Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:
Committee Room 1 – Senedd
Meeting date: 8 July 2019
Meeting time: 14.30

For further information contact:
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0300 200 6362
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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)-22-19 – Paper 1 – Statutory instruments with clear reports

Negative Resolution Instruments

2.1 **SL(5)426 – The Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) Regulations 2019**

Affirmative Resolution Instruments

2.2 **SL(5)428 – The Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) (No 2) 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)425 – The Whelk Fishing (Wales) Order 2019**

(Pages 3 – 21)

CLA(5)-22-19 – Paper 2 – Report

CLA(5)-22-19 – Paper 3 – Order

CLA(5)-22-19 – Paper 4 – Explanatory Memorandum

CLA(5)-22-19 – Paper 5 – Letter from the Minister for Finance and Trefnydd

Affirmative Resolution Instruments

3.2 **SL(5)427 - The Landfill Disposals Tax (Wales) Act 2017 (Reliefs) (Miscellaneous Amendments) Regulations 2019**

(Pages 22 – 31)

CLA(5)-22-19 – Paper 6 – Report

CLA(5)-22-19 – Paper 7 – Regulations

CLA(5)-22-19 – Paper 8 – 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)430 - The Cancellation of Student Loans for Living Costs Liability (Wales) Regulations 2019**

(Pages 32 – 42)

CLA(5)-22-19 – Paper 9 – Report

CLA(5)-22-19 – Paper 10 – Regulations

CLA(5)-22-19 – Paper 11 – Explanatory Memorandum

5 Written statements under Standing Order 30C

14.45-14.50

5.1 **WS-30C(5)136 - The Pesticides (Amendment) (EU Exit) Regulations 2019**

(Pages 43 – 46)

CLA(5)-22-19 – Paper 12 – Statement

CLA(5)-22-19 – Paper 13 – Commentary

6 Statutory instruments requiring consent: Brexit

14.50-14.55

6.1 **SICM(5)23 - The Electronic Commerce Directive (Adoption and Children) (Amendment etc.) (EU Exit) Regulations 2019**

(Pages 47 – 66)

CLA(5)-22-19 – Paper 14 – Statutory Instrument Consent Memorandum

CLA(5)-22-19 – Paper 15 – Regulations

CLA(5)-22-19 – Paper 16 – Explanatory Memorandum

CLA(5)-22-19 – Paper 17 – Letter from the Deputy Minister for Health and Social Services, 26 June 2019

CLA(5)-22-19 – Paper 18 – Written statement

CLA(5)-22-19 – Paper 19 – Commentary

7 Correspondence from the Counsel General - Intergovernmental Relations and Common Frameworks

14.55-15.00 (Pages 67 – 92)

CLA(5)-22-19 – Paper 20 – Letter from the Counsel General, 3 July 2019

CLA(5)-22-19 – Paper 21 – Written statement by the Counsel General

CLA(5)-22-19 – Paper 22 – Statement by the Rt Hon David Lidington, Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office

CLA(5)-22-19 – Paper 23 – Agreement on joint working

CLA(5)-22-19 – Paper 24 – Framework Products Update

8 Paper(s) to note

15.00-15.05

8.1 Letter from the Counsel General: Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019

(Pages 93 – 98)

CLA(5)-22-19 – Paper 25 – Letter from the Counsel General, 27 June 2019

8.2 Letter from the Chair of the Finance Committee to the Llywydd: Senedd and Elections (Wales) Bill

(Pages 99 – 101)

CLA(5)-22-19 – Paper 26 – Letter from the Chair of the Finance Committee, 27 June 2019

8.3 Letter from the Minister for International Relations and the Welsh Language: Trade Bill – Supplementary Legislative Consent Memorandum (Memorandum No 3)

(Page 102)

CLA(5)-22-19 – Paper 27 – Letter from the Minister for International Relations and the Welsh Language, 28 June 2019

8.4 **Letter from the First Minister to the Llywydd: International obligations which bind the UK**

(Pages 103 – 104)

CLA(5)-22-19 – Paper 28 – Letter from the First Minister, 3 July 2019

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

15.05

10 Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill: Draft report

15.05-15.15 (Pages 105 – 130)

CLA(5)-22-19 – Paper 29 – Draft report

CLA(5)-22-19 – Paper 30 – Legal advice note

11 Legislative Consent Memorandum on the Non-Domestic Rating (Lists) Bill

15.15-15.20 (Pages 131 – 133)

CLA(5)-22-19 – Paper 31 – Legal advice note

12 Legislative Consent Memorandum on the Non-Domestic Rating (Public Lavatories) Bill

15.20-15.25 (Pages 134 – 135)

CLA(5)-22-19 – Paper 32 – Legal advice note

13 Forward Work Programme

15.25-15.40 (Pages 136 – 139)

CLA(5)-22-19 – Paper 33 – Forward Work Programme – terms of reference for a future inquiry

Date of the next meeting – 15 July.

Statutory Instruments with Clear Reports

08 July 2019

SL(5)426 – The Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) Regulations 2019

Procedure: Negative

These Regulations amend the provisions of the Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014, which prescribe the classes of persons subject to immigration control who are eligible for an allocation of housing accommodation under Part 6 of the Housing Act 1996, as well as the classes of persons from abroad, not subject to immigration control, who are ineligible for an allocation of housing accommodation under Part 6 of that Act.

Parent Act: Housing Act 1996

Date Made: 24 June 2019

Date Laid: 25 June 2019

Coming into force date: 19 July 2019

SL(5)428 – The Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) (No 2) Regulations 2019

Procedure: Affirmative

These Regulations amend the provisions of the Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014, which prescribe the classes of persons subject to immigration control who are eligible for housing assistance under sections 66, 68, 73 and 75 of the Housing (Wales) Act 2014, as well as the classes of persons from abroad, not subject to

immigration control, who are ineligible for housing assistance under that Act.

Parent Act: Housing (Wales) Act 2014

Date Made:

Date Laid:

Coming into force date:

SL(5)425 – The Whelk Fishing (Wales) Order 2019

Background and Purpose

The new Statutory Instrument will increase the Minimum Conservation Reference Size (MCRS) of Welsh whelks. Their minimum size will increase from 45mm to 55mm from the date on which the Statutory Instrument comes into force, and further increasing to 65mm one year later. This measure will enhance the sustainability of the Welsh whelk fishery and will apply to all UK vessels which fish within the Welsh zone.

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(i) in respect of this instrument.

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

The Order is being laid under the negative procedure with deviation from the standard 21 day laying day period.

The 21 day rule under the Statutory Instruments Act 1946 (incorporated in Schedule 10 of the Government of Wales Act 2006) provides that instruments should be laid 21 days before they come into force. This enables Members to seek to annul such instruments before they have effect, as confusion can be caused if legislation is annulled after it has been implemented. However, in this case, the Welsh Government consider that the circumstances justify a breach of that rule. The Minister for Finance and Trefnydd, as required under section 11A of the Statutory Instruments Act 1946, has notified the Presiding Officer of the breach so that the matter can be brought to the attention of Members.

The Explanatory Memorandum ("the EM") sets out the reasons for the breach of the 21 day rule:

"The ability of an EU Member State to increase the MCRS for its vessels is contained within Article 46 of the Technical Conservation Regulation 850/1998. Officials have recently become aware that Article 46 of the Technical Conservation EC Regulation 850/98 will be repealed imminently.

On 13 June 2019 the EC's Employment, Social Policy, Health and Consumer Affairs Council approved the new Technical Conservation Regulation, which will replace Regulation 850/1998. The new regulation is expected to come into force at the end of June or the beginning of July 2019 (the exact date will be twenty days after its publication of the new Regulation in the Official Journal of the EU which has not yet occurred).

The replacement Technical Conservation Regulation does not include any equivalent power for Member States to legislate unilaterally in relation to an MCRS. The new EU legislation will provide a system whereby groups of Member states can submit proposals for conservation measures to the European Commission. Given that this is a Wales specific issue, no EU countries target whelks in Welsh waters and the UK intends to leave the EU, it is unlikely that any other EU state or the Commission will be interested in cooperating with us in using this regional mechanism.

Due to the timescales involved the Whelk Fishing (Wales) Order 2019 is being laid under the negative procedure with deviation from the standard 21 day laying day period. It is necessary to breach the 21 day rule to ensure the Order comes into force before the repeal of Article 46 of the Technical Conservation Regulation 850/1998."

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.

The relevant Welsh Minister has written to the Llywydd to give notification of the 21 day rule breach and detailed reasons for the breach are given in the EM.

Legal Advisers
Constitutional and Legislative Affairs Committee
July 2019

WELSH STATUTORY INSTRUMENTS

2019 No. 1042 (W. 184)

SEA FISHERIES, WALES

CONSERVATION OF SEA FISH

The Whelk Fishing (Wales) Order 2019

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision regarding the fishing, landing and carriage of whelk by British fishing boats in Wales and the Welsh zone.

Articles 3 of this Order prohibits fishing for whelk under specified minimum size in Wales and the Welsh zone.

Article 4 prescribes the specified minimum size for the landing of whelk in Wales.

Article 5 prescribes the specified minimum size for the carriage of whelk in Wales or the Welsh zone.

The specified minimum size for the purposes of Articles 3, 4 and 5 is 55 millimetres before 4 July 2020 and 65 millimetres on and after 4 July 2020.

Article 6 prescribes the method by which the size of a whelk is to be determined for the purposes of this Order.

Article 7 revokes Byelaw 11 (Whelk – Minimum Size) of the former South Wales Sea Fisheries Committee ("SWSFC") and amends Byelaw 19 (Specified Fish Sizes) of the former North Western and North Wales Sea Fisheries Committee ("NWNWSFC").

The SWSFC and the NWNWSFC were abolished, in relation to Wales, on 1 April 2010 when the Sea Fisheries Regulation Act 1966 (c. 38) was repealed by section 187 of the Marine and Coastal Access Act 2009 (c. 23). Since 1 April 2010, the Byelaws mentioned above have had effect as if made by the Welsh Ministers in a statutory instrument by virtue of

paragraphs (1) and (3) of article 13 of and Schedules 3 and 4 to the Marine and Coastal Access Act 2009 (Commencement No. 1, Consequential, Transitional and Savings Provisions) (England and Wales) Order 2010 (S. I. 2010/630 (C. 42)). Article 7(3) makes a consequential amendment to the 2010 Order.

The provisions of this order were notified in draft to the European Commission in accordance with the requirements of Article 46 of Council Regulation (EC) No. 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms (OJ No. L 125, 24.04.98, p. 1).

A Regulatory Impact Assessment has been undertaken in respect of this Order and is available for inspection at the offices of the Welsh Government, Cathays Park, Cardiff CF10 3NQ.

WELSH STATUTORY INSTRUMENTS

2019 No. 1042 (W. 184)

SEA FISHERIES, WALES

CONSERVATION OF SEA FISH

The Whelk Fishing (Wales) Order 2019

Made *24 June 2019*

Laid before the National Assembly for Wales *25 June 2019*

Coming into force *4 July 2019*

The Welsh Ministers make the following Order in exercise of the powers conferred by sections 1(1), 1(3) 1(4), 1(6), 5(1) and 5(2) of the Sea Fish (Conservation) Act 1967(**1**), now vested in them(**2**).

(**1**) 1967 c. 84, ("the 1967 Act"). Section 1 of the 1967 Act was substituted by the Fisheries Act 1981 (c. 29), section 19(1). Section 1(1) of the 1967 Act was amended by the Marine and Coastal Access Act 2009 (c. 23) ("the 2009 Act"), section 194(1) and (2) and S.I. 1999/1820, article 4, Schedule 2, Part 1, paragraphs 43(1), (2)(a). Section 1(3) of the 1967 Act was substituted by the 2009 Act, section 194(1) and (4). Section 1(4) of the 1967 Act was amended by the 2009 Act, section 201, Schedule 15, paragraph 1(1), (2)(a) and (b). See section 1(9) for a definition of the "appropriate national authority". Section 1(9) was inserted by the 2009 Act, section 194(1) and (5) and amended by S.I. 2010/760. Article 4(2) and (3). Section 5(1) was substituted by the 2009 Act, section 198(1) and (2). Section 5(2) was amended by the 2009 Act, section 201, Schedule 15, paragraph 3(1) and (2). See section 5(9) for a definition of "the appropriate national authority". Section 5(9) was inserted by the 2009 Act, section 198(3) and amended by S.I. 2010/760, article 4(2) and (4). Section 22(2) of the 1967 Act, which contains a definition of "the Ministers", was amended by the Fisheries Act 1981 (c. 29), section 19(2)(d) and (3), and 45 and 46, Schedule 5, Part II and S.I.1999/1820, article 4, Schedule 2, Part I, paragraph 43(1) and (12)), Part IV.

(**2**) The functions of the Ministers under sections 1(1), 1(3) 1(4), 1(6), 5(1) and 5(2) so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales (as constituted under the Government of Wales Act 1998 (c. 38)): see article 2(a) of and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order (S.I. 1999/672). Those functions were then further transferred to

Title, commencement and application

1.—(1) The title of this Order is the Whelk Fishing (Wales) Order 2019 and it comes into force on 4 July 2019.

(2) Subject to paragraph (3), this Order applies in relation to Wales.

(3) Articles 3 and 5 apply in relation to the Welsh zone.

Interpretation

2. In this Order, unless the context requires otherwise—

"the Act" ("*y Ddeddf*") means the Sea Fish (Conservation) Act 1967(**1**);

"British fishing boat" ("*cwch pysgota Prydeining*") means a fishing boat which is either registered in the United Kingdom under Part II of the Merchant Shipping Act 1995(**2**) or is owned wholly by persons qualified to own British ships for the purposes of that part of the Act;

"Specified minimum size" ("*maint lleiaf penodedig*") means—

(i) 55 millimetres before 4 July 2020, and

(ii) 65 millimetres on and after 4 July 2020;

"Wales" ("*Cymru*") has the meaning given in section 158 of the Government of Wales Act 2006(**3**);

"Welsh zone" ("*parth Cymru*") has the meaning given in section 158 of the Government of Wales Act 2006(**4**); and

"Whelk" ("*cregyn moch*") means shellfish of the species *Buccinum undatum*.

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the Welsh Ministers by section 162 and paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32). So far as exercisable in relation to the Welsh zone, the functions of the Ministers under sections 1(3), 1(4), 1(6), 5(1) and 5(2) of the 1967 Act, were transferred to the Welsh Ministers by article 4(1)(b) of the Welsh Zone (Boundaries and Transfer of Functions) Order 2010 (S.I. 2010/760).

(**1**) 1967 c. 84.

(**2**) 1995 c. 21.

(**3**) 2006 c. 32; Section 158(1) was amended by the Marine and Coastal Access Act 2009 (c. 23), section 43(1) and (2). For the purposes of the definition of "Wales" in section 158(1) of the 2009 Act, the boundary between those parts of the sea within the Severn and Dee Estuaries which are to be treated as adjacent to Wales and those which are not are, in each case, a line drawn between the co-ordinates set out in Schedule 3 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). By virtue of section 162 of and paragraph 26 of Schedule 11 to the 2006 Act, S.I. 1999/672 continues to have effect.

(**4**) The Welsh zone is specified in S.I. 2010/760.

Fishing prohibition for specified whelk

3. It is prohibited for a British fishing boat to fish for whelk with a size of less than the specified minimum size.

Prohibition on landing of specified whelk

4. For the purpose of section 1(1) of the Act (which prohibits the landing of any sea fish of any description which does not meet the requirements as to size as may be prescribed in relation to sea fish of that description) it is prescribed that the minimum size for whelk is the specified minimum size.

Prohibition on carriage of specified whelk

5. For the purpose of section 1(3) of the Act (which prohibits the carriage on specified fishing boats of any sea fish of any description which does not meet the requirements as to size prescribed in relation to sea fish of that description), it is prohibited for a British fishing boat to carry any whelk with a size of less than the specified minimum size.

Measurement of whelk

6. For the purposes of articles 3, 4 and 5, the size of a whelk is to be measured in accordance with paragraph 7 of Annex XIII to Council Regulation (EC) No 850/98 for the conservation and management of fishery resources through technical measures for the protection of juvenile marine organisms(**1**).

Revocation and Amendments

7.—(1) Byelaw 11 (Whelk – Minimum Size)(**2**) of the former South Wales Sea Fisheries Committee(**3**) is revoked.

(2) In Byelaw 19 (Specified Fish Sizes)(**4**) of the former North Western and North Wales Sea

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(**1**) OJ No. L125, 27.4.1998, p.30.

(**2**) Byelaw 11 of the former South Wales Sea Fisheries Committee has effect as if made by the Welsh Ministers in a statutory instrument in relation to the same area of Wales as the area to which that Byelaw originally applied by virtue of article 13(1) of and Schedule 3 to the Marine and Coastal Access Act 2009 (Commencement No. 1, Consequential, Transitional and Savings Provisions) (England and Wales) Order 2010 (S.I. 2010/630 (C. 42)).

(**3**) The South Wales Sea Fisheries Committee was dissolved on 1 April 2010 when article 3 of the Marine and Coastal Access Act 2009 (Commencement No. 1, Consequential, Transitional and Savings Provisions) (England and Wales) Order 2010 (S.I. 2010/630 (C. 42)) brought into force section 187 of the Marine and Coastal Access Act 2009 (c. 23), with the effect of repealing the Sea Fisheries Regulation Act 1966 (c. 38).

(**4**) Byelaw 19 of the former North Western and North Wales Sea Fisheries Committee has effect as if made by the Welsh

Fisheries Committee(**1**),in the Table specifying minimum shellfish size, delete the row relating to Whelk.

(3) In the Marine and Coastal Access Act 2009 (Commencement No. 1, Consequential, Transitional and Savings Provisions) (England and Wales) Order 2010(**2**), in the Table in Schedule 3, delete the row relating to Byelaw 11.

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

Ministers in a statutory instrument in relation to the same area of Wales as the area to which that Byelaw originally applied by virtue of article 13(3) of and Schedule 4 to the Marine and Coastal Access Act 2009 (Commencement No. 1, Consequential, Transitional and Savings Provisions) (England and Wales) Order 2010 (S.I. 2010/630 (C. 42)).

(**1**) The North Western and North Wales Sea Fisheries Committee was dissolved, in relation to Wales, on 1 April 2010 when article 3 of the Marine and Coastal Access Act 2009 (Commencement No. 1, Consequential, Transitional and Savings Provisions) (England and Wales) Order 2010 (S.I. 2010/630 (C. 42)) brought into force section 187 of the Marine and Coastal Access Act 2009 (c. 23), with the effect of repealing the Sea Fisheries Regulation Act 1966 (c. 38) in relation to Wales.

