Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:
Committee Room 5 – Tŷ Hywel
Meeting date: 14 October 2019
Meeting time: 10.15

For further information contact:
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0300 200 6362
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1 Introduction, apologies, substitutions and declarations of interest

10.15

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

10.15–10.20 (Pages 1 – 2)

CLA(5)-28-19 – Paper 1 – Statutory instruments with clear reports

Affirmative Resolution Instruments

2.1 **SL(5)452 – The Food Information (Wales) (Amendment) (EU Exit) Regulations 2019**

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

10.20–10.25

Negative Resolution Instruments

3.1 **SL(5)448 – The Plant Health (Wales) (Amendment) (No. 3) Order 2019**

(Pages 3 – 38)

CLA(5)-28-19 – Paper 2 – Report

CLA(5)-28-19 – Paper 3 – Order

CLA(5)-28-19 – Paper 4 – Explanatory Memorandum

Composite Negative Resolution Instruments

3.2 **SL(5)450 - The Humane Trapping Standards (England and Wales) Regulations 2019**

(Pages 39 - 46)

CLA(5)-28-19 - Paper 5 - Report

CLA(5)-28-19 - Paper 6 - Regulations

CLA(5)-28-19 - Paper 7 - Explanatory Memorandum

4 Instruments previously considered for sifting and now subject to scrutiny under Standing Orders 21.2 and 21.3

10.25-10.30

Affirmative Resolution Instruments

4.1 **SL(5)451 - The Seeds (Amendment etc.) (Wales) (EU Exit) Regulations 2019**

(Pages 47 - 60)

CLA(5)-28-19 - Paper 8 - Report

CLA(5)-28-19 - Paper 9 - Regulations

CLA(5)-28-19 - Paper 10 - Explanatory Memorandum

5 Paper(s) to note

10.30-10.35

5.1 **Letter from the Counsel General: Joint Ministerial Committee (EU Negotiations)**

(Pages 61 - 62)

CLA(5)-28-19 - Paper 11 - Letter from the Counsel General, 8 October 2019

6 Wales' Changing Constitution: Evidence session 3

11.00-13.00 (Pages 63 - 110)

CLA(5)-28-19 - Briefing 1

CLA(5)-28-19 - Briefing 2

CLA(5)-28-19 - Paper 12 - Written evidence (Dr Andrew Blick)

CLA(5)-28-19 - Paper 13 - Written evidence (Jo Hunt and Hedydd Phylip)

Professor Michael Keating, Centre on Constitutional Change, University of Aberdeen

Dr Andrew Blick, Centre for British Politics and Government, King's College London

Professor Jo Hunt, Wales Governance Centre

Akash Paun, Institute for Government

Professor Alan Page, University of Dundee

Professor Aileen McHarg, University of Durham

Professor Michael Gordon, Liverpool Law School

Professor Alison Young, Cambridge Centre for Public Law

Dr Jack Simson Caird, Bingham Centre for the Rule of Law

Dr Huw Pritchard, Wales Governance Centre

Professor Dan Wincott, Wales Governance Centre

Date of the next meeting - 21 October

Statutory Instruments with Clear Reports

14 October 2019

SL(5)452 – The Food Information (Wales) (Amendment) (EU Exit) Regulations 2019

Procedure: Affirmative

The Food Information (Wales) (Amendment) (EU Exit) Regulations 2019 ("the Regulations") amend the Food Information (Wales) Regulations 2014.

The amendments being made seek to maintain the status quo in relation to food labelling, by introducing a transitional provision to allow businesses to continue to adhere to pre-Brexit labelling requirements, whilst adjusting to any new post-Brexit requirements over a reasonable and set period of time.

The transitional provision provides that improvement notices will not be issued if a product complies with pre-exit labelling requirements. The relevant transition periods for different products will be:

- for specified products placed on the market before exit day, until existing stocks of such products are exhausted;

- for wine products held by a person as at exit day, until stocks are exhausted; and

- for specified (non-wine) products placed on the market on or after exit day, three years, which commences on the day after exit day.

These Regulations are being made using powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018.

Parent Act: European Union (Withdrawal) Act 2018
Date Made:
Date Laid: 01 October 2019
Coming into force date:

SL(5)448 – The Plant Health (Wales) (Amendment) (No. 3) Order 2019

Background and Purpose

The Plant Health (Wales) Order 2018 ("the 2018 Order") contains measures to prevent the introduction and spread of harmful plant pests and diseases. The Plant Health (Wales) (Amendment) (No. 3) Order 2019 ("the 2019 Order") amends the 2018 Order to implement control measures to minimise the risk of the introduction into and spread of various pests and diseases in Wales.

Procedure

Negative.

Technical scrutiny

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

1. **Standing Order 21.2(vi) – That its drafting appears to be defective or it fails to fulfil statutory requirements.**

We are not clear whether new item 64 in the table in Part A of Schedule 4 to the 2018 Order accurately reflects new point 34 in Section 1 of Part A of Annex IV to Council Directive 2000/29/EC. We question whether the reference in paragraph (c)(ii)(bb) in the third column of the table at paragraph 7(a)(ix) of the 2019 Order to "the requirements specified in paragraph (a)" should state "the requirements specified in paragraphs (a) and (b)".

We also seek clarification whether the reference at the end of paragraph (c)(ii)(bb) should refer to sub-paragraph (c) instead of sub-paragraph (i).

Merits scrutiny

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

Implications arising from exiting the European Union

The 2018 Order, which is being amended by this instrument, implements various EU obligations in respect of plant health law. The 2018 Order, as amended, will form part of retained EU law after exit day.

Government Response

A government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
4 October 2019

WELSH STATUTORY INSTRUMENTS

2019 No. 1280 (W. 224)

PLANT HEALTH, WALES

The Plant Health (Wales) (Amendment) (No. 3) Order 2019

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Plant Health (Wales) Order 2018 (S.I. 2018/1064 (W. 223)) ("the 2018 Order") to implement—

(a) Commission Implementing Decision (EU) 2018/638 establishing emergency measures to prevent the introduction into and the spread within the Union of the harmful organism *Spodoptera frugiperda* (Smith) (OJ No. L 105, 25.4.2018, p. 31);

(b) Commission Implementing Decision (EU) 2018/1503 establishing measures to prevent the introduction into and the spread within the Union of *Aromia bungii* (Faldermann) (OJ No. L 254, 10.10.2018, p. 9);

(c) Commission Implementing Decision (EU) 2019/449 amending Commission Implementing Decision (EU) 2016/715 setting out measures in respect of certain fruits originating in certain third countries to prevent the introduction into and the spread within the Union of the harmful organism *Phyllosticta citricarpa* (McAlpine) Van der Aa (OJ No. L 77, 20.3.2019, p. 76); and

(d) Commission Implementing Directive (EU) 2019/523 amending Annexes I to V to Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (OJ No. L 86, 28.3.2019, p. 41).

This Order amends the 2018 Order to ensure that the following EU instruments are correctly implemented—

(a) Commission Decision 98/109/EC authorising Member States temporarily to take emergency

measures against the dissemination of *Thrips palmi* Karny as regards Thailand (OJ No. L 27, 3.2.1998, p. 47);

(b) Commission Decision 2004/200/EC on measures to prevent the introduction into and the spread within the Community of Pepino mosaic virus (OJ No. L 64, 2.3.2004, p. 43).

This Order also introduces emergency measures to prevent the introduction of Rose rosette virus and its vector *Phyllocoptes fructiphilus* (Keifer 1940), and removes provisions in the 2018 Order which implement various EU instruments which are no longer in force.

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.

WELSH STATUTORY INSTRUMENTS

2019 No. 1280 (W. 224)

PLANT HEALTH, WALES

The Plant Health (Wales) (Amendment) (No. 3) Order 2019

Made *24 September 2019*

Laid before the National Assembly for Wales *26 September 2019*

Coming into force in accordance with article 1(2)

The Welsh Ministers make this Order in exercise of:

(a) the powers conferred on them by sections 2 and 3(1) of the Plant Health Act 1967(**1**);

(b) the powers conferred by paragraph 1A of Schedule 2 to the European Communities Act 1972(**2**).

This Order makes provision for a purpose mentioned in section 2(2) of the European Communities Act 1972(**3**) and it appears to the Welsh Ministers that it is expedient for the references to the European Union instrument mentioned in article 3(a)(ii) to be construed as references to that instrument as amended from time to time.

(**1**) 1967 c. 8; section 2 was amended by paragraph 8(2)(a) of Schedule 4 to the European Communities Act 1972 (c. 68), Part 1 of the table in paragraph 12 of Schedule 4 to the Customs and Excise Management Act 1979 (c. 2), S.I. 1990/2371 and S.I. 2011/1043. Section 3(1) was amended by paragraph 8(2)(a) and (b) of Schedule 4 to the European Communities Act 1972 and S.I. 2011/1043. The powers conferred by sections 2 and 3(1) are conferred on a "competent authority", which is defined in section 1(2). Section 1(2) was amended by paragraph 43 of Schedule 2 to S.I. 2013/755 (W. 90). Section 1(2), as amended, provides that the competent authority for Wales is the Welsh Ministers.

(**2**) 1972 c. 68; paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51) and amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7) and S.I. 2007/1388.

(**3**) Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 and Part 1 of the Schedule to the European Union (Amendment) Act 2008.

Title and commencement

1.—(1) The title of this Order is the Plant Health (Wales) (Amendment) (No. 3) Order 2019.

(2) It comes into force 21 days after the day on which this Order is laid.

Amendment of the Plant Health (Wales) Order 2018

2. The Plant Health (Wales) Order 2018 is amended as follows.

Article 2

3. In article 2—

(a) in paragraph (1)—

(i) omit the definition of "Decision 2007/365/EC";

(ii) after the definition of "Decision (EU) 2017/198" insert—

""Decision (EU) 2018/638" ("*Penderfyniad (EU) 2018/638*") means Commission implementing Decision (EU) 2018/638 establishing emergency measures to prevent the introduction into and spread within the Union of the harmful organism *Spodoptera frugiperda* (Smith)(**1**);

"Decision (EU) 2018/1503" ("*Penderfyniad (EU) 2018/1503*") means Commission Implementing Decision (EU) 2018/1503 establishing measures to prevent the introduction into and the spread within the Union of *Aromia bungii* (Faldermann)(**2**);";

(iii) in the definition of "relevant material", at the end insert "or any machinery or vehicle which has been operated for agricultural or forestry purposes;";

(b) in paragraph (5)—

(i) omit sub-paragraph (d);

(ii) at the end of sub-paragraph (o), insert—

"(p) Decision (EU) 2018/638;

(q) Decision (EU) 2018/1503.".

Schedule 1

4. In Schedule 1—

(**1**) OJ No. L 105, 25.4.2018, p. 31.
(**2**) OJ No. L 254, 10.10.2018, p. 9.

(a) in the table in Part A—

(i) under the heading "Insects, mites and nematodes"—

(aa) after item 8 insert—

"**8A.** *Aromia bungii* (Faldermann)";

(bb) after item 21 insert—

"**21A.** *Grapholita packardi* Zeller";

(cc) after item 30 insert—

"**30A.** *Neoleucinodes elegantalis* (Guenée)

30B. *Oemona hirta* (Fabricius)

30C. *Phyllocoptes fructiphilus* (Keifer 1940)";

(ii) under the heading "Fungi", after item 3 insert—

"**3A.** *Elsinoë australis* Bitanc. & Jenk.

