Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:
Committee Room 1 – Senedd
Meeting date: 21 October 2019
Meeting time: 11.30

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

11.30

2 The National Health Service (Indemnities) (Wales) Bill: Evidence session

11.30–12.00 (Pages 1 – 13)

Vaughan Gething, Minister for Health and Social Services
Frances Duffy, Director, Primary Care & Health Science, Welsh Government
Sarah Tyler, Lawyer, Welsh Government

CLA(5)-29-19 – Briefing 1
CLA(5)-29-19 – Paper 1 – Letter from the Minister for Health and Social Services to the Chair of the Health, Social Care and Sport Committee, 14 October 2019

National Health Service (Indemnities) (Wales) Bill, as introduced
Explanatory Memorandum

3 Wild Animals and Circuses (Wales) Bill: Evidence session

12.00–13.00 (Pages 14 – 25)

Lesley Griffiths, Minister for Environment, Energy and Rural Affairs
Jackie Price, Senior Responsible Officer – Circus Bill, Welsh Government
Richard Lewis, Lawyer, Welsh Government Legal Services Department
Tom Henderson, Senior Bill Manager – Circus Bill, Welsh Government

CLA(5)-29-19 – Briefing 2

CLA(5)-29-19 – Paper 2 – Letter from the Minister for Environment, Energy and Rural Affairs to the Chair of the Climate Change, Environment and Rural Affairs Committee, 8 July 2019

CLA(5)-29-19 – Paper 3 – Letter from the Minister for Environment, Energy and Rural Affairs to the Llywydd, 12 August 2019

Wild Animals and Circuses (Wales) Bill, as introduced

Explanatory Memorandum

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

13.00–13.05 (Pages 26 – 27)

CLA(5)-29-19 – Paper 4 – Statutory instruments with clear reports

Negative Resolution Instruments

4.1 **SL(5)455 – The National Health Service (Amendments Relating to Serious Shortage Protocols) (Wales) Regulations 2019**

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

13.05–13.10

Negative Resolution Instruments

5.1 **SL(5)453 – The M4 Motorway (Rogiet Toll Plaza, Monmouthshire) (50 MPH Speed Limit) Regulations 2010 (Revocation) Regulations 2019**

(Pages 28 – 36)

CLA(5)-29-19 – Paper 5 – Report

CLA(5)-29-19 – Paper 6 – Regulations

CLA(5)-29-19 – Paper 7 – Explanatory Memorandum

5.2 **SL(5)454 – The Genetically Modified Organisms (Deliberate Release) (Amendment) (Wales) Regulations 2019**

(Pages 37 – 58)

CLA(5)-29-19 – Paper 8 – Report

CLA(5)-29-19 – Paper 9 – Regulations

CLA(5)-29-19 – Paper 10 – Explanatory Memorandum

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

13.10–13.15

Negative Resolution Instruments

6.1 SL(5)456 – The Sea Fishing (Miscellaneous Amendments) (Wales) Regulations 2019

(Pages 59 – 66)

CLA(5)-29-19 – Paper 11 – Report

CLA(5)-29-19 – Paper 12 – Regulations

CLA(5)-29-19 – Paper 13 – Explanatory Memorandum

7 Instruments that raise issues to be reported to the Assembly under Standing Order 21.7

13.15–13.20

7.1 C(5)035 – The Legislation (Wales) Act 2019 (Commencement) Order 2019

(Pages 67 – 70)

CLA(5)-29-19 – Paper 14 – Report

CLA(5)-29-19 – Paper 15 – Order

8 Written statements under Standing Order 30C

13.20–13.25

8.1 WS-30C(5)153 – The Food and Drink (Amendment) (EU Exit) Regulations 2019

(Pages 71 – 74)

CLA(5)-29-19 – Paper 16 – Written statement

CLA(5)-29-19 – Paper 17 – Commentary

8.2 **WS-30C(5)154 - The Common Fisheries Policy and Animals (Amendment etc.) (EU Exit) Regulations 2019**

(Pages 75 - 81)

CLA(5)-29-19 - Paper 18 - Written statement

CLA(5)-29-19 - Paper 19 - Commentary

9 Statutory Instruments requiring Assembly consent (Statutory Instrument Consent Memorandums)

13.25-13.30

9.1 **SICM(5)26 - The Pesticides (Amendment) Regulations 2019**

(Pages 82 - 89)

CLA(5)-29-19 - Paper 20 - Statutory Instrument Consent Memorandum

CLA(5)-29-19 - Paper 21 - Explanatory Memorandum

CLA(5)-29-19 - Paper 22 - Legal advice note

10 Paper(s) to note

13.30-13.35

10.1 **Letter from the First Minister: New policy document - Reforming our Union**

(Pages 90 - 117)

CLA(5)-29-19 - Paper 23 - Letter from the First Minister, 10 October 2019

10.2 **Letter from the Minister for Environment, Energy and Rural Affairs: Quadrilateral meeting with the Secretary of State for Business, Energy and Industrial Strategy**

(Pages 118 - 119)

CLA(5)-29-19 - Paper 24 - Letter from the Minister for Environment, Energy and Rural Affairs, 11 October 2019

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

13.35

12 The National Health Service (Indemnities) (Wales) Bill: Consideration of evidence

13.35-13.45

13 Wild Animals and Circuses (Wales) Bill: Consideration of evidence

13.45–13.55

14 Wales' Changing Constitution: Consideration of evidence received to date

13.55–14.05 (Pages 120 – 122)

CLA(5)-29-19 – Paper 25 – Written evidence

15 Update on Brexit

14.05–14.10

16 Welsh Government consultation – The future of Welsh law: classification, consolidation, codification

14.10–14.15 (Page 123)

CLA(5)-29-19 – Paper 26 – Welsh Government written statement

Date of the next meeting – 4 November

Agenda Item 2

Document is Restricted

Vaughan Gething AC/AM
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

Llywodraeth Cymru
Welsh Government

Dr Dai Lloyd AM
Chair
Health, Social Care and Sport Committee
National Assembly for Wales
Ty Hywel
Cardiff Bay
Cardiff
CF99 1NA

14 October 2019

Dear Dai,

National Health Service (Indemnities) (Wales) Bill

Following the introduction of the National Health Service (Indemnities) (Wales) Bill into the National Assembly for Wales on 14 October 2019, please find attached a copy of the statement of policy intent. This document is provided to support the Committee's scrutiny of the Bill.

I look forward to providing evidence to the Committee in due course.

I am copying this letter to the Chair of the Constitutional and Legislative Affairs Committee.

Yours sincerely,

Vaughan Gething AC/AM
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

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Llywodraeth Cymru
Welsh Government

National Health Service (Indemnities) (Wales) BILL

Statement of Policy Intent for Subordinate Legislation to be made under this Bill

14 October 2019

NATIONAL HEALTH SERVICE (INDEMNITIES) (WALES) BILL

STATEMENT OF POLICY INTENT FOR SUBORDINATE LEGISLATION

1. This document provides an indication of the current policy intention for the subordinate legislation that the Welsh Ministers would be empowered to make by virtue of the amendments made to section 30 of the NHS (Wales) Act 2006 ("the 2006 Act") by the National Health Service (Indemnities) (Wales) Bill ("the Bill"). It has been prepared in order to assist committees during the scrutiny of the Bill and should be read in conjunction with the Bill, the Explanatory Memorandum and Explanatory Notes that accompany it.

   Section 30 of the NHS (Wales) Act 2006, as amended by Section 1 of the Bill

2. The primary purpose of the Bill is to amend section 30 of the 2006 Act.

3. Section 30, subsection (1) of the 2006 Act provides the Welsh Ministers with the power to make regulations to establish schemes whereby a body specified in subsection (2) may make provision to meet expenses arising from loss or damage to property, or third party liabilities for loss, damage or injury arising out of the carrying out of functions of the body which is providing the scheme. The Bill inserts the definition "mutual indemnity scheme" into subsection (1) of section 30 of the 2006 Act to cover those schemes where several health service bodies meet their expenses and liabilities by combining resources in a collective fund.

4. The Bill will amend section 30 subsection (2) so as to expand the bodies which may be included in schemes set up under section 30 of the 2006 Act. The additional bodies inserted into section 30(2) include those persons who are providing or have provided primary medical services in Wales in accordance with an arrangement pursuant to the 2006 Act, as well as bodies who is providing, or arranging the provision of, or who has provided or arranged the provision of, services provided as part of the health service (section 1(3) of the Bill inserts new paragraphs (f) and (g) into subsection (2)).

5. Subsection (8) of section 1 of the Bill inserts new subsections (8) to (11) into section 30 of the 2006 Act conferring subordinate legislation making powers on the Welsh Ministers and setting the parameters within which the Welsh Ministers may exercise those powers.

6. New subsection (8) of section 30 of the 2006 Act creates a power for the Welsh Ministers to establish, by regulations, a scheme under which they may directly indemnify bodies listed in subsection 2 (i.e. where the scheme does not involve mutual pooling of contributions in order to cover the future liabilities of its members). The Bill names these type of schemes, "direct indemnity schemes".

7. By virtue of new subsection (8) of section 30 of the 2006 Act, direct indemnity schemes may only indemnify those bodies listed in subsection (2) of section 30 (as amended by section 1(3)(c) of the Bill) for expenses arising from loss or damage to their property, or to meet liabilities to third parties for loss, damage or injury arising out of those bodies carrying out their functions.

8. New subsection (9) of section 30 of the 2006 Act provides a non-exhaustive list of what regulations establishing a direct indemnity scheme may prescribe, for example, who is an eligible person and what liabilities are covered by the scheme.

Existing Liabilities Scheme

9. On 14th May 2018, the then Cabinet Secretary for Health and Social Services announced that the Welsh Government would introduce a state backed scheme to provide clinical negligence indemnity cover for providers of GP services in Wales.

10. One element of that scheme involves the Welsh Government agreeing to assume responsibility to consider covering liabilities for historic clinical negligence claims against GPs who were members of a Medical Defence Organisation which had either been reported, or which had been incurred but not reported, prior to 1 April 2019 in exchange for a proportion of the Medical Defence Organisations' assets. This is called an Existing Liabilities Scheme (ELS).

11. Upon the Bill receiving Royal Assent, the Welsh Ministers anticipate using the power in section 30 of the 2006 Act (as amended) to make the regulations necessary to underpin the ELS. These regulations would set the parameters within which the Welsh Ministers will deal with claims for historic clinical negligence that have either been reported, or incurred but not reported, prior to 1 April 2019 to an MDO with whom they have reached agreement ('a participating MDO').

Content of ELS Regulations

12. ELS regulations will need to establish a direct indemnity scheme setting out how the Welsh Ministers will consider indemnifying clinical negligence claims made against a GP as a result of negligence that occurred prior to 1 April 2019 (the ELS).

13. Any indemnity provided under the ELS would need to cover the clinical negligence liabilities of GPs (and others working in a general practice setting) reported, or incurred but not reported, prior to 1 April 2019 in connection with the provision of NHS services provided by general practice and at a time when a policy of indemnity cover with a participating MDO was in existence.

14. The ELS is anticipated to apply from 1 April 2020 in respect of eligible liabilities that are within scope. This means that, from that date, GPs and others who provided NHS services in a general practice setting and who held indemnity cover with a participating MDO will be indemnified under the ELS in relation to eligible liabilities. Currently, it is thought unlikely that there would be any membership requirements or other formal processes that would need to be completed for an indemnity under the ELS to apply.

15. The ELS would be an ‘occurrence-based’ scheme which means that, even if a person is no longer practising or working in general practice, liabilities incurred whilst they were practising and held a policy for professional indemnity cover with a participating MDO will be covered.

16. The regulations would need to make provision defining ‘eligible persons’ and ‘eligible liabilities’. The regulations would need to specify the liabilities covered under the ELS. These would relate primarily to clinical negligence liabilities arising from a breach of a duty of care owed to a third party by an eligible person in connection with NHS activities that are within the scope of the ELS.

17. The main NHS services likely to be within the scope of the ELS are primary medical services that would have been provided under contractual arrangements and agreements made under Part 4 of the National Health Service (Wales) Act 2006 or predecessor legislation.

18. The ELS is also likely to cover clinical negligence liabilities incurred in respect of other NHS services provided by general practice, but only if a provider’s principal activity at the time was to provide primary medical services. Where that is the case, the intention is for the ELS to cover GPs and others in the GP practice who were carrying out activities in connection with the provision of NHS services. Such cover would extend to historic clinical negligence liabilities arising from those activities, provided the GP practice held indemnity cover with a participating MDO at the time of the incident.

19. The ELS regulations will need to set out how any payments would be made out of the scheme, including specifying the circumstances in which no payment would be made under the ELS.

20. The regulations are also likely to include provisions to enable the Welsh Ministers to require the provision of information and assistance to the Welsh Ministers for the purposes of the ELS, as well as creating a duty upon the Welsh Ministers to make information available about directions or guidance given by the Welsh Ministers for the purposes of the ELS.

Timing of Regulations

21. Section 2(2) of the Bill provides that the Bill will come into force on the day after the day on which the Bill receives Royal Assent.

22. It is intended that ELS regulations will be made and laid before the Assembly upon the Bill becoming an Act, coming into force on 1 April 2020. This will ensure the Welsh Ministers safeguard the continuity of professional indemnity cover for historic liabilities of GPs at the earliest possible opportunity, whilst ensuring that the delivery of ELS regulations is aligned with the English scheme as soon as is reasonably possible given the need for primary legislation. Additionally it enables the ELS regulations to come into force on 1 April 2020 in line with potential ELS contractual arrangements which are currently subject to ongoing negotiation.

Consultation on subordinate legislation

23. The Welsh Government consults on the content of subordinate legislation when it considers it appropriate to do so. Whether there is a need to consult and if so the precise nature and extent of any consultation, in relation to exercising the powers to make subordinate legislation pursuant to the 2006 Act as a result of the amendments made by the Bill, will be decided at the appropriate time.

Document is Restricted

Lesley Griffiths AC/AM
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA-L/LG/0489/19

Mike Hedges AM
Chair
Climate Change, Environment and Rural Affairs Committee
National Assembly for Wales
Ty Hywel
Cardiff Bay
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8 July 2019

Wild Animals and Circuses (Wales) Bill

Following the introduction of the Wild Animals and Circuses (Wales) Bill into the National Assembly for Wales on 8 July 2019, please find attached a copy of the Statement of Policy Intent on the powers to make subordinate legislation under the Bill. This document is provided to support the Committee's scrutiny of the Bill.

I look forward to providing evidence to the Committee in due course.

I am copying this letter to the Chair of the Constitutional and Legislative Affairs Committee.

Regards,

Lesley Griffiths

Lesley Griffiths AC/AM
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

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Wild Animals and Circuses (Wales) Bill

Statement of Policy Intent for Subordinate Legislation

Subordinate Legislation

The powers to make subordinate legislation in the Bill are discretionary, and there are no plans to use these powers immediately. Draft regulations have therefore not been prepared; instead the information below is intended to explain how the powers are to be used (at the relevant time).

Section 3: Meaning of "wild animal"

In the Bill, a "wild animal" means an animal of a kind that is not commonly domesticated in the British Islands. It is possible there may be uncertainty or conflicting views regarding whether a kind of animal is to be considered wild or not. Welsh Ministers may, by regulations, specify a kind of animal (a) that is to be regarded as a wild animal, and/or (b) that is not to be regarded as a wild animal. However, the power to make regulations is without prejudice to the generality of the definition of wild animal in the Bill. This power does not require Welsh Ministers to list, in legislation, all wild animals.

Section 4: Meaning of "travelling circus"

In the Bill, a "travelling circus" means a circus which travels from one place to another for the purpose of providing entertainment at those places, despite there being periods during which it does not travel from one place to another. It is possible that there may be cases where there may be uncertainty or conflicting views regarding whether a type of undertaking, act or entertainment is or is not regarded as a travelling circus. Welsh Ministers may, by regulations, specify a type of undertaking, act or entertainment (a) that is to be regarded as a travelling circus, and/or (b) that is not to be regarded as a travelling circus. However, the power to make regulations is without prejudice to the generality of the definition of travelling circus in the Bill. This power does not require Welsh Ministers to list, in legislation, all types of undertakings, acts or entertainment which are, or are not, to be regarded as a travelling circus.

Section 11: Regulations

Regulations under the Act are to be made by the Welsh Ministers. A power to make regulations is exercisable by statutory instrument, and includes power to make different provision for different purposes. A statutory instrument containing regulations may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Assembly.

Consultation on subordinate legislation

The Welsh Government consults on the content of subordinate legislation when it considers it appropriate to do so. The precise nature of any consultation in relation to

exercising the powers to make subordinate legislation would be decided at the appropriate time.

Regulatory Impact Assessment

The analysis presented in the Regulatory Impact Assessment (RIA) is based on the current, widely accepted definitions for “wild animals” and “travelling circuses”. Any future subordinate legislation to specify a kind of animal (a) that is to be regarded as a wild animal, and/or (b) that is not to be regarded as a wild animal, or to specify a type of undertaking, act or entertainment (a) that is to be regarded as a travelling circus, and/or (b) that is not to be regarded as a travelling circus, will be accompanied by an RIA. No need for such legislation is currently envisaged and at this stage the best estimate of the costs associated with any subordinated legislation is therefore zero.

Procedure

Making Regulations to determine what is or is not a wild animal or to specify a type of undertaking, act or entertainment that is or is not to be regarded as a travelling circus will have a bearing on the offence, and therefore would require the Assembly to explicitly approve them before they become law (through the ‘affirmative procedure’).

Lesley Griffiths AC/AM
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

Llywodraeth Cymru
Welsh Government

Elin Jones, AM
Llywydd
National Assembly for Wales
Cardiff Bay
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12 August 2019

Annwyl Elin,

WILD ANIMALS AND CIRCUSES (WALES) BILL

I introduced the Wild Animals and Circuses (Wales) Bill to the Assembly on 8 July 2019.

The First Minister wrote to you on 7 June, enclosing for your consideration the Wild Animals and Circuses (Wales) Bill to determine whether it was within the competence of the National Assembly. The First Minister advised there is a provision within the Bill which requires the consent of the Secretary of State under Schedule 7B to the Government of Wales Act 2006. This relates to section 10 of the Bill – Crown land: powers of entry. The 2006 Act provides that a provision of an Act of the Assembly cannot confer or impose a new function on a reserved authority without consent of the Secretary of State. Section 10 provides that the power of entry conferred by the Schedule to the Bill may be exercised in relation to Crown land only with the consent of the relevant Crown authority (which includes the Crown Estate Commissioners, other government department or HM Treasury). These Crown authorities are reserved authorities under the 2006 Act.

At the time of the First Minister's letter, consent was pending and you recognised this in your response (ref: PO676/EJ/EW), where you noted not all of the provisions in the Bill were within the legislative competence of the Assembly.

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Correspondence.Lesley.Griffiths@gov.wales

I can confirm consent has now been received and a letter from the Secretary of State giving consent is attached.

A copy of this letter and the attached also goes to the Chair of the Climate Change, Environment and Rural Affairs Committee, and the Chair of the Constitutional and Legislative Affairs Committee.

Yn Gywir,

Lesley Griffiths AC/AM
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

UK Government
Llywodraeth y DU

Rt Hon Alun Cairns MP
Secretary of State for Wales
Ysgrifennydd Gwladol Cymru

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Lesley Griffiths AM
Minister for Environment, Energy and Rural Affairs
Welsh Government
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28 July 2019

Dear Lesley,

Thank you for your letter of the 7th May in respect of the Wild Animals and Circuses (Wales) Bill in which you sought consent from the UK Government for a provision in the Bill in relation to power of entry in Crown land but only with consent of the relevant Crown authority.

My officials have confirmed with relevant UK Government departments that we are content for consent to be given for this provision. As you acknowledge it is highly unlikely that an inspector would need to use this power. Furthermore, with a similar Westminster Bill having recently gained Royal Assent the goal of outlawing wild animals being used in circuses throughout Great Britain will be achieved once your Bill is on the statute book.

