

Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:	For further information contact:
Committee Room 1 – Senedd	Gareth Williams
Meeting date: 6 January 2020	Committee Clerk
Meeting time: 14.30	0300 200 6362
	SeneddCLA@assembly.wales

- 1 Motion under Standing Order 17.22 to elect a temporary
Committee chair**
14.30
- 2 Introduction, apologies, substitutions and declarations of interest**
14.30
- 3 Instruments that raise issues to be reported to the Assembly
under Standing Order 21.2 or 21.3**
14.35–14.40
Affirmative Resolution Instruments
 - 3.1 SL(5)482 – The Representation Of The People (Annual Canvass) (Amendment)
(Wales) Regulations 2020**

(Pages 1 – 47)

CLA(5)–01–20 – Paper 1 – Report
CLA(5)–01–20 – Paper 2 – Regulations
CLA(5)–01–20 – Paper 3 – Explanatory Memorandum
CLA(5)–01–20 – Paper 4 – Letter from the Minister for Housing and Local
Government, 10 December 2019
Negative Resolution Instruments
 - 3.2 SL(5)478 – The Welsh in Education Strategic Plans (Wales) Regulations 2019**

(Pages 48 – 82)

CLA(5)–01–20 – Paper 5 – Report
CLA(5)–01–20 – Paper 6 – Regulations



CLA(5)–01–20 – Paper 7 – Explanatory Memorandum

3.3 SL(5)481 – The Renting Homes (Fees etc.) (Holding Deposit) (Specified Information) (Wales) Regulations 2019

(Pages 83 – 95)

CLA(5)–01–20 – Paper 8 – Report

CLA(5)–01–20 – Paper 9 – Regulations

CLA(5)–01–20 – Paper 10 – Explanatory Memorandum

CLA(5)–01–20 – Paper 11 – Letter from the Minister for Finance and Trefnydd to the Llywydd, 6 December 2019

No Procedure Instruments

3.4 SL(5)484 – The Whelk Fishing (Wales) (Amendment) Order 2019

(Pages 96 – 105)

CLA(5)–01–20 – Paper 12 – Report

CLA(5)–01–20 – Paper 13 – Order

CLA(5)–01–20 – Paper 14 – Explanatory Memorandum

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

14.40–14.45

4.1 SL(5)476 – The Meat (Official Controls Charges) (Wales) (Amendment) Regulations 2019

(Pages 106 – 111)

CLA(5)–01–20 – Paper 15 – Report

CLA(5)–01–20 – Paper 16 – Welsh Government response

5 Subordinate legislation that raises no reporting issues under Standing Order 21.7

14.45–14.50

(Pages 112 – 114)

CLA(5)–01–20 – Paper 17 – Subordinate legislation with clear reports
Negative Resolution Instruments

5.1 SL(5)479 – Code of Practice for the Welfare of Meat Chickens and Meat Breeding Chickens

5.2 SL(5)480 – Code of Practice for the Welfare of Laying Hens and Pullets

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

14.50–14.55

6.1 SICM(5)27 – The Pilotage Act 1987 (Amendment) Regulations 2019

(Pages 115 – 126)

CLA(5)–01–20 – Paper 18 – Statutory Instrument Consent Memorandum

CLA(5)–01–20 – Paper 19 – Explanatory Memorandum

CLA(5)–01–20 – Paper 20 – Regulations

CLA(5)–01–20 – Paper 21 – Letter from the Minister for Economy and Transport, 17 December 2019

CLA(5)–01–20 – Paper 22 – Legal advice note

7 Paper(s) to note

14.55–15.00

7.1 Letter from the Minister for International Relations and the Welsh Language to the Chair of the External Affairs and Additional Legislation Committee: Assembly scrutiny of international agreements

(Pages 127 – 128)

CLA(5)–01–20 – Paper 23 – Letter from the Minister for International Relations and the Welsh Language to the Chair of the External Affairs and Additional Legislation Committee, 9 December 2019

7.2 Letter from the Minister for Environment, Energy and Rural Affairs to the Llywydd: Withdrawal of The Sustainable Drainage (Enforcement) (Wales) (Amendment) Order 2019

(Pages 129 – 130)

CLA(5)–01–20 – Paper 24 – Letter from the Minister for Environment, Energy and Rural Affairs to the Llywydd, 11 December 2019

7.3 Letter from the Minister for Finance and Trefnydd: UK regulations relating to exiting the European Union

(Pages 131 – 142)

CLA(5)-01-20 – Paper 25 – Letter from the Minister for Finance and Trefnydd, 17 December 2019

CLA(5)-01-20 – Paper 26 – Letter to the Clerk of the Constitutional and Legislative Affairs Committee, 2 December 2019

CLA(5)-01-20 – Paper 27 – Letter from the Chair of the Constitutional and Legislative Affairs Committee to the Minister for Finance and Trefnydd, 22 November 2019

CLA(5)-01-20 – Paper 28 – Letter from the Minister for Finance and Trefnydd, 11 November 2019

CLA(5)-01-20 – Paper 29 – Letter to the Minister for Finance and Trefnydd, 18 October 2019

7.4 Letter from the Deputy Minister for Culture, Sport and Tourism: Creative Europe Programme and Europe for Citizens Programme (Revocation) (EU Exit) Regulations 2019

(Pages 143 – 146)

CLA(5)-01-20 – Paper 30 – Letter from the Deputy Minister for Culture, Sport and Tourism, 19 December 2019

7.5 Letter from the Minister for Finance and Trefnydd: The Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2020

(Page 147)

CLA(5)-01-20 – Paper 31 – Letter from the Minister for Finance and Trefnydd, 20 December 2019

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

15.00

9 European Union (Withdrawal Agreement) Bill – briefing

15.00–15.10

(Pages 148 – 168)

CLA(5)-01-20 – Briefing

Date of the next meeting – 13 January

SL(5)482 – The Representation of the People (Annual Canvass) (Amendment) (Wales) Regulations 2020

Background and Purpose

These Regulations (and the Representation of the People (Annual Canvass) (Amendment) Regulations 2019) provide for the reformed annual canvass to apply to a register of local government electors in Wales.

These Regulations are part of a package of statutory instruments that will ensure the same changes to the annual canvass are introduced across Great Britain.

According to the Explanatory Memorandum to these Regulations:

“In its current form, the annual canvass prescribed in legislation focuses on process (e.g. the number of canvass forms to be sent to each household) rather than outcomes (e.g. the accuracy and completeness of the register). It is heavily paper based, inefficient and outdated, leaving little scope for digital innovation.”

The reformed canvass is intended to be less prescriptive and therefore more permissive. The objectives of the canvass reform are:

- to make the process simpler and clearer for citizens;
- for EROs to have greater discretion to run a tailored canvass which better suits their local area;
- to reduce the administrative burden on EROs and the financial burden on taxpayers;
- to safeguard the completeness and accuracy of the registers;
- to maintain the security and integrity of the registers;
- to include the capacity for innovation and improvement, with a model that is adaptable to future change.

Procedure

Affirmative.

Technical Scrutiny

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

Merits Scrutiny

One point is identified for reporting under Standing Order 21.3 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



We note, and welcome, the helpful and thorough information provided in the Explanatory Memorandum to these Regulations, including the detailed list of “Matters of special interest to the Constitutional and Legislative Affairs Committee” in paragraph 2.

We note how these Regulations rely on The Government of Wales Act 2006 (Amendment) Order 2019 (the section 109 Order). We also note that the section 109 Order has now been made and that it came into force on 18 December 2019. Nevertheless, we agree that it was appropriate to lay these Regulations when they were laid (i.e. before the section 109 Order was made), in order to give the Assembly sufficient time for scrutiny.

Implications arising from exiting the European Union

None.

Government Response

A government response is not required.

Legal Advisers

Constitutional and Legislative Affairs Committee

20 December 2019



Draft Regulations laid before the National Assembly for Wales under section 201(2) of the Representation of the People Act 1983 and section 11(2) of the Electoral Registration and Administration Act 2013, for approval by resolution before the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2019 No. (W.)

**REPRESENTATION OF THE
PEOPLE, WALES**

**The Representation of the People
(Annual Canvass) (Amendment)
(Wales) Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Representation of the People (Annual Canvass) (Amendment) Regulations 2019 (S.I. 2019/1451) (“the 2019 Regulations”) make provision in relation to the reformed annual canvass in respect of a parliamentary register of electors and a local government register of electors in England. These Regulations and the 2019 Regulations make provision for the reformed annual canvass to apply to a register of local government electors in Wales.

Regulations 4 to 6 amend the Representation of the People Act (“the 1983 Act”). Regulation 4 amends section 9A(2) to amend the provision in respect of the steps which a registration officer may take in respect of a register of local government electors in Wales for the purposes of complying with the duty to maintain registers under section 9 of the 1983 Act. Regulation 5 amends section 9D of the 1983 Act in order to provide the Welsh Ministers with a power by regulations to require the Electoral Commission to design one or more canvass communications. Regulation 5 will also enable a registration officer conducting the canvass in respect of a register of local government electors in Wales to make house to house enquiries to obtain information required by a canvass form. Regulation 6 amends paragraph 3C of Schedule 2 to the 1983 Act in order to provide the Welsh Ministers with power to make provision by regulations authorising or requiring

a registration officer for a local government register in Wales to take specified steps for the purpose of obtaining information when conducting the canvass.

Regulations 8 to 19 amend the Representation of the People (England and Wales) Regulations (S.I. 2001/341)(“the 2001 Regulations”).

Regulation 8 amends the definition of “digital service” in regulation 3(1) (interpretation) of the 2001 Regulations to extend the application of the definition to a register of local government electors in Wales.

Regulation 9 revokes regulation 26(3)(eb) (applications for registration) in the 2001 Regulations.

Regulations 10 and 11 revoke regulations 32ZA (annual canvass: register of local government electors in Wales) and 32ZB (steps to be taken by a registration officer where no information in relation to a response to an annual canvass form is received in respect of a particular address) in the 2001 Regulations.