3B. *Elsinoë citricola* X.L. Fan, R.W. Barreto & Crous

3C. *Elsinoë fawcettii* Bitanc. & Jenk.";

(iii) under the heading "Viruses and virus-like organisms", after item 1 insert—

"**1A.** Rose rosette virus";

(b) in the table in Part B—

(i) under the heading "Insects, mites and nematodes", after item 9 insert—

"**9A.** *Pityophthorus juglandis* Blackman";

(ii) under the heading "Fungi"—

(aa) before item 1 insert—

"**A1.** *Ceratocystis platani* (J.M. Walter) Engelbr. & T.C. Harr.";

(bb) after item 1 insert—

"**1A.** *Fusarium circinatum* Nirenberg & O'Donnell

1B. *Geosmithia morbida* Kolarik, Freeland, Utley & Tisserat".

Schedule 2

5. In Schedule 2—

(a) in the table in Part A—

(i) under the heading "Insects, mites and nematodes", omit item 9;

(ii) under the heading "Fungi", omit item 9;

(b) in the table in Part B—

(i) under the heading "Insects, mites and nematodes", in item 13, in the entry in the second column, after "seeds, of" insert "*Cedrus* Trew or";

(ii) under the heading, "Viruses and virus-like organisms" after item 6 insert—

"6A.	Seeds of *Solanum lycopersicum* L.	Pepino mosaic virus"

Schedule 3

6. In the table in Schedule 3—

(a) for item 10 substitute—

"10.	Soil consisting in part of solid organic substances or other growing medium consisting in whole or in part of solid organic substances, other than any growing medium that is composed entirely of peat or fibre of *Cocos nucifera* L. and has not been previously used for growing plants or for any agricultural purposes	Any third country, other than Switzerland".

(b) omit item 17.

Schedule 4

7. In Schedule 4—

(a) in the table in Part A—

(i) after item 8 insert—

"8A.	Plants, other than seeds, of *Juglans* L. or *Pterocarya* Kunth, intended for planting, originating in the USA	The plants must be accompanied by an official statement that: (a) they have been grown throughout their life in an area established by the national plant protection organisation in the country of origin in accordance with ISPM No. 4 as an area that is free from *Geosmithia morbida* Kolarik, Freeland, Utley & Tisserat and its vector *Pityophthorus juglandis* Blackman; (b) they: (i) originate in a place of production where neither symptoms of *Geosmithia morbida* Kolarik, Freeland, Utley & Tisserat nor its vector *Pityophthorus juglandis* Blackman, or the presence of the vector, have been observed during official inspections of the place of production and its vicinity (which, as a minimum, must include the area lying within a radius of 5 km of the place of production) carried out in the period of two years prior to their export;

		(ii) have been inspected immediately prior to export; and (iii) have been handled and packaged in ways to prevent their infestation once they have left the place of production; or (c) they: (i) originate in a place of production with complete physical isolation; (ii) have been inspected immediately prior to export; and (iii) have been handled and packaged in ways to prevent their infestation once they have left the place of production. Where the phytosanitary certificate or phytosanitary certificate for re-export includes the official statement referred to in paragraph (a), the name of the area must also be mentioned on the certificate under the heading "Additional declaration"";

(ii) for item 10 substitute—

"10.	Plants, other than seeds, of *Platanus* L., intended for planting, originating in Albania, Armenia, Switzerland, Turkey or the USA	The plants must be accompanied by an official statement that: (a) they originate in an area established by the national plant protection organisation in the country of origin in accordance with ISPM No. 4 as an area that is free from *Ceratocystis platani* (J.M. Walter) Engelbr. & T.C. Harr.; or (b) no symptoms of *Ceratocystis platani* (J.M. Walter) Engelbr. & T.C. Harr. have been observed at the place of production or in its immediate vicinity since the beginning of the last complete cycle of vegetation. Where the phytosanitary certificate or phytosanitary certificate for re-export includes the official statement referred to in paragraph (a), the name of the area must also be mentioned on the certificate under the heading "Additional declaration"";

(iii) after item 14 insert—

"14A.	Plants, other than plants in tissue culture or seeds, of *Crataegus* L., *Cydonia* Mill., *Malus* Mill., *Prunus* L., *Pyrus* L. or *Vaccinium* L., intended for planting, originating in Canada, Mexico or the USA	The plants must be accompanied by an official statement that: (a) they have been grown throughout their life in an area established by the national plant protection organisation in the country of origin in accordance with ISPM No. 4 as an area that is free from *Grapholita packardi* Zeller; (b) they have been: (i) grown throughout their life in a place of production established in accordance with ISPM No. 10 as a place of production that is free from *Grapholita packardi* Zeller, which is registered and supervised by the national plant protection organisation in the country of origin and has been subjected annually to inspections for any signs of *Grapholita packardi* Zeller carried out at appropriate times; (ii) grown in a site with the application of appropriate preventive treatments, where the absence of *Grapholita packardi* Zeller has been confirmed by official surveys carried out annually at appropriate times; and (iii) subjected to a meticulous inspection for the presence of *Grapholita packardi* Zeller immediately prior to export; or (c) they have been grown in a site with complete physical protection against the introduction of *Grapholita packardi* Zeller. Where the phytosanitary certificate or phytosanitary certificate for re-export includes the official statement referred to in paragraph (a), the name of the area must also be mentioned on the certificate under the heading "Additional declaration" and must have been previously notified in writing to the European Commission by the relevant national plant protection organisation";

(iv) in item 19, in the entry in the third column—

(aa) omit paragraph (b);

(bb) in paragraph (d), after "Argentina" insert "or Brazil";

(v) for items 21 and 22 substitute—

"21.	Fruits of *Citrus* L., *Fortunella* Swingle, *Poncirus* Raf., *Mangifera* L. or *Prunus* L., originating in any third country	The fruits must be accompanied by an official statement that: (a) they originate in a country which is recognised as being free from *Tephritidae* (non-European) in accordance with the measures specified in ISPM No. 4; (b) they originate in an area established by the national plant protection organisation in the country of origin in accordance with ISPM No. 4 as an area that is free from *Tephritidae* (non-European); (c) no signs of *Tephritidae* (non-European) have been observed at the place of production or in its immediate vicinity since the beginning of the last complete cycle of vegetation on official inspections carried out at least monthly during the three months prior to harvesting, and none of the fruits harvested at the place of production have shown, in appropriate official examinations, signs of *Tephritidae* (non-European); or (d) they have been subjected to an effective treatment to ensure freedom from *Tephritidae* (non-European). Where the phytosanitary certificate or phytosanitary certificate for re-export includes the official statement referred to in paragraph (a), the freedom status of the country must have been previously notified in writing to the European Commission by the relevant national plant protection organisation. Where the phytosanitary certificate or phytosanitary certificate for re-export includes the official statement referred to in paragraph (b), the name of the area must also be mentioned on the certificate under the heading "Additional declaration" and must have been previously notified in writing to the European Commission by the relevant national plant protection

		organisation. Where the phytosanitary certificate or phytosanitary certificate for re-export includes the official statement referred to in paragraph (c), information on traceability must also be included in the certificate. Where the phytosanitary certificate or phytosanitary certificate for re-export includes the official statement referred to in paragraph (d), details of the treatment data must also be mentioned on the certificate and the treatment method must have been previously notified in writing to the European Commission by the relevant national plant protection organisation
22.	Fruits of *Capsicum* (L.), *Citrus* L., other than *Citrus* limon (L.) Osbeck. or *Citrus aurantiifolia* (Christm.) Swingle, *Prunus persica* (L.) Batsch or *Punica granatum* L., originating in any country of the African continent, Cape Verde, Saint Helena, Madagascar, La Reunion, Mauritius or Israel	The fruits must be accompanied by an official statement that: (a) they originate in a country which is recognised as being free from *Thaumatotibia leucotreta* (Meyrick) in accordance with the measures specified in ISPM No. 4; (b) they originate in an area established by the national plant protection organisation in the country of origin in accordance with ISPM No. 4 as an area that is free from *Thaumatotibia leucotreta* (Meyrick); (c) they: (i) originate in a place of production established by the national plant protection organisation in the country of origin in accordance with ISPM No. 10 as a place of production that is free from *Thaumatotibia leucotreta* (Meyrick); and (ii) are free from *Thaumatotibia leucotreta* (Meyrick) as shown from official inspections carried out at the place of production at appropriate times during the growing season, which included at least one visual examination on representative samples of fruit; or (d) they have been subjected to an effective cold or other treatment to ensure freedom from

		Thaumatotibia leucotreta (Meyrick). Where the phytosanitary certificate or phytosanitary certificate for re-export includes the official statement referred to in paragraph (a), the freedom status of the country must have been previously notified in writing to the European Commission by the relevant national plant protection organisation. Where the phytosanitary certificate or phytosanitary certificate for re-export includes the official statement referred to in paragraph (b), the name of the area must also be mentioned on the certificate under the heading "Additional declaration" and must have been previously notified in writing to the European Commission by the relevant national plant protection organisation. Where the phytosanitary certificate or phytosanitary certificate for re-export includes the official statement referred to in paragraph (c), information on traceability must also be included in the certificate. Where the phytosanitary certificate or phytosanitary certificate for re-export includes the official statement referred to in paragraph (d), details of the treatment data must also be mentioned on the certificate and the treatment method, together with documentary evidence of its effectiveness, must have been previously notified in writing to the European Commission by the relevant national plant protection organisation";

(vi) after item 22 insert—

"22A.	Fruits of *Malus* Mill. originating in any third country	The fruits must be accompanied by an official statement that: (a) they originate in a country which is recognised as being free from *Enarmonia prunivora* Walsh, *Grapholita inopinata* Heinrich and *Rhagoletis pomonella* (Walsch) in accordance with the measures specified in ISPM No. 4; (b) they originate in an area established by the national plant protection organisation in the country of origin in accordance with ISPM No. 4 as an area that is

		free from *Enarmonia prunivora* Walsh, *Grapholita inopinata* Heinrich and *Rhagoletis pomonella* (Walsch); (c) they originate in a place of production where official inspections and surveys for the presence of *Enarmonia prunivora* Walsh, *Grapholita inopinata* Heinrich and *Rhagoletis pomonella* (Walsch) are carried out at appropriate times during the growing season, including at least one visual examination on representative samples of fruits, and have shown the fruits to be free from those plant pests; or (d) they have been subjected to an effective treatment to ensure freedom from *Enarmonia prunivora* Walsh, *Grapholita inopinata* Heinrich and *Rhagoletis pomonella* (Walsch). Where the phytosanitary certificate or phytosanitary certificate for re-export includes the official statement referred to in paragraph (a), the freedom status of the country must have been previously notified in writing to the European Commission by the relevant national plant protection organisation. Where the phytosanitary certificate or phytosanitary certificate for re-export includes the official statement referred to in paragraph (b), the name of the area must also be mentioned on the certificate under the heading "Additional declaration" and must have been previously notified in writing to the European Commission by the relevant national plant protection organisation. Where the phytosanitary certificate or phytosanitary certificate for re-export includes the official statement referred to in paragraph (c), information on traceability must also be included in the certificate. Where the phytosanitary certificate or phytosanitary certificate for re-export includes the official statement referred to in paragraph (d), details of the treatment data must also be included in the certificate and the treatment method must have been previously notified in writing to the European Commission by the relevant

