Committee**

**24 June 2019**



**2019 No. (W.)**

**ELECTRICITY, WALES**

The Electricity (Offshore  
Generating Stations)  
(Miscellaneous Amendments)  
(Wales) Regulations 2019

**EXPLANATORY NOTE**

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

These Regulations amend the Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019 (“the Applications for Consent Regulations”), the Electricity (Offshore Generating Stations) (Inquiries Procedure) (Wales) Regulations 2019 (“the Inquiries Procedure Regulations”) and the Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019 (“the Variation of Consents Regulations”).

Regulations 2 and 3 amend the Applications for Consent Regulations and the Variation of Consents Regulations respectively. They replace references to “the Department of the Environment” in Northern Ireland to “a district council” to reflect changes made by the Planning (Northern Ireland) Act 2011 which transferred the majority of planning functions and decision making responsibilities to district councils. They also replace the term “national newspapers” with “newspapers circulating in Wales, England and Northern Ireland”.

Regulation 4 amends regulation 16 of the Inquiries Procedure Regulations to define “by local advertisement” and to prescribe when first publication of the notice of the inquiry required by regulation 16(1) must be made. Other minor amendments are made to regulation 16.

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



**2019 No. (W.)**

**ELECTRICITY, WALES**

The Electricity (Offshore  
Generating Stations)  
(Miscellaneous Amendments)  
(Wales) Regulations 2019

*Made* 11 June 2019

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

*Coming into force* 5 July 2019

The Welsh Ministers, in exercise of the powers conferred on them by sections 36(8A) and 36C(2) and (6) of the Electricity Act 1989<sup>(1)</sup>, make the following Regulations:

**Title and commencement**

1. The title of these Regulations is the Electricity (Offshore Generating Stations) (Miscellaneous Amendments) (Wales) Regulations 2019 and they come into force on 5 July 2019.

**Amendments to the Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019**

2.—(1) The Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019<sup>(2)</sup> are amended as follows.

---

(1) 1989 c. 29. Section 36(8A) was inserted by section 69(1) and paragraph 47 of Schedule 6 to the Wales Act 2017 (c. 4) ("the 2017 Act"). Section 36C was inserted by section 20(1) and (2) of the Growth and Infrastructure Act 2013 (c. 27). Section 36C(6) was amended by section 39(12) of the 2017 Act. There are other amendments to section 36C which are not relevant to these Regulations.

(2) S.I. 2019/295 (W. 73).

(2) In regulation 5, in paragraphs (2) and (4), for “the Department of the Environment” substitute “any district council”.

(3) In regulation 7(1)(b), for “national newspapers” substitute “newspapers circulating in Wales, England and Northern Ireland”.

**Amendments to the Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019**

**3.**—(1) The Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019(1) are amended as follows.

(2) In regulation 2 in the definition of “relevant planning authority”, in paragraph (b), for “the Department of the Environment” substitute “a district council”.

(3) In regulation 5(5)(c), for “national newspapers” substitute “newspapers circulating in Wales, England and Northern Ireland”.

**Amendments to the Electricity (Offshore Generating Stations) (Inquiries Procedure) (Wales) Regulations 2019**

**4.**—(1) The Electricity (Offshore Generating Stations) (Inquiries Procedure) (Wales) Regulations 2019(2) are amended as follows.

(2) In regulation 16—

(a) in paragraph (1) after the word “notice” insert “by local advertisement”;

(b) after paragraph (1) insert—

“(1A) The date when the notice under paragraph (1) is first published must be not less than two weeks ending with the day before the date fixed for the beginning of the inquiry.”;

(c) omit paragraph (2);

(d) in paragraph (3) for “paragraphs (1) and (2)” substitute “paragraph (1)”.

*Julie James*

Minister for Housing and Local Government, one of the Welsh Ministers

11 June 2019

---

(1) S.I. 2019/297 (W. 75).

(2) S.I. 2019/304 (W. 77).

**Explanatory Memorandum to the Electricity (Offshore Generating Stations) (Miscellaneous Amendments) (Wales) Regulations 2019.**

**Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Electricity (Offshore Generating Stations) (Miscellaneous Amendments) (Wales) Regulations 2019.

Julie James AM

**Minister for Housing and Local Government**

13 June 2019

## **1. Description**

- 1.1 The Electricity (Offshore Generating Stations) (Miscellaneous Amendments) (Wales) Regulations 2019 make amendments to the Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019, the Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019 and the Electricity (Offshore Generating Stations) (Inquiries Procedure) (Wales) Regulations 2019 in particular.
- 1.2 The Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations and the Electricity (Offshore Generating Stations) (Variations of Consent) Regulations 2019 are amended to:
  - Replace the term ‘national newspaper’ with ‘a newspaper circulating in Wales, England and Northern Ireland’; and
  - Remove reference to the Department of the Environment (“DoE”) and replace it with district council in Northern Ireland, where applicable.
- 1.3 The Electricity (Offshore Generating Stations) (Inquiries Procedure) (Wales) Regulations 2019 are amended to:
  - Specify a period in which publication of the notice of inquiry must take place; and
  - Provide for the publication of the notice of inquiry by local advertisement.

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

- 2.1 Regulation 2 addresses the technical reporting point raised by the Constitutional and Legislative Affairs Committee (“CLAC”) in the report dated 14 March 2019. Regulation 3 addresses the technical reporting point raised by the CLAC in the report dated 13 March 2019. Regulation 4 addresses technical points 2 and 3 raised by the CLAC in the report dated 12 March 2019.

## **3. Legislative Background**

- 3.1 These Regulations are made under sections 36(8A) and 36C(2) and (6) of the Electricity Act 1989 (“the 1989 Act”).
- 3.2 Section 36(8A) gives the Welsh Ministers power to make provision about the grant of consents under section 36 of the 1989 Act in relation to generating

stations in respect of which they are the appropriate authority. The Welsh Ministers are the appropriate authority in relation to generating stations (or proposed generating stations) in Welsh waters which do not or will not when constructed or extended exceed 350MW (section 36(10)).

3.3 Section 36C(2) and (6) give the Welsh Ministers power to make provision about the variation of a consent under section 36 of the 1989 Act relating to generating stations in relation to which they are the appropriate authority.

