

Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:

Committee Room 1 – Senedd

Meeting date: 23 September 2019

Meeting time: 14.45

For further information contact:

Gareth Williams

Committee Clerk

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1 Motion under Standing Order 17.22 to elect a temporary Chair

14.45

2 Introduction, apologies, substitutions and declarations of interest

14.45

**3 Instruments that raise no reporting issues under Standing Order
21.2 or 21.3**

14.45–14.50

(Pages 1 – 2)

CLA(5)–25–19 – Paper 1 – Statutory instruments with clear reports

Negative Resolution Instruments

3.1 SL(5)441 – Code of Practice for the Welfare of Laying Hens and Pullets

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

14.50–14.55

Composite Negative Resolution Instruments

**4.1 SL(5)440 – The Invasive Alien Species (Enforcement and Permitting)
(Amendment) Order 2019**

(Pages 3 – 10)

CLA(5)–25–19 – Paper 2 – Report

CLA(5)–25–19 – Paper 3 – Order

CLA(5)–25–19 – Paper 4 – Explanatory Memorandum



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

14.55–15.00

5.1 SL(5)435 – The Plant Health (Forestry) (Amendment No. 2) (Wales) Order 2019

(Pages 11 – 13)

CLA(5)–25–19 – Paper 5 – Revised report

6 Written statements under Standing Order 30C

15.00–15.05

6.1 WS–30C(5)151 – Specific Food Hygiene (Regulation (EC) No. 853/2004) (Amendment) (EU Exit) Regulations 2019

(Pages 14 – 17)

CLA(5)–25–19 – Paper 6 – Written statement

CLA(5)–25–19 – Paper 7 – Commentary

6.2 WS–30C(5)152 – The Animal Health and Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2019

(Pages 18 – 22)

CLA(5)–25–19 – Paper 8 – Written statement

CLA(5)–25–19 – Paper 9 – Commentary

7 Paper(s) to note

15.05–15.10

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

(Pages 23 – 25)

CLA(5)–25–19 – Paper 10 – Letter from the Deputy Minister for Health and Social Services, 13 September 2019

7.2 Letter from the Deputy Minister for Health and Social Services to the Chair of the Children, Young People and Education Committee: Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill

(Pages 26 – 43)

CLA(5)–25–19 – Paper 11 – Letter from the Deputy Minister for Health and Social Services to the Chair of the Children, Young People and Education Committee, 13 September 2019

7.3 Letter from the Deputy Minister for Health and Social Services to the Chair of the Finance Committee: Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill

(Pages 44 – 49)

CLA(5)–25–19 – Paper 12 – Letter from the Deputy Minister for Health and Social Services to the Chair of the Finance Committee, 13 September 2019

7.4 Letter from the Counsel General: Inter-Institutional Relations Agreement

(Pages 50 – 51)

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

7.5 Letter from the Minister for Housing and Local Government to the Chair of the Equality, Local Government and Communities Committee: Voting rights for prisoners

(Pages 52 – 53)

CLA(5)–25–19 – Paper 14 – Letter from the Minister for Housing and Local Government to the Chair of the Equality, Local Government and Communities Committee, 18 September 2019

7.6 Letter from the Llywydd to the Chair of the Equality, Local Government and Communities Committee: Voting rights for prisoners

(Pages 54 – 55)

CLA(5)–25–19 – Paper 15 – Letter from the Llywydd to the Chair of the Equality, Local Government and Communities Committee, 18 September 2019

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

15.10

9 Forward Work Programme

15.10–15.15

(Page 56)

CLA(5)-25-19 – Paper 16 – Future business

Date of the next meeting – 30 September

Statutory Instruments with Clear Reports

23 September 2019

SL(5)441 – Code of Practice for the Welfare of Laying Hens and Pullets

Procedure: Negative

This Code of Practice is issued under section 14 of the Animal Welfare Act 2006 (the “Act”). The Welsh Government undertook a review of the existing Code (which was issued in 2002) and consulted upon it between November 2017 and February 2018.

This Code of Practice applies in Wales only, is issued by the Welsh Ministers and comes into force on 12 November 2019. It covers all parts of the laying hen production sector, including pullets and breeding birds, and all types of husbandry systems. It covers single or multiple laying hens kept on a smallholding (hobby/backyard flock), as well as commercial laying hen producers.

The purpose of the Code is to ensure that those who are responsible for an animal are aware they have a legal duty to take reasonable steps to ensure its welfare needs are met, and explains what those persons must do in order to meet the standard of care that the law requires.

Procedure

The Code of Practice is issued under section 14 of the 2006 Act, which allows the National Assembly for Wales to publish practical guidance in respect of any provision under the Act. The power to publish guidance was transferred from the Assembly to Welsh Ministers by paragraph 30 of Schedule 11 of the 2006 Act. Section 16 requires that a draft of the Code is published, consulted on, and any consultation responses are considered. These steps have been taken.



A draft of the code must be laid before the Assembly. If, within 40 days (excluding any time when the Assembly is dissolved or is in recess for more than 4 days) of the draft being laid, the Assembly resolves not to approve the draft code then the Welsh Ministers must not issue the code.

If no such resolution is made, the Welsh Ministers must issue the code (in the form of the draft) and the code comes into force in accordance with its provisions. The intended date in this case is 12 November 2019.

Parent Act: Animal Welfare Act 2006

Date Made:

Date Laid: 09 September 2019

Coming into force date:



SL(5)440 – The Invasive Alien Species (Enforcement and Permitting) (Amendment) Order 2019

Agenda Item 4.1

Background and Purpose

This Order amends the Invasive Alien Species (Enforcement and Permitting) (Amendment) Order 2019 (the 2019 Order) to change the date on which the 2019 Order comes into force, from 1 October 2019 to 1 December 2019.

This Order also makes a consequential amendment to article 43 of the 2019 Order (Review: England) to change the date by which the first report under article 43 must be made, from 1 October 2024 to 1 December 2024. Article 43 does not apply to Wales.

Procedure

Negative.

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument:

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

- This Order has been made as a composite instrument, meaning the Order has been: (a) made by both the Welsh Ministers and the Secretary of State, and (b) laid before both the National Assembly for Wales and the UK Parliament. As a result, the Order has been made in English only.
- The Explanatory Memorandum states that the Order needed to be made on a composite basis as it amends the 2019 Order, which was made on a composite basis. The Explanatory Memorandum restates that the 2019 Order was made on a composite basis to “assist with a consistent enforcement approach, and accessibility and understanding for members of the public and others”. Legal Advisers accept there are good reasons to make this Order on a composite basis, but we note the effect that has (i.e. there is no Welsh language version).

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument:

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

- This Order is made under section 2(2) of the European Communities Act 1972 (the 1972 Act). The 1972 Act gives a discretion as to whether the negative procedure or the affirmative procedure should apply to this Order. The negative procedure has been chosen on the basis that the required provisions are required to give effect to the provisions of an EU Regulation. Additionally, the enabling power under section 22(5) of the Wildlife and Countryside Act 1981 requires the instrument to follow the negative procedure.
- The Legal Advisers accept that the choice of negative procedure is appropriate given these reasons.



Implications arising from exiting the European Union

This Order and the 2019 Order implement EU obligations in relation to the prevention and management of the introduction and spread of invasive alien species, and therefore the 2019 Order will form part of retained EU law after exit day.

Government Response

A government response is not required.

Legal Advisers

Constitutional and Legislative Affairs Committee

17 September 2019



STATUTORY INSTRUMENTS

2019 No. 1213

WILDLIFE

**The Invasive Alien Species (Enforcement and Permitting)
(Amendment) Order 2019**

Made - - - - - *3rd September 2019*
Laid before Parliament *5th September 2019*
Laid before the National Assembly for Wales *5th September 2019*
Coming into force - - - *30th September 2019*

The Secretary of State and the Welsh Ministers make this Order in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) (“the 1972 Act”), and by section 22(5) of the Wildlife and Countryside Act 1981(b).

The Secretary of State has been designated for the purposes of section 2(2) of the 1972 Act in relation to the environment(c), and the Welsh Ministers have been designated for those purposes in relation to the prevention and remedy of environmental damage(d).

Citation and commencement

1. This Order may be cited as the Invasive Alien Species (Enforcement and Permitting) (Amendment) Order 2019, and comes into force on 30th September 2019.

Amendment of the Invasive Alien Species (Enforcement and Permitting) Order 2019

2.—(1) The Invasive Alien Species (Enforcement and Permitting) Order 2019(e) is amended as follows.

(2) In article 1 (citation, commencement, extent and application), in paragraph (1), for “1st October 2019” substitute “1st December 2019”;

(3) In article 43 (review: England), in paragraph (2), for “1st October 2024” substitute “1st December 2024”.

3rd September 2019 *Gardiner of Kimble*
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

(a) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51), and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7).
(b) 1981 c. 69; section 22(5) was amended by section 25(5) of the Infrastructure Act 2015 (c. 7).
(c) S.I. 2008/301.
(d) S.I. 2014/1890.
(e) S.I. 2019/527.

3rd September 2019

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

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Invasive Alien Species (Enforcement and Permitting) Order 2019 (S.I. 2019/527) to change the date on which that Order comes into force, from 1st October 2019 to 1st December 2019. It also makes a consequential amendment to article 43 of the Order (review: England), to change the date by which the first report under that article needs to be made, from 1st October 2024 to 1st December 2024.

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

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. 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 this Order.

Explanatory Memorandum to The Invasive Alien Species (Enforcement and Permitting) (Amendment) Order 2019

This Explanatory Memorandum has been prepared by Department for Environment and Rural Affairs 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 Invasive Alien Species (Enforcement and Permitting) (Amendment) Order 2019.

Lesley Griffiths

Minister for Environment, Energy and Rural Affairs

3 September 2019

PART 1

1. Description

This Order amends the Invasive Alien Species (Enforcement and Permitting) Order 2019 (S.I. 2019/527) to change the date on which that Order comes into force, from 1 October 2019 to 1 December 2019.