		national plant protection organisation.
22B.	Fruits of *Malus* Mill. or *Pyrus* L., originating in any third country	The fruits must be accompanied by an official statement that: (a) they originate in a country which is recognised as being free from *Guignardia piricola* (Nosa) Yamamoto in accordance with the measures specified in ISPM No. 4; (b) they originate in an area established by the national plant protection organisation in the country of origin in accordance with ISPM No. 4 as an area that is free from *Guignardia piricola* (Nosa) Yamamoto; (c) they originate in a place of production where official inspections and surveys for the presence of *Guignardia piricola* (Nosa) Yamamoto are carried out at appropriate times during the growing season, including at least one visual examination on representative samples of fruits, and have shown the fruits to be free from that plant pest; or (d) they have been subjected to an effective treatment to ensure freedom from *Guignardia piricola* (Nosa) Yamamoto. Where the phytosanitary certificate or phytosanitary certificate for re-export includes the official statement referred to in paragraph (a), the freedom status of the country must have been previously notified in writing to the European Commission by the relevant national plant protection organisation. Where the phytosanitary certificate or phytosanitary certificate for re-export includes the official statement referred to in paragraph (b), the name of the area must also be mentioned on the certificate under the heading "Additional declaration" and must have been previously notified in writing to the European Commission by the relevant national plant protection organisation. Where the phytosanitary certificate or phytosanitary certificate for re-export includes the official statement referred to in paragraph (c), information on traceability

		must also be included in the certificate. Where the phytosanitary certificate or phytosanitary certificate for re-export includes the official statement referred to in paragraph (d), details of the treatment data must also be included in the certificate and the treatment method must have been previously notified in writing to the European Commission by the relevant national plant protection organisation
22C.	Fruits of *Malus* Mill. or *Pyrus* L., originating in any third country	The fruits must be accompanied by an official statement that: (a) they originate in a country which is recognised as being free from *Tachypterellus quadrigibbus* Say in accordance with the measures specified in ISPM No. 4; (b) they originate in an area established by the national plant protection organisation in the country of origin in accordance with ISPM No. 4 as an area that is free from *Tachypterellus quadrigibbus* Say; (c) they originate in a place of production where official inspections and surveys for the presence of *Tachypterellus quadrigibbus* Say are carried out at appropriate times during the growing season, including at least one visual examination on representative samples of fruits, and have shown the fruits to be free from that plant pest; or (d) they have been subjected to an effective treatment to ensure freedom from *Tachypterellus quadrigibbus* Say. Where the phytosanitary certificate or phytosanitary certificate for re-export includes the official statement referred to in paragraph (a), the freedom status of the country must have been previously notified in writing to the European Commission by the relevant national plant protection organisation. Where the phytosanitary certificate or phytosanitary certificate for re-export includes the official statement referred to in paragraph (b), the name of the area must also be mentioned on the certificate under

		the heading "Additional declaration" and must have been previously notified in writing to the European Commission by the relevant national plant protection organisation. Where the phytosanitary certificate or phytosanitary certificate for re-export includes the official statement referred to in paragraph (c), information on traceability must also be included in the certificate. Where the phytosanitary certificate or phytosanitary certificate for re-export includes the official statement referred to in paragraph (d), details of the treatment data must also be included in the certificate and the treatment method must have been previously notified in writing to the European Commission by the relevant national plant protection organisation.
22D.	Fruits of *Malus* Mill., *Prunus* L., *Pyrus* L. or *Vaccinium* L., originating in Canada, Mexico or the USA	The fruits must be accompanied by an official statement that: (a) they originate in an area established by the national plant protection organisation in the country of origin in accordance with ISPM No. 4 as an area that is free from *Grapholita packardi* Zeller; (b) they originate in a place of production where official inspections and surveys for the presence of *Grapholita packardi* Zeller are carried out at appropriate times during the growing season, including at least one visual examination on representative samples of fruits, and have shown the fruits to be free from that plant pest; or (c) they have been subjected to an effective treatment to ensure freedom from *Grapholita packardi* Zeller. Where the phytosanitary certificate or phytosanitary certificate for re-export includes the official statement referred to in paragraph (a), the name of the area must also be mentioned on the certificate under the heading "Additional declaration" and must have been previously notified in writing to the European Commission by the relevant national plant protection organisation.

		Where the phytosanitary certificate or phytosanitary certificate for re-export includes the official statement referred to in paragraph (b), information on traceability must also be included in the certificate. Where the phytosanitary certificate or phytosanitary certificate for re-export includes the official statement referred to in paragraph (c), details of the treatment data must also be included in the certificate and the treatment method must have been previously notified in writing to the European Commission by the relevant national plant protection organisation”;

(vii) after item 45 insert—

“45A.	Tubers of *Solanum tuberosum* originating in any third country other than Switzerland	The tubers must be accompanied by an official statement that the consignment or lot does not contain more than 1% by net weight of soil and growing medium”;

(viii) after item 50 insert—

“50A.	Fruits of *Capsicum annuum* L., *Solanum aethiopicum* L., *Solanum lycopersicum* L. or *Solanum melongena* L. originating in any third country	The fruits must be accompanied by an official statement that: (a) they originate in a country which is recognised as being free from *Neoleucinodes elegantalis* (Guenée) in accordance with the measures specified in ISPM No. 4; (b) they originate in an area established by the national plant protection organisation in the country of origin in accordance with ISPM No. 4 as an area that is free from *Neoleucinodes elegantalis* (Guenée); (c) they: (i) originate in a place of production established by the national plant protection organisation in the country of origin in accordance with ISPM No. 10 as a place of production that is free from *Neoleucinodes elegantalis* (Guenée); and (ii) are free from that plant pest as shown from official inspections carried out at the place of production at appropriate times during the

		growing season, which included at least one visual examination on representative samples of fruit; or (d) they originate in an insect-proof site of production, established by the national plant protection organisation in the country of origin as a site of production that is free from *Neoleucinodes elegantalis* (Guenée) on the basis of official inspections and surveys carried out during the three months prior to export. Where the phytosanitary certificate or phytosanitary certificate for re-export includes the official statement referred to in paragraph (a), the freedom status of the country must have been previously notified in writing to the European Commission by the relevant national plant protection organisation. Where the phytosanitary certificate or phytosanitary certificate for re-export includes the official statement referred to in paragraph (b), the name of the area must also be mentioned on the phytosanitary certificate or phytosanitary certificate for re-export under the heading "Additional declaration" and must have been previously notified in writing to the European Commission by the relevant national plant protection organisation. Where the phytosanitary certificate or phytosanitary certificate for re-export includes the official statement referred to in paragraph (c) or (d), information on traceability must also be included in the certificate.
50B.	Fruits of *Solanaceae* originating in Australia, the Americas or New Zealand	The fruits must be accompanied by an official statement that: (a) they originate in a country which is recognised as being free from *Bactericera cockerelli* (Sulc.) in accordance with the measures specified in ISPM No. 4; (b) they originate in an area established by the national plant protection organisation in the country of origin in accordance with ISPM No. 4 as an area that is free from *Bactericera cockerelli* (Sulc.);

		(c) they: (i) originate in a place of production where official inspections and surveys for the presence of *Bactericera cockerelli* (Sulc.) were carried out at the place of production and in its immediate vicinity during the three months prior to export; (ii) have been subjected to effective treatments to ensure freedom from the plant pest; and (iii) representative samples of the fruit have been inspected prior to export; or (d) they originate in an insect-proof site of production, established by the national plant protection organisation in the country of origin as a site of production that is free from *Bactericera cockerelli* (Sulc.) on the basis of official inspections and surveys carried out during the three months prior to export. Where the phytosanitary certificate or phytosanitary certificate for re-export includes the official statement referred to in paragraph (a), the freedom status of the country must have been previously notified in writing to the European Commission by the relevant national plant protection organisation. Where the phytosanitary certificate or phytosanitary certificate for re-export includes the official statement referred to in paragraph (b), the name of the area must also be mentioned on the certificate under the heading "Additional declaration" and must have been previously notified in writing to the European Commission by the relevant national plant protection organisation. Where the phytosanitary certificate or phytosanitary certificate for re-export includes the official statement referred to in paragraph (c) or (d), information on traceability must also be included in the certificate";

(ix) for item 64 substitute—

"64.	Growing medium, attached to or associated with plants, intended to sustain the vitality of the plants, other than any sterile medium of *in-vitro* plants, originating in any third country other than Switzerland	The associated plants must be accompanied by an official statement that: (a) at the time of their planting, the growing medium: (i) was free from soil and organic matter and had not been previously used for growing plants or for any agricultural purposes; (ii) was composed entirely of peat or fibre of *Cocos nucifera* L. and had not been previously used for growing plants or for any agricultural purposes; or (iii) was subjected to an effective treatment to ensure freedom from harmful plant pests; (b) the growing medium was stored and maintained under appropriate conditions to keep it free from harmful plant pests; and (c) either: (i) appropriate measures have been taken since planting to ensure that the growing medium has been kept free from harmful plant pests, including at least the physical isolation of the growing medium from soil and other possible sources of contamination, the use of water that is free from harmful plant pests and hygiene measures; or (ii) in the period of two weeks prior to export: (aa) the growing medium (including, where appropriate, any soil) has been completely removed by washing with water that is free from harmful plant pests; and (bb) where the associated plants have been replanted, the growing medium met the requirements specified in paragraph (a) at the time of replanting and appropriate measures since replanting have

		been taken to ensure that the growing medium has been kept free from harmful plant pests in accordance with sub-paragraph (i). Where the phytosanitary certificate or phytosanitary certificate for re-export includes the official statement referred to in paragraph (a)(iii), details of the treatment data must also be mentioned on the certificate under the heading "Additional declaration"";

(x) after item 64 insert—

"64A.	Bulbs, corms, rhizomes or tubers, intended for planting, other than tubers of *Solanum tuberosum*, originating in any third country other than Switzerland	The bulbs, corms, rhizomes or tubers must be accompanied by an official statement that the consignment or lot does not contain more than 1% by net weight of soil and growing medium
64B.	Root or tubercle vegetables originating in any third country other than Switzerland	The vegetables must be accompanied by an official statement that the consignment or lot does not contain more than 1% by net weight of soil and growing medium
64C.	Machinery or vehicles which have been operated for agricultural or forestry purposes, imported from any third country other than Switzerland	The machinery or vehicles must be accompanied by an official statement that they have been cleaned and are free from soil and plant debris
64D.	Machinery or vehicles which have been operated for agricultural or forestry purposes, imported from Switzerland	The machinery or vehicles must be accompanied by an official statement that: (a) they have been exported from an area established by the national plant protection organisation for Switzerland in accordance with ISPM No. 4 as an area that is free from *Ceratocystis platani* (J.M. Walter) Engelbr. & T.C. Harr.; or (b) in the case of any machinery or vehicles exported from an area infested with *Ceratocystis platani* (J.M. Walter) Engelbr. & T.C. Harr., they have been cleaned and are free from soil and plant debris prior to export";

(xi) in the second column of item 68, after "Orchidaceae" insert "originating in any third country, other than Thailand;";

(xii) after item 93 insert—

"93A.	Cut flowers of Orchidaceae originating in Thailand	The cut flowers must be accompanied by a phytosanitary certificate or phytosanitary certificate for re-export which includes an official statement under the heading "Additional declaration" that they have been: (a) produced at a place of production which has been found to be free from *Thrips palmi* Karny in official inspections carried out at least monthly during the three months prior to export; or (b) subjected, as a consignment prior to export, to an appropriate fumigation treatment to ensure freedom from thysanoptera. Where paragraph (b) applies, the specification of the fumigation treatment must also be included under the heading "Disinfestation and/or disinfection treatment" of the certificate."