3.4 The Regulations are being made under the negative resolution procedure.

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

4.1 The overall policy aim is to provide a workable process in which offshore generating stations within the competence of the Welsh Ministers can be consented under s.36 of the 1989 Act. These Regulations clarify certain details. Were this legislation not made interpretation of certain terms and aspects of procedure, may be open to debate.

4.2 In addition, alterations to legislation are made for the purpose of accuracy and to reflect the transfer of certain planning functions from the DoE in Northern Ireland to district councils in Northern Ireland.

The Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019; and  
The Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019

4.3 Specifically, the intended effect of this legislation is to amend the term 'national newspaper' to refer to 'a newspaper circulating in Wales, England and Northern Ireland'. The purpose of this is to provide clarity for the applicant.

4.4 Scotland has been omitted from the definition as no offshore generating station in Welsh waters would be of material interest to bodies and individuals in Scotland due to the lack of any bordering waters between Wales and Scotland. There are bordering waters between Wales and both England and Northern Ireland.

4.5 The purpose of these Regulations is also to provide accuracy. Certain planning functions in Northern Ireland have been transferred from the DoE to district councils in Northern Ireland. The effect is that notice, where applicable, shall be given to those relevant district councils in Northern Ireland rather than the DoE.

The Electricity (Offshore Generating Stations) (Inquiries Procedure) (Wales) Regulations 2019

4.6 The purpose of these regulations is to provide certainty and consistency in respect of when the publication of the notice of inquiry must take place and the definition of 'local advertisement'. The effect of the legislation is to specify a period in which the notice of inquiry must take place and to provide for the publication of a notice of inquiry by 'local advertisement', as already defined in the Regulations.

**5. Consultation**

5.1 Due to the minor and technical nature of these Regulations, no specific consultation was held.

**6. Regulatory Impact Assessment**

6.1 The requirement for a Regulatory Impact Assessment ("RIA") has been assessed against the RIA code for subordinate legislation. In this instance, an RIA was not considered necessary.

6.2 This statutory instrument is made as a consequence of comments made by CLAC and is intended to clarify how the law is stated. It comprises minor amendments to the existing procedures under the 1989 Act which have no policy impact.

# Agenda Item 4.1

## SL(5)424 – The Education (Student Support) (Postgraduate Master's Degrees) (Wales) (Amendment) (EU Exit) Regulations 2019

### Background and Purpose

---

These amending Regulations make amendments to the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019 ("the 2019 Regulations") to reflect the withdrawal of the United Kingdom from the European Union and to ensure that students who would have been eligible for support under the 2019 Regulations immediately before exit day will continue to be eligible for support on and after exit day.

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

The 2019 Regulations employ various territorial and institutional descriptions in relation to the residency criteria. These include references to the EU and EEA. As the UK will no longer be a member of either, technical amendments are required to ensure the language of the legislation will continue to implement existing policy effectively. The changes will take effect when the new legislation comes into force on exit day.

### Procedure

---

Negative.

### Technical Scrutiny

---

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

### Merits Scrutiny

---

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

### Implications arising from exiting the European Union

---

These Regulations make technical amendments to the 2019 Regulations to ensure the language of the legislation continues to implement existing policy effectively when the United Kingdom leaves the European Union. Despite relating to the withdrawal of the UK from the EU, these Regulations are not being made using the powers under the European Union (Withdrawal) Act 2018 ("the Withdrawal Act"). Instead, the Regulations are made using powers under the Teaching and Higher Education Act 1998 ("the 1998 Act").

The Welsh Government acknowledge in the Explanatory Memorandum that there is an argument that the Regulations should be made under the Withdrawal Act but consider the powers under the 1998 Act to be more appropriate. The Welsh Government submit the following in the Explanatory Memorandum:



*“No new policy is being introduced and the 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 to the law. 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 includes “EU Exit”, making it clear that there is a link to the departure of the UK from the EU.”*

## Government Response

---

A government response is not required.

### **Legal Advisers**

**Constitutional and Legislative Affairs Committee**

**26 June 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. 1039 (W. 182)**

**EXITING THE EUROPEAN  
UNION, WALES**

**EDUCATION, WALES**

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

**EXPLANATORY NOTE**

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

The Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019 ("the 2019 Regulations") provide for the making of grants and loans to students who are ordinarily resident in Wales for postgraduate master's degree courses that begin on or after 1 August 2019.

These Regulations make amendments to the 2019 Regulations to reflect the withdrawal of the United Kingdom from the European Union and to ensure that students who would have been eligible for support immediately before exit day will continue to be eligible for support.

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

---

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

---

**2019 No. 1039 (W. 182)**

**EXITING THE EUROPEAN  
UNION, WALES**

**EDUCATION, WALES**

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

*Made* 20 June 2019

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

*Coming into force in accordance with  
regulation 1(2)*

The Welsh Ministers, in exercise of the powers conferred on 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.

## PART 1

### TITLE AND COMMENCEMENT

#### **Title and commencement**

**1.**—(1) The title of these Regulations is the Education (Student Support) (Postgraduate Master’s Degrees) (Wales) (Amendment) (EU Exit) Regulations 2019.

(2) These Regulations come into force on exit day.

## PART 2

### AMENDMENTS

**2.** The Education (Student Support) (Postgraduate Master’s Degrees) (Wales) Regulations 2019(3) are amended in accordance with regulations 3 to 5.

#### **Amendment to regulation 16**

**3.** In regulation 16(1)(b)(iii) (students becoming eligible during a course), after “EU national” insert “, a person described in paragraph 8(1)(a)(ii) of Schedule 2 or of a person who is eligible other than as a family member under paragraph 8(1) of Schedule 2 by virtue of paragraph 8(1A) of that Schedule”.

- 
- (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) of the Teaching and Higher Education Act 1998 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 functions under subsections (a), (c) and (k) exercisable concurrently with the Secretary of State. The Secretary of State’s function in section 42 was transferred, in 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).
- (3) S.I. 2019/895 (W. 161).

## Amendments to Schedule 2

4.—(1) Schedule 2 (categories of eligible students) is amended as follows.

(2) In paragraph 1(2)(d) (category 1 – persons settled in the United Kingdom), after “the territory comprising” insert “the United Kingdom, Gibraltar,”.