Therefore, I am content for consent to be given for the provision relating to Crown Land in the Wild Animals and Circuses (Wales) Bill.

Yours sincerely,

Rt Hon Alun Cairns MP

Secretary of State for Wales
Ysgrifennydd Gwladol Cymru

Agenda Item 4

Statutory Instruments with Clear Reports

21 October 2019

SL(5)455 – The National Health Service (Amendments Relating to Serious Shortage Protocols) (Wales) Regulations 2019

Procedure: Negative

The National Health Service (Amendments Relating to Serious Shortage Protocols) (Wales) Regulations 2019 ("these Regulations") amend the terms of service for NHS pharmacists in Wales to facilitate compliance with Serious Shortage Protocols ("SSPs") issued under the Human Medicines Regulations 2012.

These Regulations will also extend the definition and scope of a SSP to include a written protocol issued by Welsh Ministers, in circumstances where Wales, or any part of it is, in the opinion of the Welsh Ministers, experiencing or may experience a shortage of a specified drug (other than one which is a prescription only medicine) or appliance or a drug (other than one which is a prescription only medicine) or appliance of a specified description.

The Human Medicines (Amendment) Regulations 2019 ("the amendment Regulations") came into force on 9 February 2019 and amended the Human Medicines Regulations 2012 to provide for the sale or supply of prescription only medicines by a pharmacist under an SSP issued by the Secretary of State for Health and Social Services and the Ministers of Northern Ireland (medicines regulation being a devolved matter in Northern Ireland) and either of them acting alone or both of them acting jointly.

The amendment Regulations give the Secretary of State and NI Ministers powers to issue SSPs where, in their opinion, the United Kingdom or part of the United Kingdom is experiencing, or may experience, a severe shortage of particular prescription only medicines. The SSPs are designed to allow for

substitution by pharmacists and, only in restricted circumstances, of a different form, quantity, or strength of a prescription only medicine, or a different prescription only medicines, to that ordered by the prescriber.

The Welsh Ministers assert that SSPs will improve the means by which the Welsh Government can manage critical shortages of medicines.

Parent Act: National Health Service (Wales) Act 2006

Date Made: 08 October 2019

Date Laid: 10 October 2019

Coming into force date: 31 October 2019

SL(5)453 – The M4 Motorway (Rogiet Toll Plaza, Monmouthshire) (50 mph Speed Limit) Regulations 2010 (Revocation) Regulations 2019

Background and Purpose

These Regulations revoke the 50 mph speed limit on the westbound carriageway of the M4 motorway at Rogiet in the County of Monmouthshire which extends from a point 800 metres east of the centre line of Station Road overbridge to a point 752 metres west of the centre line of Station Road overbridge. In consequence, the national speed limit will apply to that carriageway upon the coming into force of these Regulations.

The M4 Motorway (Rogiet Toll Plaza, Monmouthshire) (50 MPH Speed Limit) Regulations 2010 (S.I. 2010/1512 (W.138) are revoked by these Regulations.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

The following points are 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**

- It is unclear why a regulatory impact assessment has not been produced for these Regulations as the reference within the Explanatory Note and Explanatory Memorandum refers to the "impact on the costs of business" but does not refer to any other "likely costs or benefits". It is usually the case that the Welsh Ministers refer to their decision in light of the Code of Practice on the carrying out of Regulatory Impact Assessments and specifically the exceptions under the Code.

  Which exception under the Code applies to the decision not to produce a regulatory impact assessment?

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

- The Explanatory Memorandum contains some inconsistencies and errors, namely:
  - In paragraph 1, reference is included to "the general 70 mph speed limit imposed on motorways by the Motorway Traffic (Speed Limit) Regulations 1974". Although the position is accurate in so far as it relates to the 1974 Regulations, it is inconsistent with the Explanatory Note, which more accurately refers to the "national speed limit", thereby recognising the

impact of speed limits applicable to particular classes of vehicles in accordance with the Road Traffic Regulation Act 1984.

- There is no reference to the enabling power under section 17(3) of the Road Traffic Regulation Act 1984 within paragraph 3, although section 17(3) is relied upon and is referred to in the preamble to the Regulations.
- Paragraph 4 refers to "regulation 2 of the Regulations", but should refer to regulation 3 of the M4 Motorway (Rogiet Toll Plaza, Monmouthshire) (50 mph Speed Limit) Regulations 2010. The reference to the Regulations throughout the Explanatory Memorandum is to the Revocation Regulations 2019 so is not consistent.
- Paragraph 5 refers to road safety being compromised, but does not include a reference to any adverse impact to air quality if these Regulations were to be annulled, which might be expected given the reasons for the revocation given under paragraph 7.

Implications arising from exiting the European Union

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

Government Response

Regulatory Impact Assessments have not historically been undertaken when the Welsh Ministers have made regulations under section 17 of the Road Traffic Regulation Act 1984 imposing speed limits on lengths of special roads. The reason for this is that such regulations have generally been made for highway safety reasons and have no impact on the costs of business.

The M4 Motorway (Rogiet Toll Plaza, Monmouthshire) (50 mph Speed Limit) Regulations 2010 had the effect of reducing the maximum speed limit on the approaches to the Toll Plaza concessionary area of the Second Severn Crossing (now the Prince of Wales bridge) from the national speed limit for motorways to 50 miles per hour, on safety grounds. The speed limit was imposed due to the need to slow down traffic on the approaches to the Toll Plaza. Following the abolition of tolling and the resultant removal of the toll booth buildings at the Toll Plaza concessionary area, the rationale for the 50 miles per hour limit imposed by the 2010 Regulations has ceased to exist. This is recognised by the M4 Motorway (Rogiet Toll Plaza, Monmouthshire) (50 mph Speed Limit) Regulations 2010 (Revocation) Regulations 2019, which revoke the 2010 Regulations, with the result that the national speed limit will apply to the lengths of road in question.

Specifically in relation to the Welsh Government's Regulatory Impact Assessment Code for Subordinate Legislation, the relevant exception to the requirement to undertake an assessment is that the regulations in question involve a routine technical or factual amendment to update regulations that have no major policy effect.

Legal Advisers
Constitutional and Legislative Affairs Committee
9 October 2019

WELSH STATUTORY INSTRUMENTS

2019 No. 1306 (W. 227)

ROAD TRAFFIC, WALES

The M4 Motorway (Rogiet Toll Plaza, Monmouthshire) (50 mph Speed Limit) Regulations 2010 (Revocation) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Welsh Ministers make these Regulations which revoke the maximum speed limit of 50 miles per hour on the westbound carriageway of the M4 motorway at Rogiet in the County of Monmouthshire which extends from a point 800 metres east of the centre line of Station Road overbridge to a point 752 metres west of the centre line of Station Road overbridge. In consequence, the national speed limit will apply to the said carriageway upon the coming into force of these Regulations.

A full regulatory impact assessment has not been produced for this instrument as these Regulations have no impact on the costs of business.

WELSH STATUTORY INSTRUMENTS

2019 No. 1306 (W. 227)

ROAD TRAFFIC, WALES

The M4 Motorway (Rogiet Toll Plaza, Monmouthshire) (50 mph Speed Limit) Regulations 2010 (Revocation) Regulations 2019

Made	*3 October 2019*
Laid before the National Assembly for Wales	*7 October 2019*
Coming into force	*31 October 2019*

The Welsh Ministers, in exercise of the powers conferred on them by section 17(2), (3) and (3ZAA) of the Road Traffic Regulation Act 1984(**1**), and after consultation with such representative organisations as were thought fit in accordance with section 134(10) of that Act, make the following Regulations.

Title and commencement

1. The title of these Regulations is the M4 Motorway (Rogiet Toll Plaza, Monmouthshire) (50 mph Speed Limit) Regulations 2010 (Revocation) Regulations 2019 and they come into force on 31 October 2019.

Revocation

2. The M4 Motorway (Rogiet Toll Plaza,

(**1**) 1984 c. 27. Section 17(2) was amended by the New Roads and Street Works Act 1991 (c. 22), Schedule 8, paragraph 28(3) and the Road Traffic Act 1991 (c. 40), Schedule 4, paragraph 25 and Schedule 8. Section 17(3ZAA) was inserted by the Wales Act 2017 (c. 4), section 26(2).

Monmouthshire) (50 mph Speed Limit) Regulations 2010(**1**) are revoked.

Ken Skates
Minister for Economy and Transport, one of the Welsh Ministers
3 October 2019

(**1**) S.I. 2010/1512 (W. 138).

Explanatory Memorandum to The M4 Motorway (Rogiet Toll Plaza, Monmouthshire) (50 MPH Speed Limit) Regulations 2010 (Revocation) Regulations 2019.

This Explanatory Memorandum has been prepared by the Department for Economic Infrastructure 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 M4 Motorway (Rogiet Toll Plaza, Monmouthshire) (50 MPH Speed Limit) Regulations 2010 (Revocation) Regulations 2019.** I am satisfied that the benefits outweigh any costs.

Ken Skates
Minister for Economy and Transport
7 October 2019

1. Description

These Regulations revoke the 50 mph speed limit and consequently reinstate the general 70 mph speed limit imposed on motorways by the Motorway Traffic (Speed Limit) Regulations 1974 (S.I. 1974/502) on the westbound carriageway of the M4 motorway at Rogiet in the County of Monmouthshire which extends from a point 800 metres east of the centre line of Station Road overbridge to a point 752 metres west of the centre line of Station Road overbridge.

2. Matters of special interest to the Subordinate Legislation Committee

None.

3. Legislative Background

The powers enabling this instrument to be made are under Sections 17(2) and (3ZAA) of the Road Traffic Regulation Act 1984 (RTRA). These give the Welsh Ministers the power to revoke Regulations with respect to particular special roads such as motorways and for regulating the speed of vehicles on such roads, so far as they are exercisable in relation to Wales.

This instrument is to be made following the negative procedure.

4. Purpose and intended effect of the legislation

Following the removal of the Rogiet Toll Plaza, these Regulations remove the 50 mph speed limit and allow for the operation and enforcement of a 70 mph mandatory speed limit in relation to the lengths of the M4 specified in regulation 2 of the Regulations. The use of the mandatory 70 mph speed limit is proposed to maintain the safe passage of vehicles.

5. Implementation

If this legislation were to be annulled, road safety would be compromised at this location. This Instrument has a coming into force date of 31 October 2019.

6. Consultation

In accordance with Section 134(10) of the Road Traffic Regulation Act 1984 the views of representative organisations and groups were sought between 07 August and 28 August 2019 (3 week period).

The list of consultees and summary of any responses is attached at Annex A.

7. REGULATORY IMPACT ASSESSMENT

A regulatory impact assessment has not been produced as these Regulations are being introduced for road safety and air quality improvement reasons and have no impact on the costs of business.

ANNEX A

SCHEDULE OF CONSULTATION

Organisation	Response
Monmouthshire County Council	No comment
Chepstow Town Council	No comment
Gwent Police	No comment
South Wales Fire & Rescue Service HQ	No comment
Welsh Ambulance Services NHS Trust	No comment
Road Haulage Association Ltd.	No comment
Freight Transport Association	No comment
NAVTEQ	No comment
Trafficmaster Travel	No comment
South Wales Trunk Road Agent Manager	No comment
'Go Safe'	No comment
Ministry of Justice	No comment
HERE	No comment

SL(5)454 – The Genetically Modified Organisms (Deliberate Release) (Amendment) (Wales) Regulations 2019

Background and Purpose

These Regulations amend the Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 ("the 2002 Regulations") and the Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 ("the 2019 Regulations").

Regulations 3 to 8 of these Regulations amend the 2002 Regulations. The 2002 Regulations implement Directive 2001/18/EC relating to the deliberate release of genetically modified organisms ("the 2001 Directive"). These amendments are necessary to implement Commission Directive (EU) 2018/350 amending Directive 2001/18/EC of the European Parliament and of the Council as regards the environmental risk assessment of genetically modified organisms ("the 2018 Directive").

Regulation 3 amends the definition of the 2001 Directive to reflect the amendments made to it by the 2018 Directive.

The amendments made by regulations 4 to 7 relate to the information to be contained in applications for consent to release genetically modified higher plants in relation to trials. They also make provision in relation to the information to be included in applications for consent to release genetically modified higher plants for commercial purposes. These changes are necessary owing to the substitution, by the 2018 Directive, of Annexes III and IIIB to the 2001 Directive.

Regulation 8 makes minor changes to Schedule 3 to the 2002 Regulations.

Regulation 9 amends the 2019 Regulations which come into force on exit day and will amend Schedule 3 to the 2002 Regulations. The purpose of the amendment is to omit a provision which regulation 8 of these Regulations will render redundant.

Procedure

Negative.

Technical Scrutiny

The following 4 technical points are 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**

The transposition deadline of 29 September 2019 for the 2018 Directive has been missed. The Explanatory Memorandum states that an earlier decision was taken collectively by the UK Administrations not to transpose the 2018 Directive as part of preparations to exit the EU on 29 March 2019. However, following the extension of the EU Exit date to 31 October 2019, the UK administrations have agreed to transpose the 2018 Directive but this decision was taken with only a short timeframe to transpose. We

ask the Welsh Government whether it has been in correspondence with the European Commission regarding the late implementation of the 2018 Directive.

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

In regulation 7, which inserts Schedule 1A into the 2002 Regulations, new paragraph 15(c) contains a cross-reference to paragraph 14(f). We believe the cross-reference should be to paragraph 14(g), not paragraph 14(f).

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

i. Section B.4(f) of Annex III B I of the 2001 Directive (which is inserted by the Annex to the 2018 Directive) requires the following information in relation to the release of genetically modified higher plants:

"Description of the methods and procedures to:

(i) avoid or minimise the spread of the GMHPs beyond the site of release;

(ii) protect the site from intrusion by unauthorised individuals;

(iii) prevent other organisms from entering the site or minimise such entries."

These Regulations do not appear to include a corresponding requirement, Schedule 1 of the 2002 Regulations only requires information on *"methods and procedures to protect the site"*. We ask why the text of the 2018 Directive quoted above has not been reflected in the Regulations?

ii. In regulation 7 (which inserts Schedule 1A into the 2002 Regulations) new paragraph 18(c) requires information on *"experimental design including statistical analysis"* to be provided in an application for consent to market genetically modified higher plants. The 2018 Directive provides the following:

"Experimental design and statistical analysis of data from field trials for comparative analysis:

(i) Description of field studies design

(ii) Description of relevant aspect of the receiving environments

(iii) Statistical analysis."

We ask why the text of the 2018 Directive quoted above has not been reflected in the Regulations?

4. **Standing Order (vii) that there appear to be inconsistencies between the meaning of its English and Welsh texts**

i. In regulation 6(13) the definition of *"plant species"* is:

"(a) wild and weedy relatives, or

(b) crops."

In the Welsh version of the Regulations the word "or" ("neu") is missing.

ii. In regulation 7 of the Welsh language version, which inserts Schedule 1A into the 2002 Regulations, new paragraph 3(e) should be 3(dd).

iii. In regulation 7, which inserts Schedule 1A into the 2002 Regulations, new paragraph 13 requires a "*description of the trait or traits and characteristics of the genetically modified plant which have been introduced or modified*". Both "traits" and "characteristics" translate as "nodweddion". We appreciate the difficulty of translating these provisions, but we ask the Welsh Government whether it is satisfied that both the English and the Welsh texts properly implement the relevant parts of the 2018 Directive.

iv. In regulation 7, which inserts Schedule 1A into the 2002 Regulations, new paragraph 22(a) requires an applicant for consent to market genetically modified higher plants to provide information on *"the adverse effects arising"* in relation to certain scenario. The Welsh language version reads *"the adverse environmental effects arising" ("effeithiau amgylcheddol andwyol sy'n deillio o hynny"*). This inconsistency does have an effect on the meaning of the provision as the Regulations differentiate between adverse effects on the environment and on human and animal health.

The same inconsistency occurs in new paragraph 24(a)(i) with the wording *"adverse effect arising"*.

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

These Regulations implement EU obligations in relation to the deliberate release of genetically modified organisms, and therefore the Regulations will form part of retained EU law after exit day.

Government Response

A government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
16 October 2019

WELSH STATUTORY INSTRUMENTS

2019 No. 1316 (W. 228)

ENVIRONMENTAL PROTECTION, WALES

The Genetically Modified Organisms (Deliberate Release) (Amendment) (Wales) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

Regulations 3 to 8 of these Regulations amend the Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 (S.I. 2002/3188 (W. 304)) ("the 2002 Regulations"). The 2002 Regulations implement Directive 2001/18/EC relating to the deliberate release of genetically modified organisms ("the 2001 Directive"). These amendments are necessary to implement Commission Directive (EU) 2018/350 amending Directive 2001/18/EC of the European Parliament and of the Council as regards the environmental risk assessment of genetically modified organisms (O.J. No L 67, 9.3.2018, p. 30) ("the 2018 Directive").

Regulation 3 amends the definition of the 2001 Directive to reflect the amendments made to it by the 2018 Directive.

The amendments made by regulations 4 to 7 relate to the information to be contained in applications for consent to release genetically modified higher plants in relation to trials (amendments to regulation 12 of, and Schedule 1 to, the 2002 Regulations by regulations 4 and 6 respectively). They also make provision in relation to the information to be included in applications for consent to release genetically modified higher plants for commercial purposes (amendments to regulation 17 of, and the insertion of Schedule 1A to, the 2002 Regulations by regulations 5 and 7 respectively). These changes are necessary owing to the substitution, by the 2018 Directive, of Annexes III and IIIB to the 2001 Directive.

Regulation 8 makes minor changes to Schedule 3 to the 2002 Regulations.

Regulation 9 amends the Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 (S.I. 2019/379 (W. 94) which come into force on exit day and will amend Schedule 3 to the 2002 Regulations. The purpose of the amendment is to omit a provision in S.I. 2019/379 which regulation 8 of these regulations will render redundant.

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.

WELSH STATUTORY INSTRUMENTS

2019 No. 1316 (W. 228)

ENVIRONMENTAL PROTECTION, WALES

The Genetically Modified Organisms (Deliberate Release) (Amendment) (Wales) Regulations 2019

Made *7 October 2019*

Laid before the National Assembly for Wales *8 October 2019*

Coming into force *30 October 2019*

The Welsh Ministers are designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to measures relating to the control and regulation of the deliberate release, placing on the market and transboundary movements of genetically modified organisms.

The Welsh Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and section 111(4) and (11) of the Environmental Protection Act 1990(**3**), having consulted the Food Standards Agency in accordance with section 126(5) of that Act.

(**1**) S.I. 2003/2901. By virtue of paragraphs 28(1) and 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32), S.I. 2003/2901 has effect as if made under section 59(1) of that Act.

(**2**) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51), and section 3 of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).

(**3**) 1990 c. 43. Subsection (11) defines "prescribed". Section 126 was substituted by paragraph 18 of Schedule 3 to the Food Standards Act 1999 (c.28). The functions of the Secretary of State under these provisions were transferred to the National Assembly for Wales under Article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Function) Order 1999 (S.I. 1999/672). By virtue of paragraph 30 of Schedule 11 to the Government of Wales

Title, commencement and application

1.—(1) The title of these Regulations is the Genetically Modified Organisms (Deliberate Release) (Amendment) (Wales) Regulations 2019.

(2) These Regulations come into force on 30 October 2019.

Amendment of the Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002

2. The Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002(**1**) are amended in accordance with regulations 3 to 8.

Amendment of regulation 2

3. In regulation 2 (interpretation), in the definition of "the Deliberate Release Directive" for the text from "2015/412 of the European" to "in their territory" substitute "2018/350 amending Directive 2001/18/EC of the European Parliament and of the Council as regards the environmental risk assessment of genetically modified organisms(**2**)".