Regulation 12 amends regulation 32ZBA (annual canvass) in the 2001 Regulations so that it applies to a register of local government electors in Wales. Regulation 32ZBA requires a registration officer to conduct the annual canvass in accordance with regulation 32ZBD, unless the circumstances specified in regulation 32ZBA(4) and (5) arise. These allow the registration officer to conduct the canvass in accordance with regulations 32ZBE or 32ZBF.

Regulation 13 amends regulation 32ZBB (annual canvass data matching) of the 2001 Regulations so that the duty in paragraph (1) will apply to a registration officer in respect of a register of local government electors in Wales. Regulation 32ZBB requires registration officers to disclose certain data in respect of registered electors and authorises the comparison of that information against data held by the Secretary of State for Work and Pensions.

Regulation 14 amends regulation 32ZBC (processing of information in connection with the annual canvass data matching) to apply the provisions on processing of disclosed information to a canvass of local government electors in Wales.

Regulation 15 amends regulation 32ZBD (annual canvass for properties where it may be necessary to make any addition to, or deletion from, an electoral register and steps to be taken where no response is received). The first step in the process is for the registration officer to make contact with a person who is or may be eligible to be registered by either sending a paper communication or visiting the address (see Regulation 32ZBD(1)). Regulation 15(a) amends regulation 32ZBD(1) so that the requirement will apply to a canvass of local government electors in

Wales. Regulation 32ZBD(4) specifies how the registration officer can go about complying with the requirements in sub-paragraphs (2) and (3) to attempt to make contact with a person at the address. Regulation 32ZBD(4)(b) permits the registration officer to make a telephone call to persons aged 18 or over at the address where the registration officer has telephone numbers for them. Regulation 32ZBD(4)(c) permits the registration officer to send a communication by electronic means to persons aged 18 or over at the address where relevant contact details are held for them. Regulation 15(b) inserts new sub-paragraphs (ba) and (ca) to make provision that permits the registration officer to make a telephone call and/or send a communication by electronic means to persons aged 16 or over at the address where relevant contact details are held for them in respect of a register of local government electors in Wales. Regulation 15(c) amends regulation 32ZBD(9) to require a registration officer responsible for a register of local government electors in Wales to pre-populate the canvass form with any information already held by the registration officer in respect of a person who is on the register. Regulation 15(d) inserts new paragraph (9A) to prohibit the registration officer responsible for a register of local government electors in Wales from printing on the canvass form the date of birth of any person aged under 16.”

Regulation 16 amends regulation 32ZBE (annual canvass for properties where the registration officer is satisfied that it is not necessary to make any deletion from an electoral register and has no reason to believe that any additions to an electoral register may be required) in the 2001 Regulations so that it applies to a register of local government electors in Wales. Regulation 16(c) amends regulation 32ZBE(3) to permit the registration officer conducting a canvass in respect of a register of local government electors in Wales to send a communication by electronic means to one or more persons aged 16 or over who are registered at the address in a register of local government electors in Wales where relevant contact details are held. Regulation 16(e) inserts paragraph (4A) which specifies the requirements made of a person to whom a communication is sent pursuant to regulation 32ZBE(3). Regulation 16(g) inserts paragraph (5A) which sets out the circumstances under which a registration officer must send canvass communication A (see regulation 32ZBG(1)(a)(i) of the 2001 Regulations) to an address in a register of local government electors in Wales. Regulation 16(h) amends regulation 32ZBE(6) which imposes a duty on the registration officer to print certain information on canvass communication A so that the provision will apply to a registration officer for a register of local government electors in Wales. Regulation 16(i) amends regulation 32ZBE(7) to require a registration

officer conducting a canvass in respect of a register of local government electors in Wales to conduct the canvass in accordance with Regulation 32ZBD if, after complying with the process set out in sub-paragraphs (3) to (6) a registration officer has reason to believe that it may be necessary to remove a person from the register or that there is a person at the address who may be entitled to be registered but is not aware of the person's name.

Regulation 17 amends regulation 32ZBF (annual canvass in respect of particular types of property) in the 2001 Regulations. Regulation 17(a) amends Regulation 32ZBF(4) so that the provision will apply to a registration officer conducting a canvass in respect of a register of local government electors in Wales. Regulation 17(b) inserts new paragraph (5A) which requires a registration officer in respect of a register of local government electors in Wales to make contact with the responsible person (defined in regulation 32ZBF(8)) and request information in relation to each person aged 14 or over who is residing at the address and eligible to vote and will apply to a register of local government electors in Wales. Regulation 17(c) makes provision that is consequential on the insertion of new paragraph (5A).

Regulation 18 amends regulation 32ZBG (electoral Commission requirements) in the 2001 Regulations. Regulation 32ZBG(1)(a) places a duty on the Electoral Commission to design paper communication forms for the reformed annual canvass. Regulation 32ZBG(4) makes provision about the information that must be included in canvass communication A. Regulation 18 (a) amends Regulation 32ZBG(4)(a), (b) and (d)(ii) so that canvass communication A is designed so that it is requires information specific to the canvass of local government electors in Wales. Regulation 18(b) inserts new paragraph (4)(d)(iii) in order to require that in relation to the registration of local government electors in Wales, the canvass communication must require additional information. Regulation 32ZBG(5) makes provision about the information that must be included in the canvass form. Regulation 18(c) amends Regulation 32ZBG(5)(a), (b) and (d) so that the requirements in paragraph (5) will apply to a register of local government electors in Wales. Regulation 18(e) inserts new paragraph (f) in order to require that in relation to the registration of local government electors in Wales, the canvass form must require additional information.

Regulation 19 revokes Regulation 93A(3) in the 2001 Regulations.

Regulation 21 amends Regulation 20(1) of the 2019 Regulations so that the duty in paragraph (1) will apply to a registration officer in relation to a register of local government electors in Wales.

The Welsh Ministers' Code of Practice on the carrying out of regulatory impact assessment was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from The Local Government Democracy Division, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

Draft Regulations laid before the National Assembly for Wales under section 201(2) of the Representation of the People Act 1983 and section 11(2) of the Electoral Registration and Administration Act 2013, for approval by resolution before the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2019 No. (W.)

**REPRESENTATION OF THE
PEOPLE, WALES**

**The Representation of the People
(Annual Canvass) (Amendment)
(Wales) Regulations 2020**

Made

Coming into force in accordance with article 2

The Welsh Ministers make these Regulations in exercise of the powers conferred on the Secretary of State by sections 53(1) and (3) and 201(3) of, and paragraphs 1(2), 1A and 13(1ZB) of Schedule 2 to, the Representation of the People Act

1983(1) (“the 1983 Act”) and sections 7(1) and (2) and 11(3), (4) and (5) of the Electoral Registration and Administration Act 2013(2) (“the 2013 Act”) and now vested in them.

The Welsh Ministers have consulted the Electoral Commission in accordance with section 53(5) of the 1983 Act(3), section 7(1) and (2)(e) of the Political Parties, Elections and Referendums Act 2000(4), and has consulted the Information Commissioner and such other persons as they consider appropriate in accordance with section 53(5) of the 1983 Act.

In accordance with section 201(2) of the 1983 Act(5) and section 11(2) of the 2013 Act, a draft of this instrument was laid and approved by a resolution before the National Assembly for Wales. In accordance with section 8(6) of the 2013 Act, the draft instrument was accompanied by a report of the Electoral Commission.

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- (1) 1983 c.2 (“the 1983 Act”). Section 53(1) was amended by section 24 and paragraph 13(b) of Schedule 4 to the Representation of the People Act 1985 (“the 1985 Act”), and paragraph 13(b) of Schedule 1, and Part 1 of Schedule 7, of the Representation of the People Act 2000 (c.2) (“the 2000 Act”). Section 201(3) was inserted by paragraph 21 of Schedule 1 to the 2000 Act. Paragraph 1A of Schedule 2 was inserted by paragraph 2 of Schedule 2 to the Electoral Registration and Administration Act 2013 (c.6) (“the 2013 Act”) and was amended by paragraphs 18(1) and (2) of Schedule 19 to the Data Protection Act 2018 (c.12). Paragraph 13(1ZB) was inserted by paragraph 4 of Schedule 2 to the 2013 Act. “Prescribed” in paragraph 13(1ZB) means, as defined in section 202(1) of the 1983 Act, prescribed in Regulations. So far as the functions of the Secretary of State and Minister for the Cabinet Office are exercisable within devolved competence those functions were transferred to the Welsh Ministers by virtue of article 45 of and paragraph 1 of, Schedule 1 to S.I. 2018/644.
- (2) 2013 c.6. Powers of the Minister under sections 7 and 11 of the Electoral Registration and Administration Act 2013 (“the 2013 Act”) so far as exercisable within devolved competence were transferred to the Welsh Ministers by virtue of article 45 of and Schedule 1 to the Welsh Ministers (Transfer of Functions) Order 2018 (S.I. 2018/644). The power to make an order under section 7 of the 2013 Act may be exercised to make regulations by virtue of section 39 of the Legislation (Wales) Act 2019 (anaw 4).
- (3) Section 53(5) was inserted by paragraph 5 of Schedule 2 to the 2013 Act.
- (4) 2000 c.41.
- (5) Section 201(2) was substituted by section 24 and paragraph 69 of Schedule 4 to the 1985 Act and amended by article 5(b) of S.I. 1991/1728, paragraph 6(1) and (7)(b) of Schedule 21 to the Political Parties, Elections and Referendums Act 2000 and section 13(2) of the Northern Ireland (Miscellaneous Provisions) Act 2014 (c.13) (the 2014 Northern Ireland Act”).

Title and commencement

1. The title of these Regulations is the Representation of the People (Annual Canvass) (Amendment) (Wales) Regulations 2020.

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

Amendments to the Representation of the People Act 1983

3. The Representation of the People Act 1983(1) is amended in accordance with regulations 4 to 6.

4. In section 9A (registration officers: duty to take necessary steps), in subsection (2)—

- (a) in paragraph (za), after “a register of local government electors in England” insert “or Wales”;
- (b) in paragraph (a) omit “or in Wales”;
- (c) in paragraph (ba), after “register of local government electors in England,” insert “or in Wales”.