(3) In paragraph 6 (category 6 – workers, employed persons, self-employed persons and their family members)—

- (a) in sub-paragraphs (1)(b) and (2)(b), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;
- (b) in sub-paragraphs (3) and (4), omit “other than the United Kingdom” each time it occurs.

(4) In paragraph 7(1)(d) and (e) (category 7 – persons who are settled in the United Kingdom and have exercised a right of residence elsewhere), after “the territory comprising” insert “the United Kingdom, Gibraltar,”.

(5) In paragraph 8 (category 8 – EU nationals)—

- (a) for sub-paragraph (1)(a) substitute—
  - “(a) who, on the first day of the first academic year of the course, is—
    - (i) an EU national,
    - (ii) a United Kingdom national who has exercised a right of residence, or
    - (iii) the family member of a person in sub-paragraph (i) or (ii),”;
- (b) in sub-paragraph (1)(c) and (d), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;
- (c) after sub-paragraph (1) insert—
  - “(1A) Any description of person who would have been eligible under sub-paragraph (1) immediately before exit day is to be eligible on and after exit day.”;
- (d) in sub-paragraph (2)(a), omit “other than a United Kingdom national”;
- (e) in sub-paragraph (2)(d), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;
- (f) for sub-paragraph (4) substitute—
  - “(4) For the purposes of sub-paragraph (1)(a), a United Kingdom national has exercised a right of residence if that person has resided in Gibraltar or 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.”

(6) For paragraph 9 (category 9 – children of Swiss nationals) substitute—

**“Category 9 – Children of Swiss nationals**

**9.—(1)** 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 United Kingdom, Gibraltar, the EEA and Switzerland throughout the three-year period preceding the first day of the first academic year of 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 United Kingdom, Gibraltar, the EEA and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).

(2) Any description of person who would have been eligible under this paragraph immediately before exit day is to be eligible on or after exit day.”

(7) In paragraph 10(1)(c) (category 10 – children of Turkish workers), after “the territory comprising” insert “the United Kingdom, Gibraltar,”.

(8) In paragraph 11 (ordinary residence – additional provision)—

- (a) after “the territory comprising” insert “the United Kingdom, Gibraltar,” each time it occurs;
- (b) in sub-paragraph (5), after “an area” insert “other than the United Kingdom or Gibraltar”.

**Amendments to Schedule 3**

**5.—(1)** Schedule 3 (calculation of income) is amended as follows.

(2) In paragraph 4(1) (independent eligible students), in Case 6, before “the European Union” insert “the United Kingdom, Gibraltar and”.

(3) In paragraph 9 (taxable income)—

- (a) in sub-paragraph (1)(b), for “another member State” substitute “a member State”;
- (b) for sub-paragraph (2) substitute—

“(2) For the purposes of sub-paragraph (1)(b), where the income tax legislation of—

  - (a) the United Kingdom and one or more member State, or
  - (b) more than one member State,

applies to the person in respect of the year under consideration, the person’s total income from all 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.”
- (4) In the following paragraphs, for “another member State” substitute “a member State”—
  - (a) paragraph 11 (deductions for the purpose of calculating residual income of an eligible student), Deduction B;
  - (b) paragraph 15 (deductions for the purpose of calculating residual income of persons other than eligible student), Deduction A;
  - (c) paragraph 18 (treatment of income not treated as income for income tax purposes), each time it occurs;
  - (d) paragraph 19(1) (P’s income in currency other than sterling).

*Kirsty Williams*

Minister for Education, one of the Welsh Ministers  
20 June 2019

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

This Explanatory Memorandum has been prepared by 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) (Amendment) (EU Exit) Regulations 2019.

Kirsty Williams AM  
**Minister for Education**  
24 June 2019

## **PART 1**

### **1. Description**

The Education (Student Support) (Postgraduate Master's Degrees) (Wales) (Amendment) (EU Exit) Regulations 2019 ("the Regulations") make technical amendments to the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019, to ensure the language of the legislation will continue to implement existing policy effectively when the United Kingdom leaves the European Union.

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

The Regulations will ensure support for certain students, including EU nationals, continues uninterrupted after the UK leaves the EU. The policy of the Welsh Ministers to support these students is not directly affected by the UK's exit from the EU.

The Regulations will be subject to the negative procedure and made using powers under the Teaching and Higher Education Act 1998 rather than the European Union (Withdrawal) Act 2018 ("the Withdrawal Act").

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 Regulations should be made under this power. However, the usual education law powers cited above are more appropriate for these purposes.

No new policy is being introduced and the 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. 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 includes "EU Exit", making it clear that there is a link to the departure of the UK from the EU.



### **3. Legislative background**

This instrument is not being made under the Withdrawal Act but relates to the withdrawal of the UK from the EU because certain provisions of student support legislation require updating if policy is to be preserved.

The Regulations will be subject to the negative resolution procedure and will be made using powers under sections 22 and 42(6) of the Teaching and Higher Education Act 1998 (“1998 Act”).

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).

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

To be eligible for postgraduate Master’s support, a student must meet certain criteria, including residency requirements. EU nationals, UK nationals who have exercised free movement rights to reside elsewhere in the European Economic Area (“EEA”) or Switzerland, and EEA and Swiss migrant workers and their family members, may all be eligible for support. It has been decided that this policy will not be affected by exit from the EU for the 2019/20 academic year.

The Education (Student Support) (Postgraduate Master’s Degrees) (Wales) Regulations 2019 employ various territorial and institutional descriptions in relation to the residency criteria. These include references to the EU and EEA. As the UK will no longer be a member of either, technical amendments are required to ensure the language of the legislation will continue to implement

existing policy effectively. This is consistent with the changes already made across the full suite of student support legislation. The changes will take effect when the new legislation comes into force on exit day.

The Regulations amend Schedule 2 to the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019 to ensure that a person who would have been eligible for support under this paragraph before exit day will continue to be eligible on and after exit day.

## **5. Consultation**

Consultation was not undertaken as there is no change to policy. The purpose of the Regulations is solely to make amendments necessary to preserve existing policy.

## **6. Regulatory Impact Assessment (RIA)**

An RIA has not been conducted. The Regulations make technical amendments that are necessary to preserve existing policy.