Amendment of regulation 12

4. In regulation 12 (information to be contained in application for consent to release)—

(a) in paragraph (1)(a)—

(i) before "the information" insert "subject to paragraph (1A), ",

(ii) omit from "to the extent" to the end,

(b) after paragraph (1)(d) insert—

"(e) summaries and results of studies referred to in the application, including an explanation of their relevance to the environmental risk assessment, as appropriate.",

(c) after paragraph (1) insert—

"(1A) The information specified in paragraph (1)(a) is only required to be provided if it is necessary for the completion of an environmental risk assessment in the context of a specific application, and the level of detail to be provided may vary according to the nature and the scale of the proposed deliberate release. ".

Act 2006 these functions were then further transferred to the Welsh Ministers.

(**1**) S.I. 2002/3188 (W. 304), as amended by S.I. 2019/463 (W. 111). S.I. 2002/3188 is also amended by S.I. 2019/379 with effect from exit day; there are other amendments but none is relevant.

(**2**) O.J. No L 67, 9.3.2018, p. 30.

Amendment of regulation 17

5. In regulation 17 (application for consent to market)—

(a) in paragraph (2)(a)—

(i) before "the information" insert "subject to paragraph (2A),",

(ii) in paragraph (i), for "Schedule 1" substitute "Schedule 1A",

(iii) omit from "to the extent" to the end,

(b) in paragraph (2), after sub-paragraph (j) insert—

"(k) in respect of each subset of information required in this paragraph—

(i) summaries and results of studies referred to in the application, including an explanation of their relevance to the environmental risk assessment, as appropriate,

(ii) details of studies referred to in the application, including materials and methods used or reference to standardised or internationally recognised methods and the name of the body or bodies responsible for carrying out those studies.".

(c) after paragraph (2) insert—

"(2A) The information specified in paragraph (2)(a) is only required to be provided if it is necessary for the completion of an environmental risk assessment in the context of a specific application, and the level of detail to be provided may vary according to the nature and the scale of the proposed release resulting from the marketing of a genetically modified higher plant.".

Amendment of Schedule 1

6.—(1) Schedule 1 (information to be included in applications for consent to release or market genetically modified higher plants) is amended as follows.

(2) In the title, for the words following "consent to release" substitute "genetically modified higher plants for non-marketing purposes".

(3) For the shoulder note substitute "Regulation 12".

(4) In paragraph 7, at the end insert "in Europe".

(5) In paragraph 8, for "in the United Kingdom" substitute "in Europe".

(6) For paragraph 15 substitute "Information on parts of the plant where the insert is expressed".

(7) After paragraph 15 insert—

"**15A.** The genetic stability of the insert and phenotypic stability of the genetically modified plant.

15B. Conclusions on the molecular characterisation of the genetically modified plant.".

(8) Omit paragraphs 16 and 17.

(9) For paragraphs 18 to 23 substitute—

"PART 4A

Information on specific areas of risk

18. Information on—

(a) any change to the persistence or invasiveness of the genetically modified plant and its ability to transfer genetic material to sexually compatible relatives and the adverse environmental effects arising,

(b) any change in the ability of the genetically modified plant to transfer genetic material to micro-organisms and the adverse environmental effects arising,

(c) the mechanism of interaction between the genetically modified plant and target organisms, if applicable, and the adverse environmental effects arising,

(d) potential changes in the interactions of the genetically modified plant with non-target organisms resulting from the genetic modification and the adverse environmental effects arising,

(e) potential changes in agricultural practices and management of the genetically modified plant resulting from the genetic modification, if applicable, and the adverse environmental effects arising,

(f) potential interactions with the abiotic environment and the adverse environmental effects arising,

(g) any toxic, allergenic or other harmful effects on human health arising from the genetic modification,

(h) conclusions on the specific areas of risk.".

(10) Under the heading to Part 5 omit "(Applications for consent to release only)".

(11) Under the heading to Part 6 omit "(Applications for consent to release only)".

(12) Under the heading to Part 7 omit "(Applications for consent to release only)".

(13) For paragraph 35 substitute—

"**35.—**(1) A description of any precautions to maintain spatial and, as the case may be, temporal separation of the genetically modified plant from sexually compatible plant species.

(2) In sub-paragraph (1) "plant species" means—

(a) wild and weedy relatives, or

(b) crops.".

Insertion of Schedule 1A

7. After Schedule 1 insert—

SCHEDULE 1A Regulation 17

Information to be included in applications for consent to market genetically modified higher plants

PART 1

General information

1. The name and address of the applicant, and the name, qualifications and experience of the scientist and of every other person who will be responsible for planning and carrying out the release of the organisms, and for the supervision, monitoring and safety of the release.

2. The designation and specification of the genetically modified plant, and the scope of the application, in particular whether the application is in respect of cultivation, for some other use (which must be specified), or both.

PART 2

Information relating to the parental or recipient plant

3. The full name of the plant—

(a) family name,

(b) genus,

(c) species,

(d) subspecies,

(e) cultivar or breeding line,

(f) common name.

4. Information concerning—

(a) the reproduction of the plant—

(i) the mode or modes of reproduction,

(ii) any specific factors affecting reproduction,

(iii) generation time, and

(b) the sexual compatibility of the plant with other cultivated or wild plant species, including the distribution in Europe of the compatible species.

5. Information concerning the survivability of the plant—

(a) its ability to form structures for survival or dormancy,

(b) any specific factors affecting survivability.

6. Information concerning the dissemination of the plant—

(a) the means and extent (such as an estimation of how viable pollen or seeds decline with distance where applicable) of dissemination, and

(b) any specific factors affecting dissemination.

7. The geographical distribution of the plant in Europe.

8. Where the application relates to a plant species which is not normally grown in Europe, a description of the natural habitat of the plant, including information on natural predators, parasites, competitors and symbionts.

9. Any other potential interactions, relevant to the genetically modified organism, of the plant with organisms in the ecosystem where it is usually grown, or elsewhere, including information on toxic effects on humans, animals and other organisms.

PART 3

Information Relating to the Genetic Modification

10. A description of the methods used for the genetic modification.

11. The nature and source of the vector used.

12. The size, intended function and name of the donor organism or organisms of each constituent fragment of the region intended for insertion.

PART 4

Information relating to the genetically modified plant

13. A description of the trait or traits and characteristics of the genetically modified plant which have been introduced or modified.

14.—(1) The following information on the sequences inserted or deleted—

(a) the size and structure of the insert and methods used for its characterisation, including information on any parts of the vector introduced into the genetically modified plant or any carrier or foreign DNA remaining in the genetically modified plant,

(b) the size and function of the deleted region or regions, where appropriate,

(c) the copy number of the insert,

(d) the subcellular location of any insert in the plant cells (integrated in the nucleus, chloroplasts, mitochondria, or maintained in a non-integrated form) and methods for its determination,

(e) the organisation and sequence of the genetic material at each insertion site in a standardised electronic format,

(f) the sequence of genomic DNA flanking each insertion site in a standardised electronic format,

(g) bioinformatic analysis to identify interruptions of known genes,

(h) information on Open Reading Frames ("ORFs") within the insert and ORFs created at the junction of the insert and genomic DNA,

(i) bioinformatic analysis to identify similarities between any ORFs

generated by the genetic modification and known genes that may have adverse effects,

(j) the amino acid sequence and if necessary, other structures of proteins produced as a results of the genetic modification,

(k) bioinformatic analysis to identify sequence homologies, and if necessary, structural similarities, between proteins produced as a result of the genetic modification and known proteins and peptides with potential adverse effects,

(l) in the case of genetic modifications other than insertion or deletion, information on the function of the genetic material targeted by the genetic modification before and after modification, as well as direct changes in the expression of genes as result of the modification.

(2) In this paragraph, an ORF is a nucleotide sequence that contains a string of codons uninterrupted by the presence of a stop codon in the same reading frame.

15. The following information on the expression of the insert—

(a) information on the developmental expression of the inserted or modified DNA during the lifecycle of the plant and methods used for its characterisation,

(b) the parts of the plant where the insert is expressed, such as roots, stem or pollen,

(c) the potential unintended expression of a new ORF (which has the meaning given in paragraph 14(2)), which has resulted from the insertion or deletion of genetic material into a known gene (as identified under paragraph 14(f)) and which raises a safety concern,

(d) protein expression data from genetically modified plants grown under field conditions.

16. The genetic stability of the insert and phenotypic stability of the genetically modified plant.

17. Conclusions on the molecular characterisation of the genetically modified plant.

18. The following information on the comparative analysis of agronomic and phenotypic characteristics and of composition—

(a) choice of a conventional counterpart and any additional comparators used in comparative analyses,

(b) choice of field site location for producing plant material for comparative analyses,

(c) experimental design including statistical analysis,

(d) selection of plant material for analysis, where relevant,

(e) comparative analysis of agronomic and phenotypic characteristics,

(f) comparative analysis of composition, if relevant,

(g) conclusions of comparative analysis.

PART 5

Information on specific areas of risk

19. For each of the areas of risk listed in section D.2 of Annex 2 to the Deliberate Release Directive the applicant must describe each pathway through which harm could occur in respect of the release of a genetically modified plant, taking hazard and exposure into account.

20. The applicant must provide—

(a) the information described in paragraphs 21 to 27, and

(b) the overall risk evaluation and conclusions described in paragraph 28,

except where the applicant considers it is not relevant in view of the intended use of the genetically modified plant.

21. Information relating to the persistence and invasiveness including plant to plant gene transfer including—

(a) an assessment of the potential for the genetically modified plant to become more persistent or invasive and the adverse environmental effects arising,

(b) an assessment of the potential for the genetically modified plant to transmit transgenes to sexually compatible relatives and the adverse environmental effects arising,

(c) conclusions on the adverse environmental effect of persistence and invasiveness of the genetically modified plant including the adverse environmental effect of plant to plant gene transfer.

22. Information relating to plant to micro-organism gene transfer including—

(a) an assessment of the potential for transfer of newly inserted DNA from the genetically modified plant to micro-organisms and the adverse effects arising,

(b) conclusions on the adverse effect of the transfer of newly inserted DNA from the genetically modified plant to micro-organisms on human and animal health and the environment.

23. Information relating to the interactions of the genetically modified plant, if relevant, with target organisms including—

(a) an assessment of the potential for changes in the direct and indirect interactions between the genetically modified plant and target organisms and the adverse environmental effects arising,

(b) an assessment of the potential for evolution of resistance of the target organism to the expressed protein based on the history of evolution of resistance to conventional pesticides or transgenic plants expressing similar traits, and any adverse environmental effects arising,

(c) conclusions on adverse environmental effects of interactions of the genetically modified plant with target organisms.

24.—(1) Information on the interactions of the genetically modified plant with non-target organisms including—

(a) an assessment of the potential for direct and indirect interactions of the genetically modified plant with non-target organisms, including protected species, and the adverse effect arising,

(b) conclusions on adverse environmental effects of interactions of the genetically modified plant with non-target organisms.

(2) The assessment described in sub-paragraph (1) must take into account the potential adverse effect on relevant ecosystem

services and on the species providing those services.

25. Information on the impacts of the specific cultivation, management and harvesting techniques including—

(a) in respect of genetically modified plants for cultivation, an assessment of the changes in the specific cultivation, management and harvesting techniques used for the genetically modified plant and the adverse environmental effects arising,

(b) conclusions on adverse environmental effects of the specific cultivation, management and harvesting techniques.

26. Information on biogeochemical processes including—

(a) an assessment of the potential changes in the biogeochemical processes within the area in which the genetically modified plant is to be grown and in the wider environment, and the adverse effects arising,

(b) conclusions on adverse effects on biogeochemical processes.

27. Information on the effects on human and animal health including—

(a) an assessment of potential direct and indirect interactions between the genetically modified plant and persons working with or coming into contact with the genetically modified plant, including through pollen or dust from a processed genetically modified plant, and assessment of the adverse effects of those interactions on human health,

(b) for a genetically modified plant not destined for human consumption, but where the recipient or parental organisms may be considered for human consumption, assessment of the likelihood of and possible adverse effects on human health due to accidental intake,

(c) an assessment of the potential adverse effects on animal health due to accidental consumption of the genetically modified plant or of material from that plant by animals,

(d) conclusions on the effects on human and animal health.

28.—(1) The overall risk evaluation and conclusions must include a summary of each of the conclusions specified in paragraphs 21 to 27.

(2) The summary referred to in sub-paragraph (1) must take into account the risk characterisation in accordance with steps 1 to 4 of the methodology described in Section C.3 of Annex 2 and the risk management strategies proposed in accordance with point 5 of Section C.3 of Annex 2 to the Deliberate Release Directive.

PART 6

Information about the detection, identification and previous releases of the genetically modified plant

30. A description of detection and identification techniques for the genetically modified plant.

31. Information about previous releases of the genetically modified plant, if applicable.".

Amendment of Schedule 3

8. In Schedule 3 (information to be included in an application for consent to market genetically modified organisms), for paragraph 7 substitute—

"**7.**—(1) Information on—

(a) methods for the detection, identification and, where appropriate, quantification of the transformation event,

(b) samples of the genetically modified organisms and their control samples,

(c) the place where the reference material can be accessed.

(2) Information under sub-paragraph (1) that cannot be placed on the register for confidentiality reasons, must be identified.".

Amendment of the Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

9. In the Genetically Modified Organisms (Deliberate Release and Transboundary Movement)

(Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019(**1**) omit regulation 3(18)(c).

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

(**1**) S.I. 2019/379 (W. 94).

Explanatory Memorandum to the Genetically Modified Organisms (Deliberate Release) (Amendment) (Wales) Regulations 2019

This Explanatory Memorandum has been prepared by the Plant Health and Environment Protection Branch within the Economy, Skills and Natural Resources Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Genetically Modified Organisms (Deliberate Release) (Amendment) (Wales) Regulations 2019.

Lesley Griffiths

Minister for Environment, Energy and Rural Affairs

8 October 2019

1. Description

These Regulations implement, in relation to Wales, Commission Directive (EU) 2018/350 amending Directive 2001/18/EC of the European Parliament and of the Council. These Regulations achieve this by amending the Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 (S.I. 2002/3188) (W. 304) (the 2002 Regulations).

Directive (EU) 2018/350 makes more detailed provision in respect of the environmental risk assessments, which must be made before the release of Genetically Modified Organisms (GMOs). There is a particular emphasis on the information, which must be provided before the release of Genetically Modified Higher Plants. There is no change of policy in this area.

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

The transposition deadline for Directive (EU) 2018/350 was 29 September 2019 and this deadline has been missed. An earlier decision was taken collectively by the UK Administrations not to transpose Directive 2018/350 as part of preparations to exit the EU on 29 March 2019. However, following the extension to the EU Exit date to 31 October 2019, the UK administrations have agreed to transpose Directive 2018/350 but this decision was taken with only a short timeframe to transpose.

3. Legislative background

These Regulations are made in exercise of the powers conferred on Welsh Ministers by section 2(2) of the European Communities Act 1972 and section 111(4) and (11) of the Environmental Protection Act 1990 (the 1990 Act).

The National Assembly for Wales was designated under the European Communities (Designation) (No. 4) Order 2003 (SI 2003/2901) in relation to measures relating to the control and regulation of the deliberate release, placing on the market and transboundary movement of genetically modified organisms. By virtue of paragraphs 28(1) and 30 of Schedule 11 to the Government of Wales Act 2006 (the 2006 Act), these functions were transferred to the Welsh Ministers.

The functions of the Secretary of State under the provisions of the 1990 Act were transferred to the National Assembly for Wales under Article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). By virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 these functions were then further transferred to the Welsh Ministers.

These Regulations amend the Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 (the 2002 Regulations), which give effect, in relation to Wales, to Directive 2001/18/EC of the European Parliament and of the Council on the deliberate release into the environment of genetically modified organisms. The 2002 Regulations, amongst other things, set out the procedures to follow when seeking consent from the Welsh Ministers to trial or market GMOs. The 2002 Regulations provide a framework for the harmonised marketing of safe products produced from GMOs, and ensure that only safe GMOs are released. Any approval

for the release of a GMO is conditional upon it passing a science-based assessment of its potential impact on human health and the environment.

The amendments to the 2002 Regulations made by these Regulations are required to implement amendments to Directive 2001/18/EC made by Commission Directive (EU) 2018/350. Commission Directive (EU) 2018/350 updates four of the technical Annexes in Directive 2001/18/EC. The amendments to the annexes align them with technical guidance that was published by the European Food Safety Authority (EFSA) in 2010. The amendments relate to the methodology of the environmental risk assessment, its structure, content, and level of detail.

These Regulations are being made under the negative resolution procedure.

4. Purpose & intended effect of the legislation

No changes are being made to policy.

Following a request from the EU Commission in 2010, the European Food Safety Authority (EFSA) produced non-statutory guidance, which added detail to the established principles for environmental risk assessments (ERA) in applications to release and market genetically modified plants, as set out in Directive 2001/18/EC. Commission Directive (EU) 2018/350 amends Directive 2001/18/EC by aligning it with the EFSA's guidance. The alignment, in particular, adds more detail on the information that should be included in applications to market genetically modified plants. The requirement to provide this information in support of an application has no practical impact for an applicant's ERA as it has been supplied in applications for the last 9 years.

In practice, most applications to market GM plants are submitted under alternative legislation (Regulation (EC) No. 1829/2003 on genetically modified food and feed) because that legislation allows applicants to seek authorisation to import, cultivate and use genetically modified plants for food and feed under one process. The EU has already adopted Commission Implementing Regulation (EU) No. 503/2013 on applications made under Regulation (EC) No. 1829/2003, and Commission Directive (EU) 2018/350 aligns to that Regulation. The EFSA has applied the requirements set out in the 2018 Directive in relation to all applications to release and market genetically modified plants since 2010.

5. Consultation

The Food Standards Agency (FSA) Wales was consulted in accordance with section 126(5) of the Environmental Protection Act 1990, about the proposed changes to the 2002 Regulations as a consequence of implementing Commission Directive (EU) 2018/350. In their response to the consultation, the FSA Wales recognised these Regulations do not represent a change in policy and are content for the amendments to be made.

6. Regulatory Impact Assessment

There is no significant impact on the public sector beyond minimal administrative input to amend application forms.

An Impact Assessment has not been prepared for these Regulations because there is expected to be no additional impact on business. There is no change in policy, and the requirement to provide the stated information in support of an application has no practical impact for an applicant's ERA as it has been supplied on a non-statutory basis in applications for the last nine years. There is no impact on the statutory duties or on the statutory partners as set out in the Government of Wales Act 2006.

SL(5)456 – The Sea Fishing (Miscellaneous Amendments) (Wales) Regulations 2019

Background and Purpose

These Regulations make amendments in relation to Wales to secondary legislation that relates to sea fisheries. The amendments update and replace references to Council Regulation (EC) No 850/98 for the conservation of fishery resources through technical measures with a reference to Regulation (EU) 2019/1241 of the European Parliament and of the Council of 20 June 2019 on the conservation of fisheries resources.

References in the following Orders are updated to ensure they are operable and enforceable:

1. The Prohibition of Fishing with Multiple Trawls (Wales) Order 2003;

2. The Scallop Fishing (Wales) (No.2) Order 2010; and

3. The Whelk Fishing (Wales) Order 2019.

Procedure

Negative.

Technical Scrutiny

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

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 Orders listed above, which are being amended by this instrument, implement various EU obligations in respect of the conservation of fisheries resources. These 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
14 October 2019

WELSH STATUTORY INSTRUMENTS

2019 No. 1332 (W. 230)

SEA FISHERIES, WALES

CONSERVATION OF SEA FISH

The Sea Fishing (Miscellaneous Amendments) (Wales) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make miscellaneous amendments to secondary legislation in the field of sea fisheries that relates to Wales and the Welsh zone.

The amendments replace references to Council Regulation (EC) No 850/98 for the conservation of fishery resources though technical measures for the protection of juveniles of marine organisms with references to Regulation (EU) 2019/1241 of the European Parliament and of the Council on the conservation of fisheries resources and the protection of marine ecosystems through technical measures, which has repealed and replaced Council Regulation (EC) 850/98.

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.