(xiii) Omit item 95 and insert (as a subsequent entry)—

"95A.	Seeds of *Solanum lycopersicum* L., originating in any third country	The seeds must be accompanied by a phytosanitary certificate or phytosanitary certificate for re-export which includes an official statement under the heading "Additional declaration" that they have been obtained by means of an appropriate acid extraction method and that: (a) they originate in an area in which Pepino mosaic virus is known not to occur; (b) no symptoms of Pepino mosaic virus have been observed on the plants at the place of production during their complete cycle of vegetation; or (c) they have undergone official testing for Pepino mosaic virus on a representative sample and using appropriate methods, and have been found in these tests to be free from Pepino mosaic virus."

(xiv) omit item 104;

(xv) after item 105 insert—

"105A.	Specified plants within the meaning of Article 1(b) of Decision (EU) 2018/638	The fruits must be accompanied by a phytosanitary certificate or phytosanitary certificate for re-export which includes an

		official statement in accordance with Article 3(b) of Decision (EU) 2018/638.
105B.	Specified plants within the meaning of Article 1(b) of Decision (EU) 2018/1503 originating in any third country where *Aromia bungii* (Faldermann) is known to be present	The plants must be accompanied by a phytosanitary certificate or phytosanitary certificate for re-export which includes: (a) an official statement under the heading "Additional declaration" that they meet the requirements specified in point (a), (b) or (c) of Article 11 of Decision (EU) 2018/1503; and (b) where point (a) of that Article applies, the name of the pest-free area under the heading "place of origin";"

(xvi) after item 106 insert—

"107.	Plants, other than seeds, of *Rosa* sp., originating in Canada, India, Mexico or the USA	The plants must be accompanied by a phytosanitary certificate or phytosanitary certificate for re-export which includes an official statement that: (a) they have been grown throughout their life in an area established by the national plant protection organisation in the country of origin in accordance with ISPM No. 4 as an area that is free from Rose rosette virus and *Phyllocoptes fructiphilus* (Keifer 1940); and (b) they have been packaged in a manner to prevent infestation by *Phyllocoptes fructiphilus* (Keifer 1940) during their transport. Where the phytosanitary certificate or phytosanitary certificate for re-export includes the official statement referred to in paragraph (a), the name of the area must also be mentioned on the certificate under the heading "Additional declaration"
108.	Plants in tissue culture of *Rosa* sp., originating in Canada, India, Mexico or the USA	The plants must be accompanied by a phytosanitary certificate or phytosanitary certificate for re-export which includes an official statement that they have been produced from mother plants tested and found to be free from Rose rosette virus";

(b) in Part B—

(i) after item 4 insert—

"4A.	Plants, other than seeds, of *Juglans* L.	The plants must be accompanied by an

	or *Pterocarya* Kunth, intended for planting	official statement that: (a) they have been grown throughout their life, or since their introduction into the European Union, in a place of production in an area established in accordance with ISPM No. 4 as an area that is free from *Geosmithia morbida* Kolarik, Freeland, Utley & Tisserat and its vector *Pityophthorus juglandis* Blackman; (b) they: (i) originate in a place of production where neither symptoms of *Geosmithia morbida* Kolarik, Freeland, Utley & Tisserat nor its vector *Pityophthorus juglandis* Blackman, or the presence of the vector, have been observed during official inspections of the place of production and its vicinity (which, as a minimum, must include the area lying within a radius of 5 km of the place of production) carried out in the period of two years prior to their movement; (ii) have been visually inspected immediately prior to their movement from the place of production; and (iii) have been handled and packaged in ways to prevent their infestation once they have left the place of production; or (c) they: (i) originate in a place of production with complete physical isolation; (ii) have been visually inspected immediately prior to their movement from the place of production; and (iii) have been handled and packaged in ways to prevent their infestation once they have left the place of production";

(ii) after item 44 insert—

"44A.	Machinery or vehicles which have been operated for agricultural or forestry purposes	The machinery or vehicles must: (a) have been moved from an area established in accordance with ISPM No. 4 as an area that is free from *Ceratocystis platani* (J.M. Walter) Engelbr. & T.C. Harr. or a protected zone which is recognised as a protected zone for *Ceratocystis platani* (J.M. Walter) Engelbr. & T.C. Harr.); or (b) in the case of any machinery or vehicles being moved out of an area infested with *Ceratocystis platani* (J.M. Walter) Engelbr. & T.C. Harr., have been cleaned and be free from soil and plant debris prior to being moved out of the area";

(iii) after item 45 insert—

"45A.	Seeds of *Solanum lycopersicum* L.	The seeds must be accompanied by an official statement that they have been obtained by means of an appropriate acid extraction method and that: (a) they originate in an area in which Pepino mosaic virus is known not to occur; (b) no symptoms of Pepino mosaic virus have been observed on the plants at the place of production during their complete cycle of vegetation; or (c) they have undergone official testing for Pepino mosaic virus on a representative sample and using appropriate methods, and have been found in these tests to be free from Pepino mosaic virus."

(iv) omit item 46;

(v) after item 57 insert—

"57A.	Specified plants within the meaning of Article 1(b) of Decision (EU) 2018/1503 which originate, or have been introduced into a place of production, in an area established in accordance with Article 5 of Decision (EU) 2018/1503	The plants must be accompanied by an official statement that: (a) in the case of plants which originate in an area established in accordance with Article 5 of Decision (EU) 2018/1503, they have been grown during a period of at least two years prior to their movement, or in the case of plants which are younger than two years, throughout their life, in a place of production which meets the requirements specified in Article 7(2) to (5) of that Decision;

		(b) in the case of plants which have been introduced into a place of production in an area established in accordance with Article 5 of Decision (EU) 2018/1503, the place of production meets the requirements specified in Article 7(2) to (4) of that Decision";

(c) in Part C—

(i) in item 2, in the entry in the second column, after "seeds, of" insert "*Cedrus* Trew or";

(ii) after item 8 insert—

"8A.	Plants of *Euphorbia pulcherrima* Willd., intended for planting, for which there is evidence from their packing or their flower development or from other means that they are intended for direct sale to final consumers not involved in professional plant production, other than: —seeds, or —uprooted cuttings	The plants must be accompanied by an official statement that they have been officially inspected and found free from *Bemisia tabaci* Genn. (European populations) immediately prior to their movement";

(iii) in item 9—

(aa) in the entry in the second column, after "seeds, of" insert "*Ajuga* L., *Crossandra* Salisb.,";

(bb) in the entry in the third column, in paragraph (c), after "production", in the last place where it occurs, insert "(the last of which must have been carried out immediately prior to their movement)";

Schedule 5

8. In Schedule 5, in Part A—

(a) in paragraph 3—

(i) for sub-paragraph (i) substitute—

"(i) cut branches of *Fraxinus* L., *Juglans* L., *Ulmus davidiana* Planch. or *Pterocarya* L., with or without foliage, originating in Canada, China, Democratic People's Republic of Korea, Japan, Mongolia, Republic of Korea, Russia, Taiwan or the USA;";

(ii) after sub-paragraph (i) insert—

"(ia) *Convolvulus* L., *Ipomoea* L. (other than tubers), *Micromeria* Benth or *Solanaceae* originating in Australia, the Americas or New Zealand; or";

(b) in paragraph 5—

(i) in sub-paragraph (a), for ", *Solanum lycopersicum* L. or *Solanum melongena* L." substitute "or *Solanaceae*";

(ii) for sub-paragraph (b) substitute—

"(b) *Actinidia* Lindl., *Annona* L., *Carica papaya* L., *Cydonia* Mill., *Diospyros* L., *Fragaria* L., *Malus* L., *Mangifera* L., *Passiflora* L., *Persea americana* Mill., *Prunus* L., *Psidium* L., *Pyrus* L., *Ribes* L., *Rubus* L., *Syzygium* Gaertn., *Vaccinium* L. or *Vitis* L.;";

(iii) omit sub-paragraph (c);

(c) omit paragraph 7;

(d) for paragraph 8 substitute—

"**8.** Growing medium, attached to or associated with plants, intended to sustain the vitality of the plants, originating in any third country, other than Switzerland.";

(e) after paragraph 8 insert—

"**8A.** Machinery or any vehicle, imported from any third country, which has been operated for agricultural or forestry purposes and meets one of the descriptions specified in point 7.1 of Annex 5, Part B, Section 1 to Directive 2000/29/EC.";

(f) omit paragraph 11;

(g) omit paragraph 14 and insert (as a subsequent entry)—

"**14A**. Specified plants within the meaning of Article 1(b) of Decision (EU) 2018/638."

(h) after paragraph 15 insert—

"**15A.** Plants, other than seeds, of *Rosa* sp., originating in Canada, India, Mexico or the USA. ".

Schedule 6

9. In Schedule 6—

(a) in Part A—

(i) in paragraph 7(a)—

(aa) after "*Impatiens* L.," insert "*Juglans* L.,";

(bb) after "*Pseudotsuga* Carr.," insert "*Pterocarya* L.,";

(ii) omit paragraph 10;

(iii) after paragraph 18 insert—

"**18A.** Specified plants within the meaning of Article 1(b) of Decision (EU) 2018/1503 which—

(a) originate in a third country where *Aromia bungii* (Faldermann) is known to be present; or

(b) originate in, or have been introduced into, a place of production in an area established in accordance with Article 5 of Decision (EU) 2018/1503.";

(b) in Part B, in paragraph 20, after "seeds, of" insert "*Cedrus* Trew,".

Schedule 7

10. In Schedule 7—

(a) in Part A—

(i) in paragraph 7(a)—

(aa) after "*Impatiens* L.," insert "*Juglans* L.,";

(bb) after "*Pseudotsuga* Carr.," insert "*Pterocarya* L.,";

(ii) omit paragraph 10;

(iii) after paragraph 18 insert—

"**18A.** Specified plants within the meaning of Article 1(b) of Decision (EU) 2018/1503 which—

(a) originate in a third country where *Aromia bungii* (Faldermann) is known to be present; or

(b) originate in, or have been introduced into, a place of production in an area established in accordance with Article 5 of Decision (EU) 2018/1503.";

(b) in Part B, in paragraph 21, after "*Beta vulgaris* L.," insert "*Cedrus* Trew,".

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

Explanatory Memorandum for subordinate legislation

Explanatory Memorandum to the Plant Health (Wales) (Amendment) (No. 3) Order 2019

This Explanatory Memorandum has been prepared by the Economy, Skills and Natural Resources Department of the Welsh Government and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Plant Health (Wales) (Amendment) (No. 3) Order 2019.

Lesley Griffiths AM
Minister for Environment, Energy and Rural Affairs
26 September 2019

PART 1

1. Description

The Plant Health (Wales) (Amendment) (No. 3) Order 2019 ("this instrument") amends the Plant Health (Wales) Order 2018 (S.I. 2018/1064) (W. 223) ("2018 Order") which contains measures to prevent the introduction and spread of harmful plant pests and diseases. This instrument implements control measures to minimise the risk of the introduction into and spread of various pests and diseases into Wales.

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

There are no matters of special interest to the Constitutional and Legislative Affairs Committee.

3. Legislative background

The Plant Health (Wales) (Amendment) (No. 3) Order 2019 is being made pursuant to the powers in the Plant Health Act 1967 and paragraph 1A of Schedule 2 to the European Communities Act 1972.

Section 1 of the Plant Health Act 1967 provides that the Act has effect for the control of pests and diseases injurious to agricultural or horticultural crops and trees or bushes.