---

## WRITTEN STATEMENT BY THE WELSH GOVERNMENT

---

<b>TITLE</b>	<b>The European Grouping of Territorial Cooperation (EU Exit) Regulations 2019</b>
<b>DATE</b>	<b>20 June 2019</b>
<b>BY</b>	<b>Rebecca Evans AM, Minister for Finance and Trefnydd</b>

### **The European Grouping of Territorial Cooperation (EU Exit) Regulations 2019**

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

The European Grouping of Territorial Cooperation (EGTC) regulations are primarily concerned with facilitation and promotion of cross-border, transnational and inter-regional territorial cooperation, with the aim of strengthening Union economic, social and territorial cohesion. An EGTC can be supported via the European Regional Development Fund (ERDF) and/ or the European Social Fund (ESF).

This SI will revoke Regulation (EC) No 1082/ 2006 of the European Parliament and of the Council on a European grouping of territorial cooperation (EGTC) and Regulation (EU) No 1302/2013 of the European Parliament and of the Council of 17 December 2013 amending Regulation (EC) No 1082/2006 on a European grouping of territorial cooperation (EGTC) and will permit public authorities, inclusive of devolved Welsh public authorities, to apply and become members of EGTCs as third country members, upon agreement of the Welsh Ministers and the Secretary of State.

#### **The [retained EU] Law which is being amended**

- Regulation (EC) No 1082/2006 of the European Parliament and of the Council on a European grouping of territorial cooperation (EGTC), as it applies in the United Kingdom
- Regulation (EU) No 1302/2013 of the European Parliament and of the Council of 17 December 2013 amending Regulation (EC) No 1082/2006 on a European grouping of territorial cooperation (EGTC) as regards the clarification, simplification and improvement of the establishment and functioning of such groupings, as it applies in the United Kingdom
- The European Grouping of Territorial Cooperation Regulations 2007(a) S.I. 2007/1949, Parts 2 and 3 of the Schedule
- The Companies Act 2006 (Consequential Amendments etc) Order 2008(b) S.I. 2008/948, Paragraph 36 of Schedule 1

- The European Grouping of Territorial Cooperation Regulations 2015 S.I. 2015/1493
- The Insolvency (England and Wales) Rules 2016 (Consequential Amendments and Savings) Rules 2017 S.I. 2017/369, The last entry in the table in paragraph 1 of Schedule 2
- The Insolvency (England and Wales) and Insolvency (Scotland) (Miscellaneous and Consequential Amendments) Rules 2017(c) S.I. 2017/1115, Regulations 31 and 32

### **The purpose of the amendments**

The purpose of the amendment is to correct deficiencies in legislation arising from the UK leaving the European Union relating to participation in European Groupings of Territorial Cooperation.

European Groupings of Territorial Cooperation (EGTC) are legal entities, designed to facilitate and promote cross-border, transnational and interregional cooperation, and permits public authorities to participate in cooperation activities as a member of the EGTC.

If the UK withdraws from the EU, the UK will no longer be able to participate in cooperation activities as a member state. The amendments will permit UK public authorities to become members of EGTCs as third country members.

In the case of an application to join an EGTC by a devolved Welsh public authority, the SI contains a provision preventing the Secretary of State from approving or rejecting an application without seeking agreement from the Welsh Ministers

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: <https://beta.parliament.uk/work-packages/LFb9foWn>

### **Any impact the SI may have on the Welsh Ministers' executive competence**

This SI will require the Secretary of State to obtain agreement from Welsh Ministers to approve or reject an application in the event a devolved Welsh public authority applies to participate in a European Grouping of Territorial Cooperation. There is no impact on the Welsh Ministers' executive competence.

### **Any impact the SI may have on the legislative competence of the National Assembly for Wales**

The SI has no impact on the National Assembly for Wales' legislative competence.

### **Why consent was given**

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

## UK MINISTERS ACTING IN DEVOLVED AREAS

### 134 - The European Grouping of Territorial Cooperation (EU Exit) Regulations 2019

*Laid in the UK Parliament: 18 June 2019*

#### **Sifting**

Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	2 July 2019
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	2 July 2019
Date sifting period ends in UK Parliament	4 July 2019
Written statement under SO 30C:	Paper 8
SICM under SO 30A (because amends primary legislation)	Not required

#### **Scrutiny procedure**

Outcome of sifting	Not known
Procedure	Negative or affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

#### **Commentary**

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

The Statement made by the Welsh Government states that: “the purpose of the amendment is to correct deficiencies in legislation arising from the UK leaving the European Union relating to participation in European Groupings of Territorial Cooperation.

“European Groupings of Territorial Cooperation (EGTC) are legal entities, designed to facilitate and promote cross-border, transnational and interregional cooperation, and permits public authorities to participate in cooperation activities as a member of the EGTC.

“If the UK withdraws from the EU, the UK will no longer be able to participate in cooperation activities as a member state. The amendments will permit UK public authorities to become members of EGTCs as third country members.

“In the case of an application to join an EGTC by a devolved Welsh public authority, the SI contains a provision preventing the Secretary of State from approving or rejecting an application without seeking agreement from the Welsh Ministers.”

Legal Advisers make the following comments in relation to the Welsh Government’s statement dated 20 June 2019 regarding the effect of these Regulations.

The Welsh Government’s statement correctly explains the effect of the legislation. Under these Regulations, a public authority that wishes to become a member of an EGTC must make a written application to the Secretary of State for approval to do so. The statement correctly indicates that in relation to a devolved Welsh authority the Secretary of State must seek the approval of the Welsh Ministers before granting approval of the application. If the Welsh Ministers do not agree, the application must be refused. On the other hand, if the Secretary of State is minded to reject the application, even if the Welsh Ministers consider that it should be approved, the Secretary of State must reject the application.