WELSH STATUTORY INSTRUMENTS

2019 No. 1332 (W. 230)

SEA FISHERIES, WALES

CONSERVATION OF SEA FISH

The Sea Fishing (Miscellaneous Amendments) (Wales) Regulations 2019

Made	*9 October 2019*
Laid before the National Assembly for Wales	*11 October 2019*
Coming into force	*1 November 2019*

The Welsh Ministers make these Regulations in exercise of the powers conferred by sections 1(1) and (3), and 5(1) of the Sea Fish (Conservation) Act 1967(**1**),

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

and now vested in them(**1**), and paragraph 1A of Schedule 2 to the European Communities Act 1972 ("the 1972 Act")(**2**).

The Welsh Ministers are designated for the purposes of the 1972 Act in relation to the common agricultural policy(**3**).

These Regulations make provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears to the Welsh Ministers that it is expedient for the reference to an EU instrument in regulation 3 to be construed as a reference to that instrument as amended from time to time.

Title and commencement

1.—(1) The title of these Regulations is the Sea Fishing (Miscellaneous Amendments) (Wales) Regulations 2019.

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

The Prohibition of Fishing with Multiple Trawls (Wales) Order 2003

2. In the Prohibition of Fishing with Multiple Trawls (Wales) Order 2003(**4**), in article 2, for the definition of "the Council Regulation" substitute—

> ""the Council Regulation ("*Rheoliad y Cyngor*") means Regulation (EU) 2019/1241 of the European Parliament and of the Council of 20 June 2019 on the conservation of fisheries resources and the protection of marine ecosystems through technical measures;".

(**1**) The functions of the Ministers under sections 1(1) and (3), and 5(1) and so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). Those functions were then further transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32). So far as exercisable in relation to the Welsh zone, the functions of the Ministers under sections 1(3), (4) and (6), and 5(1) and (2) of the 1967 Act were transferrred to the Welsh Ministers by article 4(1)(b) of the Welsh Zone (Boundaries and Transfer of Functions) Order 2010 (S.I. 2010/760).

(**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 was amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7) and S.I. 2007/1388.

(**3**) S.I. 2010/2690 (W. 205). By virtue of paragraph 28(1) of Schedule 11 to the Government of Wales Act 2006, this designation has effect as if made under section 59(1) of that Act.

(**4**) S.I. 2003/1855 (W. 205), amended by S.I. 2019/463 (W. 111).

Scallop Fishing (Wales) (No. 2) Order 2010

3. In the Scallop Fishing (Wales) (No. 2) Order 2010(**1**), for article 11(2) substitute—

"(2) For the purposes of paragraph (1), the size of a scallop is to be measured in accordance with paragraph 6 of Annex 4 to Regulation (EU) 2019/1241 of the European Parliament and of the Council of 20 June 2019 on the conservation of fisheries resources and the protection of marine ecosystems through technical measures as amended from time to time."

Whelk Fishing (Wales) Order 2019

4. In the Whelk Fishing (Wales) Order 2019(**2**), for article 6 substitute—

"**6.** For the purposes of articles 3, 4 and 5, the size of a whelk is to be measured in accordance with paragraph 6 of Annex 6 to Regulation (EU) 2019/1241 of the European Parliament and of the Council of 20 June 2019 on the conservation of fisheries resources and the protection of marine ecosystems through technical measures. "

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

(**1**) S.I. 2010/269 (W. 33).
(**2**) S.I. 2019/1042 (W. 184).

Explanatory Memorandum to The Sea Fishing (Miscellaneous Amendments) Wales Regulations 2019

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

Cabinet Secretary/Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of **The Sea Fishing (Miscellaneous Amendments) Wales Regulations 2019**

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

PART 1

1. Description

These Regulations make amendments in relation to Wales to secondary legislation that relates to sea fisheries.

The amendments replace existing references to Council Regulation (EC) No 850/98 for the conservation of fishery resources though technical measures, with a reference to Regulation (EU) 2019/1241 of the European Parliament and of the Council of 20 June 2019 on the conservation of fisheries resources, which has repealed and replaced Council Regulation (EC) 850/98.

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

None.

3. Legislative background

The Sea Fisheries (Miscellaneous Amendments) (Wales) Regulations 2019 are being made pursuant to sections 1 and 5 of the Sea Fish (Conservation) Act 1967 and paragraph 1A of Schedule 2 to the European Communities Act 1972.

Section 1 of the Sea Fish (Conservation) Act 1967 enables the Welsh ministers to make an order prescribing the minimum size at which any specified sea fish maybe landed or carried on board a fishing vessel. Section 5 allows the Welsh ministers to prohibit fishing for any specified a sea fish.

Paragraph 1A of Schedule 2 to the European Communities Act 1972 provides that if an instrument gives effect to an EU obligation and contains a reference to an EU instrument, and it appears to the person making the legislation that it is necessary or expedient for the reference to be construed as a reference to that instrument as amended from time to time, then the instrument may provide that it the EU instrument is construed as amended from time to time.

These Regulations are being made under the negative resolution procedure, pursuant to section 20 of the Sea Fish (Conservation) Act 1967.

4. Purpose and intended effect of the legislation

The following Orders currently reference Council Regulation (EC) 850/98 for the conservation of fishery resources through technical measures, which was repealed by the European Union on 20 June 2019 and replaced by Regulation (EU) 2019/1241 on the conservation of fisheries resources. On EU exit day Regulation (EU) 2019/1241 will become part of the UK statute as retained EU law under the European Union (Withdrawal) Act 2019. The purpose of this legislation is to ensure the existing SIs are operable and enforceable in relation to their relevant jurisdiction.

The Prohibition of Fishing with Multiple Trawls (Wales) Order 2003 (2003/1855) prohibits fishing with any trawl other than a single trawl, save in specified circumstances. The prohibition applies to a British fishing boat in Welsh waters and introduces a definition of “single trawl” The prohibition does not apply to beam trawlers or to fishing with a trawl having a specified mesh size of not less than 80 millimetres. The SI includes a definition of “the Council Regulation” as meaning Council Regulation (EC) No 850/98. This requires amending to Regulation (EU) 2019/1241.

The Scallop Fishing (Wales) (No 2) Order 2010 (2010/269) regulates scallop fishing in Welsh waters (out to 12 nautical miles) by British fishing boats, putting in place a number of technical and conservation measures, including temporal and spatial restrictions, as well as restricted engine output capacity and gear allowed. The SI also fixes a minimum size of scallop which may be carried and the method to be used for measuring and currently states the size of a scallop is to be measured in accordance with paragraph 6 of Annex IIII to Council Regulation (EC) No 850/98. This requires amending to reference paragraph 6 of Annex IV of Regulation (EU) 2019/1241.

The Whelk Fishing (Wales) Order 2019 (2019/1042) regulates the fishing, landing and carriage of whelk by British fishing boats in Wales and the Welsh zone, specifying a minimum size for whelk. The SI currently states the size of a whelk is to be measured in accordance with paragraph 7 of Annex XIII to Council Regulation (EC) No 850/98. This requires amending to reference paragraph 9 of Annex IV to Regulation (EU) 2019/1241.

5. Consultation

The amendments required are of a purely technical nature and do not alter the intended purpose of the specified Regulations, therefore, no consultation was undertaken.

6. Regulatory Impact Assessment (RIA)

The amendments required within this regulation are of a technical nature and do not alter the intended purpose of the specified Regulations therefore no Regulatory Impact Assessment has been undertaken.

C(5)035 – The Legislation (Wales) Act 2019 (Commencement) Order 2019

Background and Purpose

This Order brings Part 2 of the Legislation (Wales) Act 2019, which makes provision about the interpretation and operation of Welsh legislation, fully into force on 1 January 2020. Part 2 of the Act will therefore apply to Assembly Acts that receive Royal Assent on or after 1 January 2020, and to Welsh subordinate instruments made on or after that date.

The Order also amends provisions that refer to the day on which Part 2 comes into force, so that they refer instead to 1 January 2020.

Procedure

No procedure.

Scrutiny under Standing Order 21.7

Two points are identified for reporting under Standing Order 21.7 in respect of this Order:

1. Article 4 of the Order amends section 23B of the Interpretation Act 1978. The beginning of the English version of article 4 (correctly) states: "In section 23B…". But the beginning of the Welsh version of article 4 (incorrectly) states: "Yn lle adran 23B…".

However, we accept that the overall context makes it clear what article 4 is seeking to achieve.

2. We note that this Order is made under both section 38 (which includes a power to make **regulations**) and section 44(2) (which includes a power to make an **order**) of the Legislation (Wales) Act 2019, and that section 39 of that Act helpfully allows the Welsh Ministers to exercise a power to make regulations and a power to make an order in a single instrument (in this case, labelled an order).

Government Response

No government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
11 October 2019

WELSH STATUTORY INSTRUMENTS

2019 No. 1333 (W. 231) (C. 44)

INTERPRETATION OF LEGISLATION, WALES

The Legislation (Wales) Act 2019 (Commencement) Order 2019

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings Part 2 of the Legislation (Wales) Act 2019, which makes provision about the interpretation and operation of Welsh legislation, fully into force on 1 January 2020. Part 2 of the Act will therefore apply to Assembly Acts that receive Royal Assent on or after 1 January 2020, and to Welsh subordinate instruments made on or after that date.

The Order also amends provisions that refer to the day on which Part 2 comes into force, so that they refer instead to 1 January 2020.

WELSH STATUTORY INSTRUMENTS

2019 No. 1333 (W. 231) (C. 44)

INTERPRETATION OF LEGISLATION, WALES

The Legislation (Wales) Act 2019 (Commencement) Order 2019

Made *10 October 2019*

Coming into force in accordance with article 1(2)

The Welsh Ministers make the following Order in exercise of the powers conferred on them by sections 38 and 44(2) of the Legislation (Wales) Act 2019(**1**).

Title, coming into force and interpretation

1.—(1) The title of this Order is the Legislation (Wales) Act 2019 (Commencement) Order 2019.

(2) This Order comes into force on the day after the day on which it is made.

(3) In this Order, "the 2019 Act" means the Legislation (Wales) Act 2019.

Provisions coming into force on 1 January 2020

2. Part 2 of the 2019 Act comes into force for all remaining purposes on 1 January 2020.

Amendment of references to day on which Part 2 of the 2019 Act comes fully into force

3. In section 3(1) of the 2019 Act—

(a) in paragraph (b), for "the day on which this Part comes fully into force" substitute "1 January 2020";

(b) in paragraph (c), for "that day" substitute "1 January 2020".

(**1**) 2019 anaw 4. The power to make regulations under section 38 may be exercised to make an order by virtue of section 39.

4. In section 23B of the Interpretation Act 1978(**1**)—

(a) in subsection (1)(b), for "the day on which Part 2 of that Act (interpretation and operation of Welsh legislation) comes fully into force" substitute "1 January 2020 (the day on which Part 2 of that Act comes fully into force)";

(b) in subsections (2)(b) and (3)(a), for "the day on which Part 2 of the Legislation (Wales) Act 2019 comes fully into force" substitute "1 January 2020".

Mark Drakeford
First Minister of Wales
10 0ctober 2019

(**1**) 1978 c. 30. Section 23B was inserted by paragraph 11 of Schedule 10 to the Government of Wales Act 2006 (c. 32) and substituted by paragraph 1 of Schedule 2 to the 2019 Act.

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The Food and Drink (Amendment) (EU Exit) Regulations 2019**
DATE	**3 October 2019**
BY	**Rebecca Evans AM, Minister for Finance and Trefnydd**

The Food and Drink (Amendment) (EU Exit) Regulations 2019

The Law which is being amended

- Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers

- Commission Delegated Regulation (EU) 2018/273 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the scheme of authorisations for vine plantings, the vineyard register, accompanying documents and certification, the inward and outward register, compulsory declarations, notifications and publication of notified information, and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council as regards the relevant checks and penalties

The purpose of the Regulations

The 2019 Regulations primarily amend wine legislation but also make minor operational amendments to food information rules. The 2019 Regulations will make necessary changes to EU regulations to ensure that laws in this area will remain operable after the UK leaves the EU. It will make various changes to ensure that provisions concerning the trade in wines, monitoring production and maintaining records will operate correctly after exit.

It will ensure that the responsibilities for monitoring and controls are re-allocated appropriately.

It will also set out various changes that will reflect the interdependencies with other legislation, primarily that made by HMRC to ensure that transition from Single Customs Union controls to UK specific customs controls operate correctly.

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

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

The 2019 Regulations transfer certain limited functions to the Secretary of State, exercisable on a UK-wide basis. In relation to Wales, the functions being transferred to the Secretary of State are excisable only with consent from Welsh Ministers. It is appropriate that the Secretary of State undertakes these functions on a UK-wide basis as they transfer a role which requires a single coordinating body across the UK.

The functions transferred so that they are exercisable by the Secretary of State with the consent of the Welsh Ministers constitute functions of a Minister of the Crown for the purposes of paragraph 11(2) of Schedule 7B to the Government of Wales Act 2006. Any Assembly Bill seeking to remove or modify such functions requires consultation with the relevant UK Government Minister.

Why consent was given

Consent has been given for the UK Government to make corrections in relation to, and on behalf of, Wales on matters relating to Wine, and to food information rules, for reasons of efficiency, expediency and due to the technical nature of the amendments. The Regulations make a number of technical changes, and supplement other corrections which were included in an earlier EU exit SI (The Food and Drink, Veterinary Medicines and Residues (Amendment etc.) (EU Exit) Regulations 2019), ensuring deficiencies have been fully addressed. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU.

UK MINISTERS ACTING IN DEVOLVED AREAS

153 - The Food and Drink (Amendment) (EU Exit) Regulations 2019
Laid in the UK Parliament: 10 July 2019

Sifting	
Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	16 July 2019
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	23 July 2019
Date sifting period ends in UK Parliament	3 September 2019
Written statement under SO 30C:	Paper 16
SICM under SO 30A (because amends primary legislation)	Not required
Scrutiny procedure	
Outcome of sifting	Not recommended for upgrade
Procedure	Negative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

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

These Regulations primarily amend wine legislation but also make minor operational amendments to food information rules. The key aim of the Regulations is to ensure that appropriate rules are in place to cover the movement and control of wine products from both a regime and excise perspective. These controls relate to documents that are to accompany wine product movements and any certification requirements. Similar changes are also introduced to rules on the records and declarations that must be kept in relation to the production and trade of wines and which set out the bodies that are responsible for carrying out those controls and checks.

The Regulations make the Secretary of State the liaison body responsible for official contact with third countries relating to matters covered by the Regulations for wine products imported into, or exported from, the United Kingdom. The Secretary of State must not act as such a liaison body without the consent of the Welsh Ministers in relation to wine products imported into or exported from Wales.

The Regulations oblige the Secretary of State to publish certain information and lists in relation to the authorities which carry out certain processes regarding the import and export of wine. The Secretary of State must not publish such information and lists where they apply in relation to Wales without the consent of the Welsh Ministers.

Minor changes are also made to food information laws to make them compatible with legislation that has been introduced by HMRC to replace certain other laws which will cease to operate after the UK leaves the EU.

Legal Advisers agree with the statement laid by the Welsh Government dated 7 August 2019 regarding the effect of these Regulations.
The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

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

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The Common Fisheries Policy and Animals (Amendment etc.) (EU Exit) Regulations 2019**
DATE	**10 October 2019**
BY	**Rebecca Evans AM, Minister for Finance and Trefnydd**

The Common Fisheries Policy and Animals (Amendment etc.) (EU Exit) Regulations 2019

The Law that is being amended

- The Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2019.
- The Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) Regulations 2019.
- The Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2019.
- The Animals (Legislative Functions) (EU Exit) Regulations 2019.

<u>European Directly Applicable instruments amended by the 2019 Regulations</u>

- Regulation (EU) No 2019/1241
- Regulation (EU) 2019/472
- Regulation (EU) 2018/973
- Regulation No 2019/1241
- Regulation (EU) 2019/472
- Regulation (EU) 2018/973
- Commission Delegated Regulation (EU) 2019/906.

<u>New deficiency</u>

- Created by Commission Delegated Regulation (EU) 2019/906.

<u>The revocation of</u>:

- Regulation (EU) 2016/1139
- Regulation (EU) 2019/473

- Regulation (EU) 2019/1022
- Council Regulation (EC) 768/2005 - revoked at EU level by Regulation (EU) 2019/473.
- Council Regulations (EC) No 1386/2007 and 2115/2005 - revoked at EU level by Regulation (EU) 2019/833.

The purpose of the amendments
The 2019 Regulations are required in relation to three categories of amendments:

a) Amendments required as a result of new EU CFP legislation which has come into force since 29th March. This includes both direct amendments to the EU legislation itself to ensure it will operate effectively when it becomes retained EU law on exit day, and also amendments to the existing statutory instruments made under the European Union (Withdrawal) Act (mentioned above) where legislation previously corrected has since been revoked or amended.
b) Amendments to legislation previously de-prioritised due to its non-essential nature that can be amended during the extension period before the new exit day.
c) Minor corrections required to four statutory instruments previously approved by Welsh Ministers (as listed above).

Examples of minor corrections that are made by this instrument include amending references from the “European Union” to the “United Kingdom”; and “Union” or “Member State vessels and waters” to “UK vessels and waters”.

EU Regulations which duplicate existing UK legislation are removed, and provisions that are not capable of operating within the UK, or which have no relevance to the UK outside of the EU, are revoked.

The 2019 Regulations also make a minor amendment to a previous EU exit statutory instrument in the field of animal health and welfare relating to the welfare of animals in transport. Regulation 11 of the 2019 Regulations amends the Animals (Legislative Functions) (EU Exit) Regulations 2019). The amendment removes the erroneous provision in that instrument which has been identified as being in conflict with a similar amendment in a different EU exit instrument.

The 2019 Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments are available here: https://beta.parliament.uk/work-packages/K1v1VCdU

Any impact the SI may have on the legislative competence of the National Assembly for Wales
Fisheries management is largely devolved to Scotland, Wales and Northern Ireland in relation to their vessels and their waters. Therefore, where provisions place obligations on EU Member States to do something, these references are mostly changed to “a fisheries administration”, which is a term defined in amendments made by the Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations.2019 and apply to all of the

retained Common Fisheries Policy (CFP) Regulations.

Animal health and welfare is a matter which falls within the legislative competence of the National Assembly and is therefore devolved.

The 2019 Regulations confer regulation making functions, which can be categorised as "devolved", on a concurrent basis and also confer regulation making functions, which can be categorised as "devolved" on the Secretary of State with the consent of the devolved administrations.

Functions transferred to the Secretary of State on a concurrent basis may constitute functions of a Minister of the Crown for the purposes Schedule 7B to the Government of Wales Act 2006 (GoWA 2006). This may operate as a constraint on the Assembly's competence to legislate in the future in these areas. In order to mitigate that risk, Welsh Government officials are working with the Office of the Secretary of State for Wales with a view tor amending Schedule 7B to GoWA 2006 by an Order under section 109A of that Act.

Functions transferred so that they are exercisable by the Secretary of State alone, but only subject to the consent of the Welsh Ministers, constitute functions of a Minister of the Crown for the purposes of Schedule 7B. A future Assembly Bill seeking to remove or modify these functions could trigger a requirement to consult the UK Government

Any impact the SI may have on the legislative competence of the Welsh Ministers
The 2019 Regulations will broaden the Welsh Ministers' executive competence in light of the new functions of requesting that regulations be made by the Secretary of State and consent in respect of the regulations.

Why consent was given
As set out above, the 2019 Regulations are required in relation to three categories of amendments:

a) Amendments required as a result of new EU CFP legislation which has come into force since 29th March. This includes both direct amendments to the EU legislation itself to ensure it will operate effectively when it becomes retained EU law on exit day, and also amendments to the existing statutory instruments made under the European Union (Withdrawal) Act (mentioned above) where legislation previously corrected has since been revoked or amended.
b) Amendments to legislation previously de-prioritised due to its non-essential nature that can be amended during the extension period before the new exit day.
c) Minor corrections required to four statutory instruments previously approved by Welsh Ministers (as listed above).