Section 2(1) of the 1967 Act provides that a competent authority may from time to time make such orders as it thinks expedient or called for by an EU obligation for preventing the introduction of pests into Great Britain. Section 3(1) provides a corresponding power in relation to the control of the spread of pests in Great Britain. The Welsh Ministers are the competent authority for Wales pursuant to section 1(2) of the Act as amended by the Natural Resources Body for Wales (Functions) Order 2013.

Council Directive 2000/29/EC on protective measures against the introduction into the EU of organisms harmful to plants or plant products and against their spread within the EU ("the Plant Health Directive") establishes the EU plant health regime. The Plant Health Directive is implemented in Wales by the 2018 Order. Similar but separate legislation operates in Scotland, England and Northern Ireland.

Section 6 of the Act provides that this instrument is subject to the negative procedure.

4. Purpose and intended effect of the legislation

This instrument amends the 2018 Order. A purpose of that Order is to prevent the introduction and spread of harmful plant pests and diseases. The 2018

Order is amended to take account of new and revised risk assessments, pest interceptions, changes in the distribution of pests and other developments.

This instrument amends the 2018 Order to implement—

- Commission Implementing Decision (EU) 2018/638 establishing emergency measures to prevent the introduction into and the spread within the Union of the harmful organism *Spodoptera frugiperda* (Smith) (OJ No. L 105, 25.4.2018, p. 31);
- Commission Implementing Decision (EU) 2018/1503 establishing measures to prevent the introduction into and the spread within the Union of *Aromia bungii* (Faldermann) (OJ No. L 254, 10.10.2018, p. 9);
- Commission Implementing Decision (EU) 2019/449 amending Commission Implementing Decision (EU) 2016/715 setting out measures in respect of certain fruits originating in certain third countries to prevent the introduction into and the spread within the Union of the harmful organism *Phyllosticta citricarpa* (McAlpine) Van der Aa (OJ No. L 77, 20.3.2019, p. 76); and
- Commission Implementing Directive (EU) 2019/523 amending Annexes I to V to Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (OJ No. L 86, 28.3.2019, p. 41).

This instrument amends the 2018 Order to ensure that the following EU instruments are correctly implemented—

- Commission Decision 98/109/EC authorising Member States temporarily to take emergency measures against the dissemination of *Thrips palmi* Karny as regards Thailand (OJ No. L 27, 3.2.1998, p. 47);
- Commission Decision 2004/200/EC on measures to prevent the introduction into and the spread within the Community of Pepino mosaic virus (OJ No. L 64, 2.3.2004, p. 43).

This instrument also removes provisions in the 2018 Order relating to Commission Implementing Decision (EU) 2014/237 on measures to prevent the introduction into and the spread within the Union of harmful organisms as regards certain fruits and vegetables originating in India and Commission Implementing Decision (EU) 2015/1849 on measures to prevent the introduction into and the spread within the Union of harmful organisms as regards certain vegetables originating in Ghana, which are no longer in force.

Rosa Rosette Virus

This instrument introduces emergency measures to prevent the introduction of Rose rosette virus and its vector *Phyllocoptes fructiphilus* (Keifer 1940).

All species and cultivars of *Rosa* are considered at risk from *Rose rosette virus* (RRV) and its vector, *P. fructiphilus*, as no known tolerant or resistant species or varieties have been identified. The virus causes witches' broom, flower

abortion or flower malformation, distorted leaf growth and reduction in cold hardiness, leading to mortality of roses. RRV is absent from the UK.

RRV is known to be present in parts of the Canada and the USA, where it has had high economic and social impacts. There is an unconfirmed report of the pest in Mexico and it has recently been reported in West Bengal, India. If the virus and its vector were to be introduced into the European and Mediterranean Plant Protection Organisation (EPPO) region, which includes the UK, the potential impacts are also likely to be high. All species and cultivars of *Rosa* would be at risk because no plant resistance has been identified.

Following on from a UK pest risk analysis (PRA) produced in 2016, an EPPO Expert working group (EWG) was set up in 2017 to produce an EPPO PRA for Rose rosette virus and its vector *Phyllocoptes fructiphilus*. The EWG considers RRV to be a high risk to the EPPO region. *P. fructiphilus* is considered to be a potential pest for the EPPO region, as a vector of RRV and possibly through direct feeding damage. Both RRV and *P. fructiphilus* have been added to the EPPO A1 list and are therefore recommended for regulation in EPPO countries.

The likelihood of establishment in the EPPO region is considered very high. If introduced, the magnitude of spread would be moderate to high, due to the extensive trade in *Rosa* and because of the aerial dispersal of *P. fructiphilus*, with a moderate uncertainty.

Both plants for planting and cut flowers of *Rosa* sp. are considered to be pathways for introduction of the pest. Of major concern is that the EPPO PRA assesses the risk of entry of RRV (and its vector) into the EPPO region to be high on *Rosa* plants for planting. This is the case for the UK because current measures do not significantly reduce the probability of entry. Plants of *Rosa*, intended for planting, other than dormant plants free from leaves, flowers and fruit from non-European countries are prohibited. This is, however, not effective in preventing entry, because both RRV and its vector can be associated with dormant plants. Industry is exploring new sources of planting material and this could include areas where RRV is present. Once introduced virus spread would be rapid and eradication very difficult to achieve. Early regulation is therefore vital to help prevent the introduction of this very damaging virus and its vector.

The UK Government has written to the European Commission asking that, as RRV and its vector represents a major threat to the EU, it should be a treated as a high priority for regulation by the EU. Regulation of these pests is being considered by the EU. In the meantime, national measures are being introduced to protect against the introduction of the virus. This involves adding RRV and its vector to the list of prohibited pests and introducing a requirement that host material (*Rosa* sp, including plants for planting, cut flowers and tissue culture.) originating in countries where the pest is known to be present (Canada, India, Mexico and the USA) have been grown in an area free from the pest.

This instrument aligns the law relating to plant health in Wales with plant health in England and Scotland.

5. Consultation

No consultation was required.

The changes which have been adopted which modify the annexes of the Plant Health Directive, reflect those already in place at the EU level, which have been published by the European Commission.

6. Regulatory Impact Assessment (RIA)

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.

With regard to the Government of Wales Act 2006 this legislation has no impact on the statutory duties (sections 77-79) or statutory partners (sections 72-75).

SL(5)450 – The Humane Trapping Standards (England and Wales) Regulations 2019

Background and Purpose

The Humane Trapping Standards (England and Wales) Regulations 2019 make a technical correction to ensure the proper functioning of earlier amendments to the Wildlife and Countryside Act 1981 ("the 1981 Act") made by the Humane Trapping Standards 2019 (S.I. 2019/22) ("the Regulations").

The amendments in the Regulations replaced section 11(2) of the 1981 Act and prohibited the killing and taking of stoat unless under the authority of a licence. Section 16(3) of the 1981 Act contains the relevant licensing ground, and under section 16(3)(c) it is possible to issue a licence for the purpose of conserving wild animals. However, in this provision, "wild animals" does not include wild birds.

The primary purpose for killing and taking stoat in England and Wales is the conservation of ground nesting birds. This instrument inserts a new provision into section 16 of the 1981 Act, which provides that the licensing ground in section 16(3)(c) is read, insofar as it relates to the killing and taking of stoat prohibited under section11(2), as including the conservation of wild birds.

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**

- These Regulations has been made as a composite instrument, meaning the Regulations have 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 Regulations have been made in English only.
- The Explanatory Memorandum states as the Regulations will be subject to UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually. The Explanatory Memorandum states that the Regulations were made on a composite basis to maintain the clarity, continuity, accessibility and transparency of the statute book for those required to comply with its provisions. 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 there were no factors indicating the use of affirmative procedure for this instrument, considering the technical and minor nature of the amendment, and the fact that it does not involve a policy change.
- The Legal Advisers accept that the choice of negative procedure is appropriate given these reasons.

Implications arising from exiting the European Union

These Regulations implement EU obligations in relation to the humane trapping of stoats under licence for the purpose of protecting nesting wild birds, and therefore the Regulations 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
7 October 2019

This Statutory Instrument has been made to correct errors in S.I. 2019/22 and is being issued free of charge to all known recipients of that Statutory Instrument.

STATUTORY INSTRUMENTS

2019 No. 1288

WILDLIFE, ENGLAND AND WALES

The Humane Trapping Standards (England and Wales) Regulations 2019

Made - - - -	*26th September 2019*
Laid before Parliament	*30th September 2019*
Laid before the National Assembly for Wales	*30th September 2019*
Coming into force - -	*1st April 2020*

The Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales, make these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**a**).

The Secretary of State and the Welsh Ministers are Ministers designated for the purposes of section 2(2) of that Act in relation to wild animals(**b**).

Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the Humane Trapping Standards (England and Wales) Regulations 2019 and come into force on 1st April 2020.

(2) These Regulations extend and apply to England and Wales.

Amendment of the Wildlife and Countryside Act 1981

2. After section 16(3) of the Wildlife and Countryside Act 1981(**c**) insert—

"(3ZZA) Subsection (3)(c), so far as relating to section 11(2)(**d**) in its application to *mustela erminea* (stoat, otherwise known as ermine), is to be read as if the reference to wild animals included wild birds.".

(**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). It is prospectively repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16) from exit day (see section 20 of that Act). The function of the former Minister of Agriculture, Fisheries and Food of making regulations under section 2(2) was transferred to the Secretary of State by S.I. 2002/794.

(**b**) S.I. 2014/1890, which is prospectively revoked by S.I. 2018/1011 from exit day.

(**c**) 1981 c. 69; section 16 was amended in particular by paragraph 6 of Schedule 12 to the Countryside and Rights of Way Act 2000 (c. 37).

(**d**) Section 11(2) was substituted by S.I. 2019/22.

Rebecca Pow
Parliamentary Under Secretary of State
26th September 2019 Department for Environment, Food and Rural Affairs

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Wildlife and Countryside Act 1981 (c. 69) ("the Act") in order further to implement in England and Wales requirements contained in the Agreement on international humane trapping standards between the European Community, Canada and the Russian Federation, which was approved by the European Community in Council Decision 98/142/EC (OJ No. L 42, 14.2.98, p.40).

The Regulations introduce provision to provide that the licensing ground under section 16(3)(c) (relating to the conservation of wild animals) is to be read, insofar as it relates to section 11(2) in its application to stoat, as including the conservation of wild birds. This means that the trapping of stoat will be licensable for the purpose of conserving wild birds when the inclusion of stoat in Schedule 6ZA to the Act comes into force on 1st April 2020 by virtue of the Humane Trapping Standards Regulations 2019 (S.I. 2019/22).

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.

Explanatory Memorandum for subordinate legislation

Explanatory Memorandum to the Humane Trapping Standards (England and Wales) Regulations 2019

This Explanatory Memorandum has been prepared by the Economy, Skills and Natural Resources Department of the Welsh Government and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Humane Trapping Standards (England and Wales) Regulations 2019.

Lesley Griffiths AM
Minister for Environment, Energy and Rural Affairs
30 September 2019

PART 1

1. Description

The Humane Trapping Standards (England and Wales) Regulations 2019 ("this instrument") make a technical correction to ensure the proper functioning of earlier amendments to the Wildlife and Countryside Act 1981 ("the 1981 Act") made by the Humane Trapping Standards 2019 (S.I. 2019/22) ("the Regulations").

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 and makes a technical correction to a composite instrument. This instrument is being made on a composite basis to maintain the clarity, continuity, accessibility and transparency of the statute book for those required to comply with its provisions.

As this instrument will be subject to UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually.