It also makes a consequential amendment to article 43 of the Order (review: England), to change the date by which the first report under that article needs to be made, from 1 October 2024 to 1 December 2024. Article 43 does not apply to Wales.

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

This instrument is being made on a composite basis with the Secretary of State for DEFRA as it amends the Invasive Alien Species (Enforcement and Permitting) Order 2019 which was made on a composite basis. That Order also amended England and Wales legislation (section 22 of the Wildlife and Countryside Act 1981 (“the WCA 1981”). The policy approach to controlling invasive alien species in Wales and England is aligned as invasive alien species do not recognise borders. A composite SI, which applies simultaneously throughout Wales and England, will assist with a consistent enforcement approach, and accessibility and understanding for members of the public and others.

As this Order will be subject to UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually. The instrument is not amending earlier bi-lingual legislation.

3. Legislative background

The Order is made using the powers designated to the Welsh Ministers under section 2(2) of the European Communities Act 1972 (“the ECA 1972”). The Welsh Ministers may rely on their power under section 2(2) of the ECA 1972, by way of their designation for those purposes, in relation to the prevention and remedy of environmental damage. This Order and the Order it amends implement the substantive requirements of EU Regulation No 1143/2014 (on the prevention and management of the introduction and spread of invasive alien species) in relation to Wales. The amendment Order also refers to powers under section 22(5) of the Wildlife and Countryside Act 1981 (“WCA 1981”) which are relied upon in the original Order.

The Order is subject to the negative resolution procedure in the National Assembly for Wales and in the UK Parliament. This is deemed the appropriate procedure because section 2(2) of the ECA 1972 offers a choice between negative and affirmative procedures. The negative procedure will be used in this case as the discretion of the Welsh Ministers to make the required provisions is limited due to the need to give effect to the provisions of the EU

Regulation. Moreover, the exercise of powers under section 22(5) of the WCA 1981 is subject to annulment by the motion of the Assembly (negative procedure).

4. Purpose and intended effect of the legislation

This Order amends the Invasive Alien Species (Enforcement and Permitting) Order 2019 (S.I. 2019/527) to change the date on which that Order comes into force, from 1 October 2019 to 1 December 2019.

It also makes a consequential amendment to article 43 of the Order (review: England), to change the date by which the first report under that article needs to be made, from 1 October 2024 to 1 December 2024. Article 43 does not apply to Wales.

This Order and the Order it amends implement the substantive requirements of EU Regulation No 1143/2014 on the prevention and management of the introduction and spread of invasive alien species in relation to Wales. EU Regulation 1143/2014 is designed to prevent, minimise or mitigate the adverse impact of the introduction and spread of invasive non-native species (INNS) within the European Union.

The Invasive Alien Species (Enforcement and Permitting) Order 2019 lays down the penalties applicable to infringements of EU Regulation No 1143/2014 as required by that Regulation. It was made on the 7 March 2019 with a coming in to force date of 1 October 2019.

The coming in to force date is being changed from 1 October 2019 to 1 December 2019 to allow for a longer period of consultation on joint Wales and England proposals for management measures for a number of widely spread invasive alien species, to ensure that there is adequate time for consultation responses received to be properly analysed, and to allow sufficient time for a related licensing scheme to be put in place. Welsh Ministers are obliged to put in place these management measures, and consult on their preparation, under Regulation (EU) No 1143/2014.

5. Consultation

This Order which changes the coming in to force date of the Invasive Alien Species (Enforcement and Permitting) Order 2019 from 1 October 2019 to 1 December 2019 was not subject to public consultation. Key stakeholders have been advised of this Order and the change it will make to the coming in to force date and no concerns have been raised.

A public consultation was undertaken jointly by Defra and Welsh Government between 9 January and 3 April 2018. The consultation sought views on proposed penalties in respect of restrictions outlined at Article 7 of EU Regulation No 1143/2014 which prohibit the intentional: (a) importing; (b) keeping; (c) breeding; (d) transporting; (e) selling; (f) using or exchanging; (g) permitting to reproduce, grow or cultivate or (h) releasing into the environment

of any live specimens of invasive alien species on the Union list. The consultation responses were used to help formulate the Invasive Alien Species (Enforcement and Permitting) Order 2019.

A summary of the consultation responses is available at:
<https://www.gov.uk/government/consultations/invasive-non-native-species-regulations-enforcement>

6. Regulatory Impact Assessment (RIA)

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. 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 this Order as no, or no significant, impact on the private, voluntary or public sector is foreseen by amending the coming in to force date of the Invasive Alien Species (Enforcement and Permitting) Order 2019 by two months. It is not considered that the change to the coming in to force date will have an adverse impact on the Welsh Ministers statutory duties under sections 77-79 of the Government of Wales Act 2006 or on Welsh Ministers statutory partners under sections 72-75.

An impact assessment was undertaken for the Invasive Alien Species (Enforcement and Permitting) Order 2019 and that is provided within the Explanatory Memorandum for that Order.

SL(5)435 – The Plant Health (Forestry) (Amendment No. 2) (Wales) Order 2019

Background and Purpose

This Order amends the Plant Health (Forestry) Order 2005 (S.I. 2005/2517) to introduce emergency measures to prevent—

- (a) the introduction of *Thaumetopoea processionea* L. (the Oak Processionary Moth (“OPM”)) into Wales which is recognised as a protected zone for this harmful plant pest (“the protected area”); and
- (b) the spread of this harmful plant pest within the protected area.

The Order amends the technical requirements that must be satisfied when bringing in certain plants of *Quercus* L., intended for planting, into the protected area or when moving those plants within the protected area.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

Two points are identified for reporting under Standing Order 21.3(ii) 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

1. The 21 day rule under the Statutory Instruments Act 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 occur if legislation is annulled after it has been implemented. However, in this case, the Welsh Government considers that the circumstances justify a breach of that rule.

The Explanatory Memorandum (EM) explains the reason for the breach of the 21 day rule at page 2:

“...To ensure continued enforceability with the rest of the UK it has become necessary to breach the 21 day rule. Scotland laid their equivalent Statutory Instrument on the 15th July and it came into force on the 16th of July. England laid their Statutory Instrument on the 15th July which came into force on the same day.

Currently imports of oak trees from regions where this pest is present are allowed under certain surveillance and regulations, however, findings in the wider environment in England and Wales have proved that these regulations are not sufficient and as a result a number of OPM findings have been reported outside of London across England and Wales. It is therefore necessary to immediately stop all potentially infested imports of Oak trees as soon as possible to reduce the potential spread of OPM throughout the UK...”



The EM further states at page 3 that:

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

It is necessary for the Minister to breach the 21 day laying rule due to the urgency needed to bring Welsh Government legislation in line with the rest of Great Britain. If not Wales will be a loophole in Plant trade and could still allow the importation of potentially infested material.

The earliest the Moths have been recorded flying in the UK is from 24 July and we need the ability to restrict potential plant trade pathways to minimise the spread and impact of this pest in Wales..."

The Minister for Finance and Trefnydd has, as required by section 11A of the Statutory Instruments Act 1946, notified the Presiding Officer of the breach, by way of a letter dated 19 July 2019.

2. The letter notifying the Presiding Officer of the breach of the 21 day rule on the one hand, and the Explanatory Notes and Explanatory Memorandum accompanying the Regulations on the other, provide different reasoning as to why a Regulatory Impact Assessment (RIA) has not been undertaken. The letter states as follows:

"...No Regulatory Impact Assessment or Consultation has been undertaken due to the urgency of implementing the Statutory Instrument. However, an Explanatory Memorandum has been prepared and this has been laid, together with the Regulations in Table Office..."

However, the Explanatory Notes to the Regulations state that *"an impact assessment has not been produced for the instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen"*. Likewise, the Explanatory Memorandum states at page 4 that *"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"*.

As such, it is unclear exactly why an RIA was not undertaken on this occasion, as the reasoning provided is contradictory.

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

It is accepted that the differing reasons given for not carrying out an RIA make it difficult to determine the exact reasoning.

In the circumstances the primary reason was the emergency nature of the Order justified under para. 4.2 of the Code of Practice and as set out in the letter to the presiding officer.

In reality given that this was limited to a restriction on a single kind of tree being imported from a very limited and specific source there was no significant impact on the private, voluntary or public sector.

It is accepted, however, that the primary reasoning is unclear on the face of the Order and that it should be made clear.



This order becomes otiose on 'exit day' as Schedule 4 of the Plant Health (Forestry) Order 2005 is omitted by virtue of Article 52 of The Plant Health (Forestry) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019.

In the circumstances it is proposed that the Explanatory Note will be corrected by way of a correction slip only if this point is still relevant after 31st October 2019.





WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE Specific Food Hygiene (Regulation (EC) No. 853/2004) (Amendment) (EU Exit) Regulations 2019

DATE 11 September 2019

BY Rebecca Evans AM, Minister for Finance and Trefnydd

Specific Food Hygiene (Regulation (EC) No. 853/2004) (Amendment) (EU Exit) Regulations 2019

The retained EU law which is being amended

Regulation 853/2004 laying down specific hygiene rules for food of animal origin

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

This SI revokes and remakes one of the corrections made to retained EU law Regulation 853/2004 by the Specific Food Hygiene (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/640).

The correction as re-made by this SI will make clear that the Welsh Ministers' executive powers are enhanced. The correction will confer a power on the Welsh Ministers to make regulations to specify what substances may be used to remove contamination from animal carcasses, and to set any conditions of use. The regulations will be subject to annulment by resolution of the National Assembly. The SI will not have any impact on the Assembly's legislative competence.

The purpose of the amendments

Article 3(2) of Regulation (EC) 853/2004 currently provides that food businesses in the EU must not use any substance other than water to remove contamination from animal carcasses unless the use of that substance has been approved in legislation made by the European Commission. Food businesses must also comply with any conditions for use that are prescribed in the legislation.

Regulation 6 of the Specific Food Hygiene (Amendment etc.) (EU Exit) Regulations 2019 as made on 18 March 2019 would have amended, from exit day, Article 3(2) of Regulation 853/2004. The amendment would have provided that, post EU-exit, the Food Standards

Agency/Food Standards Scotland could approve the use of substances apart from water, such approval only being effective when given effect to by regulations made by Ministers in the relevant part of the UK.