UK MINISTERS ACTING IN DEVOLVED AREAS	
154 - The Common Fisheries Policy and Animals (Amendment etc.) (EU Exit) Regulations 2019 *Laid in the UK Parliament: 7 October 2019*	
Sifting	
Subject to sifting in UK Parliament?	No
Procedure:	Made affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	N/A
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 18
SICM under SO 30A (because amends primary legislation)	N/A
Scrutiny procedure	
Outcome of sifting	N/A
Procedure	Made affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	22 October 2019

Commentary

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

The Common Fisheries Policy (CFP) imposes a common approach to the sustainable management of fisheries across the European Union (EU) and its waters. Existing CFP legislation will be converted into retained EU law on EU Exit. These Regulations are required to ensure that fisheries management in the UK can continue to operate efficiently after exit. Given the UK wide approach they seem to create a mini common framework in this area. These Regulations make three categories of amendments:

1. amendments required as a result of new EU CFP legislation which has come into force since 29 March 2019, including amendments to the EU legislation itself to ensure it will operate effectively when it becomes retained EU law on exit day, and amendments to existing

statutory instruments made under the European Union (Withdrawal) Act 2018 (the 2018 Act);
2. amendments to legislation previously de-prioritised due to its non-essential nature that can be amended during the extension period before the new exit day; and
3. minor corrections such as typographical errors to the existing statutory instruments referenced in paragraph 1.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 10 October 2019 regarding the effect of these Regulations.

1. The Regulations create functions that can be exercised by the Welsh Ministers and UK Ministers on a concurrent basis. Under Schedule 7B to the Government of Wales Act 2006 (the 2006 Act), the Assembly cannot remove or modify such concurrent functions (in so far as they are exercised by UK Ministers) without UK Government consent.
2. While this impacts negatively on the Assembly's legislative powers, the Welsh Government's written statement says that Welsh Government officials and UK Government officials are in discussions, with a view to limiting that negative impact by amending Schedule 7B to the 2006 Act (by an order under section 109 of the 2006 Act).
3. The Committee raised this point in relation to another written statement (relating to The Import of and Trade in Animals and Animal Products (Amendment etc.) (EU Exit) (No. 2) Regulations 2019) and is still waiting for further information from the Welsh Government as to how Schedule 7B to the 2006 Act may be amended.
4. These Regulations were made on 7 October 2019 and are subject to the urgent 'made affirmative' procedure. UK Government considers it important to urgently have these Regulations in place before exit day so as to provide confidence and certainty to the public and business and to ensure the effective functioning of the statute book after EU Exit.

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

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

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Pesticides (Amendment) Regulations 2019

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

2. The Pesticides (Amendment) Regulations 2019 ("the Regulations") were laid before Parliament on 1 October. The Regulations can be found at: http://www.legislation.gov.uk/uksi/2019/1290/contents/made

Summary of the Regulations and their objective

3. The primary objective of the Regulations is to correct out-of-date references to Regulation (EC) No 1107/2009 on the placing of plant protection products on the market, following amendment of that Regulation by Regulation (EU) 2019/1009 laying down rules on the making available on the market of EU fertilising products. Regulation (EU) 2019/1009 provides that products referred to as plant biostimulants should be excluded from the scope of Regulation (EC) No 1107/2009. The requirements to register a plant protection product under Regulation (EC) No 1107/2009 are necessarily strict to ensure that people and the environment are protected. Consequently they carry costs and place a fairly high regulatory burden on businesses. The recognition that biostimulant products do not need to be authorised under the plant protection products regulations will be welcomed by stakeholders developing and seeking to market such products. It is therefore necessary to ensure that all references to Regulation (EC) No 1107/2019 in primary and secondary legislation are updated.

4. The Regulations also amend the definition of "a regulator in the United Kingdom" in regulation 5(12) of the Plant Protection Products (Sustainable Use) Regulations 2012, to reflect the fact that bodies nominated to regulate the delivery of training in relation to England and Wales have changed their names.

5. The amendments cover legislation in the fields of pesticides, water and the environment.

6. The amendments will ensure the accuracy of the statute book ahead of the UK's exit from the European Union. This is because out-of date references to legislation are not necessarily interpreted as references to the correct

(updated) legislation; and there is therefore a risk that the statute book would not work as intended as a result.

7. The Regulations to which this Statutory Instrument Consent Memorandum relates have been laid in the UK Parliament under the negative procedure and will automatically become law unless there is an objection from a member of either House of Parliament. If there is no such objection, the provision that amends the primary legislation referenced below in this Memorandum will come into force on 31 October 2019.

Provisions to be made by the Regulations for which consent is sought

8. Regulation 2 of the Regulations updates the reference to Regulation (EC) No 1107/2009 in section 43(3) (d) of the Natural Environment and Rural Communities Act 2006, as it applies in England and Wales.

9. It is the view of the Welsh Government that the provision that amends the Natural Environment and Rural Communities Act 2006 falls within the legislative competence of the National Assembly for Wales in so far as it relates to agriculture and fertilising products. These subjects are not listed as reservations under Schedule 7A to the Government of Wales Act 2006.

Why is it appropriate for the Regulations to make this provision?

10. As set out above, there is a need to make a number of amendments to correct out of date references to Regulation (EC) No 1107/2009 within domestic legislation, prior to the UK's exit from the EU, to ensure the statute book operates as intended.

11. It is the view of the Welsh Government that it is appropriate and proportionate that the amendments in these Regulations are made and are made by statutory instrument, due to the technicality of their nature and the extent and application of the enactments being amended. Making these amendments separately could result in the law not operating as intended, being uncertain and inaccessible.

Financial implications

12. There are no anticipated financial implications for the Welsh Government associated with these Regulations.

Lesley Griffiths AM
Minister for Environment, Energy and Rural Affairs

October 2019

EXPLANATORY MEMORANDUM TO

THE PESTICIDES (AMENDMENT) REGULATIONS 2019

2019 No. 1290

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (Defra) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 A number of existing instruments refer to Regulation (EC) No 1107/2009 which sets rules for the authorisation of plant protection products (often referred to as pesticides). The Pesticides (Amendment) Regulations 2019 will update these references to take account of the latest amendment to the EU Regulation, with the effect that products meeting the description of plant biostimulants will become subject to the rules for fertilisers rather than the rules for pesticides.

2.2 The instrument also updates one existing instrument to take account of recent changes in title of qualifications regulators in England and in Wales.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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

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

4. Extent and Territorial Application

4.1 The extent of this instrument is: regulations 2 and 8 extend to England and Wales only; regulation 4 extends to Great Britain; and the remainder extends to the United Kingdom.

4.2 The territorial application of this instrument is: regulations 2 and 8 apply to England and Wales only; regulation 4 applies to England; and the remainder applies to the United Kingdom.

5. European Convention on Human Rights

5.1 George Eustice MP, the Minister of State for Agriculture, Fisheries and Food has made the following statement regarding Human Rights:

"In my view the provisions of the Pesticides (Amendment) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument is being introduced to update references in UK legislation to Regulation (EC) No 1107/2009 on the placing of plant protection products on the market, following amendment of that Regulation by Regulation (EU) 2019/1009 laying down rules on the making available on the market of EU fertilising products. Regulation (EU) 2019/1009 states that products referred to as plant biostimulants should be excluded from the scope of Regulation (EC) No 1107/2009 and that the latter should be amended accordingly. Article 47 of Regulation (EU) 2019/1009 amends Regulation (EC) No 1107/2009.

6.2 The cross-references in domestic legislation amended by this instrument must be updated in time for exit day to ensure that domestic legislation properly cross-refers to Regulation (EC) No 1107/2009 as it forms part of retained EU law.

6.3 The instrument also amends the definition of "a regulator in the United Kingdom" in regulation 5(12) of the Plant Protection Products (Sustainable Use) Regulations 2012, to reflect the fact that bodies nominated to regulate the delivery of training in relation to England and Wales have changed their names.

7. Policy background

7.1 EU and UK pesticides policy is aimed at providing a high level of protection for people and the environment whilst recognising that pesticides are economically important. Under the current system of regulation there are three main instruments:

- Regulation (EC) No 1107/2009 on the placing of plant protection products on the market, which is aimed at ensuring that individual pesticides are only permitted for use if scientific risk assessments find no harmful effect on people and no unacceptable effects on the environment. It operates a 2-tier regulatory process for approval of pesticide active substances at EU level if they meet safety requirements with products containing approved active substances being authorised at national level.
- Two further instruments set maximum residue levels for pesticides in food to facilitate trade in treated produce, and set a framework for action to ensure that pesticides are used responsibly and that alternatives are developed.

7.2 This instrument will update references in UK legislation to Regulation (EC) No 1107/2009 following amendment by Regulation (EU) 2019/1009 laying down rules on the making available on the market of EU fertilising products, which states that products referred to as plant biostimulants should be excluded from the scope of Regulation (EC) No 1107/2009. Plant biostimulants are substances, mixtures and micro-organisms that stimulate plants' natural nutrition processes without themselves being fertilisers or plant protection products.

7.3 Plant biostimulant products are aimed solely at improving plants' nutrient use efficiency and are more similar to fertilisers than to most categories of plant protection products. The requirements to register a plant protection product under Regulation (EC) No 1107/2009 are necessarily strict to ensure that people and the environment are protected. Consequently they carry costs and place a fairly high regulatory burden on businesses. The recognition that biostimulant products do not need to be authorised under the plant protection products regulations will be welcomed by stakeholders developing and seeking to market such products. It is

therefore necessary to ensure that all references to Regulation (EC) No 1107/2019 in primary and secondary legislation are updated.

7.4 This instrument applies to pesticides which are a transferred matter for Northern Ireland under section 4 of the Northern Ireland Act 1998. The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU Exit where we want devolved Ministers to take the necessary actions to prepare Northern Ireland for EU Exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for exit day absent a Northern Ireland Executive. With exit day less than one year away, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for exit is narrowing. UK Government Ministers have therefore decided that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument.

8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to the withdrawal of the United Kingdom from the European Union.

9. Consolidation

9.1 There are no plans to consolidate the legislation that is amended by this instrument. The instrument is updating references in a number of loosely related legal texts so as to take account of the latest change to Regulation (EU) 1107/2009. The substance and purpose of the amended legislation is unchanged and it is not appropriate to consolidate them.

10. Consultation outcome

10.1 It has not been necessary to consult on this instrument because the impact on business has been assessed to be negligible or positive. Businesses are anticipated to welcome this change as it provides clarity and removes the risk that companies might see their plant biostimulant products regulated as plant protection products. It affects a number of small businesses. This instrument also reflects the fact that two bodies responsible for the quality of qualifications under the Plant Protection Products (Sustainable Use) Regulations 2012 in England and in Wales have changed their names, which will not impact on businesses.

11. Guidance

11.1 Guidance is not required.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because the impact on businesses is assessed to be negligible or positive, as it is deregulatory.

13. Regulating small business

13.1 This instrument applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses is the fact that this instrument will have a negligible or positive impact on businesses since plant biostimulant products will no longer be classed as plant protection products and therefore will no longer be required to meet the stringent regulatory requirements established under that legislation.

14. Monitoring & review

14.1 This instrument does not include a statutory review clause and there are no plans to monitor or review this instrument because it is simply updating references to a specific EU Regulation in UK law. There are no consequences of the instrument that would benefit from monitoring or review.

15. Contact

15.1 Sarah Hugo at the Department for Environment, Food and Rural Affairs. Telephone: 0208 026 9385 or email: sarah.hugo@defra.gov.uk can be contacted with any queries regarding this instrument.

15.2 Holly Yates, Deputy Director for Chemicals, Pesticides and Hazardous Wastes, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 George Eustice MP, Minister of State for Agriculture, Fisheries and Food at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

Document is Restricted

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

Llywodraeth Cymru
Welsh Government

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

10 October 2019

Dear Mick,

The Welsh Government has this afternoon published a new document on constitutional policy, entitled "Reforming our Union: Shared Governance in the UK". The document sets out the Government's views on the reforms of culture, institutions and processes which we believe are necessary if the UK is to have a sustainable future as a union of nations.

I know that your Committee is already taking great interest in this matter, and I hope you find the document of interest. I would be glad in due course to have your views on the ideas we have brought forward.

Best wishes,

Mark.

MARK DRAKEFORD

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Llywodraeth Cymru
Welsh Government

Reforming our Union

Shared Governance in the UK

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1 First Minister's Foreword

Mark Drakeford AM
First Minister of Wales

In the public debate around Brexit which has engaged politicians and citizens in all parts of the UK in recent times, the main focus has been on the UK's future international and trading relations with the European Union and the wider world. This of course is vitally important, but just as much attention needs to be paid to the other side of the coin: how is the UK itself to be governed in future years as it responds to the challenges of the new century, including the potential challenges resulting from Brexit?

There is currently a vacuum in the UK Government's thinking on this issue, at least so far as manifested in public documents. Admittedly, in a speech delivered shortly before she left office, Mrs Theresa May spoke with commitment about the benefits of the Union. But her speech did not provide a way forward for those of us who believe that the United Kingdom continues to have value for each of its constituent parts, that its survival is however an open question, and who wish to see it continue as an effective and mutually-beneficial partnership between people and nations. So this document is offered by the Welsh Government as a stimulus to public debate on this vital question.

In a speech at the Institute for Government earlier this year, I referred to the well-known quotation in Giuseppe di Lampedusa's novel, The Leopard: "If we want things to stay as they are, things will have to change". So, for the United Kingdom to continue in being (something to which the Welsh Government is committed), so much of it – its institutions, its processes and above all its culture – will all have to change. As I told the new Prime Minister when he visited Cardiff in July, I believe that the Union has not been under greater strain in my lifetime. We cannot and must not avoid an urgent public debate about this. The prospect of an imminent General Election and the arrival of a new UK Government makes this all the more timely and necessary.

This document is the latest to be produced by the Welsh Government on these matters. I hope it will stimulate new thinking in this area, and I look forward to constructive engagement, not least from the UK Government, with the ideas the Welsh Government is putting forward.

2 Introduction

In July 2018 the House of Commons Public Administration and Constitutional Affairs Committee (PACAC) published a Report[1] on "Devolution and Exiting the EU: reconciling differences and building strong relationships". The Committee noted that

> "Devolution is now an established and significant feature of the UK constitutional architecture and should be treated with respect to maintain the integrity of the United Kingdom. The Government needs to bring clarity to the situation by setting out, in response to this Report, its Devolution Policy for the Union…".

In its response[2] published in September 2018, the UK Government noted the Committee's recommendation and declared its intention "to publish a statement on the Union in due course".

No such statement has however emerged. This can no doubt be explained by the all-consuming character of the Brexit crisis on which the UK Government has been almost entirely focused, but the very fact of the UK's possible withdrawal from the European Union reinforces the need for clearer policy perspectives on the future governance of the Union. As Professor Bogdanor explains[3]:

"Brexit will transform the relationship between the British Government and the governments of the devolved bodies in Scotland, Wales and Northern Ireland. We will have to re-think the balance of power between Holyrood, Cardiff Bay, Stormont and Westminster… [It] raises once again the question of how the United Kingdom is to be preserved. So, Brexit involves not just a new relationship between Britain and the Continent, but perhaps also a new relationship between the various components of the United Kingdom".

In the absence of a formal UK Government contribution to the debate, the Welsh Government considers it appropriate now to publish this paper, which is intended to stimulate further public discussion within the UK on the nature of the UK's governance in coming years.

THIS DOCUMENT

The document comes forward from a Welsh Government whose starting point is fiercely in support of devolution, but which also believes in the UK: we stand for entrenched devolution settlements within a strong United Kingdom.

We have a particular understanding of what devolution means. The Welsh Government view is that some of the early tensions with devolution originated in the highly restrictive interpretation in Whitehall of the meaning of devolution itself. On that interpretation, devolution provides special governance arrangements in the devolved territories, so that so-called "national" policy can be flexed to meet local circumstances.

That Whitehall perspective may derive from the very language of "devolution", which assumes the default is centralisation of political authority within the UK. But that is the wrong starting point. We should instead start from a presumption of subsidiarity and sovereignty shared within the UK. Then we can focus on how to make the Union work effectively, to join its constituent parts in a shared enterprise of governing the UK.

In other words, devolution is not only about how each of Wales, Scotland and Northern Ireland are separately governed, in different forms of association with England. Rather, devolution is concerned with how the UK as a whole should be governed, with proper account taken of the interests of all of its parts. It is a joint project between England, Wales, Scotland and Northern Ireland, based on a recognition of our mutual inter-dependence, which therefore requires a degree of shared governance.

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1 Eighth Report of Session 2017-19, HC 1485.
2 Eighth Special Report of Session 2017-19, HC1574.
3 V. Bogdanor, "Beyond Brexit: towards a British Constitution" (2019), pp. x-xi.

So this document sets out for public debate a series of propositions[4], twenty in total, reflecting that perspective. The propositions are organised under the headings of General Principles; Legislatures and Legislative Powers; Executive Powers: Governments, Agencies and Civil Service; Finance; Justice and the Courts; and Constitutional Reform. Each proposition is fleshed out as necessary by explanatory or amplifying text.

The twenty propositions are then brought together in Annex 1, and the Welsh Government's view is that, taken together, they provide a coherent vision of the way that the United Kingdom should be governed in future years for the benefit of all of its citizens in each of its parts. The propositions are presented from a Welsh perspective, and some examples drawn from the Welsh devolution settlement are referred to, but this document is intended as a contribution to public debate on the future of the UK[5], rather than an argument about Welsh devolution as such[6].

The proposals in this paper are designed to strengthen and improve the existing devolution settlements, and in the Welsh Government's view they represent the minimum that should be put in place. But they should not preclude consideration of a more radical approach to reform in the UK (including the need for a written or codified constitution); the case for this grows increasingly strong as devolution matures, and as compliance with traditional constitutional conventions and understandings breaks down.

This is a debate of very long standing: exactly 100 years ago, a Speaker's Conference on Devolution was appointed 'To consider and report upon a measure of Federal Devolution' for the United Kingdom. It produced proposals on a wide range of issues with which we continue to grapple today, although nothing ultimately came of those endeavours. But the need for change is urgent now; from the Welsh Government's standpoint, nothing in this paper should be taken as ruling out a yet more ambitious approach to constitutional reform.

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4 Certain of the propositions reflect arrangements already in place. They are re-presented in this context because in the Welsh Government's view, they constitute important building blocks in our overall constitutional vision.

5 We do not express views here about the appropriate structures of government, including executive devolution, internal to England.

6 The Welsh legislature is referred to in this document as Senedd Cymru or the Senedd, in accordance with s.1 of the Senedd and Elections (Wales) Bill currently before the National Assembly for Wales.

3 General Principles

PROPOSITIONS 1-3

1. Whatever its historical origins, the United Kingdom is best seen now as a voluntary association of nations taking the form of a multi-national state, whose members share and redistribute resources and risks amongst themselves to advance their common interests. Wales is committed to this association, which must be based on the recognition of popular sovereignty in each part of the UK; Parliamentary sovereignty as traditionally understood no longer provides a sound foundation for this evolving constitution.

"The United Kingdom was constructed not through any conscious plan, but pragmatically as a result of decisions [in respect of Wales] by Henry VIII in the sixteenth century, by the Whigs who negotiated the Anglo-Scottish Union in 1707, and by Lloyd George, who negotiated a treaty with Irish nationalists in 1921."[7] Given this long, convoluted and at times contested history, it is the Welsh Government's view that developments in the governance of the UK to face the challenges of the new century should be informed by our history, but not constrained by it.

The modern recognition of the UK as a multi-national state based on each nation's choice to be a part of the United Kingdom follows from the establishment of national devolution for Scotland and Wales in 1999, and the endorsement in Northern Ireland of the Good Friday Agreement. The devolved institutions for each of Wales, Scotland and Northern Ireland within the UK were established on the basis of popular endorsement through referendums in each territory held specifically for that purpose. As the then Prime Minister Mrs Theresa May said in her speech about the Union on 4 July 2019:

> "Our Union rests on and is defined by the support of its people… it will endure as long as people want it to – for as long as it enjoys the popular support of the people of Scotland and Wales, England and Northern Ireland."