5. In section 9D (maintenance of registers: duty to conduct canvass in Great Britain)—

- (a) in subsection (4) omit “or Wales”;
- (b) in subsection (5)(aa) omit “or Wales”.

6. In paragraph 3C of Schedule 2 (provisions which may be contained in regulations as to registration etc.)—

- (a) in sub-paragraph (1), omit “or Wales”;
- (b) in sub-paragraph (1A), after “a register of local government electors in England” insert “or in Wales”.

Amendments to the Representation of the People (England and Wales) Regulations 2001

7. The Representation of the People (England and Wales) Regulations 2001(2) are amended in accordance with regulations 8 to 19.

(1) Section 9A(2) was inserted by section 9(1) of the Electoral Administration Act 2006 (c.22) and amended by paragraphs 1, 6(1) and (3) of Schedule 4 to the 2013 Act; section 9D was inserted by section 4 of the 2013 Act and amended; paragraph 1B of Schedule 2 was inserted by paragraph 20(3) of Schedule 4 to that Act, and paragraph 3C of Schedule 2 was inserted by paragraphs 20(1) and (5) of Schedule 4 to that Act. Each of these provisions was amended by S.I. 2019/1451. There are other amendments but none is relevant to this instrument.

(2) S.I. 2001/341. Relevant amendments to regulation 3 were made by S.I. 2013/3198 and 2019/1451. Regulation 26(3)(eb) was inserted by S.I. 2016/694 and amended by 2019/1451. Regulation 32ZA was inserted by S.I.

8. In regulation 3(1) (interpretation), in the definition of “digital service”, after “register of local government electors in England” insert “or in Wales”.

9. Regulation 26(3)(eb) (applications for registration) is revoked.

10. Regulation 32ZA (annual canvass: register of local government electors in Wales) is revoked.

11. Regulation 32ZB (steps to be taken by a registration officer where no information in response to an annual canvass form is received in respect of a particular address) is revoked.

12. In regulation 32ZBA (annual canvass)—

- (a) in paragraph 1 omit “of parliamentary electors in England or Wales, or a register of local government electors in England”;
- (b) in paragraph 2 omit “of parliamentary electors in England or Wales, or a register of local government electors in England”;
- (c) in paragraph 4—
 - (i) in sub-paragraph (a)(i) for “a register of parliamentary electors in England or Wales, or a register of local government electors in England” substitute “a register”;
 - (ii) in sub-paragraph (a)(ii) omit “such”;
 - (iii) in sub-paragraph (b)(ii)(aa) for “a register of parliamentary electors in England or Wales, or a register of local government electors in England” substitute “a register”;
- (d) in paragraph 5, in sub-paragraph (b)(ii), after “regulation 32ZBF(5)” insert “or (5A)”;
- (e) in paragraph 6 omit “in respect of a register of parliamentary electors in England or Wales, or a register of local government electors in England”;
- (f) in paragraph 8 omit “in respect of a register of parliamentary electors in England or Wales, or a register of local government electors in England.”.

2013/3198 and was subsequently amended by S.I. 2015/467, 2015/1971, 2016/694, 2016/997, 2018/644 and 2019/1451. Regulation 32ZA(3)(f) was also amended by paragraphs 252 and 256 of Schedule 19 to the Data Protection Act 2018 (c.12). Regulation 32ZB was inserted by S.I. 2013/3198 and subsequently amended by S.I. 2016/694 and 2019/1451. Regulations 32ZBA to 32ZBG were inserted by S.I. 2019/1451. Regulation 93A was inserted by S.I. 2013/3198 and was subsequently amended by S.I. 2018/312 and S.I. 2019/1451. There are other amendments but none is relevant to this instrument.

13. In regulation 32ZBB(1) (annual canvass data matching) omit “of parliamentary electors in England or Wales, or a register of local government electors in England”.

14. In regulation 32ZBC(1)(a) (processing of information in connection with annual canvass data matching) omit “in respect of a register of parliamentary electors in England or Wales, or a register of local government electors in England”.

15. In regulation 32ZBD (annual canvass for properties where it may be necessary to make any addition to, or deletion from, an electoral register and steps to be taken where no response is received)—

(a) in paragraph 1 omit “of parliamentary electors in England or Wales, or a register of local government electors in England,”;

(b) in paragraph 4—

(i) after sub-paragraph (b) insert—

“(ba) where the registration officer holds a telephone number for one or more persons aged 16 or over who are registered in the register of local government electors in Wales, at the address, and whom the registration officer believes are resident at that address, by means of a telephone call to each of those persons;”;

(ii) at the end of sub-paragraph (c) omit “or”;

(iii) after sub-paragraph (c) insert—

“(ca) where the registration officer holds relevant contact details for one or more persons aged 16 or over who are registered in the register of local government electors in Wales, at the address, and whom the registration officer believes are resident at that address, by sending a communication by electronic means to each of those persons; or”;

(c) in paragraph 9—

(i) in sub-paragraph (a)(i) omit “in a register of parliamentary electors in England or Wales, or a register of local government electors in England,”;

(ii) at the end of sub-paragraph (a)(ii) omit “and”;

(iii) after sub-paragraph (a)(iii) insert—

“(iv) the full name, date of birth and nationality of each person whose application to be registered at the address in a register of local government electors in Wales,

under section 10ZC(1) or 10ZD(1) of the 1983 Act has been successfully determined, where the date on which the applicant's name will be published in a notice of alteration under section 13A(2) of the 1983 Act is after the date on which the form will be sent, with the exception of persons registered as mentioned in section 9D(6) of the 1983 Act; and”;

(d) after paragraph 9 insert—

“9A In relation to a register of local government electors in Wales, the registration officer must not, under paragraph 9, print on the form the date of birth of any person aged under 16.”

16. In regulation 32ZBE (annual canvass for properties where the registration officer is satisfied that it is not necessary to make any deletion from an electoral register and has no reason to believe that any additions to an electoral register may be required)—

(a) in paragraph 1(a) and (b) omit “of parliamentary electors in England or Wales, or a register of local government electors in England”;

(b) in paragraph 2 omit “of parliamentary electors in England or Wales, or a register of local government electors in England,”;

(c) in paragraph 3, for sub-paragraph (b) substitute—

“(b) where—

(i) the registration officer holds relevant contact details for one or more persons aged 18 or over who are registered at the address in a register of parliamentary electors in England or Wales, or a register of local government electors in England; or

(ii) the registration officer holds relevant contact details for one or more persons aged 16 or over who are registered at the address in a register of local government electors in Wales,

a communication by electronic means to each of those persons.”

(d) in paragraph 4, for “(3)(b)” substitute “(3)(b)(i)”;

(e) after paragraph 4 insert—

“(4A) Any communication sent under paragraph 3(b)(ii) must require the recipient to—

- (a) confirm to the registration officer whether the information it contains in respect of persons who are registered at the address in a register of local government electors in Wales, with the exception of persons falling within section 9D(6) of the 1983 Act, is complete and accurate;
 - (b) provide to the registration officer, except where it is already included in the communication, the full name and nationality of each person aged 14 or over who is residing at the address and who is eligible to be registered in a register of local government electors in Wales, including an indication as to whether any of those persons is aged 76 or over; and
 - (c) provide to the registration officer the date of birth of each person aged 14 or 15 who is residing at the address and who is eligible to be registered in a register of local government electors in Wales.”
- (f) in paragraph 5(b) for “(3)(b)” substitute “(3)(b)(i)”;
- (g) after paragraph 5 insert—

“(5A) In circumstances where a registration officer for a register of local government electors in Wales—

- (a) does not hold relevant contact details for one or more persons aged 16 or over who are registered at the address; or
 - (b) has sent a communication by electronic means under paragraph (3)(b)(ii) to one or more persons in respect of the address and has not, within a reasonable time of sending the communication, received the required information from at least one person in respect of the address,
- the registration officer must send a canvass communication A to the address.”
- (h) in paragraph 6—
- (i) in sub-paragraph (a)(i) omit “in a register of parliamentary electors in England or Wales, or a register of local government electors in England,”;

- (ii) in sub-paragraph (a)(ii) omit “in a register of parliamentary electors in England or Wales, or a register of local government electors in England”;
- (i) in paragraph 7—
 - (i) in sub-paragraph (a) omit “of parliamentary electors in England or Wales, or a register of local government electors in England”;
 - (ii) in sub-paragraph (b) omit “in a register of parliamentary electors in England or Wales, or a register of local government electors in England”.

17. In regulation 32ZBF (annual canvass in respect of particular types of property)—

- (a) in paragraph 4—
 - (i) omit “in respect of a register of parliamentary electors in England or Wales, or a register of local government electors in England”;
 - (ii) after “paragraph 5” insert “or (5A)”;
- (b) after paragraph (5) insert—

“(5A) The registration officer for a register of local government electors in Wales must attempt to make contact with the responsible person and must request the following information in respect of each person aged 14 or over who is residing at that property and is eligible to be registered in a register of local government electors in Wales—

 - (a) full name;
 - (b) date of birth;
 - (c) nationality;
 - (d) an indication as to whether that person is aged 76 or over.”
- (c) in paragraphs 6, 7 and 8 after “paragraph (5)” insert “or (5A)”.

18. In regulation 32ZBG (Electoral Commission requirements)—

- (a) in paragraph 4(a), (b) and (d)(ii) omit “in a register of parliamentary electors in England or Wales, or a register of local government electors in England,”;
- (b) after paragraph 4(d)(ii) insert—

“(iii) to provide the registration officer with the full name, date of birth and nationality of each person aged 14 or 15 who is eligible to be registered in a register of local government electors in Wales, and is residing at the address to which the communication relates, where that

information is not included in the communication;”;

- (c) in paragraph 5(a), (b) and (d) omit “in a register of parliamentary electors in England or Wales, or a register of local government electors in England;”;
- (d) in paragraph 5(e), at the end omit “.” and insert “,”;
- (e) after paragraph 5(e) insert—

“(f) require the recipient to provide the full name, date of birth and nationality of each person aged 14 or 15 who is eligible to be registered in a register of local government electors in Wales, and is residing at the address to which the form is given.”.