(**2**) S.I. 2010/630 (C. 42), as amended by the Specified Crustaceans (Prohibition on Fishing, Landing, Sale and Carriage) (Wales) Order 2015 (S.I. 2015/2076 (W. 312)), article 7(6)(a).

Explanatory Memorandum to The Whelk Fishing (Wales) Order 2019

This Explanatory Memorandum has been prepared by the Marine and Fisheries 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 Whelk Fishing (Wales) Order 2019**.**

I am satisfied that the benefits justify the likely costs.

Lesley Griffiths AM
Minister for Environment, Energy and Rural Affairs
25 June 2019

Description

The new Statutory Instrument will increase the Minimum Conservation Reference Size (MCRS) of Welsh whelks. Their minimum size will increase from 45mm to 55mm from the date on which the Statutory Instrument comes into force, and further increasing to 65mm one year later. This measure will enhance the sustainability of the Welsh whelk fishery and will apply to all UK vessels which fish within the Welsh zone.

It will revoke the following legislation:

- Byelaw 11 of the former South Wales Sea Fisheries Committee and
- The part of Byelaw 19 of the former North Western and North Wales Sea Fisheries Committee that prescribes a 45mm minimum size for whelks.

Matters of special interest to the Constitutional and Legislative Affairs Committee

The ability of an EU Member State to increase the MCRS for its vessels is contained within Article 46 of the Technical Conservation Regulation 850/1998. Officials have recently become aware that Article 46 of the Technical Conservation EC Regulation 850/98 will be repealed imminently.

On 13 June 2019 the EC's Employment, Social Policy, Health and Consumer Affairs Council approved the new Technical Conservation Regulation, which will replace Regulation 850/1998. The new regulation is expected to come into force at the end of June or the beginning of July 2019 (the exact date will be twenty days after its publication of the new Regulation in the Official Journal of the EU which has not yet occurred).

The replacement Technical Conservation Regulation does not include any equivalent power for Member States to legislate unilaterally in relation to an MCRS. The new EU legislation will provide a system whereby groups of Member states can submit proposals for conservation measures to the European Commission. Given that this is a Wales specific issue, no EU countries target whelks in Welsh waters and the UK intends to leave the EU, it is unlikely that any other EU state or the Commission will be interested in cooperating with us in using this regional mechanism.

Due to the timescales involved the Whelk Fishing (Wales) Order 2019 is being laid under the negative procedure with deviation from the standard 21 day laying day period. It is necessary to breach the 21 day rule to ensure the Order comes into force before the repeal of Article 46 of the Technical Conservation Regulation 850/1998.

Legislative Background

Council Regulation (EC) No 850/98 provides for the conservation of fishery resources through technical measures, including the protection of juvenile marine organisms through specified MCRS. Currently EC Regulation 850/98 specifies the MCRS for whelks as 45mm (Article 17 and Annex XII to that Council Regulation).

In terms of our domestic legislation, Byelaw 11 of the former South Wales Sea Fisheries Committee specifies a 35mm riddle size but not the minimum size of whelk, hence the

byelaw is unenforceable. Byelaw 19 of the former North Western and North Wales Sea Fisheries Committee specifies a 45mm MCRS. Those Byelaws would be revoked (in as far as they related to whelk) as part of the proposed new legislation to increase MCRS in the Welsh zone.

Currently, the Welsh Government only has powers to raise the MCRS for UK vessels fishing for whelk in the Welsh Zone. The possibility of legislating for non-UK vessels will be considered in the light of the new legislative landscape post-Brexit.

The Order is being laid under the negative procedure with deviation from the standard 21 day laying day period. It is necessary to breach the 21 day rule to ensure the Order comes into force prior to the repeal of Article 46 of the Technical Conservation Regulation 850/1998.

Enabling powers

To introduce the new MCRS and fishing/catch/landing limits, the Welsh Ministers will rely on domestic powers available to them under the Sea Fish (Conservation) Act 1967 ('the 1967 Act').

The 1967 Act powers are now exercisable by the Ministers in relation to Wales (see SI 1999/672) and the Welsh Zone (SI 2010/760). These domestic enabling powers will continue to operate post-Brexit.

Section 1(1) of the 1967 Act enables the Welsh Ministers to make an Order prescribing the minimum size at which any specified sea fish (includes shellfish) may be landed.

Section 1(3) allows for the imposition of restrictions on the carriage of any description of fish subject to landing restrictions under section 1(1).

Section 5(1) of the 1967 Act allows the Welsh Ministers to prohibit fishing for any specified description of sea fish.

Since the proposed measures relate to the conservation of marine biological resources, the UK (or in this case a part of the UK) can only act if EU law permits it to do so. Article 46 of Regulation 850/1998 provides the necessary power but requires the EU Commission be notified of the proposed conservation measures. In accordance with this provision the Commission were notified of the Whelk Fishing (Wales) Order 2019 on 18 June 2019 via the Department of Environment, Food and Rural Affairs. The Commission can delay and ultimately prevent the coming into force of the proposed measures where they do not comply with the other requirements of Article 46.

Purpose and intended effect of the proposal

This new Statutory Instrument's provisions support the sustainable management of the Welsh whelk fishery. The Statutory Instrument will increase the MCRS of whelks, prohibiting fishing or carriage of any whelks below the new MCRS in the Welsh zone and landing of whelks below the new MCRS in Wales.

REGULATORY IMPACT ASSESSMENT

1. This Regulatory Impact Assessment relates to the new Whelk Fishing (Wales) Order 2019. The new 2019 Order will increase the MCRS of whelk through the application of powers available in the Sea Fish (Conservation) Act 1967 the use of which is currently permitted by Article 46 of the Technical Conservation Regulation 850/98.

2. In recent years, due to the near doubling of the value of whelks, the fishery has been subjected to increased levels of fishing pressure. An inadequate MCRS combined with an increased level of fishing pressure threaten the long-term sustainability of the fishery, leaving the stock vulnerable to collapse.

3. Officials have recently become aware that Article 46 of the Technical Conservation EC Regulation 850/98 will be imminently repealed. That Article, among other things, allows Member States to introduce an MCRS greater than the EU minimum for their own fishing boats.

4. The replacement Technical Conservation Regulation does not include any equivalent power for Member States to legislate in this way. The new EU legislation will provide a system whereby groups of Member states can submit proposals for conservation measures to the European Commission. Given that this is a Wales specific issue, no EU countries target whelks in Welsh waters and the UK intends to leave the EU, it is unlikely that any other EU state or the Commission will be interested in cooperating with us in using this regional mechanism.

5. The new Welsh whelk MCRS legislation must be introduced before the Technical Conservation Regulation 850/98 is repealed or it is very unlikely we will be able to affect any change to the MCRS for Welsh whelks.

Consultation

6. A consultation on management of the Welsh whelk fishery was held in 2017 and a Written Statement announcing the introduction of new measures was published in December 2018. The measures in the proposed SI do not significantly deviate from those consulted on at that time. If anything, the need to act has increased since the consultation was completed.

7. A total 89 Responses were received, many were supportive of the proposals put forward, with a number of responders also offering alternative measures for consideration. Copies of the consultation document and summary of response documents are available at: https://gov.wales/proposed-sustainable-management-measures-welsh-whelk-fishery

8. The consultation put forward several management options for the Welsh whelk fishery and a package of measures was announced in December 2018. These measures will

work towards ensuring the adequate protection and long-term sustainability of the Welsh whelk fishery.

9. The loss of powers due to the repeal of Regulation 850/98 means we need to secure an increase in the MCRS immediately. Separate legislation will introduce additional measures later in the year.

Options

10. **Option A** – Do nothing: Continue to manage the Welsh whelk fishery under the current MCRS legislation. This could result in a collapse of the fishery due to too many juvenile whelks being fished before having an opportunity to reproduce.

11. **Option B** – Two stage increase in MCRS: This increase will occur in two parts with an immediate increase to 55mm from the date the Order comes into force, moving to 65mm within a year from the date the Order comes into force. This is a pragmatic approach to ensure the protection of immature whelks and enable them to develop and, in time, recruit to the fishery. This measure will apply to all UK vessels fishing within Welsh waters.

12. Given the concerns raised about the current unsustainable nature of the Welsh whelk fishery and the imminent loss of the ability to increase the MCRS under EU law, the Minister has agreed to the immediate introduction of an emergency SI to increase the MCRS of whelk.

13. Other management measures will be introduced separately.

Benefit to fishing industry

14. The Welsh whelk fishery is currently being fished unsustainably. Whelks reach sexual maturity at different sizes, depending on environmental conditions. Scientific evidence indicates many Welsh whelks do not reach sexual maturity until after they exceed the current EU MCRS. Therefore, they do not have a chance to reproduce before they are fished.

15. The increase in MCRS will allow the whelk to reach sexual maturity and reproduce before they are fished.

16. Science officials have undertaken an aging assessment of whelks across Wales. The aging data shows that whelks of 45mm will reach 65mm within approximately 2 years. The proposed changes will affect catch levels for at least two years until the current 45mm whelk reach the new 65mm MCRS.

17. The new legislation will help promote long-term sustainable management of the fishery, in line with the principles of the Well Being and Future Generations Act and Prosperity for All: the National Strategy.

Costs to Industry

18. There will be varying levels of impact on the phased increase in MCRS at differing regions in Wales. The evidence indicates that whelks reach sexual maturity at different sizes around areas of Wales. The size of maturity ranges from 45mm – 76mm.

19. Table 3.2b 'Landings into Wales by UK vessels: 2013 to 2017' from the UK Sea Fisheries Statistics 2017 Report indicates that UK vessels landed whelks worth a value £7.9 million in to Wales in 2017 (this figure does not include whelk caught in Wales but landed somewhere outside Wales by UK or foreign boats). The most up to date size profiling of whelks in 2013 indicated that whelks measuring 45-55mm account for approximately 3.5% - 23% of the overall fishery catch profile. Applying the 2013 size profiling to the 2017 landings data equates to approximately £0.3 – £1.8 million in value that could potentially be lost to the industry when the first phase of the new MCRS increase come into force as it will be prohibited to fish for, carry or land whelk in this size range.

20. In relation to the second whelk MCRS increase, whelks measuring 55-65mm account for approximately 9-45% of the overall fishery catch profile. Applying the 2013 size profiling to the 2017 landings data equates to approximately £0.7 - £3.6 million in value that could potentially be lost to the industry when the second phase of the new MCRS increase come into force as it will be prohibited to fish for, carry or land whelk in this size range.

21. The potential loss in value from catch to fishers during the initial two years could be significant in the short to medium term. However, this is balanced against the whelk growing through the size ranges from 45mm to 65mm in approximately two years. If we do nothing and the fishery collapses due to unsustainable fishing practices the value of landings would be expected to decrease significantly and in the long term.

22. Many processors of whelk pay on meat yield rather than on landed weight. In the medium to long term an increase in the size of the whelk and relative meat yield should lead to an increase the value of the fishery as the whelks grow through their size ranges.

23. The phased increase is set at a level which maximises the long term protection for the stock, while taking into account the economic impacts to fishers.

24. There will be a cost to fishers in purchasing/making new riddles to sort whelks by size. Currently most fishers in north and south Wales grade whelks with a riddle that allows the retention of > 45mm whelk

25. Replacement graders are estimated to cost £800 - £1000, therefore, for fishers who need to replace graders twice, the estimated cost will be £1600 - £2000. Based on average whelk landings and current market prices the replacement cost of £2,000 would equate to the value of approximately 0.95%-1.2% of average annual landings. Fishers' consultation responses preferred to have a phased increase to MCRS rather than a single increase.

Benefit to Welsh Government

26. The proposed Order introduces the first in a package of management measures to enhance the long-term sustainability of the Welsh whelk fishery. The measure contributes to Welsh Government delivering our obligations under the Environment Act and Sustainable Management of Natural Resources (SMNR).

Costs to Welsh Government

27. The financial implications of the introduction of this SI are covered by DRCs. There are no additional costs. The Marine & Fisheries Division MEOs will continue to monitor fishing activity and carry out enforcement activities.

Enforcement and Monitoring

28. Routine compliance checks will be carried out at sea and at the point of landing to ensure MCRS requirements are adhered to.

Post Implementation Review

29. The Marine & Fisheries Division MEO's will monitor the impact of the proposed measures and continue to monitor fishing activity and carry out enforcement activities.

Competition Assessment

The competition filter test	
Question	**Answer yes or no**
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No

The competition filter test	
Question	**Answer yes or no**
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

References:

Haig, J.A: et al 2015. The size at maturity for the common whelk, *Buccinum undatum* in Welsh Waters, with an industry perspective on the minimum landing sizes.

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Himmelman, J.H. and Hamel, J.r. (1993) Diet, behaviour and reproduction of the whelk *Buccinum undatum* in the northern Gulf of St Lawrence, eastern Canada. Marine Biology 430, 423-430

Rebecca Evans AC/AM

Y Gweinidog Cyllid a'r Trefnydd

Minister for Finance and Trefnydd

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA-L/LG/0517/19

Elin Jones AM

25 June 2019

Dear Llywydd,

The Whelk Fishing (Wales) Order 2019

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

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The Whelk Fishing (Wales) Order 2019 ('the Order') raises the minimum size of whelk (a type of sea snail) that can be fished or carried by UK boats in Welsh waters or landed by UK boats in Wales. Such a minimum size is known as a "Minimum Conservation Reference Size" or MCRS.

Currently, EC Regulation 850/1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine imposes an MCRS of 45mm. There are no other effective EU, UK or Welsh conservation management measures in place to protect the fishery. Scientific research has demonstrated that the fishery is under severe pressure and at risk of collapse with the current MCRS being inadequate to protect the fishery. Many immature whelks do not have the opportunity to breed before being fished. Any collapse of the Welsh whelk fishery could have severe consequences for fishers reliant on this particular resource and the industry which processes whelk.

A consultation on whelk management measures including increased MCRS was undertaken in 2017.

In December 2018, a package of measures was announced to support the Welsh whelk fishery and make it more sustainable (see: https://gov.wales/written-statement-welsh-whelk-fishery-statutory-instrument). A phased increase of the MCRS was a key part of the package.

Any increase in the domestic MCRS has to be compatible with EU law. Currently, Article 46 of Council Regulation (EC) No 850/98 allows Member States to introduce conservation measures (including a higher MCRS) applicable to their own fishing boats. However, Regulation 850/1998 will be abolished in early July 2019, making it impossible for the UK (or the Welsh Ministers) to raise the MCRS thereafter. It is our understanding that any Order made prior to the abolition of Article 46 will continue to apply after abolition.

Instead of allowing Member States to legislate individually, the new Regulation that replaces 850/98 will include a regionalised mechanism whereby a group of Member States will be able to request that the Commission implement a conservation measure, including raising an MCRS. Given this is a Wales specific issue, no EU countries target whelks in Welsh waters and the UK intends to leave the EU, it is unlikely that any other EU state or the Commission will be interested in cooperating with us in using this regional mechanism. Such a mechanism is likely to be lengthy and any new MCRS should be introduced as soon as possible.

Whilst the UK Government has been involved in negotiations about the replacement of Regulation 850/1998 for some time, Welsh Government officials have not been directly involved in those negotiations and were under the impression that the powers enshrined in Article 46 would be replicated in the Regulation that replaced Regulation 850/1998. It was only recently that DEFRA confirmed that this would not be the case. The increased pressure and workloads imposed by Brexit have further delayed detailed consideration of Order.

Welsh Government are not aware that any other part of the UK are intending to legislate in this area.

It is necessary to breach the 21 day rule to ensure that the Order can come into force prior to the abolition of Regulation 850/1998. The Employment, Social Policy, Health and Consumer Affairs Council approved the Regulation which will replace Regulation

850/1998 on 13 June 2019 and that instrument is expected to come into force at the end of June or the beginning of July. It is not currently possible to say when exactly the replacement Regulation will be published hence the need to bring the Order into force on 4 July 2019.

Due to the urgency involved it has not been possible to carry out an updated consultation in relation to the Order. A consultation on whelk management measures including increasing the MCRS was carried out in 2017 and a Written Statement announcing the introduction of new measures was published in December 2018. The proposed Order does not deviate in any significant way from the proposals contained in the 2017 consultation.

An Explanatory Memorandum and Regulatory Impact Assessment has been prepared and this has been laid, together with the Order, in Table Office.

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

Yours sincerely,

Rebecca Evans AC/AM

Y Gweinidog Cyllid a'r Trefnydd

Minister for Finance and Trefnydd

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SL(5)427 – The Landfill Disposals Tax (Wales) Act 2017 (Reliefs) (Miscellaneous Amendments) Regulations 2019

Background and Purpose

These Regulations amend sections 8 and 32 of the Landfill Disposals Tax (Wales) Act 2017 (the Act).

Regulation 2 amends the definition of "restoration work" in section 8(4) of the Act to make it clear that work carried out to restore a landfill disposal area that has not been capped is capable of being restoration work.

As a result of this amendment, taxable disposals made to restore a landfill disposal area which has not been capped may be eligible for relief (under section 29 of the Act), provided that they satisfy the other elements of the definition of restoration work in section 8(4), and comply with the requirements in section 29(1).

Regulation 3(a) amends section 32 of the Act to extend the scope of the relief from landfill disposals tax in respect of certain taxable disposals made when filling quarries and open-cast mines. As a result of this amendment, a disposal of a qualifying mixture of materials (as defined by section 16 of the Act) may be eligible for relief (subject to the other conditions set out in section 32). A qualifying mixture of materials consisting entirely of fines will not be eligible for relief.

Regulation 3(b) makes a related amendment to the condition imposed by section 32(1)(d) of the Act. This amendment ensures that where a taxable disposal of a qualifying mixture of materials (excluding fines) has been made on or after 1 April 2018, but before the coming into force of these Regulations, and the disposal is one that would be relieved from tax if it were made after these Regulations come into force, the making of that disposal does not prevent future disposals from being eligible for relief under section 32.

Procedure

Affirmative.

Technical Scrutiny

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

Merits Scrutiny

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

Standing Order 21.3(i) - that it imposes a charge on the Welsh Consolidated Fund or contains provisions requiring payments to be made to that Fund or any part of the government or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payment

Devolved taxes are paid into the Welsh Consolidated Fund, in accordance with section 25 of the Tax Collection and Management (Wales) Act 2016 (the 2016 Act). This states as follows:

25(1) WRA[1] must pay amounts collected in the exercise of its functions into the Welsh Consolidated Fund…

These Regulations amend the reliefs available in respect of landfill disposals tax, and so may necessarily affect the tax receipts collected and paid into the Welsh Consolidated Fund.