Although their existence is legally authorised by way of Acts of Parliament, the devolved institutions gained, and retain, their legitimacy by reason of democratic approval.

If, as this first proposition maintains, the UK is conceived of as a voluntary association of nations, it must be open to any of its parts democratically to choose to withdraw from the Union. If this were not so, a nation could conceivably be bound into the UK against its will, a situation both undemocratic and inconsistent with the idea of a Union based on shared values and interests.

In the case of Northern Ireland, provision is made for periodic "border polls", and in certain circumstances the Secretary of State is statutorily obliged to arrange for the holding of one. There are no equivalent standing statutory arrangements for Scotland or Wales for the holding of referendums on continuing membership of the Union, but in the Welsh Government's view, provided that a government in either country has secured an explicit electoral mandate for the holding of a referendum, and enjoys continuing support from its parliament to do so, it is entitled to expect the UK Parliament to take whatever action is necessary to ensure that the appropriate arrangements can be made.

That said, it would be unreasonable for such referendums to be held too frequently (and the Northern Ireland provisions require a minimum of seven years between border polls[8]). More importantly, as a government committed to the United Kingdom, we would hope that in any such referendum the relevant electorate would vote for its territory to remain in membership of the UK.

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7 Bogdanor, "Beyond Brexit", p.171.
8 Northern Ireland Act 1998, Sched. 1, para. 3.

If, further, it is accepted that sovereignty (some of which should be shared) lies with each part of the UK, the traditional doctrine of the sovereignty of Parliament no longer provides a firm foundation for the constitution of the UK. It needs to be adjusted to take account of the realities of devolution, just as it was adjusted to take account of the UK's membership of the European Union[9].

Parliamentary sovereignty is primarily concerned with the apparently unlimited character of Westminster's legislative competence in respect of the whole of the UK. That Parliamentary legislative competence therefore overlaps with the competences of the devolved legislatures, and we say more about the implications of this in discussion of proposition 5 below. But it follows from the general approach to UK governance advocated here that the Welsh Government sees merit in at least some of the proposals of the Constitution Reform Group for a new Act of Union Bill[10], explicitly predicated on an affirmation "that the peoples of [the constituent nations and parts of the UK] have chosen… to continue to pool their sovereignty for specific purposes", and which provides for mechanisms to give effect to this principle.

2. The principles underpinning devolution should be recognised as fundamental to the UK constitution. The devolved institutions must be regarded as permanent features of the UK's constitutional arrangements; any proposals for the abolition of such institutions should be subject to their consent and to the consent of the relevant electorate.

In the Introduction we drew attention to the PACAC Report recommendation, which notes that "Devolution is now an established and significant feature of the UK constitutional architecture". In the same vein, Mrs May on 4 July observed that "For those of us who believe in the Union, devolution is the accepted and permanent constitutional expression of the unique multinational character of our Union".

These welcome sentiments are reflected in statutory provisions for both Wales and Scotland, which note that the devolved institutions for each country "are a permanent part of the United Kingdom's constitutional arrangements."[11]

Given the prevailing orthodoxy in relation to the doctrine of Parliamentary sovereignty, this may not provide the permanent protection for Senedd Cymru and the Scottish Parliament that a simple reading of the provision might imply, but it is further declared that the devolved institutions "are not to be abolished except on the basis of a decision of the people of Wales/Scotland voting in a referendum". Further, the UK Government has committed normally to seek the Senedd's legislative consent for Parliamentary legislation altering the Senedd's legislative competence. (This is a particular aspect of the Sewel Convention, discussed under Proposition 5 below). Compliance with this commitment should protect the Senedd (and the other devolved legislatures) from progressive erosion of their powers and responsibilities.

It is clear, therefore, that, although these legal provisions and extra-statutory commitments cannot, within the existing UK constitution, provide an absolute protection for devolution (because the protecting provisions could in theory be repealed by later Parliamentary legislation), any UK Government which proposed to legislate for abolition of the devolved institutions without prior popular approval in referendums, or for reduction of their powers without the relevant legislatures' legislative consent, could do so only at extreme political cost. For all practical purposes, therefore (and setting aside for present purposes the current difficult circumstances in Northern Ireland), proposition 2 sets out the existing constitutional position, and the devolved institutions are and will continue to be intrinsic to the UK's constitutional arrangements for as long as they retain popular support.

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9 See the discussion in Bogdanor, "Beyond Brexit", pp. 65-86.
10 First Reading in House of Lords 9 October 2018.
11 See for Wales, Government of Wales Act 2006, s.A1, inserted by Wales Act 2017, s.1.

3. The powers of the devolved institutions should be founded on a coherent set of responsibilities allocated in accordance with the subsidiarity principle. Those powers should be defined by the listing of the specific matters which it is agreed should be reserved to Westminster in respect of each territory, all other matters (in the case of Wales) being or becoming the responsibility of Senedd Cymru and/or the Welsh Government.

Following the changes made to the Welsh devolution settlement made by the Wales Act 2017[12], the reserved powers model, whereby a list of specific matters is excluded from the competences of the devolved legislatures and retained for Westminster and Whitehall, is now the preferred model for legislative devolution within the UK (although the particular form of the model in Northern Ireland differs from that in Wales and Scotland). The apparent corollary, that all other matters should be or become the exclusive responsibility of the devolved legislatures, however comes into conflict with the current doctrine of parliamentary sovereignty; this is further discussed in relation to proposition 5 below.

The reserved powers model may be contrasted with the conferred powers model, which was formerly in place in Wales. Under this model, the starting point was that legislative power in respect of Wales lay with Westminster, which chose, by conferring limited legislative competence, to permit the National Assembly for Wales also to legislate on certain specific matters. The UK Government, in the European Union (Withdrawal) Bill introduced in 2017, sought to create a new conferred powers model for all three devolved legislatures in relation to functions exercisable free of European Law constraints following Brexit; the functions would have been held at Westminster and then passed down, little by little, to the devolved legislatures by way of Orders in Council. This plan was wholly unacceptable to the devolved institutions, and new provisions compatible with the reserved powers model were agreed during the Bill's passage through Parliament.

Adoption of a reserved powers model, while welcome as a technically superior method of providing devolved institutions with legislative competences, cannot however answer the question as to exactly which competences should be devolved (or, more accurately, which should be reserved). The subsidiarity principle requires that legislative and governmental responsibilities should be allocated to the most local level at which they can be performed efficiently and effectively. Central authorities' functions should be subsidiary, being only those which cannot be discharged satisfactorily at local level; the starting assumption should be that responsibilities will be devolved.

Subsidiarity has not however been used as an organising principle of allocation of responsibilities under the devolution settlements within the UK. Each settlement is said to derive from the history and circumstances of the particular territory to which it relates, rather than from logic or constitutional principle. The result is an asymmetric patchwork of settlements, which in the Welsh case has led to an inappropriately lengthy set of matters reserved to Westminster, and an incoherent set of functions lying with the Welsh devolved institutions[13]. Application of the subsidiarity principle would produce a very different result.

The argument for recognition of the subsidiarity principle is not of course to seek identical settlements for each of Wales, Scotland and Northern Ireland, but it does require that differences between the settlements should be capable of rational justification (which they currently do not appear to be). The Welsh Government agrees with PACAC that "the [UK] Government should… be held accountable for representational and institutional asymmetries within the UK political system."[14]

[12] See in particular the new Schedule 7A to the Government of Wales Act 2006, inserted by Wales Act 2017, s.3(1). Note however that the conferred powers model continues to be used for devolution of powers in relation to taxation, this seemingly leading the UK Government to an inappropriately detailed investigation of devolved policy intentions before specific new taxation competences are conferred.

[13] Welsh devolution appears to be the only constitutional settlement in the world which requires the specific reservation to central authority of responsibility for Hovercraft. Issues of coherence are further discussed in the context of proposition 18 below.

[14] PACAC Report, n.1 above, paragraph 21.

4 Legislatures and Legislative Powers

PROPOSITIONS 4-7

4. It should be a matter for each legislature to determine its own size, electoral arrangements and internal organisation, with locally-determined Standing Order provision for the relevant legislature in respect of these matters as required.

The continuing existence of the devolved legislatures should (so far as possible under the existing understanding of Parliamentary sovereignty) be immune from questioning in accordance with proposition 2. In the same way they should be empowered to be self-governing in terms of the numbers of their members, the rules they put in place about who is eligible for membership, the arrangements they make about their elections, and the standing orders they adopt for conduct of their business.

It has long been the case that the UK Parliament can regulate itself in these matters, but provision to this effect is now also to be found in the devolution legislation for Wales and Scotland[15] , subject to requirements for 'super-majorities' of devolved legislature members voting for legislation on most of these matters (not something required of the House of Commons). The devolved legislatures in Wales and Scotland are now therefore for all practical purposes both permanent features of the UK's constitutional arrangements and self-governing institutions, in both respects largely immune from external interference. Different prescriptive, requirements apply in certain respects to the Northern Ireland Assembly's arrangements for conduct of its business, given the particular history and circumstances of Northern Ireland.

5. The relations of the four legislatures of the United Kingdom should proceed on the basis of mutual respect. Although, as matters currently stand, the UK Parliament still formally possesses legal authority to legislate for Wales, Scotland and Northern Ireland on all matters (including those devolved), it should not normally seek to legislate for a territory, in relation to matters within the competence of the devolved legislature of that territory, without that legislature's explicit consent. The 'not normally' requirement should be entrenched and codified by proper definition and criteria governing its application, giving it real rather than symbolic acknowledgement in our constitutional arrangements. Alternatively, a new constitutional settlement could simply provide that the UK Parliament will not legislate on matters within devolved competence, or seek to modify legislative competence or the functions of the devolved governments, without the consent of the relevant devolved legislature.

In contrast to the position in relation to executive powers further discussed in proposition 8, and given traditional understandings of parliamentary sovereignty, legislative devolution has not meant the transfer by the UK Parliament of legislative powers to the devolved legislatures. Currently, the UK Parliament continues to have unlimited legislative competence in respect of all parts of the UK (including, in respect of the devolved territories, competence about devolved matters[16]), and the devolved legislatures are additional legislatures for their territories, with competences overlapping that of the UK Parliament.[17]

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15 For Wales, see now s.111A of the Government of Wales Act 2006, inserted by s.9 of the Wales Act 2017. Earlier legislation relating to the National Assembly for Wales was notably more prescriptive as to the Assembly's internal organisation and management of its business, but these constraints were removed by ss.14-15 of the 2017 Act.

16 "This Part [4 of the Government of Wales Act 2006] does not affect the power of the Parliament of the United Kingdom to make laws for Wales": s.107(5) of the 2006 Act.

17 As a result, the UK Constitution has nothing equivalent to the lists of competences common in federal constitutions of matters reserved to the federal tier, matters reserved for state responsibilities, and matters of concurrent competence. Instead we have matters explicitly reserved to the "federal" tier ie to Westminster, with all other legislative competences in effect being concurrent.

If legislative devolution is to have real meaning, this situation therefore requires the UK Parliament to adopt a self-denying ordinance in respect of legislation on matters in the devolved sphere, thereby acknowledging the primary responsibility of the devolved legislatures for legislation in their territories on devolved matters. It has done this through adoption of the "Sewel convention", that Parliament will not normally legislate for Wales, Scotland or Northern Ireland with regard to devolved matters without the consent of the relevant devolved legislature. In the case of Wales and Scotland, the convention has been restated in statutory form.[18]

It is however clear from the decision of the Supreme Court in the Miller case[19] that questions about compliance with the convention, even though it has been statutorily restated, are not justiciable. This means that the UK Government and Parliament have considerable discretion in deciding what circumstances are "abnormal", enabling them to proceed with legislation on matters within devolved competence notwithstanding any refusal by a devolved legislature of its consent.

In the Welsh Government's view, this is not a sustainable position if devolution is to be properly respected. We propose two linked reforms. First, there must be a clearer specification of the circumstances when refusals of devolved legislatures' consent can be legitimately overridden, and secondly we advocate a more explicit stage of Parliamentary consideration of the implications of proceeding regardless of the lack of consent.

On the first point, the governments of the UK need to negotiate a new Memorandum of Understanding, setting out the circumstances and criteria under which the UK Government may in extremis proceed with its legislation, notwithstanding a lack of devolved legislative consent. Consideration should also be given to setting out these criteria in statute, in a manner which would better facilitate judicial oversight of decisions by the UK Government to proceed with legislation notwithstanding the absence of consent.

Secondly, thought should be given as to how the UK Parliament itself, when faced with a Bill for which devolved consent has been refused, should deal with the matter. In the Welsh Government's view, Parliament should have a specific opportunity to consider the constitutional implications of allowing the Bill to proceed to Royal Assent without consent. When the Scottish Parliament refused its consent to the EU (Withdrawal) Bill in 2018, neither House of Parliament was given any real opportunity to consider the implications of proceeding without that consent.

So, in the future, these matters must be handled with greater respect for the views of the devolved legislatures. The Parliamentary legislative process should be adjusted[20] so that a proper opportunity is given to each House, during the final stages of a Bill's consideration, to consider whether it wishes to proceed with a Bill when the relevant devolved legislature has refused consent. UK Ministers should be required to justify, by way of Statements in each House, why they wish to proceed with a Bill notwithstanding the absence of devolved consent, and the relevant devolved legislature should have the opportunity to provide to Parliament its reasons for not giving consent[21]. Parliamentary consideration could also be informed by reports from the relevant Parliamentary Committees on the constitutional implications of proceeding with the Bill in these circumstances.

There is however a potentially simpler, albeit more radical, approach to this issue. This would be to establish the principle, as an element in a new constitutional settlement, that the UK Parliament should not be able to legislate on devolved matters, or seek by Parliamentary legislation to modify the competences of the devolved institutions, without the consent of the relevant devolved legislature. In other words, the "not normally" qualification, with all its potential for creating uncertainty, misunderstanding and distrust

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18 For Wales, see s.107(6) of the 2006 Act, inserted by s.2 of the Wales Act 2017. Note however that the UK Government's Devolution Guidance Note 17, paragraph 69, commits the UK Government also to seeking legislative consent where a Bill provision amends the Senedd's legislative competence:
"The UK Government will normally seek [legislative consent] where Parliament is legislating on devolved matters. The UK Government will also normally seek [consent] where Parliament is altering devolved competence. This means that UK government departments will seek the consent of the [Senedd] through an LCM for a Parliamentary Bill provision which applies in relation to Wales and: a. includes devolved provision i.e. a provision which would be within the [Senedd]'s legislative competence… …or b. alters devolved competence i.e. modifies the [Senedd]'s's legislative competence or the Welsh Ministers' executive competence".

19 R (Miller) v Secretary of State for Exiting the European Union [2017] UKSC 5.

20 Note the creation, through amendment of House of Commons Standing Orders, of an additional legislative stage for England-only Bills, to give effect to "English Votes for English Laws".

21 See an analogous procedure provided for by the European Union (Withdrawal) Act 2018, Sched.3 para, 43, inserting s.157ZA into the Government of Wales Act 2006 (although in that instance it is the Welsh Ministers' reasons, rather than the devolved legislature's reasons, that are presented to Parliament).

between the UK Parliament and the devolved institutions, would be removed, and a simpler and clearer relationship established between the institutions. The Welsh Government would certainly be open to a debate on the merits of such arrangements.

6. It should be recognised that the legislative powers of the UK state are now exercisable by four legislatures rather than one, and so the running costs of the four legislatures should in future be covered together on the same basis as those of the UK Parliament currently, ie through a specified funding line (but one covering all four legislatures), 'top-sliced' from the total of budget provision for the UK.

The current arrangements, whereby each devolved legislature has to finance its own running costs out of totals of resources calculated for distribution to the executive branch for public services, are inconsistent both with citizens' expectations on the use of resources provided for such services, and with the constitutional principle of the separation of powers. In the Welsh case, the current Assembly Commission budget for 2019-20 for running the Assembly is £58m; their audited spend for the 2018-19 year was £54.4m. This money is "top-sliced" from the allocation of central funds for devolved public services, and is therefore not available for expenditure on those services. Whitehall Departments in contrast would be surprised at any suggestion that their allocations should be top-sliced to meet the running costs of the UK Parliament.

There may however be some tension between propositions 4 and 6, in that the freedom provided by proposition 4 for each devolved legislature to determine its own size and internal organisation might theoretically leave open a disproportionate claim being made by one legislature on the total of resources to be shared among the four legislatures in accordance with proposition 6. The Welsh Government would suggest that, as and when a specific funding line is established to cover the running costs of all four legislatures, this is supplemented by a memorandum of understanding between the legislatures as to how the relevant resources are to be allocated between them, and what procedures should be established to secure transparency and scrutiny in respect of the use of these resources.

7. Each of Wales, Scotland and Northern Ireland should continue to be represented in the House of Commons. A reformed Upper House of Parliament should be constituted, with a membership which takes proper account of the multi-national character of the Union, rather than (as the House of Commons is) being based very largely on population. This Upper House should have explicit responsibility for ensuring that the constitutional position of the devolved institutions is properly taken into account in UK parliamentary legislation.

As an administration committed to the UK, the Welsh Government strongly supports continued Welsh representation in the House of Commons. Further, consistently with proposition 4, it must be for that House to decide on Member numbers, and how Members are to be elected.

That said, in the past, the Welsh Government has argued[22] that for any given number of Parliamentary constituencies, the allocation of seats to each part of the UK should be fixed, rather than recalculated at each Boundary Review as the law currently requires. So, for example, in a 600-Member House, the legislation should provide that there will be 30 constituencies in Wales (with equivalent numbers for Scotland and Northern Ireland), and this should remain the position unless and until the overall number of MPs is changed.

[22] Written Evidence to House of Commons Political and Constitutional Reform Committee, "What next on the redrawing of parliamentary constituency boundaries?", Eighth Report of Session 2014-15, HC 600.

If it was clear that for the foreseeable future there would be a fixed number of Welsh constituencies, that would provide the Senedd with a firm foundation to use on which to construct new electoral arrangements, if it wanted to do so. Without that foundation, it would in all likelihood have to create a quite separate and different geography for those arrangements, but there would be obvious advantages, both for voters and for political parties in local organisational terms, in having coterminous Parliamentary and Senedd constituencies. (This is already the situation in Northern Ireland, where the existing Parliamentary constituencies are used to return numbers of MLAs to the Northern Ireland Assembly, and that would continue to be the case even if the number of such constituencies is reduced; the Assembly would simply be smaller). And it could be beneficial from a wider United Kingdom standpoint to have common geographies that enabled MPs and AMs to work effectively together in serving the same electorates.

So far as the House of Lords is concerned, few would want to defend the current composition of the House, however effectively it has used its powers in recent times. If it is to be reformed, full and proper account needs to be taken of the developments in the UK's territorial constitution which is the subject of this paper.

While it would be unrealistic, given the population disparities between England and the other parts of the Union, to argue for equal representation from each territory, a reformed upper House of Parliament should be established with a membership, largely or wholly elected, which does take into account the multi-national character of the Union.

The existing House of Lords has claimed for itself a particular responsibility in respect of UK constitutional issues. This tradition could be built upon if a reformed Upper House was given explicit responsibility for ensuring that the interests of the devolved territories and their institutions are protected and properly respected in UK parliamentary legislation.[23]

[23] The German Basic Law confers on the Bundesrat (Upper House) distinctive responsibilities and powers in respect of Bills impacting on the constitutional position of the Lander.

5 Executive Powers: Governments, Agencies and Civil Service

PROPOSITIONS 8-13

8. The United Kingdom is governed by four administrations, each of which (including the UK Government in respect of England[24]) has separate responsibilities, which should be recognised by all of the other partners as part of the shared enterprise of the governance of the UK. The relations of the four governments should therefore proceed on the basis of a partnership of equals, in a spirit of mutual respect (and comment on the policies of other administrations should, within a culture of robust political debate, properly reflect that respect).

9. Save where other arrangements have been agreed (and provided for as necessary in legislation), Ministers in each administration should have exclusive authority, and be fully accountable locally, for the exercise of statutory functions in their territories in accordance with their legal powers, without challenge, review or oversight by Ministers of another administration.