However, on reflection, it was considered that the drafting of regulation 6 of the Specific Food Hygiene (Amendment etc.) (EU Exit) Regulations 2019 did not make sufficiently clear that the final decision as to whether to approve the use of a substance falls to Ministers in the relevant part of the UK, not the Food Standards Agency/Food Standards Scotland.

As a result, this SI will revoke, immediately before exit day, regulation 6 of the Specific Food Hygiene (Amendment etc.) (EU Exit) Regulations 2019. The SI will then re-make the proposed amendment, from exit day, but makes clearer that it is the Ministers in the relevant part of the UK who are the final decision-maker in terms of authorising the use of alternative substances for washing contamination from carcasses.

This will mean that in Wales, an alternative substance may only be used if authorised by regulations made by the Welsh Ministers.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: <https://beta.parliament.uk/work-packages/wnMJ8407>

Why consent was given

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

UK MINISTERS ACTING IN DEVOLVED AREAS

**151 - The Specific Food Hygiene (Regulation (EC) No. 853/2004)
(Amendment) (EU Exit) Regulations 2019**

Laid in the UK Parliament: 9 September 2019

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Made affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	N/A
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 6
SICM under SO 30A (because amends primary legislation)	N/A

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Made 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	15 October 2019

Commentary

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

These Regulations clarify an amendment to retained EU law made by the Specific Food Hygiene (Amendment etc.) (EU Exit) Regulations 2019 (SI No. 640), which concerns the process for approval of substances which may be used to remove surface contamination from products of animal origin, as presently set out in EU Regulation (EC) No. 853/2004 laying down specific hygiene rules for food of animal origin.

The amendments made by these Regulations provide that ministers (and therefore the Welsh Ministers in relation to Wales), as opposed to the Food Standards Agency, will be responsible for authorising the use of any additional substances to remove surface contamination from products of animal origin following EU Exit.

Legal Advisers agree with the statement laid by the Welsh Government dated 11 September 2019 regarding the effect of these Regulations.

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

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



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Animal Health and Genetically Modified Organisms
(Amendment) (EU Exit) Regulations 2019**

DATE **12 September 2019**

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

The Animal Health and Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2019

The Law which is being amended

- Regulation (EC) No 999/2001 of the European Parliament and of the Council laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies.
- The Transmissible Spongiform Encephalopathies and Animal By-Products (Amendments Etc.) (EU Exit) Regulations 2019.
- The Animal Health, Invasive Alien Species, Plant Breeders' Rights and Seeds (Amendment etc.) (EU Exit) Regulations 2019.
- The Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2019.

The purpose of the amendments

The Transmissible Spongiform Encephalopathies and Animal By-Products (Amendment etc.) (EU Exit) Regulations 2019 and the Animal Health, Invasive Alien Species, Plant Breeders' Rights and Seeds (Amendment etc.) (EU Exit) Regulations 2019 have been amended as a result of recent amendments to EU law that were settled in the EU, at a point that was too late to be included in earlier EU exit instruments. The recent EU amendments are listed below:

- Commission Implementing Regulation (EU) 2019/1084 of 25 June 2019, amending Regulation (EU) No. 142/2011 as regards the harmonisation of the list of approved or registered establishments, plants and operators and the traceability of certain animal by-products and derived products.

- Commission Implementing Regulation (EU) 2019/1090 of 26 June 2019, amending Annex IV to Regulation (EC) No. 999/2001 of the European Parliament and of the Council as regards the requirements for export of products containing processed animal protein derived from ruminants and non-ruminants.
- Commission Implementing Regulation (EU) 2019/1177 of 10 July 2019 amending Regulation (EU) No 142/2011 as regards imports of gelatine, flavouring innards and rendered fats.

As part of the amendments to the Transmissible Spongiform Encephalopathies and Animal By-Products (Amendment etc.) (EU Exit) Regulations 2019, a single Commission function is transferred in Article 30(1) of Commission Regulation (EU) No. 142/2011 to the Welsh Ministers on a concurrent basis with the Secretary of State, but the function may only be exercised by the Secretary of State if consent is given by the Welsh Ministers. This function relates to the publication of technical specifications published to assist with the process of listing establishments and plants in third countries.

Annex 4 of Regulation (EC) No. 999/2001 is amended to reflect recent changes to Commission Implementing Regulation (EU) 2019/1090. As a result of these changes, two functions are transferred to the Welsh Ministers and Secretary of State on a concurrent basis, but the Secretary of State may only exercise the functions with the consent of Welsh Ministers. Firstly, Welsh Ministers may allow the inclusion of a sufficient proportion of small ruminant or ruminant Processed Animal Protein (PAP) to be included which renders the product unpalatable to animals, or is otherwise effective to prevent misuse of the mixture for feeding purposes. Secondly, Welsh Ministers may accept the use of organic fertilisers or soil improvers containing other components or using other methods to prevent the use of the organic fertilisers or soil improvers as feed, provided they adhere to strict controls.

The Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2019 are amended to correct some minor inconsistencies of terminology in Regulations 9(6) (b), (7) (a) and 10(4).

The Animal Health and Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2019 (2019 Regulations) and accompanying Explanatory Memorandum, setting out the effect of amendments are available here: <https://beta.parliament.uk/work-packages/OlvKCJP3>

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

Three functions have been transferred to the Welsh Ministers and Secretary of State on a concurrent basis, but may only be exercised by the Secretary of State with the consent of Welsh Ministers, and are set out above.

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

Functions transferred to the Welsh Ministers and the Secretary of State on a concurrent basis may constitute functions of a Minister of the Crown for the purposes Schedule 7B to

the Government of Wales Act 2006 (GoWA 2006). This may operate as a constraint on the Assembly's competence to legislate in the future in these areas.

Why consent was given

The 2019 Regulations make a number of technical changes to existing instruments and take into account recent changes to EU legislation which could not be included in earlier EU Exit SIs. The 2019 Regulations also correct minor errors in earlier EU Exit SIs. The 2019 Regulations will therefore ensure that retained EU law continues to operate effectively after the UK leaves the EU.

The 2019 Regulations will follow the 'urgent made affirmative procedure' which is set out in paragraph 5 of Schedule 7 to the European Union (Withdrawal) Act 2018. In accordance with this procedure, the 2019 Regulations may be made without a draft of the instrument being laid before, and approved by a resolution of, each House of Parliament, provided a declaration is made by the relevant Minister that as a result of urgency, it is necessary to make the regulations without a draft being laid and approved.

Defra has confirmed that the 2019 Regulations were made and laid on 5 September and will come into force immediately before exit day (31 October 2019). However, the 2019 Regulations will still need to be approved by a resolution of each House of Parliament before the end of a period of 28 days beginning from 5 September. Of note, paragraph 5(5) of Schedule 7 to the European Union (Withdrawal) Act 2018 provides that in calculating the period of 28 days, no account is to be taken of any time during which Parliament is prorogued or dissolved or either House of Parliament is adjourned for more than four days.

Defra did not seek consent from Welsh Ministers and the other devolved administrations prior to making and laying the 2019 Regulations. The explanation from Defra for this was expediency. It highlighted the need to ensure that the 2019 Regulations were in place in advance of a meeting of the European Commission's Standing Committee on Plants, Animals, Food and Feed on 11 October; to avoid an application for third country listing being declined.

It should be noted that while the Welsh Government was content with the provisions contained within the 2019 Regulations, as a matter of principle, the UK Government should have sought the consent of Welsh Ministers prior to making and laying the instrument.

UK MINISTERS ACTING IN DEVOLVED AREAS

152 - The Animal Health and Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2019

Laid in the UK Parliament: 5 September 2019

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Made affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	N/A
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 8
SICM under SO 30A (because amends primary legislation)	N/A

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Made 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	15 October 2019

Commentary

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

The amendments made by regulations 2, 3 and 4 of this instrument ensure that the law on Transmissible Spongiform Encephalopathies and Animal By-Products function correctly after the UK has left the EU by including the following recent amendments to EU law that were settled in the EU too late to be included in earlier EU Exit legislation, namely:

- Commission Implementing Regulation (EU) 2019/1084 of 25 June 2019, amending Regulation (EU) No. 142/2011 as regards the harmonisation of the list of approved or registered establishments, plants and operators and the traceability of certain animal by-products and derived products.

- Commission Implementing Regulation (EU) 2019/1090 of 26 June 2019, amending Annex IV to Regulation (EC) No. 999/2001 of the European Parliament and of the Council as regards the requirements for export of products containing processed animal protein derived from ruminants and non-ruminants.
- Commission Implementing Regulation (EU) 2019/1177 of 10 July 2019 amending Regulation (EU) No 142/2011 as regards imports of gelatine, flavouring innards and rendered fats.

Regulation 5 contains relatively minor amendments dealing with the continued effective operation of retained EU legislation, and some corrections to inconsistencies in language used.

Legal Advisers agree with the statement laid by the Welsh Government dated 12 September 2019 regarding the effect of these Regulations.

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

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

Our ref MA-L/JM/0662/19

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee

13 September 2019

Dear Mick,

I would like to thank the Constitutional and Legislative Affairs Committee for their consideration of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill during Stage 1 and for the report which was published on 2 August 2019.

I have noted the committee's view that the Explanatory Memorandum accompanying the Bill should have included a fuller explanation of the assessments undertaken in relation to human rights.

Ahead of Stage 3 I have asked my officials to review the balance between what is in the Explanatory Memorandum and the impact assessments that were undertaken and published on the Welsh Government website. In doing so officials will be mindful of the letter from the former First Minister which set out the Government position that 'due to the change to reserved powers and there no longer being a need to refer to conferred subjects, the legislative competence section of Explanatory Memoranda in the future are more likely to accord with the statement in the Fees Bill (Renting Homes (Fees etc.) (Wales) Act) Explanatory Memorandum'.