Neither the statement made by the Welsh Ministers, nor the Explanatory Memorandum accompanying the Regulations, explains why an application by devolved Welsh authorities should be made to the Secretary of State and not to the Welsh Ministers. **Legal advisers recommend that clarification is sought on why the powers are not conferred on the Welsh Ministers.**

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

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



---

## WRITTEN STATEMENT BY THE WELSH GOVERNMENT

---

<b>TITLE</b>	<b>The Reach etc. (Amendment etc.) (EU Exit) (No. 3) Regulations 2019</b>
<b>DATE</b>	<b>24 June 2019</b>
<b>BY</b>	<b>Rebecca Evans AM, Minister for Finance and Trefnydd</b>

### **The Reach etc. (Amendment etc.) (EU Exit) (No. 3) Regulations 2019**

#### **The Law which is being amended**

- The REACH etc. (Amendment etc.) (EU Exit) Regulations 2019

#### **The purpose of the amendments**

The 2019 Regulations is needed to make adjustments in order to resolve a developing issue concerning applications for authorisation under EU REACH, which are still awaiting decision. The need arises from the effects of the extension of Article 50 to the end of October, and a recent European Court of Justice judgement against the Commission which overturned some existing authorisations.

There is an increasing backlog of undecided authorisation applications to use Substances of Very High Concern (SVHCs) under the EU REACH regime. UK downstream users and applicants for authorisation would not be able to manufacture, place on the market or use the chemicals concerned from exit day. The proposed resolution is to amend the REACH Statutory Instruments to give UK companies a window of opportunity to apply for authorisations after exit day to ensure the chemicals industry and supply chain is not disrupted.

The immediate cause for concern is a number of pending authorisation decisions on a range of chromate compounds, including, chromium trioxide and sodium dichromate. These substances are used mostly for specialist engineering and aerospace uses such as: chrome plating, various coating processes and polyurethane castings. Given the size of the aerospace and automotive industries in the UK and the associated supply chains, it is likely that a substantial number of companies (100s) would be affected. Defra's assessment is that the impact of the loss of these substances to the supply chain has heightened and continues to grow.

A further issue has arisen due to the extension of Article 50 to 31 October, in that further SVHC latest application and sunset dates are passing during this period. As a result, UK applicants would need to have submitted applications to the European Chemicals Agency (ECHA) (rather than the UK authorities) to be able to continue to use those substances. After exit, they will need to redirect their applications to the UK authorities but they will not be covered by the provision that enables continued use after the sunset date where a decision is still pending, because they will not have been able to make their UK applications before the Latest Application Date. This instrument amends the REACH SI by setting new sunset and Latest Application Dates for these SVHCs as listed in Annex XIV of UK REACH. The instrument moves the latest application and sunset dates to 18 months after exit day.

The REACH SI applies some provisions by means of fixed dates or in other cases through “floating” timings tied to exit day. The extensions to Article 50 have implications for these dates of timings, which in some cases will affect the regulator’s duties or stop some businesses from benefitting from a provision. In these cases, the dates or timings should be amended to preserve the original intent.

The REACH SI has also been corrected to reflect recent technical amendments to the EU REACH Regulation and changes being made to the REACH SI through a DHSC exit SI.

This instrument will avoid the risk of disruption to chemical supply chains and provide industry with greater business certainty that the substances for which they have applied for authorisation will be attended to.

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

### **Any impact the SI may have on the legislative competence of the National Assembly for Wales**

The 2019 Regulations have no impact on the National Assembly for Wales’ legislative competence.

### **Any impact the SI may have on the Welsh Ministers’ executive competence**

The 2019 Regulations do not impact on the Welsh Ministers ability to exercise functions in relation to Wales.

### **Why consent was given**

As set out above, the 2019 Regulations makes adjustments in order to resolve a developing issue concerning applications for authorisation under EU REACH, which are still awaiting decision. The need arises from the effects of the extension of Article 50 to the end of October, and a recent European Court of Justice judgement against the Commission which overturned some existing authorisations



## UK MINISTERS ACTING IN DEVOLVED AREAS

### **135 - The Reach etc. (Amendment etc.) (EU Exit) (No. 3) Regulations 2019** *Laid in the UK Parliament: 19 June 2019*

#### **Sifting**

Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	2 July 2019
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	2 July 2019
Date sifting period ends in UK Parliament	8 July 2019
Written statement under SO 30C:	Paper 10
SICM under SO 30A (because amends primary legislation)	N/A

#### **Scrutiny procedure**

Outcome of sifting	Not known
Procedure	Negative or affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

#### **Commentary**

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

These Regulations amend the REACH etc. (Amendment etc.) (EU Exit) Regulations 2019 (the "REACH SI"). It inserts a new transitional provision relating to applications for authorisations to use chemical substances of very high concern - which gives UK companies a window of opportunity to apply for authorisations after exit day to ensure the chemicals industry and supply chain is not disrupted.

The REACH SI applies some provisions by means of fixed dates or in other cases through "floating" timings tied to exit day. The extensions to Article 50 have implications for these timings, which in some cases will affect the regulator's duties or stop some businesses from benefitting from a provision. These Regulations also make some minor amendments relating

to dates, cross-references and recent amendments to the EU REACH regulation.

Legal Advisers agree with the statement laid by the Welsh Government dated 24 June 2019 regarding the effect of these Regulations.

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

# Agenda Item 6.1

Y Gwir Anrhy/ Rt Hon Mark Drakeford AC/AM  
Prif Weinidog Cymru/First Minister of Wales



Llywodraeth Cymru  
Welsh Government

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

24 June 2019

Dear Mick,

I am writing to notify you that the 32<sup>nd</sup> Summit of the British-Irish Council will be held later this week, hosted by the UK Government. I will be representing the Welsh Government, along with the Minister for Environment, Energy and Rural Affairs. The Summit will receive an update on the work of the Council, and will discuss relevant political developments.

The Summit will be preceded by a Ministerial meeting to review progress in respect of the Energy work stream, which the Minister for Environment, Energy and Rural Affairs will attend.

A Communiqué will be agreed at the Summit, and I will update Members on the publication of the Communiqué, and the outcome of the Summit, in due course.

Best wishes,

Mark

**MARK DRAKEFORD**

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1NA

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

**Pack Page 32**

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.

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

## Agenda Item 6.2



Llywodraeth Cymru  
Welsh Government

Eich cyf/Your ref  
Ein cyf/Our ref

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

SeneddCLA@assembly.wales

25 June 2019

Dear Mick,

During my evidence session with the Committee on 29 April, I undertook to provide further information about our proposals in respect of the Electoral Commission.