These two propositions can be considered together.

Within their territories, whereas the devolved legislatures' powers would traditionally be seen as additional to those of the UK Parliament (see proposition 5), the devolved governments have exclusive responsibility for the exercise of the functions which have been transferred to them (unless the functions have been explicitly provided to be available for concurrent exercise). Although, under each of the devolution settlements, intervention powers are available to the Secretary of State on specified and limited grounds to control the exercise of devolved competences[25], these powers have never been used, and any attempt to do so would no doubt lead to very serious inter-governmental difficulties.

All this means that the four governments, being in practice each exclusively responsible within their territories for the exercise of relevant functions, are not, and must not be seen as, in an hierarchical relationship one to another. To the extent that they choose to coordinate and collaborate with each other, they should therefore do so on the basis of mutual respect and parity of esteem. And their accountability for the exercise of those functions will lie to the relevant legislature, rather than (in the devolved governments' case) to Westminster.

In the Welsh Government's view, it further follows that the UK Government, even if authorised by statute to do so, should not, save by prior agreement with the relevant devolved government, incur public expenditure in Wales, Scotland or Northern Ireland in respect of matters for which responsibility has been transferred to devolved governments.

[24] Several Whitehall Departments, following devolution, have responsibilities almost exclusively relating only to England; examples are the Department for Education, the Department of Health and the Department for Housing, Communities and Local Government. In the Welsh Government's view, it would assist public and media understanding if they were officially renamed to reflect this reality.

[25] In respect of the Welsh settlement, see ss. 82 and 114 (as amended) of the Government of Wales Act 2006. The intervention powers are further discussed in relation to proposition 11 below.

10. There should be well-founded arrangements and/or machinery to enable the various administrations to work effectively together on matters of mutual interest. These may be of a bilateral or multilateral nature as appropriate. Where all four administrations (or however many have the relevant powers) agree that there is a need for a common approach, common frameworks, shared delivery mechanisms and joint governance arrangements should be developed on a collaborative and consensual basis. Any such machinery must make provision for the speedy and efficient resolution of disagreements between one government and another, or between several governments, with a clear and agreed role for independent input (whether advice, mediation or arbitration).

If the UK is conceived of as a voluntary association of nations with distinct identities but a range of shared interests, its principal method of government in relation to those interests should be one of negotiation, with a view to securing consensus. This requires the establishment and maintenance of effective machinery for the conduct of inter-governmental relations.

The existing arrangements for the conduct of inter-governmental relations, based on a Memorandum of Understanding last revised in 2013, have been extensively criticised[26], and they have been unable to bear the weight of inter-governmental negotiation that Brexit has required. In the Welsh Government's view, we now need to secure a root and branch reform of the existing arrangements, to meet the new challenges that the post-Brexit world will bring.

In 2017 we published a paper, "Brexit and Devolution", calling for replacement of the largely consultative Joint Ministerial Committee with a decision-making UK Council of Ministers. This would oversee the existing inter-Ministerial forums such as the Finance Ministers' Quadrilateral meetings, as well as new entities such as the Inter-Ministerial Forum for Environment, Food and Rural Affairs, and the similar Forum we have proposed for International Trade. It should be supported by an independent Secretariat, with arrangements analogous to those from which the British Irish Council benefits.

Further, whether or not the argument for a Council of Ministers is accepted, the Welsh Government believes that the time has come for a reformed machinery of inter-governmental relations to be founded on statutory provision. Inter-governmental relations are now recognised as forming a fundamental component of a UK constitution based on the principle of devolution, so the foundation of the system should lie in public law, with greater transparency and accountability and better public understanding resulting from that. Statutory underpinning could then set the context for a changed culture so that the machinery operates on the basis of parity of participation by the four governments, reflecting the mutual respect and parity of esteem which should form the basis of the conduct of their inter-governmental relations.

A particular defect of the present arrangements is the failure to provide effective systems for resolution of disputes in which all administrations can have confidence. Consideration should be given to establishing these systems as part of the governance arrangements for the new Inter-Ministerial Groups referred to above, as well as at JMC (Plenary) level; dispute avoidance and resolution will frequently be more effective at this portfolio level. Introducing the possibility of independent third-party support for resolving disputes between governments, whether that takes the form in particular contexts of binding arbitration, mediation or advice, would also go some way to enabling the devolved administrations to believe that the issues they find it necessary to raise will be dealt with fairly.

There is one final point to make. If it is accepted that the four governments will need to work together more formally and across a wider range of policy areas than hitherto, this will raise questions about the most appropriate arrangements for scrutiny of this activity. It is not for the Welsh Government, or indeed any of the governments, to specify what arrangements the four legislatures should put in place to facilitate

26 See for example the PACAC Report, n.1 above, ch.8: "Inter-governmental relations: the missing part of devolution?"

scrutiny, but it is right to say that if the legislatures were to establish machinery allowing for coordinated or joint scrutiny by the legislatures of inter-governmental activity, that is something that we would regard as wholly consistent with the developing structures of UK governance.

11. In relation to the UK's international relations and trade, Ministers and officials of the devolved administrations should be involved through formal inter-governmental machinery in discussion with the UK Government about the formulation of the UK's policy position on matters which may be the subject of international negotiations, particularly where these could have important implications for matters within devolved competence. The UK Government should not normally proceed with negotiating mandates on devolved matters which have not been agreed with the relevant devolved administration, and the devolved governments should be closely involved with the process of negotiation. It should be for the devolved administrations, in consultation with the UK Government (and other administrations as necessary) and subsequently with their devolved legislatures, to consider how obligations within devolved competence arising from the UK's international agreements should be implemented, including whether the devolved institutions should implement these through their own legislation or agree to be covered in UK/GB legislation.

Ministers of the UK Government conduct the UK's international relations, including negotiations in respect of trade, under powers derived from the Royal Prerogative. And the devolution settlements all provide intervention powers for the Secretary of State to take action to ensure that the devolved institutions, in exercise of their powers, do so in line with the UK's international obligations.

It is however too simple a view to conclude from this that the devolved institutions have no legitimate interests to pursue in relation to the UK Government's conduct of international relations. As was made clear by the Supreme Court in the Scottish Continuity Bill case[27], the provisions in the devolution legislation reserving competence on International Relations to the UK Parliament do not extend to the implementation of the UK's international obligations in the devolved sphere. Certain consequences follow from this.

The Welsh Government sees the UK's acceptance and implementation of international obligations as part of a single, albeit staged, process – agreeing within the UK what we wish to achieve in the negotiations; undertaking the negotiating; securing approval ('ratification') for what has been agreed; and giving effect to the resulting obligations (with, as noted, the possibility of use of Secretary of State intervention powers in extremis). In this process, different government actors at different times must take the lead, but in a context that all are involved in a shared or joint enterprise.

Settling the UK's negotiating mandate and doing the negotiating is clearly a UK Government lead, but the devolved administrations will wish to be involved in both of those matters because implementing the obligations, at least in the devolved sphere, resulting from negotiations is primarily their responsibility. It would be artificial in the extreme to separate the UK's negotiation of new international obligations from the process of giving effect to them, and it would serve no-one's interests if the UK Government entered into international obligations which the devolved institutions were then not prepared to implement.

27 [2018] UKSC 64.

So, inter-governmental machinery[28] needs to be put in place to support a single, staged, process enabling the UK to enter into and implement new international obligations, with the devolved institutions and the UK Government each having their respective parts to play in a shared collaborative effort. Further, the UK Government needs to give an undertaking that it will work with the devolved administrations to seek agreement on all negotiating positions which touch on devolved matters, and not normally pursue negotiating mandates on those matters without the agreement of the devolved administrations. Awareness that the devolved institutions are standing in partnership with the UK Government on negotiating mandates in the devolved sphere, and engaged in the negotiations themselves, should give negotiating partners confidence that any agreements they enter into will be properly implemented within the UK.[29]

For their part, the devolved institutions will need on each occasion to give careful consideration as to whether and how new international obligations in the devolved sphere should be given effect. Assuming that the devolved administrations have been properly engaged in the negotiating process as described above, this will come down either to consenting to implementation on a UK-wide basis via Westminster legislation, or (as would be likely to be the Welsh Government's starting assumption) deciding to legislate themselves to enable international obligations to be fitted into local circumstances and legal systems. Consultations between the various governments will need to play a part in deciding on the best way forward.

12. Whenever creation, or repurposing, of a public body or agency with executive responsibilities for more than one part of the UK is in prospect, consideration must always be given in its institutional design to the views of the relevant devolved administrations, to enable appropriate account to be taken of the interests of each of the parts of the UK within the agency's remit. This should include arrangements relating both to a body's governance and funding, and to scrutiny and oversight of its activities.

The variety of circumstances in which this issue can arise means that there is no single solution appropriate to every case. The options include appointments by devolved Ministers to membership of the Board of the public body or agency; consent by devolved Ministers to appointments proposed by a Secretary of State; formal commitments to consultation about procedures for recruitment of Board members; and agreements or protocols about officials' dealings with agency officials as a routine part of the body's management of its business, including input into its corporate planning. (As a generalisation, the greater the involvement of the public body in matters within the devolved sphere, the more likely it is that devolved interests will need to be protected through direct influence on Board membership appointments).

Accountability arrangements to devolved legislatures will also need to feature in consideration of this issue. It is commonly the case that public bodies are required to send copies of their Annual Reports to devolved Ministers for laying before devolved legislatures, to facilitate scrutiny.[30]

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28 The Welsh Government has argued for the establishment of an Inter-Ministerial Forum on International Trade. There is however a case for establishing such a Forum with a wider remit, to consider how the UK is projected overseas and what the priority areas for investment and engagement should be.

29 Note here the UK Government's stress on the UK being able to "speak clearly, with a single voice, as a unitary actor under international law": UK Government Response to the Constitution Committee Report: Parliamentary Scrutiny of Treaties (July 2019), pp 5-6. Appropriate constitutional arrangements, including effective machinery capable of securing inter-governmental agreement on matters of mutual interest, are required to make this a reality.

30 See for example Wales Act 2017, s.66: requirement for Gas and Electricity Markets Authority to send its Annual Reports and Accounts to the Welsh Ministers, who must lay these before Senedd Cymru.

13. Ministers in each administration should continue to be supported by civil servants subject to common rules and codes as to appointment and professional conduct; and arrangements should be in place to facilitate exchanges and transfers of staff from one administration to another.

The Welsh Government supports the continuation of arrangements whereby members of a single Home Civil Service are able to provide support for Ministers in each of the Welsh, Scottish and UK Governments. (For historical reasons, there is a separate Northern Ireland Civil Service). Such arrangements guarantee the maintenance of common professional standards and codes of conduct across the three administrations, which facilitates inter-governmental working on a day-to-day basis. They also enable transfers and loans of staff to take place without difficulty between administrations, enabling individual civil servants to broaden their experience and understanding of the perspectives, processes and practices of other administrations within the UK.

Over time, it is possible that individual administrations may wish to re-organise public administrative resources within their territories in order to secure greater efficiency and coherence. In Wales, this is sometimes referred to as the desirability of establishing a 'single Welsh public service'. The benefits of a single Home Civil Service will need to be recalibrated against such new developments.

6 Finance

PROPOSITIONS 14-17

14. It is for the UK Government to determine levels of public expenditure, both for programmes operating at UK/GB/England and Wales level and for England in respect of policy areas which are devolved. Spending power for the devolved administrations should be determined, having regard to proposed levels of spending for England, by reference to a set of agreed objective indicators of relative need, so that spending power is fair across the different administrations and an equivalent level and quality of public goods can be delivered in all parts of the UK. The UK Government should not be able arbitrarily to allocate additional funding to any particular part of the UK outside these arrangements.

In the current system funding is, in general, allocated to the devolved administrations through the Barnett formula, where changes in funding for the devolved administrations is a population share of changes in comparable programmes, with adjustments for revenues from devolved taxes.[31] The system does not take into account the relative needs of each nation. There have been instances where the UK Government has acted outside the normal rules in a way which is not seen as fair by one or more of the devolved administrations.

In 2016, changes were made to the Barnett formula as it applies to Wales. This change – known as the 'Holtham floor'[32] – adds in a specific, needs-based factor, currently set at 105% but which will rise to 115% at the point that spending per person in Wales on devolved functions reaches 115% of the English level. This Wales-specific adjustment to the Barnett formula goes some way to delivering a fairer system. However, the Welsh Government believes that the Barnett formula should be replaced and a new relative needs-based system implemented, within a comprehensive and consistent fiscal framework to which all Governments in the UK agree.

Devolved administrations also have a legitimate interest in the levels and fairness in distribution of spending on UK/GB/England and Wales programmes, for example in relation to welfare benefits, justice and rail infrastructure. The levels and fairness in distribution of expenditure on such programmes is important for the devolved administrations for a variety of reasons but particularly because of the interactions between UK/GB/England and Wales programmes on the one hand and devolved programmes on the other.

[31] Details of the operation of Barnett formula are set out in the Statement of Funding Policy (2015), www.assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/479717/statement_of_funding_2015_print.pdf, updated in the Scottish and Welsh Fiscal Frameworks (2016), www.assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/503481/fiscal_framework_agreement_25_feb_16_2.pdf, www.assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/578836/Wales_Fiscal_Framework_Agreement_Dec_2016_2.pdf.

[32] This change was first proposed by the Holtham Commission in its second report (2010), www.gov.wales/fairness-and-accountability-new-funding-settlement-wales.

15. The devolved administrations should be resourced by a combination of needs-based grant from the UK Government, resources raised through devolved and local taxation, and capital borrowing.

The balance of funding for each devolved administration as between UK Government grant and revenue raised through devolved and local taxation will reflect particular circumstances and local political preferences. There is no assumption that the balance of funding or the scope of devolved taxation powers will be identical across all devolved administrations. However, the agreements underpinning fiscal relationships between the UK Government and the devolved administrations should be based on common principles of partnership, transparency, and recognition of the interconnected nature of the UK and devolved administration fiscal landscape.

The Welsh Government recognises that different circumstances and political preferences in different parts of the UK has led to an asymmetry in fiscal devolution. However, asymmetry does not have to mean an ad hoc, unsystematic approach to fiscal devolution and there is a risk that the growing lack of coherence will lead to instability if not addressed. The Welsh Government considers that all Governments in the UK should agree a core set of principles and aims which can apply to all administrations but also allow scope for necessary diversity.

So the Welsh Government argues for a single UK fiscal framework, agreed by all Governments. At its core we would expect this agreement to be underpinned by the principles of parity of participation, collaborative working, and shared responsibility for outcomes. The framework should also provide for a rules-based approach which does not allow for political influence over funding which can create inequality and distrust. The framework should apply in all but exceptional circumstances with any deviation from the framework to be agreed by all Governments through an open and transparent system.

16. The operation of these resourcing arrangements, including determinations of devolved administrations' spending power and borrowing limits, should be the responsibility of a public agency accountable to all four administrations jointly.

The legitimacy of a UK fiscal framework can only be properly secured if it is jointly agreed and independently operated and assured. Without the existence of an independent, jointly accountable body it is highly likely that even an agreed fiscal framework will be unable to prevent all potential disputes and grievances.

The principle of third-party assistance by an independent body in the resolution of disputes is already recognised in both the fiscal frameworks of the Welsh and Scottish Governments, and is a well-used method of dispute resolution across the world. The Welsh Government believes that there is an essential role for an independent body which can ensure the necessary parity of treatment, recognising the importance of the subsidiarity principle but at its core recognising that all parts of the UK are interdependent.

17. It is for the devolved administrations to determine, within the powers and resources available to them, their own priorities for taxation and public expenditure relating to their devolved responsibilities, and to account for their decisions to their own legislatures. However, decisions taken by the devolved administrations or bodies under their jurisdiction can have financial implications for departments or agencies of the UK Government ('spill-over' effects). Alternatively, decisions of UK departments or agencies can lead to financial implications for the devolved administrations. In these cases, the Government responsible for the decisions leading to financial implications for others must take responsibility for dealing with those implications. Disagreements on the operation of this principle should be subject to independent assessment.

Existing arrangements for recognising and dealing with the potential spill over effects of decisions made by one Government on others are not fully effective and disputes often arise. The Welsh Government believes that the new UK fiscal framework requires a clear, agreed, independent mechanism for dealing with spill-over effects and a clear approach to the resolution of disputes.

7 Justice and the Courts

PROPOSITIONS 18-19

18. The devolved institutions (and the UK Government and Parliament in respect of England) should be responsible for policing and the administration of justice in their territories. Jurisdictional arrangements and court structures should reflect the devolved institutions' distinctive responsibilities for their territories in respect of these and related matters.

This proposition is a particular application of proposition 3, that the powers of the devolved institutions should be founded on a coherent set of responsibilities and allocated in accordance with the subsidiarity principle. It is of distinctive significance for Wales, where (unlike Scotland and Northern Ireland) these powers are not presently devolved.

In the other jurisdictions the lines between what is devolved and what is not are drawn in such a way as to confer coherent sets of powers on the devolved institutions. But in the Welsh case an arbitrary division has been drawn between what can be legislated for and what cannot. So, Senedd Cymru can legislate, but the enforcement of that legislation is through the courts system, for which the UK Government has responsibility in Wales.

The Welsh Governmemt is not aware of any decentralised system of government in the common law world which is as limited. In other jurisdictions all or most "domestic" matters are devolved, which includes all public services and other matters that do not have to be regulated centrally. So there are no reasons why the police, most aspects of civil and criminal law, anti-social behaviour, or the administration of justice and related matters need be controlled centrally – and so, in Scotland and Northern Ireland as elsewhere, they are not.

As a result, it is clear what each government is responsible for, and they are able to develop coherent and comprehensive joined-up policies and laws, including in respect of policing and justice, to tackle the social problems they face. Given that responsibilities for policing and justice are currently not devolved, that is not an option at present available to the Welsh Government.

If responsibilities for policing and justice are matters appropriate for devolution to Senedd Cymru and the Welsh Government in accordance with the subsidiarity principle, this would serve to reinforce the case for the creation of a discrete system of courts for Wales, but in our view that case stands in its own right on general constitutional grounds.

In the Welsh Government's evidence to the Thomas Commission on Justice in Wales, we argue that, with one exception across the common law world, a legislature is always accompanied by a corresponding legal jurisdiction. That is because divergence in law necessitates different jurisdictional arrangements, and the existence of a distinct legislature, by definition, will mean divergence in law. Wales is however in that respect the exception. Creating a Welsh legal jurisdiction would therefore merely be dealing properly with the implications of what has already occurred, the establishment for Wales of legislative devolution. And among other things, creating a discrete jurisdiction would secure for Wales the benefits of strong local judicial leadership which is such a significant feature of the courts systems in both Scotland and Northern Ireland.

19. The Supreme Court, as the ultimate court of appeal for most matters within the United Kingdom, should have in membership individuals identified with each and every part of the UK. The opportunity should be taken, when vacancies come to be filled, to ensure that at least one suitably-qualified person identified with Wales is a member of the Supreme Court.

In a sense, this proposition is simply a particular application of the principle in proposition 12, that appropriate account must be taken in a public body's institutional design of the interests of each of the parts of the UK within its remit. But it also follows logically from the argument in proposition 18 in support of a discrete courts system for Wales.

The Supreme Court stands at the apex of the legal systems of England and Wales; Northern Ireland; and, for most matters, Scotland. Section 27(8) of the Constitutional Reform Act 2005 provides that

> "In making selections for the appointment of judges of the [Supreme] Court the commission must ensure that between them the judges will have knowledge of, and experience of practice in, the law of each part of the United Kingdom."

On its face, this would appear to require judicial representation from Wales on the Court, as from the other parts of the UK. The initial interpretation however was that for this purpose, a "part of the United Kingdom" was a reference to one of the existing three legal jurisdictions within the United Kingdom; on that basis, Wales, as part of the jurisdiction of England and Wales, was not entitled to separate representation on the Court.