In responding to the recommendations of the three committees which have scrutinised the Bill, I have tried to strike a careful balance, but there have inevitably been occasions when I have had to fall on one side rather than the other.

I have set out responses to the two recommendations made in the Committee's Stage 1 Report on the Bill below.

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

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

1. *The Deputy Minister should work with the Crown Prosecution Service and make available to Assembly Members the revised Charging Standard Guidance and any associated guidance in draft format ahead of Stage 3 proceedings on the Bill.*

I **accept the principle** of this recommendation.

I agree with the Committee's view that I, and my officials, should continue to work with the CPS to effectively implement the Bill, however, we are unable to influence the CPS on the development or timing of their guidance.

The CPS is an independent body. Its guidance is issued by the Director of Public Prosecutions, and it is not appropriate for its guidance to be influenced by Welsh Ministers, or for the CPS to be answerable to scrutiny by a legislature in this way.

CPS guidance will always consider the intent of legislation which has been passed, and if it is called into question by the courts, then the judiciary may consider whether the CPS guidance is consistent with that intent. However, it is not for a Government or the legislature to direct or suggest to the CPS how guidance should be drafted.

During the Children, Young People and Education Committee evidence session on 6 June 2019, Barry Hughes (Chief Crown Prosecutor for Wales) was asked whether the Assembly could see draft changes to CPS guidance before making final decisions on the scrutiny of the Bill. His response was that he didn't "think that would necessarily be helpful" and could "run the risk of putting the cart before the horse".¹

2. *The Bill should be amended to require the Welsh Ministers to:*
 - *Undertake a post-implementation evaluation of the Bill, within three years of the legislation coming into force, and*
 - *Report the findings of such an evaluation to the National Assembly.*

I **accept** this recommendation

I am proposing to bring forward an amendment to bring effect to this recommendation. The Welsh Government has already committed to carrying out a post implementation review and Chapter 10 of the Explanatory Memorandum sets out the intended approach for monitoring and reviewing the effect of the legislation. In line with the recommendation of the Finance Committee we will provide further details and costing of the post implementation review in a revised Regulatory Impact Assessment at Stage 3.

The effect of the Bill will be measured in a number of ways, including through research and evaluation as well as developing routine data collection with stakeholders.

We will procure contractors to conduct attitudinal studies, periodically during the scrutiny of the Bill, its implementation phase and following commencement. These will allow us to track the changes in people's attitudes to the use of physical punishment, and in their levels of awareness of the law. As now, these reports will be published in accordance with our Welsh Government Social Research requirements.

We will work with the police, social services and the courts to agree the collection of relevant data for a period prior to implementation in order to try to establish baselines. Our intention is that data collection will continue following commencement in order to monitor the impact of the Bill. Data collection will, wherever possible, be aligned with existing activity or

¹ Paragraph 54, <http://record.assembly.wales/Cyfnwrdd/5520>

other relevant work. This detailed work is being taken forward through the dedicated Data Collection and Monitoring task group.

We would expect to be undertaking post implementation review of the legislation, assuming it receives Royal Assent, starting as soon as practically possible after the commencement date and continuing for a period of five years rather than the three recommended. A five year period provides for a similar timeframe to New Zealand enabling more effective trend analysis.

I note the Children, Young People and Education Committee and Constitutional and Legislative Affairs Committee have proposed recommendations relating to post implementation review.

I hope this letter is helpful in setting out responses to the Committee's Report.

I will also be writing to the Chairs of the Children, Young People and Education Committee and the Finance Committee with respect to their Stage 1 Reports, and will copy the letters to all three Committee Chairs.

I look forward to continuing to work with Members as the Bill progresses through the Assembly process.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'Julie', is positioned below the text 'Yours sincerely'.

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/0665/19

Lynne Neagle AM
Chair
Children, Young People and Education Committee

13 September 2019

Dear Lynne,

I would like to thank the Children, Young People and Education Committee for their scrutiny of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill during Stage 1 and for the report which was published on 2 August 2019.

In light of the time you have taken to consider the content of the Bill and its implementation, I wanted to write to you ahead of the general principles debate on 17 September, setting out our detailed response to the committee's recommendations. In doing so, some of the points raised rest within the portfolios of the Cabinet Secretary for Education, the Minister for Health and Social Services and the Deputy Minister for Culture, Sport and Tourism, each of whom are copied into this letter.

I have set out responses to the committee's recommendations at Annex A. The Finance and Constitutional and Legislative Affairs Committees also considered the Bill at Stage 1 and made recommendations about its content. I have tried to strike a balance between all three Committee Reports, but there have inevitably been occasions when I have had to fall on one side rather than the other.

Consequently, it has not been possible for me to accept all of the Children, Young People and Education Committee's recommendations in these areas in full, however, I have carried the principles and underpinning reasoning through as far as possible.

I hope this letter is helpful in setting out responses to the Committee's Report. I will also be writing to the Chairs of the Finance Committee and the Constitutional and Legislative Affairs Committee with respect to their Stage 1 Reports, and will copy the letters to all three Committee Chairs.

I look forward to continuing to work with Members as the Bill progresses through the Assembly process.

Yours sincerely

Julie Morgan AC/AM

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

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

Annex A

Recommendation 1. That the National Assembly, taking into account the wide range of evidence provided to us as part of our Stage 1 scrutiny and the recommendations we make in this report, agree the general principles of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill. Suzy Davies AM and Janet Finch-Saunders AM do not support this recommendation

I note and welcome this recommendation and the support of the majority of the Committee for the general principles of the Bill. I would like to thank each member of the Committee for their considered and thorough scrutiny of the Bill. I believe, along with the vast majority of those delivering statutory services to children and their families, that this important piece of legislation will not only help protect children's rights but also provide clarity in the law.

Recommendation 2. That the Welsh Government ensure the work of the Bill Implementation Group proceeds at pace, and with a sufficient level of transparency for ongoing scrutiny of its work to continue as the Bill progresses through its stages.

I accept the principle of this recommendation, however I ask the committee to note that the work of the Implementation Group will extend beyond the passage of the Bill, if passed, to at least commencement. We have already made progress in the core business of the Strategic Implementation Group. The ongoing detailed work of implementing the Bill will be taken forward by four specific task and finish groups - Parenting advice and support; Data collection and monitoring; Operations, procedures and processes; and Out of court disposals and diversions. In addition the Implementation Group will receive regular updates on the plans for awareness raising. These groups have either already met or are due to meet in the near future.

I am confident that through working together and drawing on the expertise and experience of our partners in public bodies and services, including the third sector, we will ensure that, if passed, the legislation is implemented in a practicable and workable way.

A high level plan for the Implementation group is being prepared and will be considered by the Strategic Implementation Group at their next meeting on 23 September. At this meeting we will agree with members of the group the best way of updating the Committee and ensuring you get useful and meaningful information on the progress of the Strategic Implementation Group and associated task and finish groups.

Recommendation 3. That the Welsh Government allow sufficient time between Royal Assent and commencement of the Bill's substantive provision (to remove the defence of reasonable punishment) and for the Deputy Minister to keep the National Assembly updated on her plans in this regard. We believe this time will be needed to enable the provision of information and support to parents, to raise awareness of the legislative change, and to update the necessary training and guidance, all of which we conclude are crucial to the effective and proportionate implementation of the Bill and the delivery of its stated aims.

I accept this recommendation. I have made my view clear that I consider a period of up to 2 years between Royal Assent and commencement should allow sufficient time to carry out awareness raising, so that the public have time to understand the implications of this law and, if needed, identify ways to discipline their children that do not include physically punishing them.

This approach also provides time to take account of how the public bodies involved work together; to refine processes, procedures, guidance and training; and put any diversion scheme and associated arrangements in place prior to bringing the Act into force.

The Crown Prosecution Service (CPS) in their written evidence welcomed this approach and the Children's Commissioner for Wales in her evidence has stated:

"I note and understand the requirement to have a suitable period post Royal Assent (should the Bill pass) in order to do the training, awareness and updating of documents"

Recommendation 4. That the Welsh Government work with the police, Crown Prosecution Service and relevant UK Government departments to develop, as a matter of priority, a clear pathway to divert cases that would currently be captured under the defence of reasonable punishment away from the criminal justice system, where appropriate and proportionate to do so. Such diversionary schemes should focus on encouraging and supporting parents rather than penalising them

I accept the principle of this recommendation. I absolutely recognise the importance of working closely with the police, CPS and UK departments to implement the Bill effectively. My predecessor and I have had numerous meetings with these bodies over the last two years in which there has been fruitful discussion on a range of issues, including on out of court disposals.

A specific task and finish group will take this detailed work forward overseen by the Strategic Implementation Group. The first meeting of the Out of Court disposals and diversion scheme task and finish group took place in July, with representation from the four police forces across Wales, the CPS and social services. Members of the group recognise the importance of working together to create a joined up approach that encourages prevention and early intervention. Discussion in the meeting included consideration of a diversion scheme for first time offenders and how they might encourage and support parents.

While we will continue these constructive discussions it must be acknowledged that policing and justice in Wales are a non-devolved responsibility. Decisions around appropriate models of delivery and guidance for a diversion scheme are ultimately the responsibility of the UK Government's Home Office and Ministry of Justice.

Recommendation 5. That the Welsh Government work with the police and relevant UK Government departments to develop, as a matter of priority, clear guidance for police forces in Wales about the recording of information relating to investigation of allegations of the physical punishment of a child(ren)

I accept the principle of this recommendation in terms of working with key partners. However, the governance and administration of the police service remains the responsibility of the UK Home Office and it is for the police and Home Office to develop relevant guidance for police forces in Wales.

The police forces in Wales are represented on the Implementation Group and all of its task and finish groups. These groups will consider a range of issues including:

- How to develop a consistent approach to recording of information relating to reports of the physical punishment of a child(ren).
- What professional guidance and training requirements will be required by the police and other public services involved in the safeguarding of children.

In addition, we will continue to have regular engagement with the Home Office to look at this and other matters relating to the Bill.