The Explanatory Memorandum to the Regulations states at paragraph 4.4 that the amendment to section 8(4) will *"ensure that the relief for site restoration work…will still be available in appropriate cases where a cap is required, but will also be available to those inert landfill sites which do not require a cap"*.

In respect of the amendments made to section 32 the Explanatory Memorandum at paragraph 4.6 states that *"the amendments made to section 32 of the LDTA are designed to ensure that the initial policy intention to provide a relief from tax for disposals of materials presenting low environmental risk and being used where necessary to refill an open-cast mine or quarry is being effectively delivered"*.

The Explanatory Memorandum does not provide an estimate of the reduction in tax receipts expected as a result of the changes made by these Regulations. The Explanatory Memorandum states that "given these regulations are designed to ensure the original policy intention is realised in practice, no RIA is proposed".

Implications arising from exiting the European Union

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

Government Response

A government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
July 2019

[1] In the 2016 Act, the Welsh Revenue Authority is referred to as the WRA, see section 2(2).

Draft Regulations laid before the National Assembly for Wales under section 94(6) of the Landfill Disposals Tax (Wales) Act 2017, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

LANDFILL TAX, WALES

The Landfill Disposals Tax (Wales) Act 2017 (Reliefs) (Miscellaneous Amendments) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend sections 8 and 32 of the Landfill Disposals Tax (Wales) Act 2017 (anaw 3) ("the LDT Act").

Regulation 2 amends the definition of "restoration work" in section 8(4) of the LDT Act to make it clear that work carried out to restore a landfill disposal area that has not been capped is capable of being restoration work.

As a result of this amendment, taxable disposals made in order to restore a landfill disposal area which has not been capped may be eligible for relief under section 29 of the LDT Act, provided that they satisfy the other elements of the definition of restoration work in section 8(4) and comply with the requirements in section 29(1).

Regulation 3(a) amends section 32 of the LDT Act to extend the scope of the relief from landfill disposals tax in respect of certain taxable disposals made when filling quarries and open-cast mines. As a result of this amendment, a disposal of a qualifying mixture of materials (as defined by section 16 of the LDT Act) may be eligible for relief (subject to the other conditions set out in section 32). A qualifying mixture of materials consisting entirely of fines will not be eligible for relief.

Regulation 3(b) makes a related amendment to the condition imposed by section 32(1)(d) of the LDT Act. This amendment ensures that where a taxable disposal

of a qualifying mixture of materials (excluding fines) has been made on or after 1 April 2018, but before the coming into force of these Regulations, and the disposal is one that would be relieved from tax if it were made after these Regulations come into force, the making of that disposal does not prevent future disposals from being eligible for relief under section 32.

The amendments made by these Regulations have effect in relation to taxable disposals made on or after the date the regulations come into force.

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.

Draft Regulations laid before the National Assembly for Wales under section 94(6) of the Landfill Disposals Tax (Wales) Act 2017 for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

LANDFILL TAX, WALES

The Landfill Disposals Tax (Wales) Act 2017 (Reliefs) (Miscellaneous Amendments) Regulations 2019

Made ***

Coming into force in accordance with regulation 1(2)

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 8(5)(b), 33(1)(b) and 94(1) of the Landfill Disposals Tax (Wales) Act 2017(**1**).

In accordance with section 94(6) of that Act, a draft of these Regulations has been laid before and approved by a resolution of the National Assembly for Wales.

Title, commencement and interpretation

1.—(1) The title of these Regulations is the Landfill Disposals Tax (Wales) Act 2017 (Reliefs) (Miscellaneous Amendments) Regulations 2019.

(2) These Regulations come into force on the day after the day on which they are made.

(3) In these Regulations, "the LDT Act" means the Landfill Disposals Tax (Wales) Act 2017.

Amendment to section 8 of the LDT Act

2. In section 8(4) of the LDT Act (landfill site activities to be treated as taxable disposals), in the definition of "restoration work", for "work carried out

(**1**) 2017 anaw 3.

to restore a landfill disposal area" substitute "where a landfill disposal area is capped, work carried out to restore that area".

Amendment to section 32 of the LDT Act

3. In section 32 of the LDT Act (refilling open-cast mines and quarries), in subsection (1)—

(a) in paragraph (a), for "qualifying material;" substitute—

"(i) qualifying material, or

(ii) a qualifying mixture of materials that does not consist entirely of fines;";

(b) in paragraph (d), at the end insert "or disposals that would be relieved from tax under this section if they were made now".

Name
Minister for Finance and Trefnydd, one of the Welsh Ministers
Date

Explanatory Memorandum to

The Landfill Disposals Tax (Wales) Act 2017 (Reliefs) (Miscellaneous Amendments) Regulations 2019

This Explanatory Memorandum has been prepared by the Permanent Secretary's Group of the Welsh Government 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 Landfill Disposals Tax (Wales) Act 2017 (Reliefs) (Miscellaneous Amendments) Regulations 2019.

I am satisfied that the benefits justify the likely costs.

Rebecca Evans AM
Minister for Finance and Trefnydd
25 June 2019

1. Description

1.1 The Landfill Disposals Tax (Wales) Act 2017 (Reliefs) Miscellaneous Amendments) Regulations 2019 ("the Regulations") make certain changes to the definition of "restoration work" and the operation of the refilling relief for open-cast mines and quarries.

1.2 Regulation 2 amends the definition of 'restoration work' at section 8(4) of the Landfill Disposals Tax (Wales) Act 2017 ("LDTA") to make it clear that restoration work carried out at a landfill disposal area that has not been capped is capable of being treated as "restoration work" for the purposes of the LDTA.

1.3 Regulation 3(a) amends section 32(1)(a) of LDTA to extend the scope of the relief for refilling open-cast mines and quarries to make a qualifying mixture of materials (other than one consisting entirely of fines) eligible for relief. The amendment made by Regulation 3(b) ensures that a future disposal may be eligible for the relief under section 32 even if disposals of qualifying mixtures of material (other than those consisting entirely of fines) which would now be eligible for relief were made between 1 April 2018 and the date of these Regulations coming into force.

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

2.1 None.

3. Legislative background

3.1 The Regulations are made pursuant to sections 8(5)(b), 33(1)(b) and 94(1) of the LDTA. In accordance with section 96(4) of the LDTA, the Regulations are subject to the affirmative resolution procedure.

4. Purpose & intended effect of the legislation

Amendment to Section 8 of the LDTA

4.1 Once a landfill site (or part of it) finishes accepting disposals, there is a phase of restoration work undertaken to restore the land to an acceptable state or further use. This restoration work is generally a requirement of the environmental permit or a condition of the planning permission relating to the site.

4.2 The starting point is that the use of material in restoration work will be treated as a taxable disposal, as stated at section 8(3)(j) LDTA. Section 8(4) LDTA supplements this provision with a definition of restoration work.

However, it is possible for a landfill site operator to apply for site restoration relief in relation to the material used in restoration work. The conditions for claiming site restoration relief are set out at section 29 LDTA, with additional provisions at sections 30 and 31 LDTA. One of the conditions in section 29(1) LDTA states that a disposal must "form part of restoration work" that is carried out in accordance with a WRA approval. This links back to the definition of restoration work at section 8(4) LDTA which, as originally drafted only captures work to restore a landfill disposal area "*if it is carried out after the area has been capped*".

4.3 The Welsh Revenue Authority has become aware, through operational experience and discussions with Natural Resources Wales (NRW), that there may be landfill sites (or parts of sites) in Wales that are not required to apply a cap during restoration work. This is because of the low environmental risk that the disposals made there pose. It is understood that all hazardous and non-hazardous sites will be required to apply an engineered cap, but inert sites generally will not be subject to this requirement. The practical impact of this is that such inert sites would not be able to meet the current definition of 'restoration work' at section 8 LDTA and so would not be able to claim site restoration relief (as they would not meet the second condition of that relief at s.29(1)(b) LDTA) in relation to any disposals made there.

4.4 Consequently, the purpose of the amendment to the definition of restoration work at section 8(4) LDTA is to recognise that not all landfill sites will have a cap applied to a landfill disposal area. This amendment will ensure that the relief for site restoration work (section 29 LDTA) will still be available in appropriate cases where a cap is required, but will also be available to those inert landfill sites which do not require a cap.

Amendment to Section 32 of the LDTA

4.5 WRA's operational experience and discussions with NRW suggests that it is possible that some or all of the landfill sites currently claiming relief under section 32 LDTA are permitted to accept and may have been accepting qualifying mixtures of materials (other than those consisting entirely of fines). These disposals currently fall out of the scope of the relief from tax provided by section 32 LDTA, and due to the restriction imposed by section 32(1)(d) LDTA, operators would be prevented from claiming relief for all future disposals at those sites.

4.6 The amendments made to section 32 of the LDTA are designed to ensure that the initial policy intention to provide a relief from tax for disposals of material presenting low environmental risk and being used where necessary to refill an open-cast mine or quarry is being effectively delivered.

4.7 Consequently, the purpose of the amendment to section 32(1)(a) LDTA (relief from tax for using material in refilling open-cast mines or quarries) is to

expand the scope of the relief so that disposals of qualifying mixtures of material, other than mixtures consisting entirely of fines (section 16 LDTA) will also fall within the scope of the relief. The intended effect of this amendment is to enable authorised landfill sites that were once open-cast mines or quarries to benefit from the section 32 relief when refilling these voids with qualifying materials or qualifying mixtures of material (other than fines), provided that all of the conditions set out at section 32 LDTA are met.

4.8 A related amendment is made to section 32(1)(d) LDTA. This amendment ensures that where there has been a disposal of qualifying mixtures of material (other than fines) since 1 April 2018 but before these Regulations come into force that would be relieved from tax under section 32 if it were made after these Regulations come into force, it will still be possible to establish an entitlement to the section 32 relief.

4.9 The amendments provide a practical amount of flexibility for landfill site operators, whilst still fitting comfortably with the environmental regulation regime, where an incidental amount of non-qualifying material would generally not be considered a cause for concern. The amendments would also bring LDTA in line with the HMRC approach in this area, a regime that most operators have moved from. The amendment has been deliberately designed to exclude qualifying mixtures of materials consisting entirely of fines from the scope of the relief, which is consistent with the HMRC approach and reflects the environmental concerns with bringing qualifying mixtures of material consisting entirely of fines into the scope of the relief.

5. Consultation

5.1 No formal consultation has been undertaken, however, the views of key stakeholders *(primarily NRW)* have been sought and they agree that, in the case of section 8, inert sites that do not require an engineered cap before commencing site restoration work should be able to benefit from the relief from tax for that work. In the case of section 32, incidental amounts of non-qualifying materials would not cause disproportionate environmental concerns.

6. Regulatory Impact Assessment

6.1 A Regulatory Impact Assessment, (RIA) was undertaken on the Landfill Disposals Tax (Wales) Act 2017 and given these regulations are designed to ensure the original policy intention is realised in practice, no RIA is proposed.

SL(5)430 – The Cancellation of Student Loans for Living Costs Liability (Wales) Regulations 2019

Background and Purpose

These Regulations govern the student loan liability of full-time students who receive loans for living costs from the Welsh Ministers in respect of the academic year 2019/2020.

These Regulations provide for up to £1,500 of a borrower's living costs loan liability to be cancelled in certain circumstances, with effect from the day after the date on which their first loan repayment is considered to have been received.

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

We note the Cabinet Secretary for Education issued a Written Statement "Funding and support for EU Nationals studying in Wales" on 31 May 2019. The Written Statement included the following:

"I am pleased to confirm that EU nationals who intend to study in Wales for the academic year 2020/21 will be eligible to pay the same tuition fees as Welsh students and will be eligible to receive loans and/or grants from Student Finance Wales (SFW), subject to existing eligibility criteria.

This is a continuation of the current policy and students will be eligible to receive support until they finish their course. This applies to all student finance from SFW for students in Wales for which EU nationals are eligible. This includes loans to cover tuition fees (for those resident in the EEA for three years), loans and grants for maintenance (limited to those resident in the UK for at least three years), and some other grants and allowances.

The rules applying to EU nationals who will apply for a place at university for the academic year 2020/21 to study a course which attracts student support are unchanged. SFW will assess these applications against existing eligibility criteria, and will provide loans and/or grants in the normal way. EU nationals, or their family members, who are assessed as eligible to receive grants and/or loans will be eligible for the duration of their study on that course."

Government Response

No government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee

WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

EDUCATION, WALES

The Cancellation of Student Loans for Living Costs Liability (Wales) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations govern the student loan liability of full-time students who receive loans for living costs from the Welsh Ministers in respect of the academic year 2019/2020.

These Regulations provide for up to £1,500 of a borrower's living costs loan liability to be cancelled in certain circumstances, with effect from the day after the date on which their first loan repayment is considered to have been received.

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. (W.)

EDUCATION, WALES

The Cancellation of Student Loans for Living Costs Liability (Wales) Regulations 2019

Made	*2 July 2019*
Laid before the National Assembly for Wales	*3 July 2019*
Coming into force	*1 August 2019*

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

(**1**) 1998 c. 30; section 22 was amended by section 146 of and Schedule 11 to the Learning and Skills Act 2000 (c. 21), Schedule 6(2), paragraph 236 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1), section 147 of the Finance Act 2003 (c. 14), sections 42 and 43 of and Schedule 7 to the Higher Education Act 2004 (c. 8), section 257 of the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), section 76 of the Education Act 2011 (c. 21), and paragraph 6 of the Schedule to the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881.

(**2**) The functions of the Secretary of State under section 22 of the Teaching and Higher Education Act 1998 (except so far as they relate to the making of any provision authorised by subsection (2)(j), (3)(e) or (f) or (5) of section 22) 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 the functions under subsection (2)(a), (c) and (k) being 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 the National Assembly for Wales (Transfer of Functions) Order 1999, article 2 and Schedule 1 (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).

Title and commencement

1.—(1) The title of these Regulations is the Cancellation of Student Loans for Living Costs Liability (Wales) Regulations 2019.

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

Application

2. These Regulations apply in relation to Wales and to the provision of support to students in respect of the Academic Year 2019/2020.

Interpretation

3. In these Regulations—

"the 1998 Act" ("*Deddf 1998*") means the Teaching and Higher Education Act 1998;

"the 2008 Act" ("*Deddf 2008*") means the Sale of Student Loans Act 2008(**1**);

"academic year" ("*blwyddyn academaidd*") means the period of twelve months beginning on 1 September, 1 January, 1 April or 1 July of the calendar year in which the academic year of the course in question begins, according to whether that academic year begins on or after 1 August but before 1 January, on or after 1 January but before 1 April, on or after 1 April but before 1 July, or on or after 1 July but before 1 August, respectively;

"Academic Year 2019/2020" ("*Blwyddyn Academaidd 2019/2020*") means an academic year which begins on or after 1 September 2019 but before 1 September 2020;

"borrower" ("*benthyciwr*") means a person who has received a loan for living costs;

"loan for living costs" ("*benthyciad at gostau byw*") is a loan received from the Welsh Ministers in respect of the Academic Year 2019/2020 under Part 6 of the Education (Student Support) (Wales) Regulations 2017(**2**) or under Part 8 of the Education (Student Support) (Wales) Regulations 2018(**3**) in respect of a full-time course;

"Outstanding Liability" ("*Atebolrwydd sydd heb ei Dalu*") has the meaning given in regulation 7;

"Repayment Date" ("*Dyddiad Ad-dalu*") means the day after the date on which the borrower's first loan repayment is considered to have been received by either Her Majesty's Revenue and

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(**1**) 2008 c. 10.
(**2**) S.I. 2017/47 (W. 21), amended by S.I. 2018/191 (W. 42), S.I. 2018/814 (W. 165) and S.I. 2019/235 (W. 54).
(**3**) S.I. 2018/191 (W. 42), amended by S.I. 2018/813 (W. 164), S.I 2018/814 (W. 165) and S.I. 2019/235 (W. 54).

Customs or the Welsh Ministers, whichever is considered (in accordance with regulations made under section 22 of the 1998 Act(**1**)) to have received it first;

"Satisfaction Date" ("*Dyddiad Bodloni*") has the meaning given in regulation 9;

"Specified Amount" ("*Swm Penodedig*") has the meaning given in regulation 6; and

"Welsh Ministers" ("*Gweinidogion Cymru*") includes any person to whom they have transferred or delegated their functions under section 23 of the 1998 Act(**2**) or to whom they have transferred their rights under section 9 of the 2008 Act.

Qualification for cancellation

4. A borrower qualifies for cancellation of the Specified Amount of their Outstanding Liability in the circumstances set out in regulation 5 ("the Circumstances").

Circumstances

5. The Circumstances for the purposes of regulation 4 are that the Welsh Ministers consider that, on the Repayment Date, the borrower—

(a) is not in breach of any obligation contained in any agreement for a student loan or in any regulations made under section 22 of the 1998 Act;

(b) does not have outstanding penalties, costs, expenses or charges in relation to such a loan pursuant to any such agreement or regulations; and

(c) has not received a cancellation (including a cancellation of £0.00) under the provisions of the Cancellation of Student Loans for Living Costs Liability (Wales) Regulations 2010(**3**), the Cancellation of Student Loans for Living Costs Liability (Wales) Regulations 2011(**4**), the Cancellation of Student Loans for Living Costs Liability (Wales) Regulations 2012(**5**), the Cancellation of Student Loans for Living Costs Liability (Wales) Regulations 2013(**6**), the Cancellation of Student Loans for Living

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(**1**) At the time of making these Regulations, the date on which a borrower's repayment is considered to have been received is determined in accordance with regulation 17 of the Education (Student Loans) (Repayment) Regulations 2009 (S.I. 2009/470).

(**2**) Section 23 was amended by section 146 of the Learning and Skills Act 2000 (c. 21), S.I. 2002/808 and S.I. 2010/1158.

(**3**) S.I. 2010/1704 (W. 164).

(**4**) S.I. 2011/1654 (W. 189).

(**5**) S.I. 2012/1518 (W. 201).

(**6**) S.I. 2013/1396 (W. 135).

Costs Liability (Wales) Regulations 2014(**1**), the Cancellation of Student Loans for Living Costs Liability (Wales) Regulations 2015(**2**), the Cancellation of Student Loans for Living Costs Liability (Wales) Regulations 2016(**3**), the Cancellation of Student Loans for Living Costs Liability (Wales) Regulations 2017(**4**); or the Cancellation of Student Loans for Living Costs Liability (Wales) Regulations 2018(**5**) of any of their liability for payment in respect of a loan received from the Welsh Ministers.

Specified Amount

6. The Specified Amount is the lesser of—

(a) £1,500; or

(b) the Outstanding Liability.