This is not a sustainable position, and both Lord Thomas of Cwmgiedd (as Lord Chief Justice of England and Wales, but now retired) and Lord Lloyd-Jones have served the Court with distinction. But their appointments appear to have depended upon their personal qualifications and expertise, rather than a recognition of Wales as a distint entity for legal purposes.

If the Supreme Court is truly to be perceived as serving all parts of the United Kingdom, it will be essential, from a constitutional standpoint, that when Lord Lloyd-Jones retires, he is replaced by someone who has "knowledge of, and experience of practice in, the law" of Wales, and that from henceforth Wales is represented on the Supreme Court in its own right. Creation of a discrete Welsh courts system, as argued for in proposition 18, would reinforce the case for this.

8 Constitutional Reform

PROPOSITION 20

20. Future constitutional developments in the United Kingdom should be considered on a holistic basis and on the basis of constitutional principle, rather than by way of ad hoc reforms to particular constitutional settlements. This should be undertaken by a constitutional convention. The Welsh Government and the other devolved administrations must have seats at the convention table, and have the opportunity to press their particular constitutional aspirations, informed by proposed developments elsewhere in the UK. Citizens across the UK should also have an organised ability to contribute to any convention.

The UK Constitution is uniquely malleable. It is not codified, nor is there any special procedure to give effect to proposals for constitutional reform. Furthermore, policy conversations about devolution have tended to take place in a series of bilateral exchanges between the UK Government and the relevant devolved administration, to some degree without reference to how devolution is developing in other parts of the UK. This has resulted in a piecemeal approach, not obviously based on any intellectual rationale, to devolving powers, leading to a patchwork of different arrangements across the UK.

In the Welsh Government's view, future constitutional reform needs to be considered from a UK-wide perspective. The case for a written constitution, and a debate about the nature of such a written codification should, we believe, form part of the deliberations of a constitutional convention. As we said earlier in relation to propositions 3 and 15, this does not necessarily mean that the devolution and resource settlements need to be identical, although the differences between them should be capable of rational justification; but it does mean that ad hoc adjustments to particular settlements should be avoided, or at the very least their implications for other settlements taken into account before proceeded with.

The Welsh Government has consistently argued for the creation of a constitutional convention, primarily tasked with examining the full set of relationships between the devolved administrations and the UK Government, in the context of our joint enterprise of the governance of the UK. It continues to be our belief, now more than ever, that such a debate about the future of the Union is vital; and if, in order to secure that, it is decided to turn to some other mechanism, the Welsh Government would accept that, provided that it allows for a wide-ranging debate among the interested parties, with effective public participation.

9 Annex 1: The Twenty Propositions

GENERAL PRINCIPLES

1. Whatever its historical origins, the United Kingdom is best seen now as a voluntary association of nations taking the form of a multi-national state, whose members share and redistribute resources and risks amongst themselves to advance their common interests. Wales is committed to this association, which must be based on the recognition of popular sovereignty in each part of the UK; Parliamentary sovereignty as traditionally understood no longer provides a sound foundation for this evolving constitution.

2. The principles underpinning devolution should be recognised as fundamental to the UK constitution. The devolved institutions must be regarded as permanent features of the UK's constitutional arrangements; any proposals for the abolition of such institutions should be subject to their consent and to the consent of the relevant electorate.

3. The powers of the devolved institutions should be founded on a coherent set of responsibilities allocated in accordance with the subsidiarity principle. Those powers be defined by the listing of the specific matters which it is agreed should be reserved to Westminster in respect of each territory, all other matters (in the case of Wales) being or becoming the responsibility of Senedd Cymru and/or the Welsh Government.

LEGISLATURES AND LEGISLATIVE POWERS

4. It should be a matter for each legislature to determine its own size, electoral arrangements and internal organisation, with locally-determined Standing Order provision for the relevant legislature in respect of these matters as required.

5. The relations of the four legislatures of the United Kingdom should proceed on the basis of mutual respect. Although, as matters currently stand, the UK Parliament still formally possesses legal authority to legislate for Wales, Scotland and Northern Ireland on all matters (including those devolved), it should not normally seek to legislate for a territory, in relation to matters within the competence of the devolved legislature of that territory, without that legislature's explicit consent. The 'not normally' requirement should be entrenched and codified by proper definition and criteria governing its application, giving it real rather than symbolic acknowledgement in our constitutional arrangements.

Alternatively, a new constitutional settlement could simply provide that the UK Parliament will not legislate on matters within devolved competence, or seek to modify legislative competence or the functions of the devolved governments, without the consent of the relevant devolved legislature.

6. It should be recognised that the legislative powers of the UK state are now exercisable by four legislatures rather than one, and so the running costs of the four legislatures should in future be covered together on the same basis as those of the UK Parliament currently, ie through a specified funding line (but one covering all four legislatures), 'top-sliced' from the total of budget provision for the UK.

7. Each of Wales, Scotland and Northern Ireland should continue to be represented in the House of Commons. A reformed Upper House of Parliament should be constituted, with a membership which takes proper account of the multi-national character of the Union, rather than (as the House of Commons is) being based very largely on population. That Upper House should have explicit responsibility for ensuring that the constitutional position of the devolved institutions is properly taken into account in UK parliamentary legislation.

EXECUTIVE POWERS: GOVERNMENTS, AGENCIES AND CIVIL SERVICE

8. The United Kingdom is governed by four administrations, each of which (including the UK Government in respect of England) has separate responsibilities, which should be recognised by all of the other partners as part of the shared enterprise of the governance of the UK. The relations of the four governments should therefore proceed on the basis of a partnership of equals, in a spirit of mutual respect (and comment on the policies of other administrations should, within a culture of robust political debate, properly reflect that respect).

9. Save where other arrangements have been agreed (and provided for as necessary in legislation), Ministers in each administration should have exclusive authority, and be fully accountable locally, for the exercise of statutory functions in their territories in accordance with their legal powers, without challenge, review or oversight by Ministers of another administration.

10. There should be well-founded arrangements and/or machinery to enable the various administrations to work effectively together on matters of mutual interest. These may be of a bilateral or multilateral nature as appropriate. Where all four administrations (or however many have the relevant powers) agree that there is a need for a common approach, common frameworks, shared delivery mechanisms and joint governance arrangements should be developed on a collaborative and consensual basis. Any such machinery must make provision for the speedy and efficient resolution of disagreements between one government and another, or between several governments, with a clear and agreed role for independent input (whether advice, mediation or arbitration).

11. In relation to the UK's international relations and trade, Ministers and officials of the devolved administrations should be involved through formal inter-governmental machinery in discussion with the UK Government about the formulation of the UK's policy position on matters which may be the subject of international negotiations, particularly where these could have important implications for matters within devolved competence. The UK Government should not normally proceed with negotiating mandates on devolved matters which have not been agreed with the relevant devolved institutions, and the devolved governments should be closely involved with the process of negotiation. It should be for the devolved administrations, in consultation with the UK Government (and other administrations as necessary) and subsequently with their devolved legislatures, to consider how obligations within devolved competence arising from the UK's international agreements should be implemented, including whether the devolved institutions should implement these through their own legislation or agree to be covered in UK/GB legislation.

12. Whenever creation, or repurposing, of a public body or agency with executive responsibilities for more than one part of the UK is in prospect, consideration must always be given in its institutional design to the views of the relevant devolved administrations, to enable appropriate account to be taken of the interests of each of the parts of the UK within the agency's remit. This should include arrangements relating both to a body's governance and funding, and to scrutiny and oversight of its activities.

13. Ministers in each administration should continue to be supported by civil servants, whether or not organised on a territorial basis, subject to rules and codes as to appointment and professional conduct; and arrangements should be in place to facilitate exchanges and transfers of staff from one administration to another.

FINANCE

14. It is for the UK Government to determine levels of public expenditure, both for programmes operating at UK/GB/England and Wales level and for England in respect of policy areas which are devolved. Spending power for the devolved administrations should be determined, having regard to proposed levels of spending for England, by reference to a set of agreed objective indicators of relative need, so that spending power is fair across the different administrations and an equivalent level and quality of public goods can be delivered in all parts of the UK. The UK Government should not be able arbitrarily to allocate additional funding to any particular part of the UK outside these arrangements.

15. The devolved administrations should be resourced by a combination of needs-based grant from the UK Government, resources raised through devolved and local taxation, and capital borrowing.

The balance of funding for each devolved administration as between UK Government grant and revenue raised through devolved and local taxation will reflect particular circumstances and local political preferences.There is no assumption that the balance of funding or the scope of devolved taxation powers will be identical across all devolved administrations. However, the agreements underpinning fiscal relationships between the UK Government and the devolved administrations should be based on common principles of partnership, transparency, and recognition of the interconnected nature of the UK and devolved administration fiscal landscape.

16. The operation of these resourcing arrangements, including determinations of devolved administrations' spending power and borrowing limits, should be the responsibility of a public agency accountable to all four administrations jointly.

17. It is for the devolved administrations to determine, within the powers and resources available to them, their own priorities for taxation and public expenditure relating to their devolved responsibilities, and to account for their decisions to their own legislatures. However, decisions taken by the devolved administrations or bodies under their jurisdiction can have financial implications for departments or agencies of the UK Government ('spill-over' effects). Alternatively, decisions of UK departments or agencies can lead to financial implications for the devolved administrations. In these cases, the Government responsible for the decisions leading to financial implications for others must take responsibility for dealing with those implications. Disagreements on the operation of this principle should be subject to independent assessment.

JUSTICE AND THE COURTS

18. The devolved institutions (and the UK Government and Parliament in respect of England) should be responsible for policing and the administration of justice in their territories. Jurisdictional arrangements and court structures should reflect the devolved institutions' distinctive responsibilities for their territories in respect of these and related matters.

19. The Supreme Court, as the ultimate court of appeal for most matters within the United Kingdom, should have in membership individuals identified with each and every part of the UK. The opportunity should be taken, when vacancies come to be filled, to ensure that at least one suitably-qualified person identified with Wales is a member of the Supreme Court.

CONSTITUTIONAL REFORM

20. Future constitutional developments in the United Kingdom should be considered on a holistic basis and on the basis of constitutional principle, rather than by way of ad hoc reforms to particular constitutional settlements. This should be undertaken by a constitutional convention. The Welsh Government and the other devolved administrations must have seats at the convention table, and have the opportunity to press their particular constitutional aspirations, informed by proposed developments elsewhere in the UK. Citizens across the UK should be able to participate in any convention. The case for a written constitution should form part of the convention's deliberations.

gov.wales

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Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA/P/KS/5090/19

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

11 October 2019

Annwyl Mick,

We wish to provide advanced notice of a quadrilateral meeting with the Secretary of State (SoS) for Business, Energy and Industrial Strategy (BEIS) on 17 October 2019.

Representation at the meeting is expected as follows:

- UK Government - Andrea Leadsom MP, Secretary of State for Business, Energy and Industrial Strategy.
- Scottish Government - Rosanna Cunningham MP, Cabinet Secretary for Environment, Climate Change and Land Reform.
- Northern Ireland – Unknown, official representation.

The meeting was due to take place on 07 October but was cancelled by the Secretary of State at short notice. We are deeply frustrated by this and will be writing to the Secretary of State to express our frustration.

At the meeting the Welsh Government will be represented by the Minister for Economy and Transport and the Minister for Environment, Energy and Rural Affairs. The Ministers will raise and cross-cutting issues relevant to the Education portfolio.

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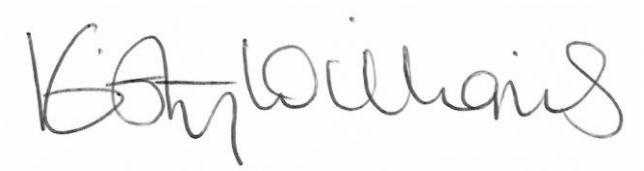
It has been agreed that the draft agenda will include discussion on how we prepare business and citizens for Brexit, the role of the UK in tackling climate change and the Industrial Strategy, in particular the place-based approach. We will also be highlighting the need to strengthen and maintain Ministerial engagement with BEIS through more robust inter-governmental structures necessary to ensure the devolution settlement is protected and impacts on Welsh citizens and businesses is limited.

Following the meeting, we will produce a Written Statement which will provide members with a summary of the issues discussed and an outline of the positions advanced by the Welsh Government.

Ken Skates AC/AM
Gweinidog yr Economi a Thrafnidiaeth
Minister for Economy and Transport

Lesley Griffiths AC/AM
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs



Kirsty Williams AC/AM
Y Gweinidog Addysg
Minister for Education

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 Grŵp Cynrychiolaeth Llafur Cymru

Evidence from Welsh Labour Representation Group

This response is on behalf of the Welsh Labour Representation Group (WLRG), a fringe and research group made up of Welsh Labour members looking at constitutional matters for Wales. Some of the questions in this response have been answered grouped together in order to give proper context to the answer.

Regarding how "normally" should be interpreted in section 107(6) of the Government of Wales Act 2006, who should interpret it and how disputes should be resolved; questioning the power of UK Ministers under section 109A of the Government of Wales Act 2006 (as introduced by section 12 of the EU Withdrawal Act 2018) to temporarily 'freeze' areas of devolved competence

With regards to the word 'normally'. Whilst the UK Parliament, would not *normally* legislate, that does not mean that it *will not*, nor does it mean that it *cannot*. Some may now argue that Sewel being placed on a statutory footing recognises how serious the UK Parliament is about respecting the rule. However, despite the codification of the convention it remains *prima facie* a convention, a non-justiciable rule because of that word *normally.* Both Section 2 of the Wales Act 2017 and Section 2 of the Scotland Act 2016 reflect a good step forward in many ways in terms of Westminster starting to respect the autonomy of devolved institutions, but they do not go far enough. There have been 340 Sewel motions voted on since 1999: 173 in Scotland, 79 in Northern Ireland and 88 in Wales. Whilst the intergovernmental mechanisms between UK and devolved administrations ensures most changes are made with the express consent of the devolved legislatures, there are circumstances in which consent has been withheld. Most recently in the case of the Scottish Parliament's refusal to consent to The EU Withdrawal Bill now Act, while the National Assembly has refused to give consent seven times and Northern Ireland once.

Something must change to ensure that devolved legislatures are not overruled or have legislation imposed upon them from London, but what is the solution? It could be argued it is time to propose a new justiciable rule, stronger than a convention, that would ensure that the UK Parliament *cannot* legislate in an area that is within the devolved competence of the Scottish Parliament, National Assembly for Wales or Northern Ireland Assembly. For the moment we shall call this Sewell +. Additionally, if UK-wide action were required, a joint ministerial committee should meet to formulate the legislation co-operatively with individual Bills introduced in each national legislature. This same joint ministerial committee

could act as an initial arbiter of the definition of the term 'normally' with the Supreme Court of the United Kingdom acting as a final decision maker. With the creation of said committee it should be considered unacceptable for Westminster to legislate for any of the devolved legislatures or for UK Government Ministers to freeze legislative competence.

This suggestion has some issues, excusing for a moment that legislation focusing on constitutional tinkering is probably quite low down on the UK Government's priority list.

Primarily that of parliamentary sovereignty. The doctrine of parliamentary sovereignty is such that even if the UK Parliament passed legislation removing their right to legislate for the devolved administrations in devolved areas, they could not bind a successor Parliament. Therefore, a subsequent Parliament could just legislate to remove this protection, or in fact just legislate in the devolved area ignoring the protection completely. Some may argue that parliamentary sovereignty is a fallacy. That just because Parliament votes to nationalise all the cafes in Paris does not make it so. However, there is a clear distinction to be made between the UK Government of the day's potential penchant for Parisian Coffee Houses and institutions created by the UK Parliament itself. With the UK's constitution as it is Parliament could simply legislate away any protection, it could even legislate to abolish the devolved legislatures. It is submitted that this must not be allowed to occur. So, something even more drastic would be required to ensure Sewel +'s place in the UK constitution.

Never again should Wales ever be under threat of not having a Parliament of its own.

We require a Constitutional Convention.

Only a Constitutional Convention that fundamentally alters the location of power in the UK could ever deliver a set of circumstances in which Sewel + could be deliverable, where power rests equally in the hands of all the UK's constituent nations. If the UK Government is not willing to engage in a convention of this kind, then the Welsh Government should do so, inviting Scottish and Northern Irish (Once re-established) Governments to take part.

Unlike the EU, the UK does not provide a structure of Sovereignty that would allow for a unilateral withdrawal from its union. The important distinction here revolves around Section 30 of the Scotland Act 1998 and Article 50 of The Treaty of the European Union. Section 30 provides for The Scottish Parliament to get a temporary extension of power with which they can pass a referendum Act. This was the legal basis for the referendum in 2014 and would be the likely basis of any future "Indy Ref". Compare this with Article 50, which provides that 'Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.' The difference here is staggering.

It is a difference of relationships and of power dynamics. In one union you are treated as an equal, a valued constituent part of a greater whole, responsible

enough to make your own decisions. In the other, you are treated as if a child, not capable of taking control of your own destiny, maybe only getting your way when the parent has grown tired of your arguments.

The development and use of intergovernmental agreements between the UK and Welsh Governments that are emerging as a consequence of Brexit-related legislation

Whilst it is the subject of some academic wrangling if indeed the EU is a *true* confederation and fair question can be raised of attempting to emulate a system which you voted to leave only a few years prior, **if the UK is to have any hope of surviving it must embrace the confederal nature of the EU and make each constituent unit equal**. It must ensure that power derives from the periphery to the centre and not the other way around. This should not only apply to the Nations, but to the regions of England as well.

The union must ensure each constituent element is in charge of making the majority of its decisions and that includes the decision to secede from the union if that element chooses to do so, in accordance with their own constitutional requirements. The UK would not accept being told what to do by France or Germany so why should it expect the same of its own constituent elements?

Scotland and Northern Ireland voted strongly to remain, and Wales and England to leave. If we learn lessons from the EU, which in many situations affords its member states a veto, each constituent element of the UK would have a veto on the decisions of the UK as an international entity. Exit from the EU could have been stopped for the UK by respecting the decision of the constituent entities in this case Scotland and Northern Ireland. Such a model was recommended by Nicola Sturgeon prior to the Brexit vote. This system could apply not only to the decision to leave the EU but to day to day governance. If one region or nation wants to govern itself in a particular way it should have the right to do so and not have to rely on Westminster for permission.

This confederal structure is not unique to the EU. Countries such as Belgium and Australia use variations of this practice in order to ensure that each constituent element has an equal say and if the Union is to survive then it will take a change such as this to make that happen.

Earlier versions of these submissions can be found in the below articles.

https://www.iwa.wales/click/2019/01/is-it-time-to-reform-the-sewel-convention/

https://www.iwa.wales/click/2018/12/our-place-in-two-unions/

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The future of Welsh law: classification, consolidation codification**
DATE	**17 October 2019**
BY	**Jeremy Miles AM, Counsel General and Brexit Minister**

I have spoken before about the complexity of our laws, about the problems people experience in understanding their rights and obligations. Members across the Senedd agree that the law for which we are responsible needs to become more accessible, and I am delighted the Legislation (Wales) Act 2019 is now in force.

Today I am continuing our work to make Welsh law more accessible by publishing more detail about the Government's proposals for the classification, consolidation and codification of the law. This is a vision for the future, one in which all laws that fall within the legislative competence of the Senedd are in order, easy to navigate, available in up-to-date form and as understandable as the complexity of the content allows.

Achieving this requires a revamp of the statute book. This will be done by instigating a system of *classification* of existing law so that it can be organised by reference to its subject matter; through subsequent *consolidation* of that law in accordance with the subject classification; and, once order is achieved in this way, a process of *codification* intended to keep the law in order. It also means improving our *communication* about the law both by better publishing and providing more explanatory material about legislation.

The proposals I am publishing today describe our proposals for getting there. We have set out what we mean by classification, consolidation and codification and outline other related projects that will contribute to our goal. I look forward to hearing the views of the public practitioners and users of legislation in Wales.

More information is available here:
https://gov.wales/the-future-of-welsh-law-classification-consolidation-and-codification