This instrument is being made subject to the negative procedure.

There is a choice of procedure in relation to instruments made under section 2(2) of the European Communities Act 1972. There were no factors indicating the use of affirmative procedure for this instrument, considering the technical and minor nature of the amendment, and the fact that it does not involve a policy change.

3. Legislative background

The Welsh Ministers make this instrument in relation to Wales pursuant to powers in section 2(2) European Communities Act 1972. For the purposes of section 2(2), the Welsh Ministers are designated in relation to "wild animals", by virtue of article 2 of the European Communities (Designation) (No. 2) Order 2014.

The Regulations amended the 1981 Act in order to implement, in Great Britain, requirements contained in the Agreement on International Humane Trapping Standards between the European Community, the Government of Canada and the Government of the Russian Federation ("the Agreement"). In doing so, the Regulations also implemented the equivalent standards contained in the bilateral Agreed Minute between the European Community and the United States of

America. The UK, as a Member State, was obliged to implement the trapping standards through domestic legislation.

The amendments in the Regulations replaced section 11(2) of the 1981 Act and prohibited the killing and taking of stoat unless under the authority of the licence. Section 16(3) of the 1981 Act contains the relevant licensing ground, and under section 16(3)(c) it is possible to issue a licence for the purpose of conserving wild animals. However, in this provision, “wild animals” does not include wild birds (see section 27 of the 1981 Act).

The primary purpose for killing and taking stoat in England and Wales is the conservation of ground nesting birds. This instrument inserts a new provision into section 16 of the 1981 Act, which provides that the licensing ground in section 16(3)(c) is be read, insofar as it relates to the killing and taking of stoat prohibited under section11(2), as including the conservation of wild birds.

The Regulations satisfy the UK’s obligation as a Member State to implement the Agreement to raise welfare standards for certain commonly-trapped species. The Regulations prohibit the use of traps for these species that do not meet humaneness standards. Of the 19 species covered by the Agreement, five occur in the wild in parts of the UK (badger, beaver, otter, pine marten and stoat), of which stoat is the only species commonly trapped.

Following the amendments introduced by the Regulations, from 1 April 2020 it will only be possible to lawfully kill or take stoat in England and Wales under the authority of a licence issued under section 16(3) of the 1981 Act. However, it is not possible under that section to issue a licence for the purpose of conserving wild birds, which is the primary purpose for which stoat are controlled. Not controlling stoat for this purpose would have adverse conservation and economic impacts.

This instrument uses the power under section 2(2) of the European Communities Act 1972 to make a further amendment to the 1981 Act to ensure that it is possible to issues licences under section 16(3) permitting the killing and taking of stoat for the purpose of conserving wild birds. This amendment will come into force on 1 April 2020 (the same day as the amendments under the Regulations take effect for stoat), ensuring that there is no impact on current stoat control activities

No change in policy will occur as a result of this instrument. The changes being made are technical in nature in order to ensure that the Regulations function as intended and do not impact on current stoat control activities.

4. Purpose and intended effect of the legislation

This instrument will amend section 16 of the 1981 Act by introducing provision to provide that the licensing ground under section 16(3)(c) relating to the conservation of wild animals, is to be read, insofar as it relates to the killing and taking of stoat prohibited under section 11(2), as including the conservation of wild birds.

The Regulations amended the 1981 Act so as to prohibit, from 1 April 2020, the killing and taking of stoat unless done under the authority of a licence. The amendment introduced by this instrument allows such a licence to be granted for the purpose of conserving wild birds. This is the primary purpose for which stoat are controlled and an inability to control stoat for this purpose would have adverse conservation and economic impacts.

The amendments made by this instrument will ensure that stoat control activities can continue under licence, as intended, once the Regulations take effect in relation to stoat.

5. Consultation

No change in policy will occur as a result of this instrument. The changes being made are technical in nature in order to ensure that the Regulations function as intended and do not impact on current stoat control activities.

Stakeholders' views on the Regulations were captured as part of a six-week, UK-wide consultation and have been taken into account in the development of this instrument. This instrument is consistent with the proposals put forward in that consultation.

6. Regulatory Impact Assessment (RIA)

A Regulatory Impact Assessment has not been prepared for this instrument because it further implements the Agreement by making a minor amendment to the 1981 Act to ensure that amendments introduced by the Regulations operate as intended.

SL(5)451 – The Seeds (Amendment etc.) (Wales) (EU Exit) Regulations 2019

Background and Purpose

Council Directive 2008/90/EC ("the Fruit Directive") prescribes marketing standards for fruit plant propagating material to ensure minimum quality standards and traceability. The Fruit Directive allows a Member State to authorise in respect of their territory the marketing of fruit plant material produced in countries outside the European Union which that Member State considers to have equivalent production standards. The Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017 transposed this provision which was time limited. That limit has been extended to 31 December 2022 by Commission Decision (EU) 2019/120. This instrument accommodates the extension of the EU timeframe relating to the Fruit Directive and makes exit deficiency amendments with regards to references to the European Union.

This instrument makes related amendments to The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019.

Part 2 of this instrument is made in exercise of powers conferred by section 2(2) of the European Communities Act 1972 while Part 3 of this instrument is made in exercise of powers in paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018 ("the 2018 Act"). Part 3 of this instrument comes into force immediately before "exit day", which is defined as 31 October 2019 at 11.00 pm.

Procedure

Affirmative.

Technical Scrutiny

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

Merits Scrutiny

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

The original sift report for this instrument recommended the affirmative procedure be applied in accordance with the criteria set out in Standing Order 21.3C. That report stated also:

"As is noted above, the Commission Decision extended the authority to authorise to 31 December 2022. The present Regulations remove the current time limit (31 December 2018) in regulation 5(4) of the Marketing Regulations rather than replacing it with the new date. It does not, therefore, appropriately implement EU law.

That date may not be relevant if Wales is no longer part of the European Union by then. If so, regulation 3 (which comes into force immediately before exit) could have made an appropriate change. As the purpose of section 2(2) of the 1972 Act, which is relied upon for regulation 2, is to implement EU law, that should be done in a manner that is correct on the date the implementing legislation is made."

We are pleased to note the uplift in procedure in response to the sift report. We note also, contrary to the sift report, the Welsh Government has chosen not to include in the Regulations the new time limit as set out in Commission Implementing Decision (EU) 2019/120. The rationale for the omission is set out in paragraph 2.5 of the Explanatory Memorandum.

Implications arising from exiting the European Union

Save for those set out above, no other implications are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

A government response is not required.

Legal Advisers
Constitutional and Legislative Affairs Committee
October 2019

Draft Regulations laid before the National Assembly for Wales in accordance with section 59(3) of the Government of Wales Act 2006 and paragraph 1(9) of Schedule 7 to the European Union (Withdrawal) Act 2018 for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

EXITING THE EUROPEAN UNION, WALES

SEEDS, WALES

The Seeds (Amendment etc.) (Wales) (EU Exit) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 2 of these Regulations is made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. Regulation 2 amends the Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017 to enable the Welsh Ministers to authorise the marketing of fruit plant and propagating material from countries outside the European Union in certain circumstances.

Part 3 of these Regulations is made in exercise of the powers conferred by the European Union (Withdrawal) Act 2018. Regulation 3 amends the Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019 to ensure that the amendment made by regulation 2 continues to operate effectively after the withdrawal of the United Kingdom from the European Union.

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

Draft Regulations laid before the National Assembly for Wales in accordance with section 59(3) of the Government of Wales Act 2006 and paragraph 1(9) of Schedule 7 to the European Union (Withdrawal) Act 2018 for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

EXITING THE EUROPEAN UNION, WALES

SEEDS, WALES

The Seeds (Amendment etc.) (Wales) (EU Exit) Regulations 2019

Made ***

Coming into force in accordance with regulation 1(2)

The Welsh Ministers make these Regulations in exercise of the powers conferred by—

(a) in relation to Part 1, the powers mentioned in paragraphs (b) and (c);

(b) in relation to Part 2, section 2(2) of the European Communities Act 1972(**1**);

(c) in relation to Part 3, paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018(**2**).

(**1**) 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). It is prospectively repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16) from exit day (see the definition of "exit day" in section 20 of that Act).

(**2**) 2018 c. 16.

The Welsh Ministers are designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to the common agricultural policy(**1**).

The requirement in paragraph 4(a) of Schedule 2 (relating to consultation with the Secretary of State) to the European Union (Withdrawal) Act 2018 has been satisfied.

In accordance with section 59(3) of the Government of Wales Act 2006(**2**) and paragraph 1(9) of Schedule 7 to the European Union (Withdrawal) Act 2018 a draft of this instrument has been laid before the National Assembly for Wales and approved by a resolution of the National Assembly for Wales.

PART 1

Introduction

Title, commencement and application

1.—(1) The title of these Regulations is the Seeds (Amendment etc.) (Wales) (EU Exit) Regulations 2019.

(2) They come into force as follows—

(a) as regards this Part and Part 2, on the day after the day on which these Regulations are made;

(b) as regards Part 3, immediately before exit day.

(3) These Regulations apply in relation to Wales.

PART 2

Marketing of seeds and plant propagating material: amendment of domestic legislation

The Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017

2. In the Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017(**3**), in regulation 5, for paragraphs (3) and (4) substitute—

> "(3) The Welsh Ministers may authorise the marketing of plant material from any country outside the European Union if satisfied that the

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(**1**) S.I. 2010/2690.

(**2**) 2006 c. 32. Section 59(3) was amended by section 20(2)(c) of the Wales Act 2017 (c. 4).

(**3**) S.I. 2017/691 (W. 163), to which there are amendments not relevant to these Regulations.

plant material has been produced under conditions equivalent to the requirements in these Regulations for plant material."

PART 3

Marketing of seeds and plant propagating material: amendment of domestic legislation consequent on the withdrawal of the United Kingdom from the European Union

The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019

3.—(1) The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019(**1**) are amended as follows.

(2) In regulation 5(4), for the words before the inserted text substitute—

"In regulation 5—

(a) in paragraph (3), for "European Union" substitute "United Kingdom";

(b) at the end insert—".

Name
Minister for Environment, Energy and Rural Affairs, one of the Welsh Ministers
Date

(**1**) S.I. 2019/368 (W. 90).

Explanatory Memorandum to: The Seeds (Amendment etc.) (Wales) (EU Exit) Regulations 2019

This Explanatory Memorandum has been prepared by Department for Energy, Planning 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 Seeds (Amendment etc.) (Wales) (EU Exit) Regulations 2019.

I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the Annex to this memorandum.

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs
1 October 2019

PART 1

1. Description

1.1 This instrument makes related amendments to the Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017 and The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019. These Regulations transpose EU legislation and correct operability issues that would arise after Exit.

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

2.1 Part 2 of this instrument is made in exercise of powers conferred by section 2(2) of the European Communities Act 1972 while Part 3 of this instrument is made in exercise of powers in paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018 ("the 2018 Act"). Part 3 of this instrument comes into force immediately before "exit day", which is defined as 31 October 2019 at 11.00 pm.

2.2 It was proposed that the instrument be subject to the negative procedure, as the instrument makes minor and technical changes and as such should be subject to annulment.

2.3 A sifting committee of the Constitutional and Legislative Affairs Committee considered this instrument on 16 September and subsequently recommended that the appropriate procedure for this instrument is the affirmative resolution procedure. A link to the CLA Committee's report can be found at: http://www.senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=25904

2.4 The central point of the Committee's concern appeared to arise from their view that the instrument did not appropriately implement European law. The instrument amends the Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017 to restate the Welsh Ministers' power to authorise the marketing of certain plant materials produced outside the EU and removes the time limit currently attached to the exercise of the power. The Committee's view was that by not inserting the new time limit of 31 December 2022 the instrument did not appropriately implement European law "on the date the implementing legislation is made".