Recommendation 6. That the Welsh Government continue its work to establish a more robust baseline for the number of cases of physical punishment of a child, and provide updates to the National Assembly on a regular basis.

I accept this recommendation. We are committed to working with the police, the Crown Prosecution Service, HM Courts & Tribunals Service and social services to put in place arrangements to collect data, both to establish a baseline pre-implementation, and to monitor the impact post implementation. We are taking this work forward through the Strategic Implementation Group.

The 'Data Collection and Monitoring' task and finish group will be considering how to capture relevant data. The data collected will be analysed as part of the post implementation review of the legislation. We will agree with members of the group the best way of updating the Committee in line with recommendation 2.

I note that there is also a recommendation from the Finance Committee relating to establishing a baseline cost for referrals to social services.

Recommendation 7. That the Welsh Government, to inform Members' tabling and consideration of amendments, make available before the start of Stage 3:

- **the conclusions of its exercise to map the support available for parents;**
- **details of the strategic investment that will be made to deliver the step-change in universal support services for parents that we believe is necessary**

I accept the principle of this recommendation.

I will be happy to share the conclusions of the mapping of parenting support with the Committee in due course.

While we anticipate the mapping exercise will be completed by the end of September 2019, it will take time to conduct a comprehensive review of the findings and to consider any potential implications. This will fall outside of the timeframe of your recommendation. The Parenting Expert Advisory Group will consider the findings when it meets on 17 October, and will be asked, based on their knowledge and experience, to make recommendations on next steps. When I have considered these recommendations I will write with an update to the Committee.

Delivering parenting support is a priority for this Government and we already have a package of measures to support children and their parents. This includes our online 'Parenting. Give it Time' campaign and access to face to face advice through health visiting and our family support programmes Flying Start and Families First. Currently, 'Parenting. Give it Time' provides information, advice and support for parents with children up to the age of 7 years. It is my intention to expand the age range from 7 years of age to 18 years of age in order to support parents with older children. In the financial year 2019-20 I have identified a budget of around £30,000 to develop new resources.

In addition up to £400,000 has been secured from the European Transition Fund for 2019-20 to help mitigate the potential impact of Brexit on parental and family relationships. The funding will be available to enhance the skills, knowledge and resources of the workforce to support families in the event of inter-parental conflict including where pressures increase due to the potential of job and/or income loss.

I note that there is also a recommendation from the Finance Committee relating to the outcome of the mapping exercise.

Recommendation 8. That the Welsh Government make a clear statement that it will commit to:

a) monitoring closely the impact of the Bill on services' resources;

I accept this recommendation. We are committed to working with organisations to put in place arrangements to collect data about the possible impact on their services, both to establish a baseline pre-implementation, and to monitor the impact post implementation. We are taking this work forward through the Strategic Implementation Group and dedicated Data Collection and Monitoring task and finish group. This group will be considering the most effective ways of monitoring the impact on different services. Work by the Group will help us develop monitoring and reporting processes for future evaluation of the impacts of the change in the law (if passed).

b) financing the implications of the removal of the defence as fully as necessary over time; and

I do not accept this recommendation. Such a funding commitment would be beyond this Assembly term. The data collected as part of the activity to monitor the impact of the Bill, will be analysed as part of the post implementation review of the legislation. At that stage, Welsh Government can consider, with relevant organisations, how best to manage any impact on workloads or resources, including potential cost implications.

I have already committed to fund a high intensity awareness raising campaign, and to carry out a mapping exercise to establish whether there are any gaps in the parenting support currently provided and for which we already provide funding.

c) providing public assurances that no other frontline services will be affected as a consequence of the Bill diverting resources

I reject this recommendation. It is for Local Authorities, Health Boards and other public sector bodies to make decisions about the allocation of their budget and priorities for service delivery, underpinned by their legal duties and obligations. However as you will know from your evidence sessions social services, the police and health already deal with calls and referrals about the physical punishment of children, including reasonable punishment, therefore this will not be an entirely new category of work.

We have explored the published data which is available from other countries on the impact of measures they have taken to prohibit the physical punishment of children. We have also spoken to a range of stakeholders in Ireland, New Zealand and Malta who have legal systems similar to our own. In these countries there is no evidence that the police and social services have been overwhelmed following law reform.

A number of stakeholders, in providing evidence to the Committee have also confirmed that this is their view:

“In terms of thresholds for children's services, we would not be anticipating a huge number of referrals to us. There may be a small number of referrals that come through. What we know from other nations is that it will peak and then settle. We recognise that's likely to happen.”

Sally Jenkins, ADSS

“So, we're talking about, in the case of south Wales, maybe something in the region of 100 of those being cases that might fall into this territory.”

Matt Jukes, Chief Constable for South Wales Police

“...there's no expectation that there's going to be a huge increase in the number of referrals coming through to local authority social services, I think it would be dealt with within their existing resources.”

Jane Randall, Chair, National Independent Safeguarding Board

“I agree, in terms of referrals, it's probably not going to change a great deal”

Dr Rowena Christmas, Royal College of General Practitioners

Recommendation 9. That the Welsh Government amend the Bill to include a duty on the Welsh Ministers to provide information and increase awareness about the effect of the legislation. The information provided should include details about the support available to parents to learn and use alternatives to physical punishment when disciplining their children.

I accept this recommendation and will bring forward amendments to the Bill regarding awareness raising. I am fully committed to raising awareness of the change in legislation, if passed, and have already given an undertaking to this committee.

As set out in the Explanatory Memorandum I have given my approval for a high intensity campaign, which would amount to around £2.2 million over approximately 6 years. This includes significant awareness raising between Royal Assent and commencement, to achieve the highest possible awareness levels before the law comes into force. This campaign would continue for around four years after commencement, to maintain a high level of awareness.

The campaign will be delivered alongside our ‘Parenting. Give it Time’ campaign, which provides parents with information on positive alternatives to physical punishment and signposts them to further sources of support. This valuable resource provides information through a dedicated website, Facebook page and a range of resources. The Family Information Service in every local authority area also provides families with free and impartial advice on a range of family issues including childcare, education and training, health, finance, recreation, and parenting support.

I note that there is also a recommendation from the Finance Committee relating to this duty.

Recommendation 10. That the Welsh Government, before the start of Stage 3, provide a written update to the National Assembly on its awareness raising plans with children and young people. This update should include an indication of how the new curriculum will:

- **raise awareness of the Bill and how it affects them as children and young people;**
- **equip children and young people to become parents and carers of the future.**

I accept this recommendation. I will publish further detail of our communications plans. We will provide an update on those developments through revision of the Explanatory Memorandum at the end of Stage 2.

The new curriculum is designed to be broad, balanced, inclusive and challenging with the four purposes outlined at its heart. One of the four purposes is that learners develop as healthy confident individuals who form positive relationships based upon trust and mutual respect and know how to find the information and support to keep safe and well. These purposes need to be at the heart of everything children and young people learn. They have been the starting point for all decisions on the design and development of the new curriculum and assessment arrangements.

One of the six Areas of Learning and Experience (AoLE) is Health and Well-being. This is an innovative part of the new curriculum and aims to ensure that learning and support around issues such as physical, mental and emotional health are provided to all young people in Wales. One of the five key statements defining ‘What matters’ within Health and Well-being focuses on the importance of healthy relationships. It is intended to support learners to form and maintain a range of positive relationships; recognising that respect and equity are essential elements of these relationships. Learning within the draft guidance for Health and Well-being includes supporting learners to: identify harmful elements of relationships and social influences, seek help and support where needed, recognise their own rights and the rights of others within relationships. The AoLE intends to support learners to build and maintain relationships based on compassion, positive communication, respect and equity, regardless of the type of relationship.

The new curriculum is not designed to specify a detailed list telling teachers every specific topic they should teach. We are moving away from a prescriptive list of what children should know at key stages in their education, because this does not guarantee that learners develop the essential knowledge, skills and experiences. However, this does not mean that children will lose out on developing important life skills or knowledge. The AoLE seeks to develop the essential learning to support learners to recognise their legal rights as well as develop the skills and dispositions essential for becoming parents and carers.

Parenting and caring are important contexts for relationships in the AoLE. The practitioners developing the AoLE guidance are currently considering feedback and as part of this, they will be considering how the guidance can be refined to further support professionals to consider a range of different types of relationships in their curriculum design, including parenting and caring relationships.

Recommendation 11. That the Welsh Government include planning for increasing awareness of the Bill's impact on visitors to Wales in the work of the Bill Implementation Group

I accept this recommendation. We will give due consideration to how we can raise awareness with visitors to Wales with the Strategic Implementation Group.

Recommendation 12. That the Welsh Government provide, before the start of Stage 3, a written update on the Healthy Child Wales Programme:

I accept this recommendation and have provided an update on each part of this recommendation below:

a) how the Healthy Child Wales Programme will incorporate messages about the removal of the defence of reasonable punishment;

The Healthy Child Wales Programme sets out the strategic direction for health boards in Wales to deliver a universal health programme for children and their families from maternity service handover to the first years of schooling.

The programme aims to work in partnership with families to achieve the best possible outcomes for children and sets out a common set of contacts between families and Health Visitors. The programme underpins the concept of progressive universalism and aims to identify a minimum set of key interventions to all families with pre-school children, irrespective of need.

At every contact, opportunities are taken to ensure that key public health priorities are identified and evidence-based messages delivered in order to improve the health and well-being of children and their families. Officials will ensure that any key messages about the removal of the defence of reasonable punishment and positive parenting techniques are cascaded through the Health Visitor and Specialist Community Public Health Nurse Forum to inform the workforce as necessary.

The safety and wellbeing of the child is the paramount consideration. Where there are professional concerns regarding a child's welfare or when a child is thought to be experiencing significant harm, as now, Health professionals will refer to their Local Authority Social Services department in line with their duties to report under the Social Services and Well-being (Wales) Act 2014.

b) what steps it will take to improve the uptake of the Healthy Child Wales programme across Wales in order to ensure that all children and families receive the full number of scheduled contacts;

The Healthy Child Wales Programme(HCWP) is supported by the Child Health System, delivered by the NHS Wales Informatics Service (NWIS), ensuring that health boards are able to schedule contacts effectively under the programme and that there is accurate and comparable data collected to support improvements to child health across Wales.