Outstanding Liability

7.—(1) Subject to paragraph (2), the Outstanding Liability is the total amount considered to be payable by the borrower on the Repayment Date in respect of any loan for living costs, but does not include any interest accrued or any penalties, costs, expenses or charges incurred in respect of any such loan.

(2) For the purposes of regulation 9, the Outstanding Liability is the total amount considered to be payable by the borrower on the Satisfaction Date in respect of any loan for living costs, but does not include any interest accrued or any penalties, costs, expenses or charges incurred in respect of any such loan.

(3) For the purposes of calculating the Outstanding Liability in paragraphs (1) and (2), the amount considered to be payable by the borrower is calculated in accordance with regulations made pursuant to section 22 of the 1998 Act(**6**).

Cancellation

8. In the Circumstances in regulation 5, the Welsh Ministers must cancel the Specified Amount with effect from the Repayment Date.

(**1**) S.I. 2014/1314 (W. 134).
(**2**) S.I. 2015/1418 (W. 142).
(**3**) S.I. 2016/48 (W. 20).
(**4**) S.I. 2017/489 (W. 102).
(**5**) S.I. 2018/818 (W. 166).
(**6**) At the time of making these Regulations the amount which a borrower is considered to have repaid and therefore the amount that is considered to still be payable is determined in accordance with the Education (Student Loans) (Repayment) Regulations 2009 (S.I. 2009/470). See in particular regulations 17, 29, 44 and 76.

9. If any of the Circumstances in regulation 5 are not satisfied on the Repayment Date, but they become satisfied at a later date, the Welsh Ministers may cancel the Specified Amount with effect from the date that they consider the Circumstances to have been satisfied ("the Satisfaction Date").

Kirsty Williams
Minister for Education, one of the Welsh Ministers
2 July 2019

Explanatory Memorandum to the Cancellation of Student Loans for Living Costs Liability (Wales) Regulations 2019

This Explanatory Memorandum has been prepared by the Higher Education Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Cancellation of Student Loans for Living Costs Liability (Wales) Regulations 2019.

Kirsty Williams AM
Minister for Education
3 July 2019

1. Description

These Regulations provide for up to £1,500 of a full-time, undergraduate student's living costs loan (also known as a maintenance loan) for academic year 2019/2020, to be cancelled in certain circumstances. The cancellation will take effect from the day after the date on which the student's first loan repayment is received.

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

None.

3. Legislative background

These Regulations are made by the Welsh Ministers in exercise of the powers conferred upon the Secretary of State by sections 22 and 42(6) of the Teaching and Higher Education Act 1998 ("THEA") and which are now exercisable by them in relation to Wales.

The relevant functions of the Secretary of State under section 22 of THEA were transferred to the National Assembly for Wales by section 44 of the Higher Education Act 2004. The functions of the Secretary of State under section 42(6) of THEA were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999. All of these functions were then transferred to the Welsh Ministers by virtue of section 162 of and paragraphs 30(1) and 30(2)(c) of Schedule 11 to the Government of Wales Act 2006.

Undergraduate students who receive a living costs loan from the Welsh Ministers in academic year 2019/2020 will do so under the Education (Student Support) (Wales) Regulations 2017 (S.I. 2017/47 (W. 21)) or the Education (Student Support) (Wales) Regulations 2018 (S.I. 2018/191 (W. 42)), depending on when their course starts.

Provisions relating to the repayment of living costs loans are contained in the Education (Student Loans) (Repayment) Regulations 2009 (SI 2009/470), (as amended) which are made on a composite basis by the Welsh Ministers and the Secretary of State under sections 22 and 42 of THEA and sections 5 and 6 of the Sale of Student Loans Act 2008.

This instrument will follow the Negative Resolution procedure.

4. Purpose & intended effect of the legislation

These Regulations make provision for students, who receive a living costs loan from the Welsh Ministers for academic year 2019/20 in respect of a full-time, undergraduate course to benefit from a reduction in the balance of their loan of up to £1,500 when they start repaying their loan. This will not be in the form of a cash lump sum; rather the balance of an individual's loan will be reduced by the appropriate amount the day after a borrower's first repayment is made.

A student can only receive a partial cancellation once; they cannot receive a partial cancellation in respect of academic year 2019/20 if they have already received a cancellation in respect of any previous academic year. A student will not be entitled to a partial cancellation if there are any outstanding charges or penalties or if they are in breach of their loan agreement or any regulations made under section 22 of THEA.

5. Consultation

No consultation has been undertaken as these Regulations are technical in nature and simply update the academic year for which this scheme will operate.

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The Pesticides (Amendment) (EU Exit) Regulations 2019**
DATE	**24 June 2019**
BY	**Rebecca Evans AM, Minister for Finance and Trefnydd**

The Pesticides (Amendment) (EU Exit) Regulations 2019

The Law which is being amended

- The Plant Protection Products (Sustainable Use) Regulations 2012
- Plant Protection Products (Miscellaneous Amendments) (EU Exit) Regulations 2019
  Pesticides (Maximum Residue Levels) (Amendment etc.) (EU Exit) Regulations 2019
- Regulation (EC) 1107/2009 concerning the placing of plant protection products on the market
- Regulation (EU) No 844/2012 regarding the implementation of the renewal procedure for active substances
- The European Economic Area Agreement.

The Law which is being revoked

- Commission Implementing Regulation (EU) No 380/2013
- Council Regulation (EU) No 518/2013
- Commission Regulation (EU) No 1136/2014
- Commission Regulation (EU) 2015/1475
- Commission Implementing Regulation (EU) 2018/155
- Commission Regulation (EU) 2018/1515
- Commission Regulation (EU) 2018/1516
- Commission Regulation (EU) 2019/38
- Commission Regulation (EU) 2019/58
- Commission Regulation (EU) 2019/89
- Commission Regulation (EU) 2019/90
- Commission Regulation (EU) 2019/91
- Commission Implementing Regulation (EU) 2019/149
- Commission Implementing Regulation (EU) 2019/150
- Commission Implementing Regulation (EU) 2019/151
- Commission Implementing Regulation (EU) 2019/158

- Commission Implementing Regulation (EU) 2019/168
- Commission Implementing Regulation (EU) 2019/291
- Commission Implementing Regulation (EU) 2019/324
- Commission Implementing Regulation (EU) 2019/337
- Commission Implementing Regulation (EU) 2019/344
- Commission Implementing Regulation (EU) 2019/481
- Commission Implementing Regulation (EU) 2019/530
- Commission Regulation (EU) 2019/552
- Commission Implementing Regulation (EU) 2019/676
- Commission Implementing Regulation (EU) 2019/677
- Commission Implementing Regulation (EU) 2019/706
- Commission Implementing Regulation (EU) 2019/707
- Commission Implementing Regulation (EU) 2019/716
- Commission Implementing Regulation (EU) 2019/717

The purpose of the Regulations
The Regulations make a number of amendments to the retained direct EU legislation which forms the plant protection product and maximum residue level regulatory regimes, so that they can continue to operate effectively after the United Kingdom leaves the European Union. Some of the required amendments are as a consequence of the change in "exit day" from 29 March which impacts on various dates specified in the retained law. Further new EU legislation has also come into force during the extension period, which needs to be amended in order to correct deficiencies arising from exiting the European Union. The Regulations also fix errors in earlier instruments made under section 8(1) of the European Union (Withdrawal) Act 2018.

The Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments are available here: https://beta.parliament.uk/work-packages/rld2tI43

Any impact the SI may have on the Welsh Ministers' executive competence
The Regulations have 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 Regulations have no impact on the National Assembly for Wales' legislative competence.

Why consent was given
The Regulations make a number of technical changes and supplement provisions on policies which were included in earlier EU exit SIs, ensuring all deficiencies have been fully addressed.

UK MINISTERS ACTING IN DEVOLVED AREAS

136 - The Pesticides (Amendment) (EU Exit) 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 12
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 2(2) of the European Communities Act 1972 and section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

The Regulations make minor, technical amendments to direct EU legislation comprising the plant protection product and maximum residue level regulatory regimes, in order for the legislation to continue to operate effectively following EU Exit. The Regulations also revoke a series of redundant EU Regulations.

Some of the amendments are made in consequence of the change in "exit day" from 29 March 2019, including amendments to EU legislation that has come into force during the extension period. The Regulations also fix errors identified in earlier instruments made under the European Union (Withdrawal) Act 2018.

The Regulations apply to the whole of the United Kingdom and do not implement new policy.

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.

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Electronic Commerce Directive (Adoption and Children) (Amendment etc) (EU Exit) Regulations 2019

1. This Statutory Instrument Consent Memorandum is laid under Standing Order ("SO") 30A.2. SO 30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the National Assembly for Wales ("the Assembly") if a UK Statutory Instrument (SI) makes provision in relation to Wales amending primary legislation within the legislative competence of the Assembly.

2. The Electronic Commerce Directive (Adoption and Children) (Amendment etc) (EU Exit) Regulations 2019 was laid before Parliament on 25 June 2019 and is now being laid before the Assembly. The order can be found at:

https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-electronic-commerce-directive-adoption-and-children-amendment-etc-eu-exit-regulations-2019-revised

Summary of the Statutory Instrument and its objective

3. The objective of the SI is to correct deficiencies in legislation arising from the UK leaving the European Union. This SI removes references to the Country of Origin principle, and to the EU and EU State, from Schedule 11B of the Education Act 2002 and from the Electronic Commerce Directive (Adoption and Children Act 2002) Regulations 2005.

4. These corrections are required to ensure that the statute book will continue to operate after exit.

Relevant provision to be made by the SI

5. These Regulations amend the Education Act 2002 (c. 32) ("the 2002 Act") and the Electronic Commerce Directive (Adoption and Children Act 2002) Regulations 2005 (S.I. 2005/3222) ("the 2005 Regulations"). Together, the amendments provide for the disapplication of the "country of origin" principle in respect of certain matters under the 2002 Act and the 2005 Regulations respectively.

6. The amendments to the 2002 Act relate to provision in Schedule 11B to that Act (in relation to publishing a matter in breach of restrictions on reporting alleged offences by teachers; those provisions extend to England and Wales). The effect of the amendments is to disapply the country of origin principle in respect of information society services which have potentially breached the reporting restrictions under section 141F of the 2002 Act.

7. The amendments to the 2005 Regulations provide for the disapplication of the country of origin principle in relation to information society services in the application of sections 92 and 93 of the Adoption and Children Act 2002 (c. 38) (restriction on arranging adoptions) and sections 123 and 124 of that Act (restriction on advertising adoptions).

8. It is the view of the Welsh Government that the provisions described in paragraphs 5 to 7 above fall within the legislative competence of the National Assembly for Wales in so far as they relate to services and facilities relating to adoption and to Education.

Why it is appropriate for the SI to make this provision

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

Julie Morgan AM
Deputy Minister for Health and Social Services
25 June 2019

STATUTORY INSTRUMENTS

2019 No. 0000

EXITING THE EUROPEAN UNION

CHILDREN AND YOUNG PERSONS

EDUCATION, ENGLAND AND WALES

ELECTRONIC COMMUNICATIONS

The Electronic Commerce Directive (Adoption and Children) (Amendment etc.) (EU Exit) Regulations 2019

Sift requirements satisfied ***

Made - - - - ***

Laid before Parliament ***

Coming into force in accordance with regulation 1(1)

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

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

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Electronic Commerce Directive (Adoption and Children) (Amendment etc.) (EU Exit) Regulations 2019 and come into force on exit day.

(2) Any amendment, repeal or revocation made by these Regulations has the same extent as the provision amended, repealed, or revoked.

Amendment of the Education Act 2002

2.—(1) The Education Act 2002(**b**) is amended as follows.

(2) In Schedule 11B (offence under section 141G: supplementary provisions)(**c**)—

(a) in paragraph 1(2)—

(**a**) 2018 c. 16.
(**b**) 2002 c. 32.
(**c**) Schedule 11B was inserted by Schedule 4 to the Education Act 2011 (c. 21) and amended by S.I. 2012/1809.

(i) for "The purpose of this Schedule is to comply with" substitute "In this Schedule "the E-Commerce Directive" means";

(ii) omit "("the E-Commerce Directive")";

(b) omit paragraphs 2 and 3;

(c) omit paragraph 7(2).

Amendment of the Electronic Commerce Directive (Adoption and Children Act 2002) Regulations 2005

3.—(1) he Electronic Commerce Directive (Adoption and Children Act 2002) Regulations 2005(**a**) are amended as follows.

(2) In regulation 1—

(a) for the heading substitute "Citation and commencement";

(b) omit paragraph (2).

(3) In regulation 2 (interpretation)—

(a) in paragraph (1), omit the definitions of the following—

(i) "the Commission";

(ii) "co-ordinated field";

(iii) "country of origin";

(iv) "EEA State";

(v) "incoming electronic commerce activity";

(vi) "incoming provider";

(vii) "prohibited measure";

(viii) "relevant EEA authority";

(b) in paragraph (2), omit sub-paragraphs (a), (b) and (c).

(4) Omit regulations 3 to 8.

Saving provision

4. Where an offence under section 141G(**b**) of the Education Act 2002 was committed before these Regulations come into force, Schedule 11B to that Act applies in relation to that offence as if—

(a) regulation 2 had not been made;

(b) in paragraph 2(2), the words "other than the United Kingdom" were omitted;

(c) in paragraph 3(1), the words "other than the United Kingdom" were omitted;

(d) in paragraph 7(2), the words "other than the United Kingdom" were omitted each time those words appear.

Name
Parliamentary Under Secretary of State
Department for Education

Date

(**a**) S.I. 2005/3222, amended by S.I. 2011/1043, 2012/1809; there are other amending instruments but none is relevant.
(**b**) Section 141G was inserted by section 13(1) of the Education Act 2011 (c. 21).

EXPLANATORY NOTE

(This note is not part of the Regulations)

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

These Regulations amend the Education Act 2002 (c. 32) ("the 2002 Act") and the Electronic Commerce Directive (Adoption and Children Act 2002) Regulations 2005 (S.I. 2005/3222) ("the 2005 Regulations"). Together, the amendments provide for the disapplication of the "country of origin" principle in relation to information society services (defined in Article 2(a) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market) in respect of certain matters under the 2002 Act and the 2005 Regulations respectively.

The amendments to the 2002 Act relate to provision in Schedule 11B to that Act (which supplements section 141G of that Act in relation to publishing a matter in breach of restrictions on reporting alleged offences by teachers in section 141F(3); those provisions extend to England and Wales only). The effect of the amendments is to disapply the country of origin principle in respect of information society services which have potentially breached the reporting restrictions under section 141F of the 2002 Act. However, by virtue of regulation 4, Schedule 11B continues to apply as though these Regulations had not been made where an offence under section 141G of the 2002 Act was committed before they come into force.

The amendments to the 2005 Regulations provide for the disapplication of the country of origin principle in relation to information society services in the application of sections 92 and 93 of the Adoption and Children Act 2002 (c. 38) (restriction on arranging adoptions) and sections 123 and 124 of that Act (restriction on advertising adoptions).

An impact assessment has not been published for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

EXPLANATORY MEMORANDUM TO

THE ELECTRONIC COMMERCE DIRECTIVE (ADOPTION AND CHILDREN) (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019

2019 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Act.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments and for the Sifting Committees.

2. Purpose of the instrument

2.1 These Regulations are being made under the European Union (Withdrawal) Act 2018 to address deficiencies that arise from the United Kingdom's withdrawal from the European Union ("EU") without a deal.

2.2 These Regulations amend two pieces of legislation, which stem from Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, commonly referred to as the Electronic Commerce Directive ("eCD"). The pieces of legislation amended by these Regulations are Schedule 11B to the Education Act 2002 ("2002 Act"), and the Electronic Commerce Directive (Adoption and Children Act 2002) Regulations 2005 ("the 2005 Regulations").

Explanations

What did any relevant EU law do before exit day?

2.3 The eCD (which has been incorporated into the European Economic Area (EEA) Agreement) seeks to contribute to the proper functioning of the internal market by ensuring the free movement of information society services (ISS) between EEA states and approximating EEA states' laws concerning the regulation and provision of information society services. The EEA Agreement brings EU member states plus Iceland, Liechtenstein and Norway together in the single market. ISS refers to any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing and storage of data, at the individual request of a recipient of the service e.g. an internet service provider,

2.4 Article 3 of the Directive sets out the country of origin ("CoO") principle in relation to the regulation of ISS. Generally, this principle provides that, within the "coordinated field", ISS must be regulated by the law of the EEA state in which the provider of the services is established, rather than the law of the EEA state in which the services are received. This means that where the UK regulates information society services within the co-ordinated field, such regulation must extend to information society services provided by persons established in the UK, even where such services are provided elsewhere in the EEA (Article 3(1)). In addition, for services falling within the "coordinated field", the UK must not restrict the freedom of a person established in another EEA state to provide those services in the UK (Article 3(2)).

2.5 Schedule 11B to the 2002 Act and the 2005 Regulations gave effect to the CoO principle in two particular contexts. Specifically, they made provision relating to the prosecution of certain criminal offences ("relevant offences") created by the 2002 Act and, further to modifications made by the 2005 Regulations, the Adoption and Children Act 2002 ("ACA 2002").

2.6 The relevant provision in the 2002 Act relates to the offence at section 141G, which is committed where a person breaches a reporting restriction set out at section 141F in respect of a teacher who has been accused of an offence involving a pupil at their school.

2.7 The relevant provisions in the 2005 Regulations make provision in respect of a breach of section 92 of ACA 2002, which imposes certain restrictions on arranging adoptions (section 93 creates the offence of breaching that prohibition). The 2005 Regulations also make provision in relation to a breach of section 123 of ACA 2002, which relates to the publishing or distributing of adoption- related advertisements (section 124 of ACA 2002 creates the offence of breaching that prohibition).

Why is it being changed?

2.8 These Regulations amend the 2002 Act and the 2005 Regulations to remove provisions that will be inappropriate following the UK's withdrawal from the EU without a deal, ensuring the law continues to function effectively. The provisions in question engage the CoO principle, a reciprocal arrangement between EU Member States, which will not apply to the United Kingdom following its exit from the EU. The removal of these provisions is necessary, therefore, to reflect the loss of this reciprocity, and as a consequence to ensure that domestic legislation continues to operate effectively post-exit.

What will it now do?

2.9 The CoO principle is a reciprocal arrangement between EEA states, from which the UK will no longer benefit in a no deal exit. These Regulations disapply that principle as it relates to the subject matter of Schedule 11B to the 2002 Act and the 2005 Regulations.