19. In regulation 93(A) (notifying registration officer of change to edited register preference), omit paragraph (3).

Amendment to the Representation of the People (Annual Canvass) (Amendment) Regulations 2019

20. The Representation of the People (Annual Canvass) (Amendment) Regulations 2019⁽¹⁾ are amended in accordance with regulation 21.

21. In regulation 20(1) (data matching confirmation), after “a register of local government electors in England” insert “or Wales”.

Name

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

Date

(1) S.I. 2019/1451.

**EXPLANATORY MEMORANDUM TO
THE REPRESENTATION OF THE PEOPLE (ANNUAL CANVASS)
(AMENDMENT) (WALES) REGULATIONS 2020**

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

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Representation of the People (Annual Canvass) (Amendment) (Wales) Regulations 2019 and Regulatory Impact Assessment. I am satisfied that the benefits justify the likely costs.

Julie James

Minister for Housing and Local Government

10 December 2019

PART 1

1. Description

1.1. These regulations amend the Representation of the People Act 1983 (“the 1983 Act”), the Representation of the People (England and Wales) Regulations 2001 (“the RPR 2001 E&W”) and the Representation of the People (Annual Canvass)(Amendment) Regulations 2019 (“the RPR 2019 Amendment Regulations”).

1.2. These amendments relate to the reform of the annual canvass. The changes remove the current requirement to canvass all households the same way which presently involves sending up to three full canvass forms with pre-paid pre-addressed envelopes, with the addition of a household visit where the property has not responded.

1.3. These changes will allow Electoral Registration Officers (EROs) to better focus their resources on households more likely to have experienced changes in composition, i.e. where additions to or deletions from the register are required. The Regulations will place a duty on ERO’s to undertake a data matching step using a national data matching service established by the Minister for the Cabinet Office. The establishment of this new step in the process will allow EROs some discretion over the conduct of their annual canvass of the electors on their electoral registers. It sets out new matched and unmatched property routes, one of which EROs must follow based on the results of their data match step, as well an exemption process for certain properties.

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

Section 109 Order

2.1. The Committee will be aware of the draft Section 109 Order which was approved by Parliament on 28th October 2019 and by the Assembly on 6th November. The purpose of that Order is to deal with two issues. Firstly, to allow provision about ERO’s to be made in Assembly legislation without the need to obtain Minister of the Crown consent and secondly, to provide clarity as to executive competence in relation to EROs in the context of the transfer of electoral functions under the Welsh Ministers (Transfer of Functions) Order 2018.

The TFO and paragraph 12 of Schedule 7B

2.2. Article 45 of the Welsh Ministers (Transfer of Functions) Order 2018 transfers existing Ministerial functions under certain pieces of electoral legislation to the Welsh Ministers. The functions that are transferred are those that are within “devolved competence” as defined by article 45 of that Order (that is, within the legislative competence of the Assembly).’

2.3 Paragraph 12 of Schedule 7B of GoWA 2006 provides that in any enactment, a reference to the legislative competence of the Assembly does not include provision that could be made in an Act of the Assembly only with the consent of a Minister of the Crown (under paragraphs 8-11 of Schedule 7B).

2.4. Paragraph 8 of Schedule 7B to the Government of Wales Act 2006 provides that a provision in an Assembly Act cannot confer or impose any function on a reserved authority; cannot modify the constitution of a reserved authority; and cannot confer, impose, modify or remove functions specifically exercisable in relation to a reserved authority; without Minister of the Crown consent. Paragraph 10 of that Schedule provides that a provision of an Act of the Assembly cannot remove or modify any function of a public authority (other than a devolved Welsh authority), unless the appropriate UK Minister consents.

2.5. EROs appointed under section 8 of the Representation of the People Act 1983 are considered to be a reserved authority for the purposes of the Act and are not included in paragraphs 9 or 10, which lists the reserved authorities to which specified consent requirements apply.

2.6. As a result, although the Assembly has legislative competence in relation to Assembly elections and local government elections in Wales, it cannot legislate for certain changes to electoral registration processes in Wales for devolved elections where such changes relate to the functions of EROs, without Minister of the Crown consent.

2.7. The combined effect of the consent requirements in paragraphs 8 and 10 of Schedule 7B, the way in which the TFO transfers functions relating to electoral legislation and the operation of paragraph 12 of Schedule 7B is considered to mean that those electoral functions relating to EROs were not transferred and cannot currently be exercised by Welsh Ministers under the TFO.

2.8. The section 109 Order will add to the exemptions at paragraph 9(6) and 10(2) of Schedule 7B “electoral registration officers (within the meaning given in section 8 of the Representation of the People Act 1983)”. The Order will also provide for certain functions of electoral registration officers in Wales to be treated as transferred to the Welsh Ministers under article 45 of the TFO from the date that the 109 Order comes into force.

Timing of section 109 Order

2.9. This instrument is laid prior to approval by the Privy Council to the making of the section 109 Order. Parliament approved the Order on 28th October 2019 and the Assembly approved the Order on 6th November. The motion to approve this instrument will not be scheduled for debate by the Assembly until such time that the section 109 Order is made.

Section 39 Legislation (Wales) Act 2019

2.10. This statutory instrument is made in reliance on section 53 of the 1983 Act and section 7 of the 2013 Act. The power in section 53 of the 1983 Act is a

power to make provision in subordinate legislation in the form of Regulations. The power in section 7 of the 2013 Act is a power to make provision by Order. Section 39 of the Legislation (Wales) Act 2019 is relied upon in order to make cohesive provision in relation to the reformed annual canvass in the form of Regulations.

Approach to Regulatory Impact Assessment

2.11. The policy and implementation for canvass reform has been led by the UK Government who have funded the annual canvass in respect of the whole of the UK since 2014. The UK Government have produced and managed the policy, pilots, consultation and implementation processes with input from Welsh Ministers. With respect to the Regulatory Impact Assessment which accompanies this Explanatory Memorandum, we have inserted the financial impact assessment prepared for the whole of the UK by the UK Government. It is not possible to disaggregate this information to a Wales level.

3. Legislative background

3.1. These Regulations are part of a package of statutory instruments that will ensure the same changes to the annual canvass are introduced across Great Britain. Legislative competence in respect of the UK parliamentary register is reserved. Legislative competence in respect of the local government register in Wales was devolved to the National Assembly for Wales by the Wales Act 2017. The Welsh Ministers (Transfer of Functions) Order 2018 as modified by the Government of Wales Act 2006 (Amendment) Order 2019, transferred to the Welsh Ministers functions exercisable by a Minister of the Crown in respect of the local government register in Wales, so far as those functions are exercisable within the Assembly's devolved competence.

3.2 The RPR 2019 Amendment Regulations makes provision for canvass reform in relation to the parliamentary register and local government register in England. Scottish Ministers are also taking forward equivalent changes in respect of the local government register in Scotland, with the intention that the changes for the whole of Great Britain come into effect at the same time.

3.3. In order to fully appreciate the changes introduced by the Representation of the People (Annual Canvass) (Amendment) (Wales) Regulations 2020, they should be read alongside the UKG Regulations, the RPR 2019 Amendment Regulations which were made on the 4th November 2019.

3.4. The requirement for an annual canvass to take place is set out in Sections 9A - *EROs: duty to take necessary steps* and 9D Maintenance of registers: *duty to conduct canvass in Great Britain* of the 1983 Act

3.5. Section 9A of the 1983 Act places a duty on EROs to take all the necessary steps to maintain their registers and secure, where reasonably practicable, all persons who are entitled to be registered are registered. The steps including sending the canvass form and making household visits on one or more occasion.

3.6. Section 9D of the 1983 Act places a duty on EROs to conduct an annual canvass in the area for which they act. The purpose of the canvass is to ascertain the names and addresses of persons entitled to be registered and those who are registered but are not entitled to be. The canvass must be conducted in accordance with relevant regulations and provides the ERO with the power to make household visits for the purpose of the canvass.

3.7. The canvass process was previously laid out in regulations 32ZA (*Annual Canvass*) and 32ZB (*Steps to be taken by a registration officer where no information in response to an annual canvass form is received in respect of a particular address*) of the RPR 2001 E&W.

3.8. The power to make the changes to the above provisions is found in Section 53 of the 1983 Act - *Power to make regulations as to registration etc.* and Schedule 2 to that Act - *Provisions which may be made in regulations as to registration etc.* and in Section 7 of the Electoral Registration and Administration Act 2013 - *Power to amend or abolish the annual canvass.*

3.9. The power in section 53 of the 1983 Act is a power to make provision in subordinate legislation in the form of Regulations. The power in section 7 of the 2013 Act is a power to make provision by Order. Section 39 of the Legislation (Wales) Act 2019 is relied upon in order to make cohesive provision in relation to the reformed annual canvass in the form of Regulations.

4. Purpose and intended effect of the legislation

4.1. The current canvass gathers information on potential additions to, changes to, and deletions from, the register. Since the introduction of Individual Electoral Registration (“IER”) in 2014 EROs must individually invite potential new electors to apply to register to vote, and verify their identity, before they can be added to the register. This process sits separately to the annual canvass but can, and generally does occur concurrently.

4.2. In its current form, the annual canvass prescribed in legislation focuses on process (e.g. the number of canvass forms to be sent to each household) rather than outcomes (e.g. the accuracy and completeness of the register). It is heavily paper based, inefficient and outdated, leaving little scope for digital innovation.

4.3. Pilots of alternative models for conducting the annual canvass were run in 2016 and 2017 in England, Scotland and Wales - Blaenau Gwent and Torfaen were pilot areas in Wales. Evaluation of the pilots makes clear that there is merit in enabling EROs to more effectively target their resources towards those properties where the occupiers have changed and the electoral register needs to be updated. A new canvass model has been developed based on the evidence from the pilots, feedback from our consultation and extensive engagement with key stakeholders.