As the Committee will know, the Government of Wales Act 2006 (as amended by the Wales Act 2017) gives the Assembly legislative competence in relation to devolved elections. This includes competence to legislate on certain matters relating to the Electoral Commission's activities in relation to Assembly and local government elections in Wales, such as:

- the financing of the Electoral Commission;
- the preparation, laying and publication by the Electoral Commission of reports about the performance of its functions; and
- provision by the Electoral Commission of copies of regulations it has made, altered or revoked.

In the light of these changes, the Welsh Government believes that oversight and reporting of the work of the Electoral Commission in relation to devolved elections should also be the responsibility of the Senedd, drawing on the arrangements set out in the Political Parties, Elections and Referendums Act 2000 (PPERA).

Section 27 of the Senedd and Elections (Wales) Bill as introduced sets out provisions which place a duty on the Senedd to consider the financial and oversight arrangements for the work of the Electoral Commission in relation to devolved Welsh elections and devolved

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1NA

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

[PSCGBM@gov.wales](mailto:PSCGBM@gov.wales) / [YPCCGB@llyw.cymru](mailto: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.

referendums with a view to making recommendations for reform of those arrangements. A further duty is placed on the Electoral Commission to respond to any recommendations relevant to it by laying a report before the Senedd. A power is also conferred on the Senedd to make provision in Standing Orders regarding the exercise of the functions conferred upon it by section 27 of the Bill.

The Government intends to seek to amend section 27 to make clearer the financial and accountability arrangements between the Senedd and the Electoral Commission. In essence, our objective is to ensure that the Senedd should be placed under a duty to fund the Electoral Commission in respect of devolved elections in Wales, and that the Senedd should have oversight of the work of the Electoral Commission in so far as it relates to devolved Welsh elections.

We are continuing to refine our approach to this matter in discussions with the Electoral Commission and the Assembly Commission whilst also liaising with the Scottish Government. Our aims are to ensure:

- the responsibilities being undertaken are clear but that there is some discretion in how they are exercised; and
- there is as much consistency as possible between arrangements in Wales and those in Scotland, to assist the Electoral Commission with operational planning and delivery.

As this is a complex area of the law, and detailed discussions are ongoing, I am not in a position to confirm the final form of the amendments at present. However, I am confident that the work will be completed in time to table amendments at Stage 2.

Subject to the caveats I have outlined, I thought it would be helpful to outline my current thinking about the structure of the amendments. I envisage, subject to further consideration and legal advice, that the amendments will seek to:

- create a Committee of the Senedd (the Senedd Committee) chaired by the Llywydd with responsibility for the oversight of the work of the Electoral Commission in relation to devolved Welsh elections. No further detail on the structure of the Senedd Committee will be included in the Bill as this is a matter for the Senedd through its Business Committee decision-making and/or its Standing Orders. This approach also retains operational flexibility for the Senedd;
- clarifying the EC's duties in respect of devolved Welsh elections including:
  - laying before the Senedd the Welsh elements of the Electoral Commission's rolling 5 year plan and budget detailing how the Electoral Commission intends to exercise its functions in relation to devolved Welsh elections;
  - laying before the Senedd an Annual Report;
  - laying before the Senedd reports relating to Senedd elections and local government elections in Wales;
  - the preparation, revision and submission of Codes of Practice on candidate expenditure to the Welsh Ministers who, will in turn have to lay them before the Senedd;

- the preparation, revision and submission of Codes of Practice on the attendance of observers at devolved Welsh elections; and
- consultation with the Senedd on performance standards for ROs and EROs and reporting on those performance standards in relation to devolved Welsh elections.

We are also considering whether all of the Secretary of State's functions in relation to the Electoral Commission's role in devolved Welsh elections have been appropriately conferred on Welsh Ministers.

It is not my intention that the amendments will make provision about the mechanism for the financing of the Electoral Commission in the text of the Bill, because this can and should be dealt with via administrative arrangements – though amendments may prove to be necessary once further consideration has been given to these matters. The administrative arrangements should in my view, but subject to further work and legal advice, include:

- a funding formula, set out in a high level inter-institutional agreement, agreed between the Senedd, the Scottish Parliament, the Speaker's Committee and the Electoral Commission; and
- a commitment that whilst the Speaker's Committee retains overall control of the total budget and work plan of the Electoral Commission it would not exercise any decision making in relation to Wales or Scotland and would, in accordance with their new statutory duty, give regard to the recommendations of the Senedd Committee in giving final approval to the overall 5 year plan and budget.

Discussions are continuing – including between the Welsh Government and the UK Treasury – about the mechanism by which the funding would reach the Electoral Commission. There are two main options under consideration, both of which assume that the funding transfers from the UK Consolidated Fund to the Welsh Consolidated Fund:

- The Electoral Commission being paid directly from the Welsh Consolidated Fund.
- Electoral Commission funding being taken from the Welsh Consolidated Fund and ring-fenced as part of the Senedd Commission funding.

I hope this information is of use to the Committee, and I will keep the Committee updated on progress. Given the financial aspects of this work, I am copying this letter to the Chair of the Finance Committee. I am also copying it to the Llywydd, to the Minister for Housing and Local Government and to the Head of the Electoral Commission in Wales.



**Jeremy Miles AM**

Y Cwnsler Cyffredinol a Gweinidog Brexit  
Counsel General and Brexit Minister



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref: MA-L/CG/0409/19

Lucy Frazer QC MP  
Solicitor General  
Attorney General's Office  
5-8 The Sanctuary  
London SW1P 3JS

26 June 2019

Dear Lucy,

## LEGISLATION (WALES) BILL

May I, first of all, take this opportunity to congratulate you on your appointment as Solicitor General. I look forward to meeting you in due course.

This is a response to a letter of 25 April 2019 which I received from your predecessor, Robert Buckland QC MP, which set out concerns of the UK Government in relation to the Legislation (Wales) Bill.

Mr Buckland's letter argued that the Bill goes beyond the National Assembly's legislative competence. It made three points, all relating to the fact that the provisions about the interpretation and operation of legislation in Part 2 of the Bill are designed to apply to Welsh subordinate instruments made by the Welsh Ministers or other devolved Welsh authorities under Acts of the UK Parliament. That is the effect of section 3(2)(b) of the Bill and Mr Buckland's letter invited me to take forward an amendment to remove section 3(2)(b) from the Bill.