2.10 The amendments will mean that domestic ISS (i.e. those based in England and Wales) will no longer be automatically treated as having committed a relevant publishing offence in England and Wales/UK if they publish prohibited information in an EEA state. They will instead be subject to the laws of the EEA state in which they are operating. Equally, it will mean that any EEA ISS will not automatically be exempt from prosecution in England and Wales/UK.

2.11 The changes will ensure equal treatment in the UK/England and Wales for all ISS worldwide, should they commit a relevant offence. It will also mitigate the risk of any breach of World Trade Organisation obligations as treating ISS in other countries and domestic ISS less favourably than those from EEA. ISS would likely breach World Trade Organisation Most Favoured Nation obligations.

2.12 These Regulations therefore disapply the CoO principle as it relates to the relevant provisions in the 2002 Act and the provisions in the ACA 2002 modified by the 2005 Regulations. This will mean that post EU (no deal) exit, domestic ISS will not be automatically treated as having committed a relevant offence if they publish restricted

information in an EEA state. It will also mean that EEA ISS will not automatically be exempt from prosecution for the relevant offences in the UK.

2.13 These Regulations do not revoke any criminal offences either in the UK or across the EEA but as explained in paragraph 2.10 they will affect where ISS are liable for prosecution if they commit a relevant offence.

2.14 The changes will ensure equal treatment in England and Wales or as the case may be the UK for all ISS worldwide should they commit a relevant offence.

3. Matters of special interest to Parliament

Matters of special interest to the Sifting Committees

3.1 This instrument is being laid for sifting by the Sifting Committees. A statement regarding use of legislative powers in the Withdrawal Act is contained in Part 2 of the Annex to this memorandum.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

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

4. Extent and Territorial Application

4.1 These Regulations extend to the United Kingdom.

4.2 They make amendments to Schedule 11B to the 2002 Act, which extends to England and Wales.

4.3 These Regulations also amend provision in the 2005 Regulations, which extend to the United Kingdom.

4.4 The territorial application of the Regulations is the same as their extent except to the extent that the Regulations amend the 2005 Regulations in relation to sections 92 and 93 of ACA 2002, in which case they apply to England and Wales only.

5. European Convention on Human Rights

5.1 The Parliamentary Under-Secretary of State for Children and Families, Nadhim Zahawi has made the following statement regarding Human Rights: "In my view the provisions of the *The Electronic Commerce Directive (Adoption and Children) Amendment Etc.) (EU Exit) Regulations 2019* are compatible with the Convention rights.

6. Legislative Context

6.1 The Government intends to remove provisions in all UK legislation which give effect to the CoO principle. These Regulations remove the provisions giving effect to the CoO principle in the 2002 Act and 2005 Regulations. The changes are being made under powers in the European Union (Withdrawal) Act 2018.

6.2 These Regulations amend Schedule 11B to the 2002 Act. Section 141F of the 2002 Act prohibits information being published that identifies a teacher accused of committing a criminal offence by, and against, a pupil in a school in England and

Wales. This restriction is predominately intended to ensure anonymity of a teacher who is facing an allegation of abuse in respect of a pupil pending prosecution for the offence, or the Secretary of State announcing a disciplinary investigation or a decision on the matter. Section 141G of the 2002 Act creates an offence of breaching the reporting restrictions in section 141F. Paragraphs 2 and 3 of Schedule 11B to the 2002 Act give effect to the CoO by providing (i) that domestic ISS who publishes information in an EEA state other than England and Wales in breach of section 141F may be treated as having committed the offence in England and Wales, and may be tried for the offence in England and Wales, and (ii) that ISS established in an EAA state other than England and Wales may not be prosecuted for an offence under section 141G.

6.3 These Regulations also amend the 2005 Regulations, which were made under section 2(2) of the European Communities Act 1972. The 2005 Regulations modified provision in ACA 2002 in relation to the place where prosecutions for certain criminal offences under ACA 2002 would be dealt with. The effect of the modifications made by the 2005 Regulations in respect of ACA 2002 is to provide that ISS established in the UK that publishes or distributes adoption related material in another EEA state in breach of section 92 or 123 of the Act (an offence under sections 93 and 124 respectively), may be treated as having committed an offence in the UK and may be tried for the offence domestically. Likewise, subject to certain exceptions, non-UK EEA ISS operating in the UK would not be liable to be prosecuted for an offence under section 93 or 124 of ACA 2002.

7. Policy background

What is being done and why?

7.1 The CoO principle is a reciprocal arrangement between EEA states. It will no longer apply to the UK in a no deal exit. These Regulations will remove provisions giving effect to the CoO principle in the eCD. These changes are necessary so that it is clear where prosecutions for criminal offences created by the 2002 Act and ACA 2002 can be brought. The amendments will mean that domestic ISS will no longer be automatically treated as having committed a relevant publishing offence in England and Wales or as the case may be the UK if they publish prohibited information in an EEA state. They will instead be subject to the laws of the EEA state in which they are operating. Equally, it will mean that EEA ISS will not automatically be exempt from prosecution in England and Wales or as the case may be the UK.

7.2 The changes will ensure equal treatment in the UK and England and Wales for all ISS worldwide, should they commit a relevant publishing offence. It will also mitigate the risk of any breach of World Trade Organisation obligations as treating ISS in other countries and domestic ISS less favourably than those from EEA ISS would likely breach World Trade Organisation Most Favoured Nation obligations.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the UK from the European Union. In accordance with the requirements of that Act, the Minister has

made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 Since these Regulations do no more than disapply the country of origin principle as it relates to the subject matter of Schedule 11B to the 2002 Act and the 2005 Regulations, there are no plans to undertake a consolidation exercise.

10. Consultation outcome

10.1 The Department has not undertaken a formal public consultation. DCMS (the department responsible for the eCD parent legislation) has consulted a wide range of stakeholders on the eCD more broadly.

11. Guidance

11.1 There is no guidance associated with the eCD and the legislation being amended, and no future guidance is planned. However, DCMS has published general guidance in relation to the eCD at ttps://www.gov.uk/government/publications/ecommerce-eu-exit-guidance.

12. Impact

12.1 There is no significant impact on the public sector.

12.2 There is no significant impact on the private sector.

12.3 A Regulatory Triage Assessment (RTA) has been completed. The RTA assesses low cost and having an equivalent annual net direct cost to business which is below 5m (de-minimis limit) cost to business, therefore a Full Impact Assessment has not been completed.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses but does apply to non-profit making voluntary adoption agencies who charge local authorities a fee to recruit, assess and approve families for children for whom adoption is the plan.

13.2 The amendments will have little effect on voluntary adoption agencies. They will ensure the future operability of the legislation when the UK leaves the EU and ensure all ISS worldwide are treated equally in the UK if they commit a relevant publishing offence.

14. Monitoring & review

14.1 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. **Contact**

15.1 Debra Gilder at the Department for Education, email: debra.gilder@education.gov.uk can be contacted with any queries regarding the instrument in so far as it amends The Electronic Commerce Directive (Adoption and Children Act 2002) Regulations 2005.

15.2 Carol Macmillan at the Department for Education, email: carol.macmillan@education.gov.uk can be contacted with any queries regarding the instrument in so far as it amends Schedule 11B to the Education Act 2002.

15.3 Christina Bankes, Deputy Director for Children in Care and Permanence and Peter Swift, Deputy Director for Independent Education Division at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.

15.4 Nadhim Zahawi MP, Parliamentary Under-Secretary of State for Children and Families at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA Sis	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.

Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

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

1. **Sifting statement(s)**

1.1 The Parliamentary Under-Secretary of State for Children and Families, Nadhim Zahawi has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Electronic Commerce Directive (Adoption and Children) (Amendment etc.) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)".

1.2 This is because the amending Regulations do not fall within any of the provisions of paragraph 1(2) of Schedule 7 to the Withdrawal Act.

2. **Appropriateness statement**

2.1 The Parliamentary Under-Secretary of State for Children and Families, Nadhim Zahawi has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the amending statutory instrument - *The Electronic Commerce Directive (Adoption and Children) (Amendment Etc.) (EU Exit) Regulations 2019* - does no more than is appropriate."

2.2 This instrument corrects deficiencies in both the 2002 Act and 2005 Regulations in a 'no deal' scenario by disapplying the country of origin (CoO) principle in relation to the relevant offences. The changes are minimal but necessary to ensure similar treatment of all ISS when we leave the EU and are in line with the intention that underpins the EU (Withdrawal) Act which is to maximise certainty for individuals and businesses as we leave the EU.

2.3 The changes are consistent with the approach taken by the Department for Digital, Culture, Media and Sport who is responsible for Government policy in relation to the eCD.

3. **Good reasons**

3.1 The Parliamentary Under-Secretary of State for Children and Families, Nadhim Zahawi has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

3.2 "In my view there are good reasons for making this instrument. The CoO principle is a reciprocal arrangement between the UK and other member States, which will no longer exist in a no deal scenario, therefore, the instrument reflects the loss of this reciprocity, and ensures that domestic legislation continues to operate effectively post-exit. It will ensure equal treatment in the UK/England and Wales for all ISS worldwide, should they commit a relevant publishing offence."

4. Equalities

4.1 The Parliamentary Under-Secretary of State for Children and Families, Nadhim Zahawi has made the following statement:

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

5. Explanations

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

6. Criminal offences

6.1 Both the 2002 Act and the 2005 Regulations make provision for where prosecutions for the relevant offences can be brought.

6.2 The amending SI will mean that domestic ISS will no longer be automatically treated as having committed the offence in the UK if they publish prohibited information in European Economic Area (EEA) states, and any ISS established in EEA states will not automatically be exempt from prosecution in the UK.

Julie Morgan AC/AM
Y Dirprwy Weinidog Iechyd a Gwasanaethau Cymdeithasol
Deputy Minister for Health and Social Services

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA-L JM/0418/19

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

SeneddCLA@assembly.wales

26 June 2019

Dear Mick,

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

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

SO30A provides that any Member may table a motion for a debate on this SI. Given the volume of legislation that the Assembly is considering, I will not myself be seeking to initiate such a debate.

Julie Morgan AC/AM
Y Dirprwy Weinidog Iechyd a Gwasanaethau Cymdeithasol
Deputy Minister for Health and Social Services

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Gohebiaeth.Julie.Morgan@llyw.cymru
Correspondence.Julie.Morgan@gov.wales

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Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The Electronic Commerce Directive (Adoption and Children) (Amendment etc) (EU Exit) Regulations 2019**
DATE	**26 June 2019**
BY	**Rebecca Evans AM, Minister for Finance and Trefnydd**

The Electronic Commerce Directive (Adoption and Children) (Amendment etc) (EU Exit) Regulations 2019

The law which is being amended
The Electronic Commerce Directive (Adoption and Children) (Amendment etc) (EU Exit) Regulations 2019 amends the following pieces of legislation:

- The Education Act 2002
- The Electronic Commerce Directive (Adoption and Children Act 2002) Regulations 2005

The 2019 Regulations contain provisions which fall within devolved competence.

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence
There is potentially an impact on competence as the SI only partly removes certain provisions derived from the Directive from Schedule 11B to the Education 2002 Act and from the Electronic Commence Directive (Adoption and Children Act 2002) Regulations 2005 . It leaves provisions relating to exceptions (from the offence) for conduits, caching and hosting. The effect of this is that those provisions that remain will become retained in EU law. The effect of that is that the Assembly will not have powers to modify retained EU law if a UK Government Minister of the Crown makes regulations to that effect under s.109A of the Government of Wales Act 2006.

The purpose of the amendments
The Electronic Commerce Directive (eCD) regulates certain legal aspects of "information society services" across the European Economic Area (EEA) that aim to remove obstacles to cross-border online services in the European Union (EU) and to provide legal certainty to business and citizens in cross-border online translations. In effect, it creates a mutual recognition scheme.

The eCD makes specific provision referred to as the 'Country of Origin' (CoO) principle. In the field of electronic commerce, this is a reciprocal arrangement which means that where an online information society provider (ISSP) operates from an establishment in an EEA state, the law of that particular state will apply to the ISSP's activities.

Once the UK is no longer a member of the EU, and in the event of a no deal scenario, the removal of the CoO concept will mean that ISSPs will be required to comply with the rules that govern online activities in each EEA state in which they operate. ISSPs operating from EEA states will cease to benefit from the current exemption from prosecution in the UK, Wales and England for offences established by the Adoption and Children Act 2002 (section 92 and 123) and Schedule 11B to the 2002 Act. ISSPs operating in the UK that commit a section 92, 123 or 2002 Act offence in an EEA state will no longer be automatically treated as having committed those offences in the UK, or England and Wales, respectively.

The 2019 Regulations remove fully the CoO principle from UK legislation that implements the eCD and as a result the provisions giving effect to the CoO principle in the 2002 Act and 2005 Regulations are being removed by this instrument. Post EU withdrawal, UK laws will apply to all EEA based online service providers when operating in the UK. Providers, irrespective of origin, will be subject to UK laws when providing services in the UK.
The SI also makes other consequential amendments necessary to reflect the fact that the UK will no longer be a member of the EU.

The SI and accompanying Explanatory Memorandums, setting out the effect of each amendment is available here: https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-electronic-commerce-directive-adoption-and-children-amendment-etc-eu-exit-regulations-2019-revised

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 nature of the amendments to retain operability of the legislation on exit day. 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. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition.

A Statutory Instrument Consent Memorandum has also been laid in the National Assembly in respect of the amendments to The Education Act 2002.

UK MINISTERS ACTING IN DEVOLVED AREAS

137 - The Electronic Commerce Directive (Adoption and Children) (Amendment etc.) (EU Exit) Regulations 2019

Laid in the UK Parliament: 20 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	02 July 2019
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known
Date sifting period ends in UK Parliament	09 July 2019
Written statement under SO 30C:	Paper 18
SICM under SO 30A (because amends primary legislation)	Paper 14
Scrutiny procedure	
Outcome of sifting	Not known
Procedure	Negative or affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

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

These Regulations amend two pieces of legislation, which stem from Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, commonly referred to as the Electronic Commerce Directive ("the Directive"). The pieces of legislation amended by these Regulations are Schedule 11B to the Education Act 2002 ("2002 Act"), and the Electronic Commerce Directive (Adoption and Children Act 2002) Regulations 2005 ("the 2005 Regulations").

The Directive seeks to contribute to the proper functioning of the internal market by ensuring the free movement of information society services

("ISS") between EEA states and approximating EEA states' laws concerning the regulation and provision of ISS.

Article 3 of the Directive sets out the country of origin ("CoO") principle in relation to the regulation of ISS. Generally, this principle provides that ISS must be regulated by the law of the EEA state in which the provider of the services is established, rather than the law of the EEA state in which the services are received. The CoO principle is a reciprocal arrangement between EEA states, from which the UK will no longer benefit in a no deal exit. These Regulations disapply that principle as it relates to the subject matter of the 2005 Regulations and Schedule 11B to the 2002 Act.

The 2005 Regulations and Schedule 11B to the 2002 Act gave effect to the CoO principle in two particular contexts. Specifically, they made provision relating to the prosecution of certain criminal offences ("relevant offences") created by the 2002 Act and, further to modifications made by the 2005 Regulations, the Adoption and Children Act 2002 ("ACA 2002").

The amendments will mean that domestic ISS (i.e. those based in England and Wales) will no longer be automatically treated as having committed a relevant publishing offence in England and Wales/UK if they publish prohibited information in an EEA state. They will instead be subject to the laws of the EEA state in which they are operating. Equally, it will mean that any EEA ISS will not automatically be exempt from prosecution in England and Wales/UK.

Legal Advisers agree with the statement laid by the Welsh Government dated 26 June 2019 regarding the effect of these Regulations.

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.

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

Agenda Item 7

Llywodraeth Cymru
Welsh Government

Mick Antoniw AM, Chair,
Constitutional and Legislative Affairs Committee

David Rees AM, Chair,
External Affairs and Additional Legislation Committee

Mike Hedges AM, Chair,
Climate Change, Environment and Rural Affairs Committee

National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

3 July 2019

Dear Chairs,

As part of the Welsh Government's commitment to keep you fully informed about and engaged in our joint work with other governments on intergovernmental relations and Common Frameworks, and building on ongoing discussions, technical briefings and evidence sessions, I am writing to draw your attention to the publication by the UK Government of material emerging from the Intergovernmental Relations (IGR) Review and the separate but linked work on Frameworks. In particular we are today publishing an outline of the first of our Common Frameworks on Hazardous Substances. We will be publishing plans for engagement and further publication of Frameworks in due course.

I welcome today's publications and progress on Frameworks, and the commitment to the further work on dispute resolution for which I have been calling. But I remain concerned about the lack of substantive progress on IGR and the pace of that work. My concerns are shared by the Scottish Government and I enclose a joint letter to the UK Government which sets out in more detail our expectations for further work.

A Written Statement will issue to Assembly Members tomorrow morning.

Bae Caerdydd • Cardiff Bay
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We would of course be happy to explore these matters further with your Committees, and will in any case update you on further developments.

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

Cabinet Secretary for Government Business and Constitutional Relations
Michael Russell MSP

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

Llywodraeth Cymru
Welsh Government

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

3 July 2019

Dear David,

We welcomed the opportunity at JMC(EN) on 28 June to consider progress on the Intergovernmental Relations Review commissioned by JMC(P) on 14th March last year and your intention to publish the draft principles for relations as set out in your statement today. However, the proposed principles for relations bear little meaning without any firm commitments for further reform. It has taken far too long to make this limited progress. Delay now poses a serious risk to UK governance, for example by holding up the fruitful collaboration on common frameworks, which so far is making an important contribution to the development of relations.

The review is taking place against the backdrop of three years of mismanaged negotiations with the European Union. Those have led to a situation in which we are likely to be facing the prospect of a catastrophic no-deal Brexit, unless the UK Government alters course and offers people a choice. The Welsh and Scottish Governments are clear that the decision on EU exit must now be put back to the people and we have called on the UK Parliament to legislate for a referendum. If such a referendum is held we will argue strongly that the UK should remain in the EU.

Whether or not the UK leaves the EU, there is an urgent need for fundamental reform of the relationship between our governments. Even before the referendum there was a widespread consensus that the intergovernmental structures are weak and ineffective. The experience of repeated failures to involve the devolved governments properly in the negotiations further demonstrates how urgent that task of reform has become.

Given this background, it is deeply disappointing that the intergovernmental relations review commissioned fifteen months ago has made so little progress. This, in our view, is almost entirely due to the lack of a commitment to reform on the part of the UK Government. The

Welsh Government set out a comprehensive set of proposals over two years ago. The Scottish Government has set out its own proposals on a number of occasions and will shortly do so again in a dedicated publication.