Since November 2018, statistics have been published which include data from the first quarter the programme was introduced (Oct-Dec, 2016) to the latest available quarter (Oct-Dec, 2018). Quarterly data updates are published on *StatsWales* and an annual statistical report is published on the Welsh Government website.

The first annual statistical report on the Healthy Child Wales Programme for the full calendar year 2018 was published in June 2019. The statistics demonstrate the value of having a consistent set of contacts for all children across Wales as they indicate a general steady increase in the percentage of children receiving contacts at most contact points since the start of the programme in 2016. The statistics show that 74% of HCWP contacts which should have been offered to eligible children, were received.

93% of eligible children received their contact at 10-14 days (the highest rate of all contact points), whilst just 50% of eligible children received their contact at 3.5 years (the lowest rate of all contact points). Contact rates vary across the various health board areas.

We expect health boards to review operations and delivery mechanisms including workforce requirements in light of the recent published statistical data to ensure coverage continues to improve at every contact point. Assurances have been received from Health Boards following the recent statistical publication confirming that every effort is being made to improve any deficiencies in particular contacts identified by these data.

As the HCWP is an offer, there is no compulsion for parents to ensure their children attend every contact planned. However, where there are concerns regarding a child's welfare, the health professional will refer to the Local Authority Social Services department in line with their duties to report under the Social Services and Well-being (Wales) Act 2014.

A Project Board has been established which includes key stakeholders to oversee the next phase of monitoring and evaluating the programme going forward.

c) how universal ante-natal support will also incorporate and deliver messages about the Bill and positive parenting.

The implementation of the Healthy Child Wales Programme ensures a commitment to deliver key public health messages from conception to 7 years, so that families are supported to make long term health enhancing choices in order to provide a safe, nurturing environment.

The Health and Well-being Information for Parents Programme is a new programme of work which is currently in development by Public Health Wales. It aims to ensure parents, and the services they engage with, have access to the information they need, when they need it, to support them as a parent, to give their child the best start in life. The programme considers ways to reduce inequalities in access to the important information all parents need and is intended to provide a suite of information sources, both in hard copy and digital, to eventually replace the advice

currently provided via the Bump, Baby and Beyond book issued to all expectant mothers.

The aim is that key information, which will include information about the Bill, will be presented in a format that is accessible to parents and professionals and appropriate to their child's needs and stage of development.

A Stakeholder Board, Chaired by the Deputy Chief Medical Officer for Wales, Professor Chris Jones, has been set up to provide oversight, governance, and leadership for the establishment and implementation of a revised approach to the provision of health information for pregnant women and parents of children aged 0 to 7 years of age.

Recommendation 13. That the Welsh Government amend the Bill to include a duty on the Welsh Ministers to:

- **undertake post-implementation evaluation of the Bill, within three years of the Bill's substantive provision (to remove the defence of reasonable punishment) coming into force;**
- **report the findings of such an evaluation to the National Assembly**

I accept this recommendation and will bring forward an amendment with a duty to undertake post implementation evaluation of the Bill over 5 years. I have provided assurances a post-implementation review will be undertaken. Chapter 10 of the Explanatory Memorandum sets out the intended approach for monitoring and reviewing the effect of the legislation. In line with the recommendation of the Finance Committee we will provide further details and costing of the post implementation review in a revised RIA at Stage 3.

The effect of the Bill will be measured in a number of ways, including through research and evaluation as well as developing routine data collection with stakeholders.

We will procure contractors to periodically conduct attitudinal studies, which will allow us to track the changes in people's attitudes to the use of physical punishment, and in their levels of awareness of the law. As now, these reports will be published in accordance with our Welsh Government Social Research requirements.

We will work with the police, social services and the courts to agree the collection of relevant data for a period prior to implementation in order to establish baselines. Data collection will continue following commencement in order to monitor the impact of the Bill. Data collection will, wherever possible, be aligned with existing activity or other relevant work. This detailed work is being taken forward through the dedicated Data Collection and Monitoring task and finish group.

We would expect to be undertaking post implementation review of the legislation, assuming it receives Royal Assent, starting after the commencement date and continuing for up to 5 years, rather than the three recommended. A five year period provides for a similar timeframe to New Zealand enabling more effective trend analysis.

I note that there is also a recommendation from the Finance Committee and Constitutional and Legislative Affairs Committee relating to this duty.

Recommendation 14. That the Welsh Government ensure the Bill Implementation Group identifies — in cooperation with all relevant services — robust methods for capturing meaningful data relating to the Bill. The purpose of this data will be to enable meaningful assessment and evaluation of the Bill’s impact, which will be crucial in identifying any unintended consequences and/or areas that may need additional support or resource during the early years of its implementation.

I accept this recommendation. I strongly agree with the Committee’s view that we need to establish robust methods for capturing meaningful data relating to the Bill. We are committed to working with organisations to put in place arrangements to collect data about the possible impact on their services, both to establish a baseline pre-implementation, and to monitor the impact post implementation. As set out above we are taking this work forward through the Strategic Implementation Group and dedicated Data Collection and Monitoring task and finish group. This group will help us develop monitoring and reporting processes which will support future evaluation of the impacts of the change in the law (if passed).

Recommendation 15. That the Welsh Government ensure that, as part of the public awareness campaign accompanying the Bill, clear advice is provided on what people can do — and who people can speak to — if they believe they have seen or learned of a child being physically punished/assaulted.

I accept this recommendation. Safeguarding is everybody’s business. As now, the public have a role in highlighting to relevant services if they are concerned about a child.

If a member of the public has reason to believe that a child is at risk of abuse, neglect or other forms of harm they should contact their Local Authority children’s services department. If the child is in imminent danger, or a criminal offence has been committed, they should contact the Police.

Statutory guidance, “Social Services and Well-being Wales Act 2014 Working Together to Safeguard People Volume 5 – Handling Individual Cases to Protect Children at Risk” sets out that it is the responsibility of all agencies and organisations to ensure that there is a good level of public awareness of abuse, neglect and harm and how concerns can and should be reported. All relevant partners should have a range of information and clear arrangements in place to ensure people, including the public, know:

- how to contact them; and
- what they might expect by way of a response.

Safeguarding children and young people is part of the wider public health agenda, which we will consider as part of the public awareness campaign.

Recommendation 16.

I recognise and accept the principle of the Committee's recommendation, however practically it may be difficult to achieve, as I outline under each part of this recommendation:

(a) That the Welsh Government ensure that activity to monitor the Bill's impact pays particular attention to the number of reports of physical punishment/assault of children that are found to be malicious.

As outlined in my letter to you on 4 June the court has in place arrangements to deal with malicious allegations. This includes 'finding of fact' hearings which are intended to provide a factual basis for the assessment of risk in determining the implications on applications for safe contact between a child and the non-resident parent. We have acknowledged in the Explanatory Memorandum and in my letter that the change in the law could lead to an increase in allegations of parental physical punishment in the context of litigation between separated couples.

Whilst we acknowledge it would be useful to understand the number of reports of physical punishment of a child found to be malicious, in practice this would provide a substantial challenge. Allegations of this kind are unlikely to feature in isolation from other safeguarding concerns raised during private law litigation. To tease out cases where malicious reporting relates specifically to physical punishment, in isolation to other issues and how this should be quantified, is extremely complex. This is, however, an issue that Cafcass Cymru is actively considering in relation to allegations of domestic abuse.

Currently Cafcass Cymru does not systematically keep a record of whether the allegation considered by the 'finding of fact' hearing in court was found to be malicious. It has started, however, piloting the use of a 'case closure form' which will be used to record the outcomes of court hearings and whether malicious allegations featured. The case closure form will attempt to capture the issue of domestic abuse allegations and subsequent 'next steps' in the court process – i.e. did the court hold a Finding of Fact hearing to consider those allegations. The form will not be addressing allegations in relation to physical harm directed from the parent to the child – although it will identify if 'physical harm related issues' featured in the case. The pilot will be completed before the end of March 2020. Cafcass Cymru will need to make an assessment of whether this approach has been successful in pinpointing cases of malicious reporting in relation to domestic abuse and whether it is feasible and practical to roll this process out on a larger scale. Following this assessment I will update the committee.

(b) Evaluation activity on the Bill should include consideration of the impact allegations of physical punishment of a child have on the family courts and CAF/CASS Cymru's workloads and timescales.

As outlined in my letter to you on 4 June I have undertaken to monitor the impact of the Bill (if passed). Bearing in mind the complexity of this issue as outlined above, Cafcass Cymru and the Bill team will continue to work closely to consider how we can best monitor impact. Representatives from both Cafcass Cymru and Her

Majesty's Courts & Tribunals Service are members of the Strategic Implementation Group; and the Data Collection, and monitoring task and finish group. These groups will help us develop a suitable approach to monitoring and reporting processes for future evaluation of the impacts of the change in the law on the family courts and Cafcass Cymru's workloads and timescales.

Recommendation 17. That the Welsh Government ensure that the Bill Implementation Group, before the start of Stage 3:

- **considers the results of the independent review on the effectiveness of Multi-Agency Safeguarding Hubs;**
- **uses the findings of this review, and other relevant research on multi-agency working, to inform its approach to planning, resourcing and delivering the joint working necessary for the effective implementation of this Bill.**

I recognise the intention behind the Committee's recommendation, however, I reject this recommendation as the review of Multi-agency safeguarding hubs (MASHs) is much broader than the context of this Bill. I therefore do not consider it appropriate that MASHs should be part of the remit of the Implementation Group. I recognise that the ability to share information in a timely and effective manner is key to facilitating early identification of need or risk; joint decision making; and the most appropriate coordinated response. However the imperative of this important activity is much broader than this Bill or the offence of common assault, to which this Bill removes a defence.