I do not share the view that section 3(2)(b) of the Bill is beyond the legislative competence of the National Assembly. Neither did the Llywydd (Presiding Officer) in the National Assembly. Our position is that the approach taken in Part 2 of the Bill is within the Assembly's competence.

I think it is helpful if I identify some key points at the outset, relevant to the objections which were raised in Mr Buckland's letter:

- The provisions in Part 2 of the Bill will apply to future subordinate instruments made by the Welsh Ministers and other devolved Welsh authorities under Acts of the UK Parliament.
- They will apply to those future subordinate instruments as a 'default position'. I use the phrase 'default position' because (as section 4 of the Bill expressly reflects) the operation

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1NA

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

[PSCGBM@gov.wales](mailto:PSCGBM@gov.wales) / [YPCCGB@llyw.cymru](mailto: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.

of the provisions in Part 2 will be displaced if there is express provision to the contrary or the context requires otherwise. That express provision or context could be found in the Act of Parliament under which the Welsh subordinate instrument is made, in the subordinate instrument itself, or indeed in any other relevant legislation.

- The 'default position' contained in Part 2 will provide a clear backdrop to what the Welsh Ministers or other devolved Welsh authorities do in making a future subordinate instrument, which can be relied on in drafting and reading the instrument. However:
  - Because (see section 4 of the Bill) Part 2 will operate subject to the parent Act of Parliament (and to any other constraint on the power to make the subordinate legislation in question), its effect can be no more expansive than the choices which the Welsh Ministers or other authority could legitimately make for themselves in making the future subordinate instrument.
  - Because the operation of Part 2 can be displaced by the Welsh subordinate instrument itself (expressly or otherwise), Part 2 does not tie the hands of the Welsh Ministers or other authority, who can choose to depart from the 'default position' where that is considered appropriate (and so far as it is within the powers that Parliament has conferred).
- From a policy perspective, the advantages of the Part 2 'default position', as the backdrop against which all future Welsh subordinate instruments will be made, are as set out in paragraph 44 of the Explanatory Memorandum: *"to provide a modern, bilingual interpretation Act for Wales"* which *"would shorten and simplify future legislation, and promote consistency in the language, form and operation of future legislation"*.

### **Argument that Part 2 modifies GOWA section 107(5)**

I will start with the argument in Mr Buckland's letter to the effect that section 3(2)(b) of the Bill would make an impermissible modification of section 107(5) of the Government of Wales Act 2006 ("GOWA"), which provides that Part 4 of the Act *"does not affect the power of the Parliament of the United Kingdom to make laws for Wales"*. The letter argues that applying a set of default rules to the interpretation of Welsh subordinate instruments made under a UK Act (which may be different from the default rules applying to the parent Act by virtue of the Interpretation Act 1978) is *"qualifying the power of Parliament to make laws for Wales and for those laws to mean what Parliament intended that they ought to mean"*.

I cannot agree with this analysis.

- The power of the UK Parliament to legislate for Wales is not affected or qualified by the application of Part 2 of the Bill to Welsh subordinate instruments made under Acts of Parliament.
- None of the provisions in Part 2 of the Bill apply to Acts of the UK Parliament. Section 3(2)(b) applies the Part 2 provisions to *"subordinate legislation ... made under an Act of the Parliament of the United Kingdom"*; but not to the Act of Parliament itself.
- Nothing in Part 2 limits the power of the UK Parliament to confer functions of making subordinate legislation on others, or to confer those functions on whatever terms it considers appropriate, expressly or by implication (including where the context requires a particular conclusion as to the UK Parliament's intention).
- The provisions of the Interpretation Act 1978 continue to govern provisions of Acts of the UK Parliament, including those which confer delegated legislative power on the Welsh Ministers and other devolved Welsh authorities.



- When the Welsh Ministers (or other authority) make a Welsh subordinate instrument, they will be able to rely on the ‘default position’ in Part 2 of the Bill or override it, but only so far as the parent Act of Parliament allows. The default position provisions in Part 2 will therefore have effect only insofar as the Welsh subordinate instrument in question would have been free to include its own express provision corresponding to the default position.
- Nothing in the Bill places any condition upon Acts of Parliament or instruments made under them taking legal effect (nor indeed places any condition on their legal effect), so it is not in any way comparable with the consent provisions in the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill, found by the Supreme Court to impermissibly modify section 28(7) of the Scotland Act 1998.

### **Argument that Part 2 of the Bill relates to reserved matters**

I turn next to the argument in Mr Buckland’s letter that, insofar as Part 2 of the Bill applies to Welsh subordinate legislation made under a UK Act that relates to a reserved matter, Part 2 would also relate to a reserved matter.

I cannot agree with the analysis that Part 2 is beyond competence on this ground.

- Whether Part 2 of the Bill is outside competence, on the ground that it “*relates to reserved matters*” by virtue of section 3(2)(b), must be determined by reference to its “*purpose*”; having regard, among other things, to its “*effect in all the circumstances*” (section 108A(6) GOWA).
- I have outlined the purpose of Part 2 above, by reference to the Explanatory Memorandum. I would also invite you to consider the 2017 consultation document *Interpreting Welsh Legislation: Considering an Interpretation Act for Wales*, and the 2018 consultation document that accompanied the draft Bill. In broad summary, Part 2 is intended to provide a set of modern and bilingual provisions for the interpretation and operation of the body of Welsh legislation so as to promote its accessibility, simplicity and consistency. By Welsh legislation, I mean legislation made by the National Assembly, the Welsh Ministers and other devolved Welsh authorities. That corresponds broadly with the definition of Welsh law in section A2(1) of GOWA as law that applies in Wales “*made by the Assembly and the Welsh Ministers*”. And that corresponds of course with the body of law that will be drafted bilingually.
- The default provisions in Part 2 will have dual benefits, for drafters and readers of legislation alike. As I have explained, drafting will be easier and legislation will be shorter, because (where appropriate) drafters can rely upon the application of the detailed interpretation provisions in the Bill. Reading Welsh law will be easier because legislation will be drafted in a more straightforward and simple way and readers can look to the Bill for the meaning of common words and phrases, in both Welsh and English.
- These purposes do not ‘relate to’ any of the matters reserved by Schedule 7A to GOWA. GOWA did not designate ‘statutory interpretation’ as a reserved matter in Schedule 7A. Indeed, where GOWA does talk about the interpretation of legislation it does so in a way which is general: see e.g. section 156(2) of GOWA (and paragraph 13 of Schedule 7 to GOWA as it had effect before the Wales Act 2017), concerning legislation about ‘the meaning of Welsh words and phrases’.
- It is legitimate and within competence for the National Assembly to provide a ‘default position’ about the meaning and operation of legislation that is enacted by the Welsh Ministers and other devolved bodies, in order to promote clarity and consistency. And it is properly for the Assembly to determine that applying the ‘default position’ to all Welsh