2.5 The Minister for Environment, Energy and Rural Affairs has agreed for the instrument to be uplifted to the affirmative procedure. The Welsh Government's view remains that the instrument appropriately implements European law. The removal of the current time limit for the Welsh Ministers to authorise the marketing of certain plant materials produced outside the EU will ensure the instrument appropriately

implements European law when it comes into force and, all things being equal, that it will continue to appropriately do so until 1 January 2023. The approach adopted is reasonable in light of the regularity of the European and domestic review of plant legislation.

3. Legislative background

3.1 Part 2 of this instrument is made in exercise of powers conferred by section 2(2) of the European Communities Act 1972. Part 3 of this instrument is made in exercise of powers conferred by paragraph 1(1) of Schedule 2 to the 2018 Act in order to address failures of retained EU law to operate effectively due to the withdrawal of the United Kingdom from the European Union.

3.2 In accordance with the requirements of the 2018 Act, the Minister for Environment, Energy and Rural Affairs, Lesley Griffiths has made the relevant statements set out in Part 2 of the Annex to this Explanatory Memorandum.

3.3 This instrument makes amendments which are legally necessary to achieve its objectives. It does not introduce changes of policy and its impact on business or the public is minimal.

4. Purpose and intended effect of the legislation

What did any relevant EU law do before exit day?

4.1 This instrument amends two pieces of domestic legislation:

- The Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017; and
- The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019.

4.2 Council Directive 2008/90/EC ("the Fruit Directive") prescribes marketing standards for fruit plant propagating material to ensure minimum quality standards and traceability. It allows each Member State to authorise in respect of its territory the marketing of planting material produced in countries outside the European Union which the Member State considers to have equivalent production standards. The Directive is transposed, in Wales, by the Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017.

Why is it being changed?

4.3 The Fruit Directive allows a Member State to authorise in respect of their territory the marketing of fruit plant material produced in countries outside the European Union which that Member State considers to have

equivalent production standards. The Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017 transposed this provision which was time limited. That limit has been extended by Commission Decision (EU) 2019/120. This instrument accommodates the extension of the EU timeframe relating to the Fruit Directive and makes exit deficiency amendments with regards to references to the European Union.

What will it now do?

4.4 This instrument will enable the Welsh Ministers to authorise the marketing, in Wales, of fruit plant and propagating material from any country outside of the EU if satisfied the plant material has been produced under conditions equivalent to those required in domestic legislation. The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019 are amended to ensure that the amendment made by Part 2 of this instrument continues to operate effectively after the withdrawal of the United Kingdom from the European Union.

5 Consultation

5.1 As there is no policy change, no public consultation was undertaken. The purpose of the instrument is, in part, to enable the current legislative and policy framework to remain unchanged by the withdrawal of the United Kingdom from the European Union.

6 Guidance

6.1 There is no associated guidance in respect of this instrument.

7 Regulatory Impact Assessment (RIA)

7.1 The impact on business, charities or voluntary bodies is minimal.

8 Monitoring & review

8.1 The amendment made by Part 2 of this instrument will be kept under review.

Annex
Statements under the European Union (Withdrawal) Act 2018
Part 1
Table of Statements under the 2018 Act

This table sets out the statements that may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28,	Applies to Ministers of the Crown exercising	A statement to explain the instrument, identify the relevant

	Schedule 7	powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g. whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority	A statement to explain why it is appropriate to create such a sub-delegated power.
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.

Part 2

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

1. Sifting statement

1.1 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

> "In my view The Seeds (Amendment etc.) (Wales) (EU Exit) Regulations 2019 should be subject to a resolution of the National Assembly for Wales (i.e. the affirmative procedure)". This follows on from a recommendation of a sifting committee of the Constitutional and Legislative Affairs Committee which considered this instrument on 16 September and subsequently recommended that the appropriate procedure for this instrument is the affirmative procedure. It should be noted that the changes being made by the instrument are technical in nature and introduce no policy changes to how the Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017 and The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019 operate.

2. Appropriateness statement

2.1 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

> "In my view The Seeds (Amendment etc.) (Wales) (EU Exit) Regulations 2019 do no more than is appropriate". This is the case because all the changes being made under the 2018 Act powers are solely in order to address deficiencies arising from EU exit."

3. Good reasons

3.1 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

> "In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action". This is because the provisions made under the 2018 Act powers ensure that powers set out in domestic legislation continue to be fully operable after the UK leaves the European Union.

4. Equalities

4.1 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement(s):

> "The Seeds (Amendment etc.) (Wales) (EU Exit) Regulations 2019 do not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts."

4.2 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

> "In relation to the instrument, I, Lesley Griffiths have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010."

Little or no impact on equalities is expected.

5. Explanations

5.1 The explanations statement has been made in paragraph 4 (Purpose & intended effect of the legislation) of the main body of this explanatory memorandum.

6. Criminal offences

Not applicable / required.

7. Legislative sub-delegation

Not applicable / required.

8. Urgency

Not applicable / required.

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

Llywodraeth Cymru
Welsh Government

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

8 October 2019

Dear Mick,

I am writing to inform you, as per the inter-institutional relations agreement, that on 10 October 2019, I will attend the Joint Ministerial Committee (EU Negotiations).

The meeting will discuss Exit Readiness, EU negotiations and the common frameworks.

I will explain our view that faced by a choice between a no deal Brexit and remaining in the EU, we will campaign to remain and that we believe a referendum is now needed to resolve the impasse. I will be pressing the UK Government for details of any discussions between the UK Government and the EU on the latest proposals and the next steps for either agreeing a deal or seeking an extension to the article 50 process as set out in legislation if a deal is not agreed.

In terms of readiness, I have always been clear that a 'no deal' would be catastrophic for Wales and the whole of the UK. As long as the risk of no deal remains, the Welsh Government will continue to do all that we can to prepare. Our Action Plan, published on 16 September, sets out a set of strategic risks which may arise if we leave without a deal, and the actions we are taking to try and mitigate these impacts. But I will again underline that it is simply not possible to mitigate all of the consequences.

I would also reinforce the importance of the UK Government not only sharing information with us, but engaging with us in a meaningful, rather than superficial way. We will also need them to make available additional funding to support the range of actions to prepare for, and mitigate the impacts of a no deal Brexit.

I will continue to call for the devolved administrations to be represented in UK negotiating teams and stress our commitment to ensure that UK negotiating positions should not normally be advanced with the EU without the agreement of the Devolved Administrations for those matters within our competence. Furthermore I will press the need for rapid progress of the Dunlop review.

I will reaffirm the central role to be played by the common frameworks and the expectation that all of the Frameworks will be completed by the end of 2020.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
PSCGBM@gov.wales/YPCCGB@llyw.cymru

I am copying this letter to the Chair of the External Affairs and Additional Legislation Committee (EAAL).

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

Agenda Item 6

Document is Restricted

Document is Restricted

Cynulliad Cenedlaethol Cymru Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol Y newid yng nghyfansoddiad Cymru	National Assembly for Wales Constitutional and Legislative Affairs Committee Wales' changing constitution
CLA(5) WCC 01 Tystiolaeth gan Arglwydd Dr Andrew Blick	Evidence from Dr Andrew Blick

This inquiry by the Constitutional and Legislative Affairs Committee ('the Committee') is extremely timely. I have held back my brief written submission – sent in advance of my participation in a session with the Committee on 14 October – so that it can best reflect the most recent developments in the political and constitutional affairs of the UK and its component elements.

My principal expertise lies in the assessment of the key features of the UK constitution, the interaction between them, the form they take, and how they are changing, from an historical and contemporary perspective. Taking into account current circumstances, and what they suggest about how the fundamental arrangements of the UK political system might be developing, I make some observations and recommendations regarding possible reforms, how they might be attained, and the part that Wales and its governmental institutions could play in promoting them. In this sense I address the part of the Committee call for evidence that refers to:

- 'any other matters relating to the UK's constitutional arrangements post Brexit including constitutional reform.'

Even before the present UK Prime Minister took office, it was becoming apparent that the existing means of managing the UK constitution – chiefly conventions and Acts of Parliament – were far from satisfactory from the point of view of the devolved legislatures and executives, both in in the specific context of Brexit and generally. The Joint Ministerial Committee has failed to provide an adequate means of engaging them in the formulation of policy that is of great significance to them. Furthermore the UK government and Parliament have proved willing to press ahead with passing a major Act of Parliament, notwithstanding the express denial of consent to it by a devolved legislature (the *European Union (Withdrawal) Act 2018*). Moreover, it appears the UK Supreme Court, while it may be disposed to protect the position of the Westminster Parliament with respect to encroachments from the UK executive, has not proved as assertive on behalf of the devolved institutions.

These revelations are ominous. Regardless of the precise way in which the Brexit episode plays out over coming months and years, it has helped to reveal the vulnerability of the devolved components of the UK system. If the UK does not leave the EU, and if a UK government takes office that is more committed to respecting the delicate territorial balance of the UK, the weaknesses highlighted

in the period since 23 June 2016 will need attention. But another – certainly equally plausible – scenario is one in which the UK leaves the EU, with or without a deal. In this circumstance, the UK might find itself under a government, with a majority in the House of Commons, that makes a positive virtue of disregard for constitutional norms and restrictions on its freedom of manoeuvre. It would place a premium on securing trade agreements with various economies around the world. In such a circumstance, UK ministers would presumably attach little importance to the priorities of the Welsh legislature and government, or their counterparts at devolved level, as regards the contents of those deals. That UK government might seek to force through the legislative consequentials of such agreements, whether they fell within devolved spheres of operation or not. Little help in this regard would be on offer from the existing convention and statute-based UK constitutional system. We should also recognise that a UK government of the type envisaged here might develop policy agendas in other areas – such as the legal status of the European Convention on Human Rights – that were problematic from a devolved perspective. Once again, constitutional safeguards against such interventions might prove weak.

I have long argued – including in my work for the Federal Trust for Education and Research – in favour of the introduction of a fully federal system for the UK, in which the respective rights of the 'federal' and 'state' tiers of governance are set out in a written constitution. Under such a system, in the case of disputes, the courts would be required to recognise the entrenched status of what are now the 'devolved' institutions, interpreting and applying a text that took precedence over all other players in the system, including the UK executive and legislature. Even an Act of Parliament could no longer unilaterally alter the constitutional framework. Changes to the written constitution would require adherence to an heightened amendment procedure, probably involving agreement from all or at least a majority of the components of the federation. A federal system would not only protect the spheres of operation of the devolved or 'state' tier. It would provide the territorial systems of the UK with a clearly defined and judicially enforceable role in the making of decisions that effected the UK as a whole, such as major constitutional changes or entry into international agreements. This principle could be achieved through a federal chamber of the UK Parliament, or federal council of some kind.

A federal constitution could therefore ensure that policies were developed and decisions were taken in a more consensual way, and territories were not simply presented with outcomes to be implemented (or resisted). A UK government planning to hold a referendum, for instance, would require approval from the states, before it could do so. It would also know that it would be likely that it could only implement that referendum result with the consent of the states (depending on the precise subject matter of the referendum). When devising mandates for trade negotiations, it would need to take into account that any agreement reached would require support from the states. Their priorities would necessarily be taken seriously from the outset.