4.4. The purpose of the canvass of households under the revised model will be the same as under the current model, that is to find out:

- the names and addresses of persons who are entitled to be registered but who are not already registered; and
- those persons who are on the register but who are no longer entitled to be registered at a particular address (normally because they have moved).

4.5. The intention is that the legislation governing the reformed annual canvass is less prescriptive and therefore more permissive than is currently the case. The objectives of canvass reform are:

- to make the process simpler and clearer for citizens;
- for EROs to have greater discretion to run a tailored canvass which better suits their local area;
- to reduce the administrative burden on EROs and the financial burden on taxpayers;
- to safeguard the completeness and accuracy of the registers;
- to maintain the security and integrity of the registers;
- to include the capacity for innovation and improvement, with a model that is adaptable to future change.

4.6. Because the annual canvass remains important the new model ensures that every residential property is contacted at least once during the canvass period to ensure there is the opportunity to report changes if required.

4.7. We do not intend to make any changes to the timing of the canvass. We wish it to remain a matter for EROs' discretion when they wish to start their canvass. The requirement to publish the revised register by 1st December each year will remain, as will the ability to defer publication of the revised register until 1st February if they hold an election in their area within the canvass period.

4.8. As highlighted above the Representation of the People (Annual Canvass) (Amendment) (Wales) Regulations 2020 are to be laid and made after the Regulations governing the non-devolved Parliamentary register - the Representation of the People (Annual Canvass) (Amendment) (Regulations) 2019. In order to fully appreciate the changes introduced by the Wales Regulations, they should be read alongside the UK Regulations.

Effect of Regulations

4.9. Regulations 3 to 6 contain amendments to the Representation of the People Act 1983 which are necessary to bring it in line with the new canvass requirements that will apply to a register of local government electors in Wales. Section 9A of the 1983 Act places a duty on registration officers to take necessary steps for the purposes of complying with the duty to maintain registers under section 9 of the 1983 Act. Regulation 4 amends section 9A(2) to amend the steps which a registration officer may take in respect of a register of local government electors in Wales. Regulation 5 amends section 9D of the 1983 Act in order to provide the Welsh Ministers with a power by regulations to confer a function on the Electoral Commission to design one or more canvass communications. The amendments made to section 9D will also enable a registration officer conducting the canvass in respect of a register of local

government electors in Wales to make house to house enquiries to obtain information required by a canvass form. Regulation 6 amends paragraph 3C of Schedule 2 to the 1983 Act in order to provide the Welsh Ministers with power to make further provision by regulations authorising or requiring a registration officer for a local government register in Wales to take specified steps for the purpose of obtaining information when conducting the canvass.

4.10. Regulations 7 to 20 amend the Representation of the People (England and Wales) Regulations 2001.

4.11. Regulation 8 amends the definition of “digital service” in regulation 3(1) (interpretation) of the 2001 Regulations. The RPR 2019 Amendment Regulations amended the definition to include the purpose of data matching alongside the existing purposes of processing online applications under sections 10ZC and 10ZD of the 1983 Act and of verifying information under regulation 29ZA of the 2001 Regulations. Regulation 8 extends the application of the definition to a register of local government electors in Wales.

4.12. Regulation 9 revokes regulation 26(3)(eb)(applications for registration) in the 2001 Regulations in order to remove the requirement for what is referred to as the “single occupancy tick box” in relation to a local government register in Wales. This was introduced in 2016 as part of a set of cost reduction measures ahead of wider canvass reform. Where an elector has indicated that they are the sole occupant of the property, and where no other available information suggests otherwise, the ERO can choose to exempt the property from the next canvass (or the current canvass, if one is already underway). The original thinking was that this would reduce canvass costs as it would allow ERO’s to exclude a proportion of properties from the canvass cycle. However, in practice many electors were confused by the tick box which was understood to have resulted in incorrect reporting so that ERO’s were unwilling to rely on the tick box information and continue to send the Household Enquiry Form.

4.13. Regulations 10 and 11 revoke regulations 32ZA (annual canvass: register of local government electors in Wales) and 32ZB (steps to be taken by a registration officer where no information in relation to a response to an annual canvass form is received in respect of a particular address) in the 2001 Regulations which make provision in relation to the current annual canvass. The revocation of these provisions is consequential on the application of the new canvass process to a register of local government electors in Wales.

4.14. Regulation 13 of the Representation of the People (England and Wales) (Annual Canvass)(Amendment) Regulations 2019 inserts Regulations 32ZBA to 32ZBF into the Representation of the People (England and Wales) Regulations 2001 which make provision for the reformed annual canvass as it applies to the UK Parliamentary register and a register of local government electors in England.

4.15. Regulations 12 to 18 of these Regulations amends Regulations 32ZBA to 32ZBG in the 2001 Regulations so that they will apply, with some variations, to a register of local government electors in Wales. The text below describes the process as it applies in relation to a register of local government electors in Wales.

32ZBA Annual Canvass

4.16. This regulation sets out the steps of the new canvass. Firstly EROs must complete the data match which is prescribed in Paragraph (1).

4.17. Secondly, they then follow the appropriate route for the property. Paragraph (2) makes it clear that the default canvass is the unmatched property route. However, paragraph (3) provides for two other processes, (the matched property route and the defined property route) as exceptions, which are described in paragraphs (4) and (5).

4.18. Paragraph (6) prevents an ERO from using the matched property route if the ERO has information indicating that only persons under the age of 18 are resident in the property.

4.19. Paragraph (7) defines the information EROs are required to take into account in determining whether to use the matched property route instead of the unmatched property route. These are the data match results and data the ERO holds on pending electors and recent electors. These are detailed fully in 32ZBD.

4.20. Paragraph (8) makes provision for EROs to take into account any other (usually locally-obtained) data which they have access to when informing their choice of process.

32ZBB Annual Canvass Data Matching

4.21. As explained above, the new annual canvass will incorporate a mandatory 'data match' at the outset which will allow EROs to match the names and addresses of their registered electors against other data sources. The data match, detailed in paragraphs (1) to (9) involves data matching entries on the electoral register with a national data set held at the Department of Work and Pensions data warehouse.

4.22. The ERO is required to send the prescribed information they hold on electors on the register of parliamentary electors in England and Wales and the register of local government electors in Wales to the Individual Electoral Registration digital service ("IER DS") which is a Cabinet Office service. This information is then sent to DWP Data and Analytics for matching against a routinely extracted data set in its data warehouse. The results are then sent back to the IER DS, which in turn discloses the results to the ERO.

4.23. While the requirement for EROs to disclose information to the digital service in the first place is the responsibility of the devolved administrations in relation to the local government registers in Wales and Scotland, the remaining provisions, which set out the steps required for the data comparison, including the format and the infrastructure to be used, have been included in the UKG SI. The results of the data match, disclosed to EROs in accordance with paragraph (6) will relate both to the register of parliamentary electors in England or Wales and the local government register in Wales. Where those results relate to the local government registers, any further processing of these results by Welsh EROs is devolved.

4.24. Certain properties and electors are exempt from the data match step. These include in sub-paragraphs (7)(a) and (b) recently successfully determined electors (for a period of up to 90 days after determination), and in paragraph (8) special category electors, such as overseas voters and anonymous registrations.

4.25. Determined electors are those whose application to register to vote has been successfully determined by the ERO, but will not be added to the register until the next monthly alteration is published. Since they will not appear on the register at the point of that data match, the EROs will not submit their details for matching. In practice, the ERO will have discretion to set their own time period within which recently successfully determined electors are excluded. They will be able to set the time period from zero up to 90 days.

32ZBC Processing of information in connection with annual canvass data matching

4.26. Paragraph (1) makes clear that the results of the data match may only be used for registration purposes or if requested for legal proceedings and paragraph (2) details a new criminal offence for misuse of data shared under the new data matching step. This offence is very similar to the one already in place in respect of misuse of data transferred during the data verification step for registration (e.g. at paragraph (6) of regulation 29ZB of the RPR 2001).

4.27. Paragraph (3) sets out that the Minister for the Cabinet Office may impose requirements on any ERO or person who discloses information to the Cabinet Office as part of the data match step.

4.28. These requirements may cover the processing of data, including the transfer, storage and security of that information. Paragraph (4) clarifies that these requirements for the processing of data may be in respect of both the register of parliamentary electors in England and Wales and the local government register in Wales.

4.29. Paragraph (5) sets out that where the Minister for the Cabinet Office imposes requirements on the processing of information for the national data match step, this must have been done before the data match step is due to commence.

32ZBD Annual Canvass for properties where it may be necessary to make any addition to, or deletion from, an electoral register and steps to be taken where no response is received

4.30. Paragraphs (1) to (9) set out the unmatched property route, described in the policy section of the Regulatory Impact Assessment.

4.31. Guidance on the various options available to EROs as part of the unmatched properties route will be provided by the Electoral Commission in their *Guidance for Electoral Administrators*. This will cover the option to use electronic communications such as emails and text messages to try to increase response rates and close the cycle using less expensive and more innovative methods than the canvas form. Regulation 15 (d) of these Regulations will

insert paragraph (9A) to make it clear that where a date of birth is held by the ERO for a person under the age of 16, the form should not be pre-populated with that date of birth.

32ZBE Annual canvass for properties where the registration officer is satisfied that it is not necessary to make any deletion from an electoral register and has no reason to believe that any additions to an electoral register may be required

4.32 Paragraph (1) makes provision for the ERO to use the matched canvass process described in the policy section of the Regulatory Impact Assessment. This is set out in Paragraphs (2) – (6) of the regulation. Paragraph (3) gives the ERO the choice between sending canvass communication A to the property or sending an electronic communication to the property where the ERO holds the relevant contact details for at least one local government registers elector over the age of 16 at the property where they are eligible to vote in local government elections in Wales. Sub-paragraph (4A) requires the recipient of the communication to also provide the ERO with the date of birth of those who are aged 14 and 15 and eligible to be registered on the register of local government electors in Wales.

4.33. Paragraph (7) sets out that the ERO must change the method of canvassing a property from the matched property process if they have reason to believe that there may be changes that need to be captured. This is intended to cover situations where the ERO has become aware of a probable change to the register but has not received sufficient information to allow them to proceed with the normal additions or deletions processes.