subordinate instruments (including those made under Acts of the UK Parliament), subject to any intention to the contrary, is an appropriate way to promote those aims.

- It is true that some of the legislation to which Part 2 applies may relate to reserved matters, but this does not take Part 2 itself outside the Assembly's legislative competence. The Supreme Court found that the sentencing reforms at issue in *Martin v Most* [2010] UKSC 10 did not 'relate to reserved matters', even though they directly governed reserved road traffic offences. The Supreme Court recognised that the purpose of the reforms was a broad one, intended to promote coherence and consistency. The Court did not think there was even a borderline case of the reforms relating to reserved matters. And that was all in a case where provisions of a Bill had an immediate effect on laws applicable within a reserved area, including laws already in existence. The Court discussed reform of limitation periods, intended to promote coherence and consistency, as another example of general provision which would not fall foul of this restriction on competence.
- The introduction of Part 2 of the Legislation (Wales) Bill has a broad purpose, intended to promote coherence and consistency. As with general reforms of magistrates sentencing powers, and as with general reforms of limitation periods (an example which was discussed in *Martin v Most*), there is in Part 2 a general purpose – for legitimate reasons of reform which promote consistency – which does not fall foul of 'relating to reserved matters'. Part 2 is applicable to Welsh subordinate instruments generally, regardless of their subject matter. But that is because of the broad and legitimate purpose, and the intention to promote coherence and consistency. Moreover, there is no direct and immediate effect on any law within a reserved area; and there is no effect at all, even as a default position, on any law already in existence. The competency concerns in this case are therefore far weaker than they were in *Martin v Most*.
- In this context I repeat that Part 2 makes provision about the interpretation and operation of Welsh legislation in general. It does this for purposes relating to the clarity, simplicity and consistency of that legislation. Those are its purposes, and they are consistent with its effect.
- The position as to clarity, coherence, simplicity and consistency can be tested by considering the position if the Bill sought to 'carve out' any subordinate instrument *to the extent that it could be said to take effect in relation to a reserved matter*, so that the 'default position' would not apply to any such instrument. It is legitimate to hold to the position that such a 'carve out' – as no doubt with similar 'carve outs' for limitation periods in *Martin v Most* – would not promote but would undermine the aims of clarity, coherence, simplicity and consistency. Indeed, the writer and reader of the subordinate instrument would need to embark on a complex and time-consuming exercise of analysis, not dictated by the title or source of the instrument, as to which provisions fell on which side of the line in which circumstances.

### **Argument that Part 2 modifies 'the law on reserved matters'**

Mr Buckland's letter argues, finally, that the application of Part 2 of the Bill to Welsh subordinate legislation made under an Act of Parliament which itself relates to reserved matters is an impermissible modification of 'the law on reserved matters'.

I cannot agree with this analysis.

- The relevant restriction in GOWA protects 'the law on reserved matters' that already exists. But the coming into force of Part 2 of the Bill will leave the substantive law on reserved matters intact.

- Mr Buckland's letter stated the view that the considerations relevant to the previous argument are also relevant to this argument. I agree, and have answered the previous argument above.
- Part 2 will, as I have explained, apply prospectively only. It will not modify any Act of the UK Parliament or any existing subordinate legislation. It will apply only to future subordinate legislation and only in so far as there is no contrary intention.
- In all these circumstances, there is no 'modification' and none is identified.

## **Policy questions**

Beyond the scope of the points raised in relation to legislative competence, Mr Buckland's letter made some points which go to the wisdom of the policy choices being made by the National Assembly. The letter contends that applying Part 2 of the Bill to Welsh subordinate legislation made under Acts of the UK Parliament will cause confusion and legal uncertainty. For completeness, I should make clear that I do not share this view.

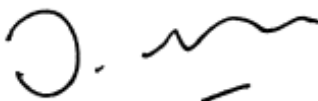
The policy considerations have been carefully considered and explained. Such points are, ultimately, about the wisdom of the legislation (and of the legislature in enacting it). We have engaged with UK officials on this question. My officials have set out the Welsh Government's position on these issues. They asked for concrete examples of how you believe the Bill would create difficulties of this kind, and no examples have been given.

I would add this. The current position is already complex. Understanding how the Interpretation Act 1978 applies to Welsh legislation is far from straightforward. This is particularly the case so far as the Welsh language version of our legislation is concerned, and it is hard to see how the application of the 1978 Act to our bilingual laws is consistent with the principle established by the Government of Wales Acts that the English and Welsh language texts have equal standing for all purposes. The Welsh Government sees the Bill as necessary to reflect the emergence of a growing body of bilingual Welsh law, as recognised by section A2(1) of GOWA (inserted by the Wales Act 2017).

Mr Buckland's letter requested an amendment to the Bill to exclude Welsh subordinate legislation made under UK Acts from its application. However, the scope of the Bill reflects the Welsh Government's policy and its view on legislative competence. I have addressed the arguments about legislative competence in this letter, and why they have not persuaded me that there is a need for the Bill to be limited in the way requested.

I am copying this letter to the Chair of the Constitutional and Legislative Affairs Committee of the National Assembly, and to the Llywydd, and placing a copy in the Member's Library.

Yours sincerely,



**Jeremy Miles AM**

Y Cwnsler Cyffredinol a Gweinidog Brexit  
Counsel General and Brexit Minister