Against this backdrop, we therefore urge that a meeting of Heads of Government at JMC(P) be convened as soon as practicable in order to discuss these proposals and agree a programme of reform with a clear timetable. That programme will of course be essential if the draft principles are to have any practical effect.

That programme of reform must include:

- reformed machinery which is robust enough to bear the weight of intergovernmental working now required and as replacement for the current inadequate architecture;

- a strengthened dispute resolution process which both reflects the discussion on the use of independent advice and arbitration and delivers real parity of participation – a fundamental shortcoming of the current arrangements;

- arrangements which guarantee respect for devolved responsibilities, in contrast to the statements being made by candidates for leadership of your party which are clearly incompatible with devolution and threaten to undermine co-operation between our governments;

- arrangements to provide certainty that decisions made by devolved institutions, including in relation to legislation on devolved matters, are fully respected.

The Supreme Court judgment in the Reference of the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill put beyond doubt that legislating to regulate the domestic consequences of international agreements is within devolved competence. There is therefore a need for our involvement in agreeing UK-wide positions; our governments and our legislatures must be fully involved in the negotiation and agreement of any international agreements which will affect devolved interests.

We need to make real progress on the international relations element of the Review. This is urgent: by early November, the UK could be embarking on the future relations negotiations with the EU27, or new international trade agreements, or both. Indeed discussions are already under way with trading partners which will have an impact on future trade arrangements. The Scottish and Welsh Governments have made clear how we expect to be involved in these matters now and into the future. It is absolutely vital that we have agreed the way forward before any UK negotiating mandates are set, and any negotiations proceed.

There is, of course useful precedent to draw upon in the current practice of joint working to agree a UK-wide approach on EU business as a reasonable starting point. Though not by any means perfect, this recognised that, given the way EU law impacts on devolved competence, the UK position needs to be negotiated with the devolved administrations to ensure it fully reflected the interests of all parts of the UK in terms of the development of critical EU policies like the Common Agricultural Policy or the Structural Funds. Negotiations on the future relationship will be fundamentally different in scale, scope, intensity and pervasive impact on devolved interests and therefore arrangements for our involvement need to recognise this. We must build on those precedents which exist but need to see a step change in approach to the future partnership, and to all international negotiations which impact on devolved competence, so that our roles and responsibilities are fully respected. It is deeply regrettable that the UK Government appears to be resisting its responsibility to agree negotiating mandates with the devolved institutions and to involve us fully in relevant international negotiations as the UK forms

The Scottish and Welsh Governments and our Parliaments cannot be expected to co-operate on implementing obligations in devolved areas where we have not been fully involved in the determination of those obligations.

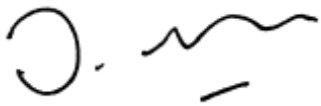
The practical necessity for such arrangements has been at the heart of the devolution settlement since its inception.

Our experience of the JMC(EN) is that it has not lived up to its terms of reference. As the way of working we agreed to has not materialised, an agreed programme for reform must include a specific commitment to secure the substantive improvements in working practice required to give effect to that remit.

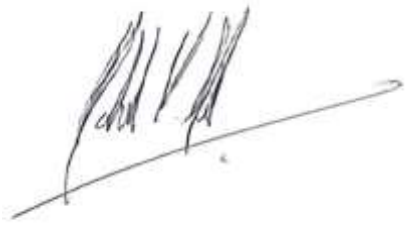
More generally, whilst we recognise and are grateful to you for your personal commitment to seeking to ensure positive and constructive relations, it is essential that we are similarly assured that delivery of the reforms we have described are a top priority for the incoming Prime Minister and Cabinet. It will be not be possible to establish effective working relations without firm commitments to change the current dynamic.

Delivering reforms which are capable of changing the current dynamic will require a shift of devolution culture and capability across the UK Government. We note reports that the current Prime Minister is to visit Scotland tomorrow to announce a review of the way UK Government departments approach devolution. We sincerely hope that the remit of any review will focus on the step change required within the UK Government, and will fully respect the boundaries of the devolution settlement.

Yours sincerely



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



Cabinet Secretary for Government Business and Constitutional Relations
Michael Russell MSP

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**Joint Ministerial Committee (European Union Negotiations), Manchester, 28 June 2019**
DATE	**04 July 2019**
BY	**Jeremy Miles AM, Counsel General and Brexit Minister**

I represented the Welsh Government at a meeting of the Joint Ministerial Committee (EU Negotiations) on Friday 28 June in Manchester. The meeting focused on Negotiations, the Intergovernmental Relations Review and Common Frameworks. The communique issued following the meeting and can be found at:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/813216/2019-06-07_Communique_for_JMC_EN___28_June.pdf

During the discussion on negotiations, I reiterated the Welsh Government's position in terms of our call for a further referendum (during which we would campaign for remain) to avoid a disastrous no-deal scenario. I noted that although preparations were being made for that no-deal scenario despite that not being UK Government policy, no preparations were being made for a referendum, which is also not UK Government policy. I urged the UK Government to make those preparations.

I also called for a process to manage intergovernmental negotiations around international treaties such as those securing reciprocal voting rights in local government elections which had recently been concluded with Spain, Portugal and Luxembourg.

And I emphasised that for all international negotiations affecting devolved matters, the UK Government needed to commit to not normally proceeding with a UK negotiating position without the agreement of the other governments of the UK.

Following discussion of progress on the Intergovernmental Relations Review, the UK Government yesterday published the draft principles for relations alongside the commitment I had pressed for to design a system for dispute resolution which works for all parts of the UK and includes an independent element. The documents are available at:

https://www.gov.uk/government/publications/draft-principles-for-intergovernmental-relations

https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2019-07-03/HCWS1687/

I welcome publication of the principles. They are the product of the workstream led by Welsh Government officials. However, I am disappointed with the overall progress of the Intergovernmental Relations Review to date. I have written, jointly with the Cabinet Secretary for Government Business and Constitutional Relations at the Scottish Government, to the UK Government to set out the next steps we expect to be taken on the Review.

We also discussed at the meeting the good progress that had been made on Common Frameworks. Further information has been published about this and can be found here: http://qna.files.parliament.uk/ws-attachments/1136451/original/Frameworks%20Products%20Update%20.pdf.

I highlighted the need for a clear publication and engagement plan as this work continues, and I will keep Members fully informed.

www.parliament.uk

Update on common frameworks and intergovernmental relations: Written statement - HCWS1687

Made by: Mr David Lidington (Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office)

03 July 2019

Today I have published four documents providing an update on progress towards the formation of the common UK frameworks. These include;
1. a progress report on the formation of the common frameworks;
2. a document outlining key phases necessary to deliver the common frameworks and;
3. an outline framework relating to Hazardous Substances Planning.
4. a set of draft principles for intergovernmental relations.

Publication of these documents reflects the considerable programme of work we have undertaken with the devolved administrations as part of our preparations for EU Exit and beyond.

Together with the devolved administrations, we continue to make significant progress in the development of common frameworks. This work is underpinned by the framework's principles agreed with the Scottish and Welsh Governments in October 2017 at JMC(EN). Since then, the UK Government has published two iterations of the frameworks analysis, in March 2018 and April 2019 respectively, which set out all the policy areas where EU law intersects with devolved competence and our approach in each. We have also published three statutory reports setting out progress on common frameworks under the terms of the EU (Withdrawal) Act. These reflect the fact that, based on the good work done to date, the UK Government has not brought forward any section 12 regulations under that legislation. The Scottish and Welsh governments have in turn agreed not to diverge in areas where policy discussions are ongoing.

The documents published today reflect the latest developments in this area of work and are intended to underline the UK Government's commitment to transparency in this area, and facilitate a more detailed process of scrutiny by Parliament and wider stakeholders.

I am also enclosing a set of draft principles for intergovernmental relations. A review of intergovernmental relations was commissioned by the Joint Ministerial Committee (Plenary), consisting of the Prime Minister and the First Ministers of Scotland and Wales on 14 March 2018. The UK Government and the devolved administrations continue to work closely with on this joint review of the existing Memorandum of Understanding between us.

The draft principles for intergovernmental relations were developed jointly by a working group of representatives of all four administrations. The principles are intended to establish a solid foundation for the ways in which all four administrations will work together in the future. They will be presented for formal adoption to a future Joint Ministerial Committee (Plenary) and, subject to the timing of its re-establishment, to a new Northern Ireland Executive for its endorsement.

The UK Government and the devolved administrations are committed to making rapid and substantive progress on the review. This will include agreeing a joint plan of next steps, developing a clear timeline covering all four remaining workstreams of the review. This will focus in particular on dispute avoidance and the role of an independent element in the process for resolving any future intergovernmental disputes which might arise.

This statement has also been made in the House of Lords: HLWS1648

Agreement on Joint Working

In the context of the United Kingdom's departure from the European Union, the Joint Ministerial Committee (Plenary) agreed to review the existing framework for intergovernmental relations. This agreement describes initial conclusions from that review, comprising a set of principles intended to guide those relations in the future.

The governments agree that devolution is an established part of the UK's current constitutional arrangements. The governments are committed to ensuring effective joint working according to the following principles:

A. Maintaining positive and constructive relations, based on mutual respect for the responsibilities of governments across the UK and their shared role in the governance of the UK
B. Building and maintaining trust, based on effective communication
C. Sharing information and respecting confidentiality
D. Promoting understanding of, and accountability for, their inter-governmental activity
E. Resolving disputes according to a clear and agreed process

This statement of principles builds on and sits alongside the existing Memorandum of Understanding (MoU) between the governments and will inform its future development.

As and when a Northern Ireland Executive is re-established, it will be invited to endorse this agreement.

[to be signed by heads of governments]

Cabinet Office

An update on progress in Common Frameworks

Overview

When the UK leaves the EU, powers previously exercised at an EU level that intersect with devolved competence will flow back directly to Edinburgh, Cardiff and Belfast. In some areas, the UK Government and the Scottish and Welsh Governments agree it is necessary to maintain UK-wide approaches, or common frameworks. Officials from the Northern Ireland Civil Service have engaged in the common frameworks process where the policy area intersects with the devolved competence of the Northern Ireland Assembly. In the absence of the NI Executive, officials' input has been limited to analytical and factual responses only. A detailed programme of collaboration has been undertaken to agree where common frameworks are needed and how they will be implemented.

Progress to date

On 4 April 2019 the UK Government published a revised frameworks analysis, which set out a detailed assessment of progress. This was the culmination of multilateral policy development in priority framework areas, through which the UK Government and devolved administration officials produced outline frameworks in the majority of priority areas. Discussions on cross-cutting issues, including the internal market and governance, continue in parallel and we have jointly developed an engagement strategy that will raise awareness, secure buy-in and increase transparency in the overall programme. The cooperative approach on frameworks so far demonstrates the progress that can be achieved through proceeding collaboratively.

The frameworks process

This work to establish common frameworks has five phases. The delivery process shown below illustrates how a framework will move through these five phases of development.

The five phases of work include:

- Phase one: Multilateral (with the UK Government and the devolved administrations) engagement on common frameworks
- Phase two: Detailed policy development resulting in an outline framework
- Phase three: Review, consultation and further detailed policy development, resulting in a provisional framework confirmation

- Phase four: Frameworks implementation and framework agreement
- Phase five: Post-implementation arrangements

This process also includes a period of reappraisal for each framework, spanning across phases four and five, where frameworks agreements will be re-evaluated according to the outcomes of cross-cutting issues.

Frameworks will be implemented depending on the needs of the particular policy area. This may require a combination of legislative and non-legislative measures. The process accounts for frameworks being implemented in different ways, with the potential for some activity to be undertaken concurrently, to ensure that due process has been followed as the framework is put in place. As a result, frameworks will be implemented at different points in time, depending on the individual requirements of each framework.

Cross-cutting issues

Work is ongoing to develop a collective position on some of the key issues relevant to all frameworks policy areas. These include:

- ***Governance.*** Consideration is being given to how much a consistent approach is required in areas such as information sharing, decision-making, and dispute resolution, including, in some cases, expert advice.
- ***The UK Internal Market.*** The UK Government continues to seek development of a shared approach to the UK Internal Market with the devolved administrations, and, alongside the work being undertaken by policy teams, we are considering how to manage internal market issues across framework areas.
- ***The future relationship with the EU.*** Frameworks discussions have to date been conducted without prejudice to the outcome of negotiations with the EU. Frameworks will need to be flexible to interact with the outcomes of negotiations with the EU on the UK-EU future relationship. Officials are working to explore this interaction in more detail
- ***Trade and international obligations.*** Although frameworks are domestic structures, they will need to be adaptable to future international trade deals and other international obligations which will require ongoing flexibility.
- ***Northern Ireland.*** Northern Ireland has a unique position as an integral part of the UK economy and, in several sectors, simultaneously part of the all-Ireland economy. This creates some specific challenges for those frameworks involving NI.

Next steps and engagement

As we move forward there is a need for increased transparency, so we have developed a more detailed engagement plan on the back of a Joint Ministerial Committee (European Negotiations) mandate to increase engagement, including unilaterally where it makes sense to do so.

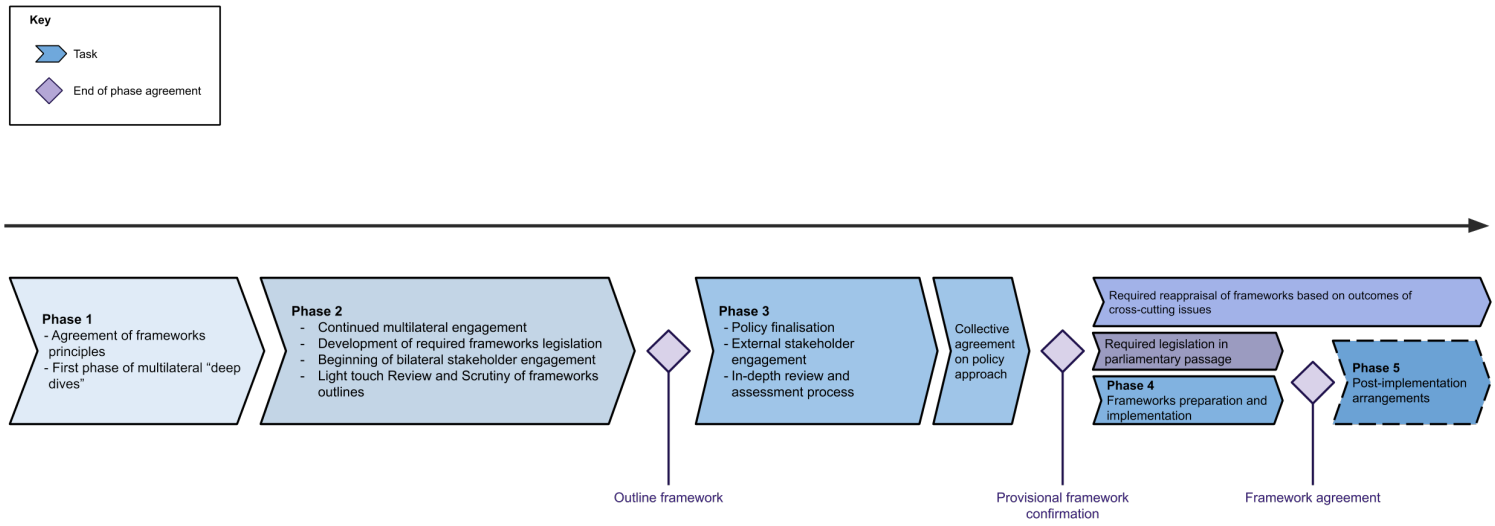
There are three strands to this:

- ***High-level programme engagement*** focused on academics and umbrella organisations. The UK Government and the devolved administrations are working together on the best way of presenting the overarching principles and purpose of frameworks at key events across the UK;
- ***Parliamentary engagement*** with UK Parliament and the devolved legislatures. We will be updating parliamentary committees at key moments in the process, and consulting them on the arrangements that will need to be put in place to enable the formal scrutiny of frameworks; and
- ***Technical engagement*** by policy teams on specific frameworks - this work is engaging relevant sectors to test provisional conclusions, informing future policy development.

The first multilateral (UK Government and devolved administrations) technical engagement roundtable with stakeholders took place on 19 March 2019 to test provisional conclusions made within the Hazardous Substances (Planning) draft outline framework. This successful pilot provided stakeholders with reassurance and increased transparency of the frameworks process, while opening new channels for stakeholders to communicate with policy teams and raise any issues with the practicalities of what is within the framework. Further work will be done to see how lessons from this pilot could inform the format of future engagement plans, though these may take different approaches in accordance with the policy areas in question.

The Northern Ireland Civil Service will continue to participate in this area of work. In the absence of the Northern Ireland Executive, officials' input has been limited to analytical and factual responses only. Where framework arrangements have been developed, they are without prejudice to the views of future Northern Ireland Executive Ministers.

An illustration of the frameworks delivery process



COMMON FRAMEWORKS: OUTLINE FRAMEWORK

This outline framework for Hazardous Substances should be read as an example of how common frameworks are being developed. The outline framework template has been designed to allow for a variety of approaches to suit the needs of particular policy areas. This example is therefore without prejudice to how other frameworks may be developed in the future.

Purpose

This document provides a suggested outline for an initial UK-wide, or GB, framework agreement in a particular policy area. It is intended to facilitate multilateral policy development and set out proposed high-level commitments for the four UK Administrations; it should be viewed as a tool that helps policy development, rather than a rigid template to be followed. The document may be developed iteratively and amended and added to by policy teams as discussions progress. It should be read alongside the accompanying guidance (UK Government and Devolved Administrations Guidance Note for Phase 2 Engagement).

Population of the agreement skeleton should be based on the existing work undertaken and should remain consistent with the underlying Framework Principles agreed by the UK, Scottish and Welsh Governments. The content should inform the drafting of any legislative and non-legislative mechanisms required to implement UK-wide frameworks.

Until it is formally agreed this document should not be considered as government policy for any of the participating administrations and should be treated as confidential. The process for developing and finalising this document will be mutually agreed by all administrations.

The document is made up of four sections:

Outline

1. **Section 1:** What We Are Talking About. This section will set out the area of European Union (EU) law under consideration, current arrangements, and any elements from the policy that will not be considered. It will also include any relevant legal or technical definitions.

2. **Section 2:** Proposed Breakdown of Policy Area and Framework. This section will break the policy area down into its component parts, explaining where common rules will and will not be required and the rationale for this approach. It will also set out any areas of disagreement.

Operational Detail

3. **Section 3:** Proposed Operational Elements of Framework. This section will explain how the framework will operate in practice by setting out: how decisions will be made; the planned roles and responsibilities for each administration, or a third party; how implementation of the framework will be monitored and, if appropriate enforced; arrangements for reviewing and amending the framework; and proposed arrangements for resolution of a dispute.