32ZBF Annual canvass for certain properties

4.34. Some types of residential address are less suited to traditional canvassing methods as described in the policy section of the Regulatory Impact Assessment and so 32ZBF sets out this alternative process for certain properties. Properties eligible for this process will be identified at the start of the canvass process.

4.35. Paragraph (1) makes provision for this separate process – making clear that the ERO is only able to follow this process where they have been able to identify a responsible person at a property that falls within the scope of properties listed at paragraph (2).

4.36. Sub-paragraphs (2) (a) to (e) list specific types of property suitable for this process.

4.37. Properties with these types of characteristics could include army barracks, a hospital staff accommodation or a religious community. The requirement at the end of sub-paragraph (2)(f) is that the ERO must reasonably believe that using this exception process is more likely to enable them to fulfil the purpose of the annual canvass than either of the two other canvass processes.

4.38. Paragraph (3) makes clear that an ordinary block of flats, unless it falls under the definition of a house in multiple occupation (an HMO) under section 254 of the Housing Act 2004 and therefore within sub-paragraph 2 (c), would not be eligible for this process. This is to avoid this route being used too broadly for properties which should properly be canvassed using either of the two other canvass processes described above.

4.39. Paragraph (5) sets out the information the ERO must request from the responsible person. The ERO is able to gather the information by any means they feel appropriate, allowing them the discretion to use whichever method they feel is most effective. This is in line with the policy intention of allowing EROs greater discretion over the canvass to enable them to use the best method for the relevant property.

4.40. Paragraph (7) provides that if the ERO is unable to gather the required information within a reasonable time period, they must then revert to the unmatched property route for the relevant property.

32ZBG Electoral Commission requirements

4.41. The duty created by regulation 32ZA has been expanded to place a duty on the Electoral Commission to design three types of paper canvass communications. In response to feedback from the public consultation, the information required on the form has been simplified and the discretion given to the Electoral Commission in respect of their design has been increased. As a result only information directly linked to the canvass is now prescribed. This will allow for forms that are clearer in purpose and remove some of the confusion citizens currently experience.

4.42. Subparagraph (1) (a) lists the two communications and the form:

(i) canvass communication A. This will be a paper communication for use during the matched canvass. It will only require a response if the recipient has changes to report in respect of the household.

(ii) canvass form (which must be accompanied by a pre-paid, pre-addressed envelope) will be used for the unmatched property route.

(iii) canvass communication B. This will be a paper communication alternative to the canvass form for use during the unmatched property route.

4.43. The Electoral Commission will, as now, provide these forms to registration officers who will be obliged, as now, to use the standardised versions. As is currently the case with the prescribed canvass form, these prescribed communications will be signed off by the Minister for the Cabinet Office. The Minister for the Cabinet Office will be required to consult Welsh Ministers on the forms to be used in Wales.

4.44. Paper canvass communication A is to be used for the matched canvass only. It is being left open to the Electoral Commission as to whether this

communication should take the format of a letter or a form. The policy intention is to allow the Commission some flexibility and to avoid being overly prescriptive. This communication will be pre-populated and, whilst it does not prescribe that this communication should be accompanied by a pre-addressed, pre-paid envelope, there is nothing in the law preventing an ERO from doing if they so wish. The minimum requirements for this communication are set out in paragraph (4).

4.45. The canvass form is to be used for the unmatched property route and therefore sent to properties where change is expected. It will therefore be similar to the form currently in use, the Household Enquiry form, but as again we have removed as much of the current prescription as possible. This provides the Electoral Commission with the maximum flexibility to design a form which elicits responses and picks up as much change information as possible. The minimum requirements for the form are set out in sub-paragraphs (5) (a) to (d) and (5A). (5A) will also require the canvass form to require the details of those who are aged 14 and 15 and eligible to be entered onto the register of local government electors in Wales in Wales along with their date of birth.

4.46. Canvass communication B is also for the unmatched property route. There is nothing in the legislation in relation to this communication other than that the ERO can send it as any one (or more) of the full canvass process contact stages and that the ERO must use the communication designed and made available by the Electoral Commission. This is intended to give the Commission flexibility to innovate.

4.47. Regulation 19 revokes Regulation 93A (3) in the 2001 Regulations. The electoral register lists the names and addresses of everyone who is registered to vote in public elections. The register is used for electoral purposes, such as making sure only eligible people can vote. It is also used for other limited purposes specified in law, such as: detecting crime (e.g. fraud), calling people for jury service, and checking credit applications. The open register is an extract of the electoral register, but is not used for elections. It can be bought by any person, company or organisation. This SI is removing the requirement to include details about the open/edited register on the canvass form. An individual will have been provided with relevant information to support that decision at the time of registering to vote.

4.48. Regulation 21 amends Regulation 20(1) of the 2019 Regulations so that the duty in paragraph (1) will apply to a registration officer in relation to a register of local government electors in Wales. Before the reformed canvass starts in July 2020 implementation plans include testing the data matching step. This will be a one-off test and will effectively be a dry run of what will happen following the reforms of the canvass. The purpose of conducting the test of the data matching step is to assist the successful implementation of canvass reform, by enabling ERO's to gain a better understanding of the match results they are likely to achieve in their area and therefore how many properties are likely to be canvassed using the matched and unmatched property routes.

4.49. Provision for the test is made in Regulation 20(1) to (8) of the 2019 Regulations and is almost identical to the provisions made for the data match itself. The only difference is that it is to be conducted "within the specified period", namely on a particular date or dates specified by the Minister for the Cabinet

Office. It is currently scheduled to take place early in 2020 once Welsh Government and Scottish Government Statutory Instruments have been made. The UK Government Regulations have already been made.

Risks

4.50. Should this subordinate legislation not be made in the timeframe laid out there is a risk to a robust canvass posed by EROs potentially running two canvasses side by side, one for Parliamentary register of electors and the other for Assembly/local government register of electors. This is because the current canvass would apply to a local government register in Wales, which would be different to the new canvass which would be conducted in respect of a register of parliamentary electors. This is a considerable risk to the policy objectives of the Welsh Government and will incur costs for maintaining two canvasses side by side.

5. Consultation

5.1. An 8 week UK wide public consultation was held on the Policy Statement from the 5 October to 30 November 2018. 82 responses were received from electoral administrators across the UK and stakeholders including the Association of Electoral Administrators, the Electoral Commission and the Scottish Assessors Association. Respondents were asked to answer 19 questions on various aspects of the policy. Responses to the policy proposals were overwhelmingly positive.

5.2. Section 8 of the Electoral Registration and Administration Act 2013, Section 53 (5) of the Representation Act 1983 and Section 7 (1) and (2)(e) of the Political Parties, Elections and Referendums Act 2000 make it obligatory for the Secretary of State to consult with the Electoral Commission, the Information Commissioner and any other person the Secretary of State thinks appropriate. Section 8 of the ERA Act 2013 gives the requirements for the consultation with the Commission – for a period of no less than 3 months which includes the EC preparing a report which accompanies the draft SI.

5.3. The consultation with the EC on the Statutory Instrument began on 23 July 2019, the response was received from the EC on 18 November 2019. Welsh Government lawyers and policy officials worked with the Electoral Commission to identify and address any issues raised where appropriate.

5.4. The Wales Regional Office of the Information Commissioners Office was consulted on the 23 July and a response was received on the 2 October. The response recommended that a full DPIA be carried out in relation to Wales, in addition to the DPIA carried out on the whole of the UK by the Cabinet Office.

6. PART 2 - REGULATORY IMPACT ASSESSMENT

Background

6.1. Electoral Registration Officers from all parts of Great Britain observed that the current annual canvass of electors is outdated and cumbersome. The one-size-fits-all approach is heavily paper based, expensive and complex to administer and leads to confusion for the citizen.

6.2. It was therefore agreed by all governments to modernise and streamline the process of the annual canvass to ensure that it is fit for purpose.

6.3. Pilots of four different models for conducting the annual canvass were run in 2016 and 2017 in England, Scotland and Wales. Blaenau Gwent and Torfaen were pilot areas in Wales.

6.4. Based on the evidence from the pilots, it was suggested that a hybrid model, taking the successful elements of each pilot, was the best way forward. Greater discretion would be conferred on Electoral Registration Officers (EROs) to shape the canvass to activities which best suit their local circumstances and to enable them to target the properties they believe need to have their electoral register details updated.

6.5. These proposals were shared in a joint consultation policy statement on Canvass Reform, undertaken by the Welsh, UK and Scottish Governments which closed on the 30 November 2018.

6.6. Under the current canvass EROs must send every residential address in their area a Household Enquiry Form and are required to follow up non-responses with two reminders and, if necessary, a household visit. Whilst the majority of households do not need to report a change in household composition, a response is required from every household. Where there is a change, an individual Invitation to Register is then sent, causing some confusion for the electorate by the two stage process.

6.7. The objectives of canvass reform are:

- to make the process simpler and clearer for citizens;
- for EROs to have greater discretion to run a tailored canvass which better suits their local area;
- to reduce the administrative burden on EROs and the financial burden on taxpayers;
- to safeguard the completeness and accuracy of the registers;
- to maintain the security and integrity of the registers; and
- to include the capacity for innovation and improvement, with a model that is adaptable to future change.

6.8. The new canvass model will incorporate a 'data discernment step'. This will inform the ERO as to which properties have an unchanged household composition, based on data available to them. The ERO will then be able to follow one of two routes.

A: The matched property process:

- This route is for properties where the registered electors have matched against other data, which indicates the household composition is likely to have remained the same since the previous years' canvass was conducted.
- EROs are able to send an e-communication (such as email or text message) to those electors registered at the property to confirm who is living at the property.
- The e-communication requires a response as it is to an individual elector rather than the property.
- If no response is received or no e-communication is sent (for example because the ERO does not have the relevant contact details) then the ERO is required to send a paper Canvass Communication A to the property. It will contain all the current elector details held by the ERO at that address. If there are no changes to report at an address, no response is required the resident is not required to respond.
- This route is simpler and cheaper than the current canvass process as it reduces the number of paper communications sent by the ERO.