I recognise that this arrangement raises many complicated details requiring attention, but that it is not appropriate to discuss them in full here. One particularly complex issue would be the place for England within this arrangement. I am clear that England could not form a single unit within a UK federation. I note that a process of limited devolution to newly-created directly-elected mayors of combined local authorities (and to Cornwall as a unitary council) has been underway in the UK since the middle of the present decade (and that it has not required approval via referendums). Whatever the merits or deficiencies of this particular model, it may have marked the instigation of a set of regional entities that could form part of a UK federation at some point in the future. But difficulties in handling the position of England within a federation should not be sufficient reason for denying the other components of the UK a proper place within the governance of the UK. It is for England to find a way of incorporating itself into the federation, rather than allowing its anomalous position to deprive the other parts of the UK of a proper constitutional place within it.

Though events may be making the case for a federal UK, achieving this outcome while an administration holds office at UK level that is hostile to the values it would embody would clearly be a difficult task. This dilemma presents some opportunities. Wales could, if it wished, take a lead. Continuing to engage with the UK government in the hope of securing concessions and better treatment does not seem a worthwhile course of action. Lessons could be drawn from the brief period during which the Welsh and Scottish executives cooperated in resisting the initial proposals for inclusion in what became the *European Union (Withdrawal) Act 2018*. This kind of joint action has more political traction than any one institution acting alone. Admittedly, the objectives of the Scottish government may differ from those of the Welsh. However, it is worth seeking to establish common cause if possible. Moreover, Wales could seek to become a convenor for the many points of democratic legitimacy across the UK – such as the English directly elected mayors – who may be opposed to various aspects of the current stance of the UK government.

A convention of such bodies to agree a set of principles and objectives might be able to achieve significant impact. To hold it in Cardiff, or indeed some other part of Wales, would seem entirely suitable. Having agreed a basic programme, a next logical step would be for a group of randomly chosen members of the public to take a view on it, and other issues it might wish to consider. I understand such a body has been used recently in Wales, along with many other parts of the UK and around the world. I am currently engaged in a pilot project, supported by the Joseph Rowntree Charitable Trust, the Joseph Rowntree Reform Trust, and the Open Society Foundation, to design a 'Citizens' Convention on UK Democracy'.[1]

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[1] Interim report, *Citizens' Convention on UK Democracy: A User's Manual*, available here: < https://www.kcl.ac.uk/political-economy/assets/uk-citizens-convention-v6-fa-lrs.pdf >, last accessed 2 October 2019.

The project has been endorsed by senior MPs from four parliamentary parties (and one who no longer has a party): Caroline Lucas, Vince Cable, Tom Watson, David Davies and Dominic Grieve. A firm political initiative, that Wales might seek to instigate, could ensure that the design work was put into practice. While it would be empowered to reach its own conclusions, it might be a means of finally taking steps towards a federal UK.

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National Assembly for Wales
Constitutional and Legislative Affairs Committee
Wales' changing constitution

CLA(5) WCC 02
Tystiolaeth gan Jo Hunt a Hedydd Phylip

Evidence from Jo Hunt and Hedydd Phylip

The current scope and application of the Sewel convention in the context of the process of leaving the EU:

1. As a consequence of the continuing sovereignty of Westminster Parliament, the legislative competence held by the National Assembly for Wales is, in effect, concurrent competence. As a matter of law, the National Assembly has no exclusive areas of competence that it alone holds.

2. The exercise of this concurrent, overlapping competence is subject to a self-limiting edict from the Westminster Parliament, that it will not normally legislate on devolved matters without the consent of the National Assembly. This is referred to as the Sewel Convention, which operates through the Legislative Consent procedure. In practice, the Westminster Parliament has operated as though there is a presumption in favour of the devolved institutions exercising their devolved powers – a 'devolution first' approach.

3. The current scope of the Sewel Convention can be determined by reference to a range of different legal and extra-legal sources, including Acts of Parliament (for Wales, GOWA 107(6)), in case law (especially the Supreme Court judgment in Miller 2017), in Standing Orders, the 2013 Memorandum of Understanding between the UK, Welsh, Scottish and Northern Irish governments, the Devolution Guidance Notes, and finally in the working practices of the parties involved.

4. Despite earlier uncertainty, there is now a strong basis to assert that the Sewel convention's scope engages both proposed Westminster legislation on matters which could be legislated on by the National Assembly for Wales as well as Westminster legislation which amends the scope of devolved legislative or executive competence. This broader definition is not excluded by the language used in the legislation (which refers to 'devolved matters'), and reflects the practice of the both the devolved legislatures and executives, and the UK government. This wider practice was observed by the Supreme Court in Miller: 'devolved legislatures have passed legislative consent motions not only when the UK Parliament has legislated on matters which fall within the legislative competence of a devolved legislature, but also when the UK Parliament has enacted provisions that directly alter the legislative competence of a devolved legislature or amend the executive competence of devolved administrations' (at para 137).

5. As McHarg (2018) demonstrates, the Sewel Convention/legislative consent procedure operates both facilitatively, as well as defensively. The facilitative dimension is reflected in Lady Hale's depiction of the convention in Miller: 'The convention was adopted as a means of establishing cooperative relationships between the UK Parliament and the devolved institutions' (at para 136). Elliot (2015) meanwhile has defined the Sewel Convention as having the purpose of ensuring respect for devolved autonomy.

6. The convention might be perceived as being particularly ill-equipped to meet the more defensive objective of protecting the sphere of devolved competence. However, it should be acknowledged that the concept of a sphere of autonomous competence is itself a political construct. There is no autonomous, exclusive field of de jure devolved legislative competence to protect. As a political convention, protecting a political construct of 'autonomous' legislative competence, it has proved remarkably robust. A hardening towards exclusive legal spheres of competence held by the different legislatures would demand a set of legal protections. Absent such a move, maintaining Sewel as a politically enforceable constitutional convention continues to appear appropriate.

7. The presumption against Westminster legislating on devolved matters without consent has generally operated effectively. However, the willingness of Westminster to afford the devolved legislatures their de facto autonomous spheres of activity may have been the product of a relatively settled form of multi-level governance that devolution developed within. The process of leaving the EU will dramatically increase the need for effective interaction between the different parliaments and governments of the UK, and destabilise the existing generally hands-off approach from Westminster and Whitehall given the need to replace the governance structures and policies previously provided by the EU.

8. In view of this, some additional elements to the Sewel Convention might be proposed which strengthen the position of the devolved legislatures, whilst reflecting the collaborative demands of sustaining the UK union. The convention might continue to provide that Westminster will not normally legislate for Wales in devolved matters, except with consent. 'Normal', in the post-exit context, would come to mean greater collaboration, joint-working and potentially, a coordinated legislative approach, between the four partner legislatures and governments. However, if the Westminster Parliament wishes to legislate for the UK as a whole, then it should be required to justify why a UK-wide approach is necessary, drawing on understandings of subsidiarity gained over the last 25+ years of EU activity. The need for a UK wide approach may be contested, and if the agreement of the affected legislatures cannot be gained, the dispute will come before a newly constituted UK-wide Council of Ministers, developed from the JMC, for determination.

9. The Intergovernmental Agreement reached between the Welsh and UK Governments in April 2018 unlocked the door to legislative consent being forthcoming from the Assembly for the EU (Withdrawal) Act 2018, and it also introduced a consent requirement into UK government's use of secondary instruments operating across devolved matters. In addition to the procedure to be followed in adopting 'freezing' regulations under section12 EUWA, sections 8 and 9 EUWA provide UK ministers with regulation-making powers to correct deficiencies and to introduce the Withdrawal Agreement. The procedure for s. 12 'consent decisions' (which may be overridden) is set out in the EUWA and in GOWA, though the consent requirements relating to s. 8 and 9 are not on the face of the legislation. Neither is the agreement (in the MoU, para. 8) that these powers will not be used to enact new policy in devolved areas but are primarily to be used for administrative efficiency. Further, none of these developments are reflected in the Devolution Guidance Note, which was updated to reflect the Wales Act changes of 2017, but before agreement was reached on the Withdrawal Act. For example, whilst there is reference in DGN Part 5 to Assembly consent normally being required for UK government secondary legislation which amends primary legislation within devolved competence (reflecting the 2013 change to SOs), it then states that 'there are however some exceptions to this general rule: for example, ….several Bills relating to EU exit would enable UK Ministers to makes SIs modifying Assembly legislation without the need for formal consent by the Assembly'. This does not reflect the position under the IGA, and clearly needs updating.

10. As Mullen and Hunt (2019) highlight in their report for the Scottish Parliament on the impact of Brexit legislation on devolved competence, the EU (Withdrawal) Act 2018 is not the only piece of actual and proposed Brexit related legislation which contains regulation-making powers for UK Ministers in devolved areas with the potential to restrict devolved policy options. Whilst commitments as to the use of these powers, and guarantees about the involvement of the devolved administrations in their exercise have been made by the UK government, this has tended not to be on the face of the legislation. A heavy emphasis has been placed on the role of intergovernmental agreements and memoranda of understanding accompanying the legislation to take these commitments forward. This soft form of policy instrument comes with concerns about its transparency, robustness and the strength of its guarantees. As there is expected to be an increase in the volume and significance of MoU as a tool of creating common frameworks, a more systematic approach is required in terms of the accessibility of these texts to ensure governments can be held accountable to the commitments made in them.

The implications of new levels of UK governance as a result of Brexit on the Welsh devolution settlement:

11. As noted above, the governance framework provided by EU membership will be dismantled as the UK leaves the EU. There has been general agreement that the new UK wide common frameworks will be required. Though it was expected that the sequencing of events would see adoption of freezing regulations under s. 12 EUWA 2018 and the subsequent determination of new frameworks- this has not been the way things have proceeded to date. Instead, frameworks are emerging through the ongoing process of readying the statute book for exit through s. 8 statutory instruments. The UK Government's Frameworks analysis update of 4 April 2019 notes that in 78 areas, non-legislative Frameworks will be 'common rules or ways of working will be needed' and that 'in some of these areas, consistent fixes to retained EU law (made using secondary legislation) will create a unified body of UK law alongside the non-legislative framework agreement'. It also notes that 'it is envisaged that the fixes to EU law, being put in place under the EU (Withdrawal) Act, may provide the basis for interim or longer-term framework arrangements, depending on the outcome of negotiations with the EU'. In practice, this means that the National Assembly for Wales may have already scrutinised EU Exit SIs, without being fully aware of their place within the broader Frameworks context.

12. The development of legislative and non-legislative common frameworks is being driven by a bottom-up approach through inter-governmental negotiations between government officials. The nature of such inter-governmental working makes the scrutiny of progress by the legislatures difficult

13. As the CLA Committee moves to consider the prospective scrutiny of Common Frameworks, it may feel it appropriate to obtain an explanatory memorandum from the Welsh Government, tabled at the same time as the Common Framework that contains the breadth of both primary and secondary legislation caught within the scope of the Framework. This would allow the Assembly to be fully aware of the practical implications of any Framework on the ability of the Assembly to amend legislation falling within it. Such an explanatory memorandum could, should the CLA Committee see fit, include an indication of any other Common Framework envisaged or operational in the same policy area, so that the Committee may have a fuller picture of where competence lies in relation to any given policy area.

14. It is likely that other UK legislatures will face similar challenges in the scrutiny of Common Frameworks, as such the importance and usefulness of fora such as the Interparliamentary Forum on Brexit is likely to increase, not least in its capacity as an information-sharing forum. With the increase in inter-governmental activity, there could also be scope for enhancing interparliamentary relations.

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