4. **Section 4:** Practical Next Steps and Related Issues. This section will set out the next steps that would be required to implement the framework (subject to Ministerial agreement) and key timings.

Draft Outline Framework

OUTLINE

SECTION 1: WHAT WE ARE TALKING ABOUT

1. Policy area

Hazardous Substances Planning. Encompasses the elements of the Seveso III Directive (2012/18/EU) which relate to land-use planning, including: planning controls on the presence of hazardous substances and handling development proposals both for hazardous establishments and in the vicinity of such establishments.

The Seveso III Directive ('the Directive') has the objective of preventing on-shore major accidents involving hazardous substances, as well as limiting the consequences to people and/or the environment of any accidents that do take place. 'Hazardous substances' in the legislation include individual substances (such as ammonium nitrate), or whole categories of substances (such as flammable gases). The Ministry of Housing, Communities and Local Government (MHCLG) and devolved administrations (DAs) are responsible for the land-use planning (LUP) requirements of the Directive. In accordance with the retained Seveso III Directive, the UK is obliged to ensure that the objectives of preventing major accidents and limiting the consequences of such accidents are taken into account in land-use policies. This requires controls on the siting of new establishments and modifications to establishments which fall within scope of the Directive, and on new developments and public areas in the vicinity of such establishments. It also requires these considerations to form the development of relevant policy and has requirements on public involvement in decision making, including relevant plans and programmes.

When implementing the original EU Directive in this regard, a distinction was made between those elements relating to on-site controls for establishments to minimise the risk of a major accident (those now covered by the Control of Major Accident Hazards Regulations 2015 (GB) and their Northern Ireland equivalent) and the residual off-site risk. The latter is primarily the risk of a major accident arising due to the proximity of hazardous substances to other development or sensitive environments (i.e. if there were an accident due to on-site failures, what the risks would be where certain developments or habitats are or would be close by). This latter issue was considered to be a spatial planning matter to be addressed through planning controls. Subsequently, LUP matters generally in the UK were devolved to the new administrations.

To summarise, very broadly the hazardous substances regime;

a) sets limits on the amount of dangerous substances that can be stored/used in an establishment before that establishment must apply for consent to do so from their local planning authority (usually the local authority);
b) requires the preparation of planning policies to take into account the aims and objectives of the Directive; and
c) requires local planning authorities to comply with various consultation requirements and consider any major accident hazard issues before they can grant planning permission in relation to establishments, to certain types of development near such establishments, and hazardous substances consent.

To note the hazardous substances regime does NOT ban any substance, or any development around establishments containing hazardous substances. All decisions rest with local planning authorities or, in some cases, called-in applications or appeals, the Minister(s) in England, Wales, Northern Ireland or Scotland.

It should also be noted that LUP controls on hazardous substances existed in Great Britain for around a decade before becoming an EU requirement. This is an issue on which the UK has led the way.

2. Scope

- The scope of this Common Framework is any legislation which applies the LUP elements of the retained Seveso III Directive in the United Kingdom. At the time of writing The Planning (Hazardous Substances) Act 1990 and Planning (Hazardous Substances) Regulations 2015 in England, and devolved administrations' equivalent primary and secondary provisions, constitute the main body of legislation that applies these elements of the Seveso III Directive. The Directive's minimum requirements are common across England, Scotland, Wales and Northern Ireland. Whilst the different administrations are currently free to use their devolved planning powers to increase controls beyond the minimum requirements of the Directive, this has not happened.

- Once the UK leaves the EU this set of common minimum requirements may* cease

to be in effect and the different administrations will have wider scope to use their planning powers to make changes.

*This is subject to the terms on which the UK leaves. The Withdrawal Agreement includes a commitment, if the backstop comes into effect, to a principle of non-regression from the standards applicable within the UK at the end of transition period. This will include in areas relating to 'the prevention, reduction and elimination of risks to human health or the environment arising from the production, use, release and disposal of chemical substances'.

- The primary focus of this agreement is to maintain the principles and objectives of retained EU legislation across the hazardous substances regime, that is, primarily, to prevent on-shore major accidents involving hazardous substances and limit the consequences to people and/or the environment of any accidents that do take place. It also seeks to, wherever possible, facilitate the sharing of information on a multilateral basis.

- Post Exit, the UK will still be party to the following relevant international agreements;
    - The Convention on the Transboundary Effects of Industrial Accidents is a UNECE convention designed to protect people and the environment from the consequences of industrial accidents. Parties are required to, amongst other things, take appropriate measures and cooperate within the framework of this Convention, to protect human beings and the environment against industrial accidents…shall ensure that the operator is obliged to take all measures necessary for the safe performance of the hazardous activity and for the prevention of industrial accidents…take measures, as appropriate, to identify hazardous activities within its jurisdiction and to ensure that affected Parties are notified of any such proposed or existing activity. The Convention also sets out detailed requirements when it comes to siting of/around hazardous establishments as well as setting out the types and quantities of substances that should be considered hazardous.
    - The UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters ('the Aarhus Convention') establishes a number of rights of the public (individuals and their associations) with regard to the environment. The Parties to the Convention are required to make the provisions necessary so that public authorities (at national, regional or local level) will contribute to these rights to become effective.

3. Definitions

All technical definitions used in this agreement will reflect those set out in legislation implementing the retained Seveso III Directive.

In this framework the following definitions are also used:

- *JMC.* The Joint Ministerial Committee is a set of committees that comprises ministers from the UK and devolved governments, providing central co-ordination of the overall relationship between the UK and the devolved nations.
- *HSE & HSE NI.* The Health and Safety Executive and Health and Safety Executive Northern Ireland are government agencies responsible for the encouragement, regulation and enforcement of health and safety.
- MoU – Memorandum of Understanding. This is a multilateral agreement which indicates a common line of action. It is often used where a legal commitment would not be required or appropriate.

SECTION 2: PROPOSED BREAKDOWN OF POLICY AREA AND FRAMEWORK

4. Summary of proposed approach

It is important to first note the context in which the proposed approach has been developed. Divergence is already entirely possible across the devolved administrations, however there are currently a number of restrictions on what the United Kingdom Government (UKG) and DAs can amend based on what has been set at EU level. The key restrictions are that the UKG and DAs;

i) are unable to change the definition of what an establishment is (in short, a location where dangerous substances are present in significant quantities);
ii) must not lower standards on what constitutes a dangerous substance (i.e. by removing categories of substances or individual substances from the list, or raising the threshold at which the quantity becomes significant and the establishment falls into scope of the regime);
iii) must ensure that the objectives of preventing major accidents and limiting the consequences of such accidents for human health and the environment are taken into account in their land-use policies, through controls on the siting of new establishments and new developments close to establishments;
iv) must set up appropriate consultation procedures to ensure that operators provide sufficient information on the risks arising from the establishment and that technical advice on those risks is available when decisions are taken; and
v) facilitate public involvement at various stages of decision-making on relevant applications for consent or plans and programmes.

In simplified terms, what may become possible post-Exit that is <u>not possible now</u> is that the UKG and devolved administrations will have the powers within a domestic context to relax requirements on the level of substances that can be held before triggering the regime and relax the process around what is required once the regime is triggered.

It is considered that whilst a framework is appropriate for the hazardous substances regime, it should be non-legislative. It is envisaged that this would be in the form of an MOU, setting out the principles of engagement between the UK government, DAs and HSE where changes to devolved legislation are concerned (see Section 6 for more details). This view is guided by the overarching principle established by JMC; that any framework should secure the proper functioning of the regime whilst at the same time respecting the devolution rights of the devolved administrations. It is also guided with reference to the priorities that JMC list as key, that any framework should be established where they are necessary to:

- *enable the functioning of the UK internal market, while acknowledging policy divergence*

Hazardous substances planning is not significantly different from devolved planning controls generally – it is about consenting the locations of substances with major accident hazard potential and development around those locations. As stated in section 1, establishments which store certain amounts of certain substances or developers looking to build near such establishments will be required to seek consent from a local authority. The regime is not focused on banning activities or making a substance illegal in a general sense. As a result, (and in a scenario in which the non-regression principle did not apply) the biggest potential discrepancy would be where, for example in one administration, controls were removed for a certain substance completely, where across the border, operators would need to go through the hazardous substances consenting process with their local authority to hold the substances at a site in the same quantities. Whilst any such scenario *could* result in a potentially damaging 'race to the bottom', due to the nature of the regime this would bring very limited economic benefits – relaxed hazardous substances standards would not bring a significant enough benefit to operators to influence which administration they set up business in to the point where this would distort the internal market. And as such reducing standards in this way is unlikely to be an attractive proposition (and industry has not been pushing for this up to now). It is therefore considered unlikely and, particularly in consideration with other factors, is not a strong enough argument to justify a *legislative* approach for this framework; but arrangements will need to be in place to manage any potential impacts on the internal market within this – or related – policy areas.

- *ensure compliance with international obligations*

The UK is a signatory to two international agreements relevant to the hazardous substances regime (as mentioned in section 2), the Aarhus Convention and the Convention on the Transboundary Effects of Industrial Accidents. The latter in particular cements many of the requirements of the current regime in international law, therefore any significant stripping back of the hazardous substances regime could result in a breach of international obligations. This presents limits on what the UKG can do as the party to the treaties, but also constrains the administrations. In very extreme cases the Secretary of State has step-in powers already built into Devolution settlements where there is a potential breach of international law, although we do not envisage these forming any part of the framework. A non-legislative framework would provide the appropriate forum for any policy changes to be addressed, where anything of concern can be flagged and any

necessary dispute resolution measures (see section 13) can be put into place.

- *ensure the UK can negotiate, enter into and implement new trade agreements and international treaties*

Not applicable. Through discussions we have not identified any differences between administrations on hazardous substances that would have an impact on the UK's ability to negotiate (etc.) trade agreements and treaties. Negotiation of any new trade agreements or treaties would in any event need to take account of where devolved competence means there are or could be divergence across the UK in matters pertinent to that particular treaty or agreement.

- *enable the management of common resources*

HSE/HSE NI – as indicated, they operate across the different planning jurisdictions (HSE NI covering Northern Ireland), and so any divergence could affect them, and so any framework encouraging and providing a forum for discussion would be beneficial. However, potential changes to the regime with significant impacts on HSE are already a potential feature of the existing regime *within the EU framework* and are not triggered by EU exit. There is not a new significant issue being created on this point that would need to be addressed by legislative means.

- *administer and provide access to justice in cases with a cross-border element*

Not applicable. Any differences between administrations on hazardous substances will not have an impact on the UK's ability to administer or provide access to justice.

- *safeguard the security of the UK*

Differing hazardous substances planning controls in parts of the UK are already a possibility, i.e. not affected by EU Exit, and these differences do not pose a threat to UK security.

Reducing protections below current levels could become possible after Exit, which could increase the risk to safety *within an area (acknowledging the limited risk of cross-border impacts)* e.g. by allowing hazardous substances near a sensitive development (to note, safety measures within establishments would still be regulated through non-planning requirements under the Control of Major Accidents Hazards Regulations 2015 or their equivalent). As stated previously, hazardous substances powers are broadly analogous to other devolved planning powers in this regard and as such should be seen as a matter for individual administrations – divergence in and of itself does not pose a risk to the security of the UK as a whole.

According to the JMC principles a legislative framework should be considered only where absolutely necessary. As set out above a potential legislative framework for hazardous substances would not meet this criteria. According to the principles set out by the JMC and the objective of securing the proper functioning of the hazardous substances regime whilst at the same time respecting the devolution rights of the devolved administrations, this Common Framework will not be a legislative vehicle but rather a reflection of the discussions that have taken place and agreements reached on ways of working going forward, post the UK's departure from the European Union.

Other factors supporting a non-legislative agreement

- the devolved regimes predate the current version of the Directive, and in certain

cases go further than its minimum requirements; this demonstrates the lack of appetite to legislate below its minimum standards.

- the HSE, and in Northern Ireland HSE NI, have a cross-cutting role which provides a common evidence base which all DAs look to; with policy development across all administrations driven by HSE and HSE(NI) advice, differing approaches would be unlikely.

Current potential for divergence – decision making is devolved, so as long as the aims of the Directive are taken into account, it should be emphasised that despite the scope for such divergence, very little of it has occurred. It should also be noted that planning authorities and Ministers in the various home nations are free to make decisions on applications as they see fit, provided the major accident hazard potential forms part of the consideration.

5. Detailed overview of proposed framework: legislation (primary or secondary)

N/A – no legislation is considered to be necessary

6. Detailed overview of proposed framework: non-legislative arrangements

The UKG and the DAs have agreed a set of eight principles for future ways of working that would make up the agreement:

i. In the absence of EU requirements applying to the UK, the nations of the UK will consider the evidence and advice of the Control of Major Accidents Hazards (COMAH) competent authority, as appropriate, as regards the substances and quantities to which hazardous substances consent should apply.
ii. Administrations will respect the ability of other administrations to make decisions (i.e. allowing for policy divergence).
iii. Administrations will consider the impact of decisions on other administrations, including any impacts on cross-cutting issues such as the UK Internal Market.
iv. Wherever it is considered reasonably possible, administrations agree to seek to inform other administrations of prospective changes in policy one month, or as close to one month as is practical, before making them public.
v. Parties will create the right conditions for collaboration, by for example ensuring policy leads attend future meetings.
vi. Future collaborative meetings will be conducted at official level and on a without prejudice basis.
vii. In order to broaden the debate at future collaborative meetings, parties will ensure that different perspectives are present.
viii. Those attending future collaborative meetings recognise the importance of h*ow* collaboration is approached.

7. Detailed overview of areas where no further action is thought to be needed

N/A

OPERATIONAL DETAIL

SECTION 3: PROPOSED OPERATIONAL ELEMENTS OF FRAMEWORK

8. Decision making

The MoU or equivalent will be drafted in cooperation with the devolved administrations – the UKG will pull together an initial draft which will be sent out for comment, with each party then feeding in. The common framework will only be put in place once there is unanimous agreement. We will also involve HSE, HSE NI, and other stakeholders with an interest. The overarching principles were agreed at official level at the 'deep dive' meeting with all administrations.

Ministerial clearance will be sought on the principle of proceeding with a non-legislative framework, as well as the final framework agreement itself.

Once this has been taken forward all decision making under the relevant devolved competences (within the scope of the framework) will fall to the UKG and the DAs within their respective territories, taking into account the principles set out in Section 6. The framework will also link into any future arrangements for the maintenance of the UK Internal Market. Currently the arrangements for coordinating work on the implementation of the Seveso III Directive are ad hoc. Usually, HSE acts as the coordinator for implementing new requirements from revision of, or amendments to the Directive and engage with planning representatives from the various administrations to coordinate implementation. As other issues arise, again contact is made on an ad hoc basis to seek to resolve these. Ministers responsible for planning individually sign off implementing legislation or changes to procedures.

To facilitate the sharing of information where appropriate, and as a forum to discuss wider policy issues, it is envisaged that a working group of the policy leads in each administration will hold a six-monthly telephone conference to discuss any issues and share learning. This would not rule out issues being raised for consideration by the working group between meetings if necessary.

9. Roles and responsibilities of each party to the framework

See key principles (section 6).

10. Roles and responsibilities of existing or new bodies

HSE and HSE NI are government agencies and the key existing bodies relevant to this framework. Under the Hazardous Substances regulations they act (in conjunction with the Environment Agency in England, the Scottish Environmental Protection Authority in Scotland, Natural Resources Wales in Wales and the Northern Ireland Environment Agency in Northern Ireland) as the COMAH competent authority. They advise hazardous substances authorities (local planning authorities) across the four territories on the nature and severity of the risk to persons in the vicinity and the local environment arising from the presence of a hazardous substance at an establishment.

They have the lead for the UK on the Seveso III Directive, and post-Exit will be taking up several of the functions that currently sit with the European Commission in relation to COMAH, this will include the responsibility for advising on any changes to the lists of controlled substances or other policy updates that may impact the hazardous substances regime. Changes in their policy, e.g. on risk or the way they engage in the planning system ultimately rest with the UK Secretary of State for Work and Pensions.

In relation to hazardous substances they will continue in their current role and with their current responsibilities after Exit and have been kept informed throughout the process of developing this framework.

11. Monitoring and enforcement

As no legislative arrangements are considered necessary then enforcement measures are not appropriate. In place of formal monitoring measures there will be regular meetings to review the framework (see sections 8 and 12.)

12. Review and amendment

We propose having a review meeting two years after the day the framework comes into effect, to consider the ongoing application of transposing domestic legislation across the different administrations. The meeting would focus in particular on any issues encountered, and allow parties to provide a forward look of any changes that they are considering. This would not rule out an earlier review if required. After this initial review a more permanent arrangement for recurring meetings on this framework will be decided based around a timeframe that is considered appropriate.

13. Dispute resolution

The intention under this framework is that there will be a regular group at working level to discuss and work through any issues at an early stage.

This approach to dispute resolution largely reflects the current decision-making approach

mentioned in section 8. i.e. matters proceed via policy leads, with senior managers and Ministers within each administration brought in to agree a course of action as appropriate. We have not previously had disagreements in this area that have warranted engagement between senior officials or Ministers of the different administrations. There is no particular reason to suppose that EU Exit will make the need for that level of engagement any more likely. Therefore whilst we think disagreement is unlikely it is appropriate to have a procedure in place in the event it is needed. This process would be as follows:

Policy leads. Where officials become aware of potential issues or areas of disagreement via any means the first step will be to seek to resolve this amongst policy leads without escalation. This will usually be resolved via discussion with equivalents in other administrations to determine the source of the disagreement, to establish whether it is a material concern and to work through possible solutions to the satisfaction of all parties. It is expected that most disagreements would be resolved at this point.

Director level/Chiefs of planning. Where disagreements cannot be resolved amongst policy leads the next stage will usually be to escalate the issue to director level. At this stage directors can decide whether it would be appropriate to arrange a meeting with counterparts across administrations. Alternatively, or after such a meeting, directors may determine that the issue cannot be resolved at this stage at which point the involvement of ministers will be required.

Ministers. This is expected to be a last resort for only the most serious issues and where all alternatives have been exhausted. In very extreme cases the Secretary of State has step-in powers, already built into Devolution settlements, although we do not envisage these forming any part of the framework.

HSE/HSE NI. They may be included at multiple stages of the process, either flagging potential issues, or providing advice on potential solutions.

Agree to disagree. It does not always follow that where disagreements emerge these will need to be escalated or a 'solution' need to be established. This framework will not prejudice the right of administrations to 'agree to disagree' in certain circumstances.