B: The unmatched property process:

- This is for properties where results of the data match indicate that the household composition is likely to have changed since the previous canvass was conducted.
- This is considered the default process and requires the ERO to make at least 3 contacts with the property in order to gain a response from the residents to update their details. If they obtain the information at any stage in the cycle they are able to stop contacting the property.
- A 3 step chasing cycle is similar to the current canvass. However, there are a number of different ways EROs can make contact with the property, including the use of the paper letter, paper canvass form, e-communications, telephone calls and visits to the property.
- The paper canvass form will be similar to the current Household Enquiry Form and will contain all the information the ERO holds on all currently registered electors at the property. It will set out the ways electors can respond, for example via an online service, over the phone or by being returned to the ERO. It requires a response and is sent out with a prepaid pre-addressed envelope.
- EROs are not permitted to close the chasing cycle if this form hasn't been sent as one of the contacts.
- In line with the policy of allowing EROs great discretion over the way they run the canvass in their area, EROs may also choose to send Canvass Communication B (CCB) as one of the contact options. The content of CCB is not prescribed in the legislation and the Electoral Commission is responsible for the design of the canvass reform forms and communications, and it may be that CCB is designed as a letter rather than a form. In this case, EROs may choose to send CCB to try to reduce the number of canvass forms they need to send out, which require the inclusion of a pre-paid envelope, or to encourage electors to complete their response online.

C: The defined property process, new regulation 32ZBF:

- This is for properties such as care homes and hostels where the required information can be obtained from a responsible person (that is, a person who lawfully holds information on the residents of the property and is legally able to share it) using whichever means the ERO thinks is appropriate. This may include the use of a paper communication, a visit to the property, telephone call or electronic means. The type of properties that may be included within this process are set out in the legislation.

6.9 Under the reformed canvass, every property will still receive a written communication if there has been no response to an individual communication and the ERO has been unable to update the information it holds in respect of that property on the register(s). This is to safeguard the completeness and accuracy of the register. The main difference under the reformed canvass though, is that the properties where the ERO is satisfied there are no changes to be made, do not need to respond to the paper canvass communication, and will not receive a follow up process.

Options

6.10. In drafting this regulatory impact assessment, two options have been considered:

- Option 1 – Business as Usual
- Option 2 – Modernise and streamline the process of the annual canvass to ensure that it is fit for purpose.

Option 1: Business as usual

Description

6.11. Option 1 would introduce no extra change. In its current form, the annual canvass prescribed in legislation focuses on process (e.g. the number of Canvass Forms to be sent to each household) rather than outcomes (e.g. the accuracy and completeness of the register). It is heavily paper based, inefficient and outdated, leaving little scope for digital innovation.

6.12. Electoral Registration Officers (EROs) must send every residential address in their area a Household Enquiry Form and are required to follow up non-responses with two reminders and, if necessary, a household visit. Whilst the majority of households do not need to report a change in household composition, a response is required from every household.

6.13. It is likely UK Government will move ahead with canvass reform regardless of whether Wales does. Were Wales then not to make the changes, it would mean two canvasses running side by side – one for the non-devolved Parliamentary register and one for the devolved local government register.. This will also mean electors being sent information on both canvasses, causing

considerable voter confusion. In 2018/19, the UK Government Cabinet Office provided £0.7M to Welsh local authorities to cover the additional costs of Individual Electoral Registration. Should canvass reform not proceed in Wales this is a possible additional cost to Welsh Government.

Option 2: Modernise and streamline the process of the annual canvass to ensure that it is fit for purpose.

Description

6.14. The new canvass model will incorporate a 'data discernment step'. This will inform the ERO as to which properties have an unchanged household composition, based on data held by other sources. The ERO will then be able to follow one of two routes. Route 1, for properties in which the data suggests no change in household composition and Route 2 for properties where data does not support the information the ERO currently holds for the property.

6.15. Properties where the data indicates no changes will still receive contact from the ERO but a crucial difference is that a response is not required, nor is the resource intensive process of follow up processes. This will allow the process to be streamlined for the households that do not change each year and enable the ERO to target their resources to where responses and updates to the electoral register are required.

Costs and benefits

6.16. The policy and implementation for canvass reform has been led by the UK Government who have funded the annual canvass in respect of the whole of the UK since 2014. The UK Government have produced and managed the policy, pilots, consultation and implementation processes with input from Welsh Ministers. With respect to the Regulatory Impact Assessment which accompanies this Explanatory Memorandum, we have inserted below a summary of the financial impact assessment taken directly from the Impact Assessment prepared for the whole of the UK by the UK Government and published on the legislation.gov.uk website. It is not possible to disaggregate this information to a Wales level for the reasons set out in paragraphs 6.17 to 6.19. The best estimate for the net benefit across the UK is £170.9M over the ten year period from 2020/21 to 2029/30.

Summary

Title: The Representation of the People (Annual Canvass) (Amendment) Regulations 2019 RPC Reference No: n/a Lead department or agency: Cabinet Office Other departments or agencies: n/a IA Number: CO2018	Impact Assessment (IA)
	Date: 01 October 2019
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Secondary legislation
Contact for enquiries: Constitution Group Analysis, Cabinet Office cg-analysis@cabinetoffice.gov.uk	
Summary: Intervention and Options	RPC Opinion: Not Applicable

Cost of Preferred (or more likely) Option: Option 1 – Canvass Reform			
Total Net Present	Business Net Present Value	Net cost to business per year	Business Impact Target Status
£170.9m	n/a	n/a	Non qualifying provision

What is the problem under consideration? Why is government intervention necessary?

The canvass gathers information on potential additions, changes and deletions to the electoral register. It is heavily paper-based and outdated. All properties must respond to the canvass even if they have no changes to report. If they fail to respond, they enter a comprehensive chasing cycle of reminders and personal door-knocking. This is costly, inefficient, and often confusing for electors when faced with both the annual canvass and Individual Electoral Registration (IER). Intervention is necessary to amend the canvass by amending the legislation.

What are the policy objectives and the intended effects?

These reforms continue to work towards an electoral registration system which is modern and digitally enabled. The reforms will reduce prescriptive regulation which will empower Electoral Registration Officers (EROs) to tailor their services to their local electorate, maximise electoral registration – particularly among under-registered groups – and, ultimately, reduce if not fully offset the additional costs generated by IER. The reforms are designed to at least maintain the accuracy and completeness of the electoral register as it is currently.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Pilots of alternative models for conducting the canvass were undertaken in 2016 and 2017 trialled four models across 27 local authority areas in England, Scotland and Wales as part of a randomised control trial (RCT), which built a robust evidence base for reform to the annual canvass. The evidence base indicates the one-size-fits-all approach that currently exists, which incorporates numerous prescribed steps, takes little account of differences within and between registration areas. It is heavily paper based, expensive and complex to administer. Finally, it is a process that leads to confusion for the citizen. All participating authorities believe the current canvass should be modernised. Based on the evidence from the pilots, we believe that a hybrid model, taking the successful elements of each and refining certain processes, is the best way forward, Canvass Reform, Option 2 – our preferred option.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 2022

Does implementation go beyond minimum EU	N/a			
Is this measure likely to impact on trade and investment?	N/a			
Are any of these organisations in scope?	Micro: No	Small: No	Medium: No	Large: No

Summary: Analysis & Evidence

Policy Option 1 – continue the current canvass

Description: FULL ECONOMIC ASSESSMENT

Price Base FY20/21	PV Base FY20/21	Time Period 10 years	Net Benefit (Present Value (PV)) (£m)		
			Low: N/a	High: N/a	Best Estimate: N/a

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	n/a	n/a	n/a
High	n/a	n/a	n/a
Best	n/a	n/a	n/a

Description and scale of key monetised costs by 'main affected groups'

Costs have not been monetised above as this is the baseline against which other options are assessed.

There are two types of costs involved in the existing canvass process:

- Outward correspondence: Cost of issuing initial and reminder Household Enquiry Forms (HEFs) and undertaking HEF related household visits as part of the HEF cycle; and
- Inward processing: Cost of receiving and processing HEFs responses.

The main affected group are the EROs who have legal duty to maintain the register therefore local authorities and valuation joint boards are affected.

Other key non-monetised costs by 'main affected groups'

Not applicable.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/a	N/a	N/a
High	N/a	N/a	N/a
Best	N/a	N/a	N/a

Description and scale of key monetised benefits by 'main affected groups'

Not applicable- this is the baseline against which other options are assessed

Other key non-monetised benefits by 'main affected groups'

Not applicable.

Key assumptions/sensitivities/risks

3.5

The current canvass has been on-going in its current format since 2014. We hold good information to estimate the parts of the current canvass which are in-scope of the reforms. Assumptions, where used in the modelling, are described throughout.

Summary: Analysis & Evidence

Policy Option 2 – implement a reformed canvass

Description: FULL ECONOMIC ASSESSMENT

Price Base FY20/21	PV Base FY20/21	Time Period 10 years	Net Benefit (Present Value (PV)) (£m)		
			Low: £90.3m	High: £262.5m	Best Estimate: £170.9m

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	10	- £10.9m	- £90.3m
High	0		- £30.9m	- £262.5m
Best	0		- £20.3m	- £170.9m

Description and scale of key monetised costs by ‘main affected groups’

Amending the regulations will allow for a new model of the canvass. The costs above represent the savings relative to the counterfactual.

The reformed Canvass will have a data match step at the start of the canvass which dictates which “Route” a property should follow, but in general a variety of communication methods, such as by paper, e-communication, and telephone will be sent to households. The appropriate mixture of communications is for local EROs to decide. The data match step will bring cost-savings because matched households will receive only one piece of communication. Implementing Canvass Reform means the legislation governing the annual canvass becomes less prescriptive, allowing EROs more scope to innovate and adapt their canvass to best fit the needs of their local residents including cheaper e-communication.