MASHs are structures intended to facilitate information-sharing and decision-making on a multi-agency basis. However there is no single model for the establishment of a multi-agency safeguarding hub and these are not the only structures that can enable this activity. It is important to remember that these safeguarding arrangements are intended to facilitate multi-agency working in respect of adult safeguarding, as well as for children.

The proposed evaluation will consider the multi-agency safeguarding models that are in place across Wales; their key features and the benefits of different approaches. It will explore relevant academic evidence sources to build an understanding of the key principles of effective multi-agency safeguarding work. The intended outcome is to develop a best practice model for collaborative safeguarding arrangements that can respond to new and emerging concerns and integrate into the prevention and early intervention agenda of the Social Services and Wellbeing (Wales) Act 2014.

While the Implementation Group will take a keen interest in this review, there is no inter-dependency between the review's activities and the implementation of the Bill. As I said when I gave evidence to the Committee on 12 June, bodies such as social services already work closely with the police and have indicated their willingness to continue to do so. As my official stated in your Committee session of 12 June, the Operations, Processes, and Procedures task and finish group (governed by the Strategic Implementation Group) will be looking at how services work together in an appropriate and consistent way. This activity is much broader than a narrow focus on the MASH model.

There are already well established mechanisms in place which enable joint working to take place and the successful implementation of the Bill is not dependent on every area having a MASH.

Recommendation 18. That the Welsh Government deliver a step-change in the provision of universal positive parenting support — both in the ante- and post-natal periods — and make the strategic investment that is needed to ensure all families in Wales have access to parenting support

I accept the principle of this recommendation. I share the Committee's ambition that families in Wales should have access to parenting support, but I do not fully accept this recommendation. As I have set out in my response to recommendation 7 I do not want to pre-empt the outcome of the parenting support mapping exercise. I expect the initial phase will be completed by the end of September 2019. It will take time to conduct a comprehensive analysis of the findings and for the Parenting Expert Advisory Group to make recommendations. At this point I will consider, how much additional investment may need to be made.

Parenting support is a priority for this Government. There are many ways that we, working with and through service providers and professionals, already provide this. Through public health messaging, Flying Start, Families First, Family Information Service, HCWP, raising awareness and the curriculum we see this as part of a whole life course approach where positive parenting is accepted as the way we parent in Wales.

Recommendation 19. That the Welsh Government provide a more detailed explanation of why the potential annual financial allocation for this Bill's awareness campaign is only approximately half the spend on the campaign relating to smoking in cars, and two-thirds of the spend on the campaign relating to organ donation (both of which are cited in the Bill's Explanatory Memorandum as examples of campaigns which have accompanied legislation)

I accept this recommendation. I am happy to provide an explanation of how we have allocated funding for the Bill's awareness campaign.

As set out in the response to Committee Recommendation 9, the Welsh Government fully supports the need for a highly impactful and far-reaching awareness raising campaign as a vital part of the implementation of the legislation.

The high intensity awareness raising campaign option set out in the RIA is the basis for our current planning. Considering the current economic climate; continued austerity by the UK Government and the considerable uncertainty surrounding the future deal with the EU we believe we have allocated a proportionate budget to the campaign, which would be cost effective and achieve our objectives for the campaign.

The proposed investment over six years and three months would be significantly front weighted to deliver a high intensity awareness campaign in the first two years - with an average spend of £700,000 per annum - followed by tapering annual budgets. The budgets proposed for years five and six still represent a significant

communications spend in Wales. The Welsh Government has sought assurance from the communications agency contracted to deliver the campaign on its behalf that stretching awareness targets can be met with the proposed investment levels.

We expect the campaign to use channels such as national television and outdoor advertising (such as billboards, bus shelters and train stations) to achieve both reach and high impact, as well as highly targeted channels to reach key groups identified through our research. Awareness of the change in the law and awareness of the campaign itself will be tracked regularly throughout the campaign. Tracking data will enable us to make robust, evidence-based decisions about whether further investment in awareness raising is required.

In addition the Welsh Government is also investing in the Parenting. Give it Time campaign which promotes the importance of positive parenting techniques and drives parents and guardians to the Parenting. Give it Time website for practical guidance and information. Based on current proposals and subject to the budget setting process, approximately £500,000 is allocated to the Parenting. Give it Time campaign during the first two years of an implementation period for the legislation. This builds on an already significant investment in the campaign.

Recommendation 20. That the Welsh Government, before the start of Stage 3, publish a revised Regulatory Impact Assessment providing more detailed estimates of the “unknown” costs to public services arising from the Bill.

I accept the principle of this recommendation. I recognise the intention behind the Committee's recommendation and serious consideration is being given on how to provide more detailed estimates of the “unknown” costs to public services arising from the Bill. An update will be provided in the revised RIA before the start of Stage 3. It must be noted, however, that it may not be possible to provide more detailed estimates of all of the unknown costs listed in the published RIA. This is because, in some cases, there are practical and logistical difficulties with obtaining reliable data, which would help us establish potential costs.

One example is the potential cost around the possible increase in allegations of common assault against a child of parents involved in a family court case. As I have set out in my response to recommendation 16 there are many practical issues associated with estimating the potential impact of this on Cafcass Cymru and the courts. While we are giving this very careful consideration we are unlikely to be able to provide an update by Stage 3.



Llywodraeth Cymru
Welsh Government

Ein cyf: MA-L/JM/0664/19

Llyr Gruffydd AM
Chair
Finance Committee

13 September 2019

Dear Llyr,

I would like to thank the Finance Committee for their scrutiny of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill during Stage 1 and for the report which was published on 2 August 2019.

I have set out responses to the Committee's recommendations at Annex A. The Children, Young People and Education and Constitutional and Legislative Affairs Committees also considered the Bill at Stage 1 and made recommendations about its content. I have tried to strike a balance between all three Committee Reports, but there have inevitably been occasions when I have had to fall on one side rather than the other.

It has not been possible for me to accept all of the Finance Committee's recommendations in full. However, I have carried the principles and underpinning reasoning through as far as possible.

I hope this letter is helpful in setting out responses to the Committee's Report. I will also be writing to the Chairs of the Children, Young People and Education Committee and the Constitutional and Legislative Affairs Committee with respect to their Stage 1 Reports, and will copy the letters to all three Committee Chairs.

I look forward to continuing to work with Members as the Bill progresses through the Assembly process.

Yours sincerely

Julie Morgan AC/AM

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

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

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

Annex A: Response to Finance Committee Stage 1 Report Conclusions and Recommendations

Conclusion 1

Throughout this report, the Committee has recommended that further financial information is provided. Should there be significant changes to the Regulatory Impact Assessment (RIA), the Committee may consider those changes in more detail.

I note the Committee's conclusion.

Recommendation 1

The Committee notes the public awareness campaign is costed within the RIA. However, as this campaign will be an integral element of the Bill's implementation, the Committee recommends that a duty to carry out a public awareness campaign should be included on the face of the Bill.

I **accept** this recommendation.

I am proposing to bring forward an amendment to effect this recommendation. I have already given an undertaking to this Committee during our first session to raise awareness in relation to the change in the law.

As set out in the Explanatory Memorandum, I have given my approval for a high intensity campaign, which would amount to around £2.2 million over approximately 6 years. This includes significant awareness raising between Royal Assent and commencement, to achieve the highest possible awareness levels before the law comes into force. This campaign would continue for around four years after commencement, to maintain a high level of awareness.

I note that there is also a recommendation from the Children, Young People and Education Committee relating to a duty to raise awareness.

Recommendation 2

The Committee recommends that the Welsh Government publish further details of its awareness raising campaign. In particular, how it intends to reach relevant individuals.

I **accept** this recommendation.

I will publish further detail of our communications plans. The plans for the awareness raising campaign have continued to develop since the Explanatory Memorandum was published in March 2019. We will provide an update on those developments through revision of the Explanatory Memorandum at the end of Stage 2.

Recommendation 3

The Committee recommends that the outcome of the mapping exercise undertaken by the Implementation Group is included in a revised RIA after Stage 2.

I **accept the principle** of this recommendation.

I will be happy to share the conclusions of the mapping of parenting support with the Committee in due course.

While we anticipate the mapping exercise will be completed by the end of September 2019, it will take time to conduct a comprehensive review of the findings and to consider any potential implications. The Parenting Expert Advisory Group will consider the findings when it meets on 17 October, and will be asked, based on their knowledge and experience, to make recommendations on next steps. When we have considered these recommendations we will write with an update to the Committee. This will fall outside of the timeframe of your recommendation.

I note that the Children, Young People and Education Committee also included a recommendation in relation to this.

Recommendation 4

The Committee recommends that the Welsh Government prioritises establishing a baseline cost for referrals to social services and this should be included in a revised RIA.

Conclusion 2. Due to the lack of information on referrals to social services, the Committee is unable to draw a conclusion as to the value for money of this aspect of implementation. The Committee is also concerned that as the RIA stands, it does not provide stakeholders, such as local authorities, with a full indication of the potential resources the Bill may require.

I **accept** this recommendation and note the Committee's conclusion.

I have already prioritised this. Welsh Government officials are working with a small number of local authorities to try to obtain an estimate of numbers of current referrals to social services, based on the methodology used by the police. The conclusion of this work will be included in the revised RIA.

A unit cost per referral to social services, established in consultation with local authorities and broken down for the different possible elements of the referral up to the point of enquiries under section 47 of the Children Act 1989, is included in the Explanatory Memorandum (table at paragraph 8.38). Provided it is possible to obtain a reasonably reliable estimate of numbers through the method outlined above, it will therefore be possible to use that estimate and the unit cost information to provide an estimate of the current costs of referrals to social services.

Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill

The Data Collection and Monitoring task and finish group, operating under the Implementation Group, is working to develop an approach to collect data on relevant referrals to social services, so that data can be collected prior to commencement to provide a more robust baseline, and following commencement to monitor the impact.

Evidence from key stakeholders to the Children, Young People and Education Committee suggested they were not anticipating significant additional referrals following the removal of the defence of reasonable punishment.¹

Recommendation 5

The Committee recommends that further work is undertaken on the cost implications of diversion schemes and this information is included in a revised RIA.