SECTION 4: PRACTICAL NEXT STEPS AND RELATED ISSUES

14. Implementation

This framework will take effect once agreed by all parties and approved by Ministers. It is intended that the concordat/MoU be in effect when the UK leaves the European Union.

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

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA - L/CG/0250/19

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
SeneddCLA@assembly.wales

27 June 2019

Dear Mick,

I am writing to you regarding the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019, which were laid in the UK Parliament on 18 February and made on the 28th of that month. I am writing to you in the spirit of keeping the Committee informed of issues and developments in relation to legislation being made as a result of Brexit.

This SI corrects deficiencies in EU-derived data protection legislation to ensure that the legal framework for data protection in the UK continues to function correctly after exit day. There dispute surrounding this SI which gave rise to an exchange of letters I had with Margot James MP, Minister for Digital and the Creative Industries.

As you know, we have made a commitment that, in the context of the use of correcting powers under the EU (Withdrawal) Act 2018, all legislation made in Wales would be amended in Wales, thereby enabling direct scrutiny by the National Assembly. The provisions of the EU (Withdrawal) Act which concern the correcting powers of the Devolved Administrations (Schedule 2) specifically allow for such an approach.

The UK Government's Department for Culture, Media and Sport asserts that the SI is reserved in its entirety and has stated that the amendments being made to the GDPR (or the "UK GDPR" as the EU's General Data Protection Regulation is to be renamed and modified post-exit) and the Data Protection Act 2018 relate to the reserved matter of "protection of personal data", as set out in Section L6 in Part 2 of Schedule 7A to the Government of Wales Act 2006 (reserved matters).

The UK Government is of the view that the amendments being made to other statutory provisions by the Regulations (including, for example, to the Pupil Information (Wales) Regulations 2011 (S.I. 2011/1942 (W. 209)) are wholly consequential on these changes being made to the UK GDPR and the Data Protection Act 2018. As such it considers that these amendments also relate to the reserved matter of protection of personal data and that therefore the Intergovernmental Agreement does not apply to the making of these consequential amendments to Welsh made legislation and the Welsh Ministers consent is not required.

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This rationale does not acknowledge the powers of the Welsh Ministers to make corrections to Welsh SIs under their powers in Part 1 of Schedule 2 to the EU (Withdrawal) Act. This power to deal with deficiencies in retained EU law is a broad power and includes the power to make corrections of this kind. This power is available, irrespective of any question as to whether or not the corrections to the Welsh SIs would be within the legislative competence of the National Assembly for Wales under the Government of Wales Act 2006.

Although there are restrictions on the Welsh Ministers' powers to make provision outside devolved competence (in paragraph 2 of Schedule 2), "devolved competence" has a particular meaning within the context of Schedule 2 (see paragraph 9 of Schedule 2). Insofar as the provisions concerned are amendments to Welsh SIs that have been made by the Welsh Ministers, the provisions meet the conditions in sub paragraph (2) of paragraph 9 and are therefore within the devolved competence of the Welsh Ministers for the purposes of Part 1 of Schedule 2.

It appears that the UK Government's rationale addresses the question of whether the matter is reserved or devolved as if applying the test of devolved competence in paragraph 9(1)(a) of Schedule 2, without considering paragraph 9(1)(b) and the conditions set out in paragraph 9(2).

We do not have concerns about the policy approach proposed in this SI, and nor did we have an interest in frustrating its making. However, we do want to maintain the commitments made by both Governments in the Intergovernmental Agreement. What we have repeatedly requested is that the SI be withdrawn in order to remove the amendments to Welsh made legislation.

The response from the Minister was disappointing, even though it acknowledged the effect of the SI making corrections to Welsh made legislation. We are particularly dissatisfied as we had asked that commitments made to the National Assembly and in the Intergovernmental Agreement are respected. As a result, we intend bring forward legislation in the National Assembly to make the same corrections to the Welsh made legislation and also to make further amendments to the Welsh language text to ensure that it is accurate.

These amendments will come into force on exit day. This legislation will also make consequential amendments to the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 which will revoke the relevant provisions (namely paragraphs 71 to 75 and paragraphs 90 and 91 of Schedule 3). As the revocation of these provisions will need to come into force before exit day, we are consulting the UK Government in accordance with the requirement in paragraph 4(a) of Schedule 2 to the EU (Withdrawal) Act 2018.

I attach copies of our correspondence with the UK Government to this letter for your information.

Yours sincerely,

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

Department for Digital, Culture, Media & Sport

Margot James MP
Minister for Digital and the Creative Industries
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28 February 2019

Your Ref: MA/L/CG/0188/19
Our Ref: MC2019/01596

Jeremy Miles AM
Counsel General and Brexit Minister
Welsh Government
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Dear Jeremy,

THE DATA PROTECTION, PRIVACY AND ELECTRONIC COMMUNICATIONS (AMENDMENTS ETC) (EU EXIT) REGULATIONS 2019

Thank you for your letter of 15 February regarding the draft Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 ("the Regulations"), in which you raised concerns about the consequential amendments to a specific piece of devolved legislation.

I note that you have made a commitment to the National Assembly for Wales (NAW) about the mechanism for amending NAW legislation. I appreciate that your preference would have been for the Regulations to have been withdrawn so that the amendment in question could have been delivered through Welsh-made legislation.

Our primary objective must be to ensure that the law works appropriately by exit day. The Regulations provide the critical certainty that is needed by businesses and the public throughout the UK. The Regulations have now been approved by both Houses of Parliament, not making them at this stage would create enormous uncertainty for organisations in the UK.

We are grateful for your confirmation that you do not have concerns about the policy approach proposed in these Regulations. In light of this, we consider that we should proceed with our shared objective of ensuring a functioning statute book in time for EU Exit.

I have copied this letter to the Secretary of State for DCMS, the Chancellor of the Duchy of Lancaster, the Secretary of State for Wales, and the Minister for Education and the Minister for Health and Social Services in the Welsh Government.

Best wishes

Margot

Margot James MP
Minister for Digital and the Creative Industries

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

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/L/CG/0188/19

Margot James MP
Minister for Digital and the Creative Industries
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15 February 2019

Dear Margot,

I am writing regarding the draft Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019, which are subject to a dispute over competence. Officials in our Governments have discussed this SI at length without being able to secure a resolution, so I am writing with the intention that we are able to resolve this matter and reach an approach that reflects the Intergovernmental Agreement between the UK Government and the Welsh Government, in respecting devolution, and the exercise of powers under the EU (Withdrawal) Act.

Officials at DCMS assert that the SI is reserved in its entirety. They have shared their view that the amendments being made to the "UK GDPR" and the Data Protection Act 2018 relate to the reserved matter of "protection of personal data", as set out in Section L6 in Part 2 of Schedule 7A to the Government of Wales Act 2006 (reserved matters). We are happy to concur on this point.

However, we disagree with the other aspect of officials' reasoning on the consequential amendments, and it is this part which we dispute. The consequential amendments will amend legislation which was made in Wales. We have publicly and repeatedly committed to the National Assembly that, in the context of the use of correcting powers under the EU (Withdrawal) Act, all legislation made in Wales will be amended in Wales, thereby enabling the direct scrutiny of the National Assembly. The provisions of the EU (Withdrawal) Act which concern the correcting powers of the Devolved Administrations (Schedule 2) specifically allow for such an approach.

DCMS officials are of the view that the amendments being made to other statutory provisions by the Regulations (including, for example, to the Pupil Information (Wales) Regulations 2011 (S.I. 2011/1942 (W. 209)) are wholly consequential on these changes

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being made to the UK GDPR and the Data Protection Act 2018. As such they consider that these amendments also relate to the reserved matter of protection of personal data.

This rationale does not acknowledge the powers of the Welsh Ministers to make corrections to Welsh SIs under their powers in Part 1 of Schedule 2 to the EU (Withdrawal) Act. This power to deal with deficiencies in retained EU law is a broad power and includes the power to make corrections of this kind.

Although there are restrictions on the Welsh Ministers' powers to make provision outside devolved competence (in paragraph 2 of Schedule 2), "devolved competence" has a particular meaning within the context of Schedule 2 (see paragraph 9 of Schedule 2). Our view is that insofar as the provisions concerned are amendments to Welsh SIs that have been made by the Welsh Ministers, the provisions meet the conditions in sub paragraph (2) of paragraph 9 and are therefore within the devolved competence of the Welsh Ministers for the purposes of Part 1 of Schedule 2.

It appears that the rationale of DCMS officials addresses the question of whether the matter is reserved or devolved as if applying the test of devolved competence in paragraph 9(1)(a) of Schedule 2, without considering paragraph 9(1)(b) and the conditions set out in paragraph 9(2).

We do not have concerns about the policy approach proposed in this SI, and nor do we have an interest in frustrating its making. However, we do want to preserve the commitments made by both Governments in the Intergovernmental Agreement.

What we have repeatedly requested is that the SI be withdrawn in order to remove the amendments to Welsh made legislation. We will then make those corrections in an SI laid in the National Assembly for Wales. We have incorporated this SI in our legislative programme to ensure that the resources (including translation) are in place for these corrections to be made in time for exit day. Doing so will mean that the data protection provisions will be in place by exit day, in a way that respects the devolution position set out in the EU (Withdrawal) Act and the Intergovernmental Agreement.

I look forward to your support in this matter.

I have copied this letter to the Secretary of State for DCMS, the Chancellor of the Duchy of Lancaster, the Secretary of State for Wales, and the Minister for Education and the Minister for Health and Social Services in the Welsh Government

Yours sincerely,

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

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Cyllid

National Assembly for Wales
Finance Committee

Elin Jones AM

Llywydd

27 June 2019

Dear Llywydd,

Senedd and Elections (Wales) Bill

I write further to your letter to the Chair of the Constitutional and Legislative Affairs (CLA) Committee on 13 June 2019, in which you shared more detailed information about the policy direction relating to the financing and accountability of the Electoral Commission in relation to devolved elections in Wales.

I understand that your preferred option is:

- to establish a 'Llywydd's Committee', to be chaired by a politically impartial 'non-party representative', to which the Electoral Commission will be accountable to; and
- for the Electoral Commission to be funded directly from the Welsh Consolidated Fund (WCF).

We discussed the issue of funding and accountability of the Electoral Commission with you on 4 April 2019, at which time you had not reached a decision. As the Committee has already discussed and agreed its report, we do not feel there is adequate time remaining for us to fully consider these issues prior to the Stage 1 reporting deadline of 28 June 2019. Additionally, we are yet to see any detailed information that we can fully scrutinise, as such I am writing to request further information.

Funding from the Welsh Consolidated Fund

In your previous letter of 7 May 2019, you indicated that provisions within an Act of the Assembly which would entitle the Electoral Commission to receive funding directly from the WCF would not be within the Assembly's legislative competence unless the UK Government provides consent.

Your letter of 13 June 2019 details that your officials remain in discussions with the Welsh Government, Electoral Commission and the Wales Audit Office regarding the development of policy in this area. I also note from the Counsel General and Brexit Minister's letter to the CLA Committee of 25 June 2019, that discussions are continuing between the Welsh Government and the UK Treasury in regard to funding mechanisms and that two options

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are under consideration, both of which assume that funding transfers from the UK Consolidated Fund to the WCF.

I would be grateful to receive a substantive update on this issue, particularly in view of the possible competence issues, when you are in a position to do so, preferably before any amendments are tabled.

On a practical issue, under Standing Order 26.6 (xi) if a Bill contains any provision charging expenditure on the WCF, the Explanatory Memorandum accompanying the Bill must incorporate a report of the Auditor General setting out his or her views on whether the charge is appropriate. This is a requirement on introduction of a Bill, however, the same provision does not apply to amendments tabled at a later stage, which may contain a charge on the WCF. As Chair of the Business Committee, you may wish to consider this discrepancy in Standing Orders.

In light of this, I would urge you to give consideration to discussing the issue with the Auditor General, to ensure that best practice is followed, and that any amendment tabled at Stage 2 or 3 (should the Bill proceed) containing a provision charging expenditure on the WCF is accompanied by the Auditor General's report.

Llywydd's Committee

During evidence to the Committee on 4 April 2019, in relation to the Electoral Commission's suggestion that it should be accountable to a 'Llywydd's Committee', you stated that you were yet to make a final decision on this issue and would welcome the Finance Committee's view on what would be "most appropriate".

As such, our report reflects your view at that time and we concluded that we were not able to reach a decision on a Llywydd's Committee until we had confirmation of how the Electoral Commission would be funded.

However, you have now indicated that a Llywydd's Committee is your preferred option, with the Electoral Commission funded directly from the WCF. Whilst the Committee notes this is a model similar to the Speaker's Committee on the Electoral Commission in the UK Parliament, we are concerned about the role of the Finance Committee in relation to its scrutiny work on budgets. I understand this matter will be considered in Scotland shortly and I would be grateful for information on the proposed approach to this matter in Scotland and how this compares to the proposed approach in Wales.

In your letter of 13 June 2019, you suggest that the Electoral Commission's budget and audit report would be scrutinised by the Llywydd's Committee, and "there would be no overlap with the remit of the Finance Committee in respect of the Assembly Commission's budget".

However, as you will be aware, the Finance Committee currently has oversight of all the bodies directly funded from the WCF. The Committee has also recently consulted and agreed with these bodies a Statement of Principles that the Finance Committee expects them to have regard to when making budget proposals.

Whilst the Electoral Commission could agree to the same principles, it will be difficult for the Finance Committee to maintain an overview of all directly funded bodies if the Electoral Commission's budget is considered by a Llywydd's Committee. The Finance Committee believes it is important that budget requests are set in the context of the budget constraints in the Welsh public sector.

It would be useful if you could provide further information on how you envisage the role of the Finance Committee in your proposed approach, and why the Electoral Commission should not be subject to the same Committee scrutiny as the other bodies. The Wales Audit Office, Public Services Ombudsman for Wales and the Assembly Commission are all directly funded from the WCF to ensure independence from the Welsh Government, but are all still subject to Finance Committee scrutiny.

Financial Resolution

The Stage 1 debate on the general principles of the Bill is scheduled to take place on Wednesday, 10 July 2019. I note that the motion to approve the Financial Resolution has yet to be scheduled. However, I would urge you, in discussion with the Welsh Government, to consider not seeking the Assembly's approval of a Financial Resolution until the information requested in this letter is provided and detail is available on the financial arrangements for the Electoral Commission. This will ensure the Assembly is able to make an informed decision in relation to committing resources.

I am copying this letter to the Counsel General and the Chair of the CLA Committee.

Yours sincerely,

Llyr Gruffydd AM
Chair of the Finance Committee

Eluned Morgan AC/AM
Gweinidog y Gymraeg a Chysylltiadau Rhyngwladol
Minister for International Relations and the Welsh Language

Llywodraeth Cymru
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Ein cyf/Our ref EM/0505/19

Mr Mick Antoniw AM
Chair of Constitutional and Legislative Affairs Committee
National Assembly for Wales
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Cc: CLAC Committee Members

28 June 2019

Dear Mick,

Trade Bill – Supplementary Legislative Consent Memorandum (Memorandum No 3)

Thank you for your letter of 6 June seeking clarification on a point I made during the second plenary debate on the Supplementary Legislative Consent Memorandum (Memorandum No 3) on the Trade Bill.

As you state in your letter, during the debate I stated that the most recent amendments to the UK Trade Bill effectively widen devolved powers under the Bill. I did not mean to imply in plenary that this amendment did not widen Welsh Ministers' powers under the Bill. As you have stated in your letter, and I stated in the Legislative Consent Memorandum laid on 10 May, the effect of the amendment is to widen Welsh Ministers' powers.

I hope this response clarifies the point I was attempting to make.

Yours sincerely,

Eluned Morgan AC/AM
Gweinidog y Gymraeg a Chysylltiadau Rhyngwladol
Minister for International Relations and the Welsh Language

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

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Ein cyf/Our ref: MA-L/FM/0506/19 D4

Elin Jones AM
Llywydd
National Assembly for Wales

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3 July 2019

Dear Elin,

International obligations which bind the UK

I am writing to seek the views of the Business Committee on the National Assembly's engagement with international obligations which bind the UK. This issue has recently arisen in the context of the UK's efforts to conclude bilateral agreements with other EU countries to secure reciprocal voting rights in local government elections. However, the issue is one which can be anticipated to arise often, should we leave the EU, and which has broader constitutional implications.

The UK Government alerted us to these negotiations rather late in the day, after an agreement with Spain had been agreed in principle.

From the standpoint of current policy, this is unproblematic: it aligns fully with the commitment of the Welsh Government and a large majority in the National Assembly to extend the franchise for local government and National Assembly elections to all foreign nationals as part of our aim to make Wales a welcoming nation. Moreover, it will require no specific action on the part of the Welsh Government and the National Assembly.

However, in concluding agreements which bind all parts of the UK to extend the franchise to nationals of certain other countries the UK Government is effectively constraining both legislative and executive competence of the devolved institutions in future, since a future National Assembly with a different political outlook would be unable to legislate to remove the franchise from such citizens.

In the specific case of these agreements, there is a mechanism by which these reciprocal voting rights treaties can be modified, and we have emphasised the need for a process to

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request the use of this mechanism to remove Wales from the agreement should a future Welsh Government or National Assembly adopt a different policy position from ours.

Nevertheless, the broader constitutional principle which is at play here will be relevant across all the international agreements the UK may seek to make in the future, both with the EU and with third countries more widely, which intersect with devolved competence.

We have emphasised to the UK Government that the Welsh Government must be fully engaged in the negotiation of such agreements in order to ensure that commitments are not made on our behalf without our agreement. Discussion on these points is ongoing, not least in the context of the Inter-Governmental Relations Review.

The UK Government has in any event already committed to initiating an exchange of Ministerial letters in all cases where proposed international agreements intersect with devolved competence in order to provide sufficient opportunity for the Welsh Government to signal any difficulties we might have with what is proposed. We have also emphasised the importance of ensuring we have an opportunity to engage with the Assembly in advance.

It is on this last point that I would particularly welcome views from the Assembly. I am keen that either before or during the exchange of Ministerial letters on international obligations which bind the UK, the Assembly and/or its committees have the opportunity to express a view. I am keen to work with you to establish a process or procedure for this.

I am copying this letter to the Chairs of the Equality, Local Government and Communities, the External Affairs and Additional Legislation, and the Constitutional and Legislative Affairs Committees, as well as to the Counsel General and Brexit Minister, the Minister for Finance and Trefnydd, and the Minister for International Relations and the Welsh Language.

Best wishes,

Mark

MARK DRAKEFORD

Agenda Item 10

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Agenda Item 11

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