I **accept** this recommendation.

We are currently undertaking work on the cost implications of diversion schemes. We have a specific task and finish group which will be taking this detailed work forward overseen by the Strategic Implementation Group. This information will be included in the revised RIA.

Recommendation 6

The Committee recommends the Welsh Government considers how to ensure there is a clear link between estimated referrals to the police and prosecutions for offences that previously would have been covered by the defence of reasonable punishment. This information should be included in a revised RIA.

I **accept** the recommendation that further work should be undertaken on this issue.

We accept that the estimates provided in the RIA for the police data on the one hand, and the prosecutions on the other, were calculated in different ways. We understand the Committee's preference for a set of data which shows a clear link between the numbers of cases referred to the police, and the number of resulting prosecutions.

However, the limitations of the data at our disposal have to be borne in mind and it is not appropriate to guarantee that it will be possible to find a way of making that link clear. If this is the case, we will provide a full explanation of our work in the revised RIA.

¹ Sally Jenkins, ADSS paragraph 60 <http://record.assembly.wales/Committee/5502>

Matt Jukes, South Wales Police paragraph 52 <http://record.assembly.wales/Committee/5518#A50788>

Jane Randall, National Independent Safeguarding Board paragraph 269

<http://record.assembly.wales/Committee/5503#A50936>

Dr Rowena Christmas, RCGP paragraph 436 <http://record.assembly.wales/Committee/5503#A50937>

Recommendation 7

The Committee recommends that the Welsh Government provides a full assessment of any costs to updating guidance and training and this information is included in a revised RIA.

Conclusion 3. The Welsh Government has not offered any costings in terms of guidance and training. The Committee cannot therefore draw a conclusion as to value for money of those activities, or whether the resources associated with those activities seem adequate and reasonable to deliver the aspirations of the legislation.

I **accept** the principle of this recommendation and note the Committee's conclusion.

I note the Committee's acknowledgement that updating guidance to take account of new legislation could be part of a staff member's role² and that there may not be a requirement for additional training³.

Welsh Government officials are currently undertaking further work to assess, as far as is practically possible, the costs to stakeholders to update their guidance documents and to determine whether there are likely to be any additional training costs incurred. We will provide our best estimate of the costs in the revised RIA.

Recommendation 8

The Committee recommends that the Welsh Government publishes a workplan for the Implementation Group and specifically highlights any areas relating to resourcing activities associated with the Bill.

Conclusion 4. As has been noted at multiple points in the report, the Committee is disappointed that the work of the Implementation Group is taking place after the Committee conducts its scrutiny. The Committee will be keen to understand how that Group develops its plans for implementation and whether this provides detail to areas on which the Committee has been unable to draw a conclusion in its scrutiny.

Conclusion 5. The Committee is disappointed that the activities and resourcing of the Implementation Group have not been included in the RIA and is surprised that the Welsh Government did not see it as a priority to establish this Group prior to introducing the Bill, in order to fully understand how the objectives of the Bill would be delivered.

I **accept** this recommendation and note the Committee's conclusions.

² Paragraph 67 Finance Committee Stage 1 Report

³ Paragraph 68 Finance Committee Stage 1 Report

Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill

The work of the Implementation Group is progressing, together with its task and finish groups. The Group is a way of bringing together all those who have an interest in the practical implementation of the Bill. Welsh Government officials provide the Group secretariat and other practical support at minimal cost.

We propose publishing a high level work plan, separately from the revised RIA, as the work of the Implementation Group will continue should the Bill achieve Royal Assent. After that point there will not be an expectation to update the RIA any further. It makes more practical sense, therefore, for updates on the work of the Implementation Group to be published either on the Welsh Government website, or be included in letters to the relevant committees (Finance Committee and Children, Young People and Education Committee). It is anticipated the high level work plan will be published following the September meeting of the Implementation Group.

Recommendation 9

The Committee recommends the Welsh Government analyse its post implementation review strategy, with consideration given to the resourcing of the activities it intends to undertake. This information should be included in a revised RIA.

I **accept** this recommendation.

We are giving further consideration to our post implementation review strategy. An update will be provided in the revised RIA, giving further information about the strategy for evaluation and data collection and monitoring.



Llywodraeth Cymru
Welsh Government

Mick Antoniw AM
Chair, Constitutional and Legislative Affairs Committee
SeneddCLA@assembly.wales

13 September 2019

Dear Mick,

Thank you for your letter of 12 July 2019 regarding the Inter-Institutional relations agreement between the National Assembly for Wales and the Welsh Government.

Firstly, I would like to assure you that the Welsh Government is fully committed the principles of transparency upon which the agreement is based and supporting the Assembly's scrutiny role. The agreement also recognises our responsibility for relations with other UK administrations and the need for confidential intergovernmental discussion. On behalf of the Welsh Government, I apologise for any confusion which has arisen regarding the provision of a written summary of ministerial meetings falling within the scope of agreement. We assumed that where we had previously provided written statements to the Assembly, outlining the outcomes of meeting which would now be caught by the agreement, it would remain helpful to continue this practice and would also be in compliance with our obligation under paragraph 14 of the agreement. We recognise that a written statement might not be appropriate in all circumstances and in those instances we would provide a written summary of the relevant meeting(s) by way of a letter directly to the CLA Committee and any other relevant committee(s).

I do however appreciate that we can do more to inform you in advance as to the method we will likely be using to report the outcomes of such meetings. Therefore, in future where a written statement is appropriate we will notify you in advance of/on its publication - specifically identifying the written statement itself and identifying it as being the written summary of the issues discussed at the meeting.

As you know I represented the Welsh Government at a meeting of the Joint Ministerial Committee (European Negotiations) on 9 May; on 23 May I published a written ministerial statement summarising the discussions held at that meeting. The statement is available here:

<https://gov.wales/written-statement-joint-ministerial-committee-european-negotiations-0>

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

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

I also represented the Welsh Government at a meeting of the Joint Ministerial Committee (Europe) in London on 13 June. Please accept my sincerest apologies for the delay in updating you following that meeting. The meeting focused on the June European Council, the Finnish Presidency of the European Council and the Summertime Directive.

During the discussion on the June European Council, I welcomed the commitment to ongoing sincere cooperation and requested further update on Multiannual Financial Framework (MFF) developments, whilst noting disappointment in engagement with the Devolved Administrations on this matter so far. The progress of the MFF was also considered during the discussion on the Finnish Presidency.

I made clear my disappointment in the UK's Government's approach to involving the Devolved Administrations in the design of the new funding system under the Shared Prosperity Fund and requested a substantive agenda item on this at the next meeting expected to take place in early October.

In relation to the discussion on the Summertime Directive, I sought a commitment from UK Government to further analysis of the evidence base before coming to a position on the Directive.

At Joint Ministerial Committee (Europe Negotiations) on 12 September I received no assurance that current negotiations with the EU would deliver a deal. As a result no deal remains our central planning scenario and we remain focussed on protecting Wales as best we can.

I am copying this letter to the First Minister and to the Chair of the External Affairs and Additional Legislation Committee.

Yours sincerely

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

Jeremy Miles AM

Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister

Agenda Item 7.5

Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref: MA-P-JJ/2557/19 (addendum)

John Griffiths AC/AM
Chair
Equality, Local Government and Communities Committee
National Assembly for Wales
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18 September 2019

Dear John,

Thank you for your letter of 26 July about the responses to the Committee's report on Voting Rights for Prisoners.

I should like to thank the Committee for its detailed examination of the issues. The report and the reasoning behind its recommendations have helped inform our policy conclusions.

The Welsh Government is committed to the principle of prisoner voting for all devolved Welsh elections. My response to the Committee made clear that the Welsh Government would work to introduce legislation in this Assembly to enable prisoners and young people in custody from Wales serving a custodial sentence of less than four years to vote in local government elections.

As highlighted in the Committee's report, there are significant legal and administrative issues to tackle, not least with the UK Government and its agencies. We do not believe it will be possible to resolve these issues to include provision in the current Senedd and Elections (Wales) Bill. The Welsh Government will seek an appropriate legislative vehicle to introduce provision at the earliest opportunity to enable prisoners and young people in custody from Wales to vote in Assembly elections on the same terms as will apply for local government elections.

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

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

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I am copying this letter to the Llywydd, to the Chair of the Constitutional and Legislative Affairs Committee and to the Counsel General and Brexit Minister.

Yours sincerely

A handwritten signature in blue ink that reads "Julie James". The signature is written in a cursive, flowing style.

Julie James AC/AM

Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government

John Griffiths AM
Chair
Equality, Local Government and Communities Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

18 September 2019

Dear John,

Voting rights for prisoners

Thank you for your letter dated 26 July 2019, seeking clarity on how the issues around prisoner voting and the Assembly franchise will be dealt with, and who will be responsible for this issue.

I note that the Minister for Housing and Local Government has recently written to you on this matter, committing the Welsh Government to the principle of prisoner voting for all devolved Welsh elections, including seeking an appropriate legislative vehicle to enable prisoners and young people in custody from Wales to vote in Assembly elections.

As noted in the Commission's response to the Committee's report, the Commission agreed in its July meeting that it would not be appropriate to insert provisions on prisoner voting into the Senedd and Elections (Wales) Bill as amendments. The Constitutional and Legislative Affairs Committee noted in its report on the general principles of this Bill that this would not allow for sufficient scrutiny of legislative provisions on an important constitutional matter.

The Assembly Commission has also considered whether it would be appropriate for it to address this issue through a future piece of Assembly Commission legislation. The Assembly has of course given the Commission a mandate to bring forward legislation to reduce the voting age for Assembly elections. However, the Welsh Government retains policy responsibility for all devolved elections in Wales. This is also a far more complex policy area than enfranchising 16 and 17 year olds. For these reasons, we believe that



developing any legislative proposals in respect of prisoner voting rights for Assembly elections, and responsibility for responding to the majority of the Committee's recommendations, are a matter for Welsh Ministers.

Yours sincerely



Elin Jones

Chair, Assembly Commission

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Agenda Item 9

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