Other key non-monetised costs by ‘main affected groups’

Not known

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	n/k	10	n/k	n/k
High	n/k		n/k	n/k
Best	n/k		n/k	n/k

Description and scale of key monetised benefits by ‘main affected groups’

As the objective of the proposed policy is to at least maintain the accuracy and completeness of the electoral register, the benefits of Canvass Reform for the simplicity and purpose of this impact assessment is set as zero.

Other key non-monetised benefits by ‘main affected groups’

Not known.

Key assumptions/sensitivities/risks rate (%)	Discount	3.5
<p>The reformed canvass, Canvass Reform, has <u>not</u> been piloted in exactly the form being proposed. To inform our estimates we have used information from the internal data collected from the local authorities in 2019 alongside on-the-ground intelligence and unpublished data from the Electoral Commission. Assumptions which have particularly high impacts on the cost estimates and therefore proposed cost-savings of Canvass Reform are discussed in detail. Other assumptions, where used in the modelling, are described throughout.</p>		

6.17 The analysis explains the modelling behind the expected cost savings generated by Canvass Reform. Our volumes and calculations of costs in the following subsections have been rounded to the nearest ten, hundred, thousand or million. Some figures may not sum precisely due to rounding. Unless mentioned, all costs mentioned are associated with local government (local authorities and valuation joint boards).

6.18. As outlined above, Canvass Reform introduces autonomy in the system. This makes it difficult to predict how individual local authorities and valuation joint boards will react to the opportunities presented by Canvass Reform. In turn, *this means we cannot say with absolute certainty the scale of savings that will be generated at a local authority or valuation joint board level.*

6.19. As such, in this analysis, we make assumptions that are applied to local authorities to estimate the cost savings generated on a macro, Great Britain-level. We present a range of scenarios, starting from pessimistic scenarios (such as where local authorities do not adopt cost-saving measures immediately) through to ambitious ones (where they use more cost-efficient measures from the introduction of the reform).

Summary of savings scenarios				
	Low saving scenario	Central low saving scenario¹	Central high saving scenario	High saving scenario
Financial years 2020/21 – 2029/30				
Cost saving (current canvass average annual – reformed canvass average annual)	£10,900,000	£20,300,000	£20,600,000	£30,900,000
Financial year 2020/21				
Year 1 cost saving (current canvass – reformed canvass)	£4,100,000	£10,400,000	£10,700,000	£17,300,000
Year 1 cost of the current canvass	£53,800,000	£55,300,000	£55,300,000	£56,800,000
<i>Key factors:</i>				
<i>Staff wage unit cost (per minute)</i>	£0.24	£0.27	£0.27	£0.30

¹ This is used as the Best Estimate in the summary sheets at the start of this impact assessment.

Year 1 cost of the reformed canvass	£49,700,000	£44,900,000	£44,600,000	£39,600,000
Key factors:				
Scenario used in Route 1 and Route 2	Largely paper based – in line with existing canvass	Largely paper based – in line with existing canvass	Digitally based – making use of new opportunities	Digitally based – making use of new opportunities
Sensitivity – Data match rate	55%	65%	65%	75%
% of properties in Route 3	2.00%	1.00%	1.00%	0.13%
Staff wage unit cost (per minute)	£0.24	£0.27	£0.27	£0.30
Time taken to realise staff costs	3 years	2 years	2 years	1 year

Table 2: Present value cost estimates, financial years 2020/21 – 2029/30 (base year: 2020/21 prices)				
	Low saving scenario in reformed canvass analysis	Central low saving scenario in reformed canvass analysis	Central high saving scenario in reformed canvass analysis	High saving scenario in reformed canvass analysis
Overall option 1: reformed canvass	£427,100,000	£360,900,000	£358,100,000	£283,800,000
Comparison to counterfactual: current canvass	- £90,300,000	- £170,900,000	- £173,700,000	- £262,500,000

7. Consultation

7.1. See section 5 of Part I for background to the consultation.

8. Summary of Policy Assessment

8.1. The annual canvass gathers information on potential additions to, changes to, and deletions from, the electoral register. The changes to the canvass includes a data matching step at the start of the canvass which will inform Electoral Registration Officers (EROs) which properties have and have not changed household composition, based on data held by other sources. The reforms to the annual canvass will not impact on the process for registering as an elector but rather will focus on the initial information gathering phase.

8.2. Changes to the annual canvass within this assessment are taking place at the same time as other by other electoral reform which may need to be considered alongside.

8.3. One of these changes is the increase in the franchise through the Senedd and Elections (Wales) Bill and the recently introduced Local Government and Elections (Wales) Bill which reduce the voting age to 16 for Senedd and Local Government elections. This will mean that all 16 and 17 year olds residing in Wales and some 14 and 15 year olds (if they will achieve the age of 16 during the period the register is in force) will be added to the electoral register. The Representation of the People (Annual Canvas) (Amendment) (Wales) Regulation 2020 anticipate this change in the age of those who are enfranchised so that the new canvass in Wales works for all of the electorate.

8.4. If we accept the definition of a child as being a person who has not yet reached the age of 18 (as per the Social Services and Well-being (Wales) Act 2014 and Article 1 of the UN Convention of the Rights of the Child), then the

changes to the annual canvass will directly impact on a specific group of children: the large proportion of 16 and 17 year olds who will be included in the electoral register and will be able to vote.

8.5. Whilst all articles of the UNCRC were taken into consideration when making changes to the annual canvass the two articles below have been at the forefront of the analysis.

Article 12

8.6. Children have the right to say what they think should happen, when adults are making decisions that affect them, and to have their opinions taken into account.

Article 16

8.7. Children have a right to privacy. The law should protect them from attacks against their way of life, their good name, their families and their homes.

Positive Impacts

8.8. In order to exercise their rights to say what they think should happen and have their opinions taken into account (i.e. to vote), 16 and 17 year olds will first need to be added to the electoral register and canvass reform expedites that process by reforming the whole canvass so that EROs are able to spend less time on canvassing households where there is no change and focus their resources on identifying those who are not yet registered in order that they may be invited to register.

Possible Negative Impact and mitigation actions

8.9. EROs are required to ensure the completeness and accuracy of the electoral registers. In relation to age, a potential negative impact of the new Route 1 canvass (Light Touch) is that those who have recently turned 16 and not yet registered may be missed in the annual canvass. This is because the Route 1 paper communication will not require a response if the household has no changes in composition to report and also that only information on those who are already registered will be sent of data matching.

8.10. In order to mitigate this, the design of communications as part of the reforms will include the development of clear messaging. However, the communication will also include a prompt to inform the ERO if there is a person who should be registered residing at the property, who has not yet registered. The responsibility for designing communication lies with the Electoral Commission (EC) and the EC will be responsible for user testing the design and messaging of all new communications to check for clarity and understanding.

8.11. The EC will also design a suite of good practice guidance to support the reformed canvass process. This will include steps that the ERO could take to identify attainers, for example through data mining using locally available data sets such as education data. The encouraging of better data mining techniques as part of the reformed canvass model will help EROs to capitalise on the savings available through canvass reform whilst also ensuring that there is a

further route to EROs identifying individual who should be added to the register and who have not yet registered via the IER Digital Service.

8.12. A further potential negative impact which must be considered is the inclusion of information about young people under 18 on the electoral register.

Inclusion on the Register of those under the age of 18

8.13. There are two versions of the register. The Electoral/closed register is used for the purposes related to elections and by local authorities for their duties relating to security and law enforcement. It can also be used for other limited purposes specified in law, such as crime prevention.

8.14. The Edited/open register is not used for elections. Electors may choose whether their names should be included on the edited register. This is the version of the register can be sold to any person, organisation or company for a wide range of purposes. Users of the register include businesses and charities for checking names and address details, marketing firms.

8.15. In order to mitigate the possibly impact of being on the electoral register, new electors (16 and 17 year olds) will have the option to choose not to be included in the edited register and will be provided with information which helps them to make that choice. Young people's (under the age of 16) information will not be included in the edited register.

Attainers – young people under the age of 16

8.16. In order to mitigate any possible negative impact, young peoples' (under the age of 16) information will not be included in the edited register (which is the version of the register available for a wide range of purposes).

8.17. Furthermore, in the Senedd and Election Bill, a new summary offence has been created of disclosing information about young people under the age of 16 without statutory authority. Again, this SI works in tandem with the provisions of that Bill.

8.18. In addition, Regulation 14 of this SI amends Regulation 32ZBC (Processing of information in connection with the annual canvass data matching) so that the territorial effect of the provisions includes Wales. Regulation 32ZBC (1) prohibits the disclosure of information disclosed under data matching provisions save in two circumstances. Firstly, so that it may be taken into account by the registration officer for the purposes of determining whether the annual canvass may be conducted otherwise than in accordance with Regulation 32ZBD. Secondly, for the purposes of any civil and criminal proceedings. Regulation 14(a) amends Regulation 32ZBC to apply the provisions on disclosure of information to a canvass of local government electors in Wales.

8.19. The Senedd and Elections (Wales) Bill introduced on the 12 February has stringent provisions around the protection of the information of those young people who are under the age of 16 which work in tandem with this SI and in particular the policy approach of not providing a date of birth of any person aged under 16 on pre-printed canvass forms is replicated in this Statutory

Instrument. For example included in the Senedd and Election Bill are the following:

- Information about those under the age of 16 will not appear on the open register the version of the electoral register made public.
- A visit to a property will not be required where EROs are seeking information in relation to under 16 year olds.
- Registration officers will not provide the date of birth of any person aged under 16 on pre-printed canvass forms
- A registration officer will not impose a civil penalty on a person who fails to comply with a requirement to make an application to register where that person is under the age of 16.

Further Potential Negative Impacts and mitigation actions

8.20. Electors that have changed their name through marriage/civil partnership/deed poll or those electors who have gone through Gender Reassignment and wish to be known as another name will not be matched at the data matching step. To mitigate this these electors will be sent down Route 2, this will not result in their disenfranchisement or removal from the electoral register.

8.21. There is a risk of older electors – who are likely to be less I.T. literate becoming ostracised by the modernisation of the annual canvass. The retention of traditional paper communications within the reforms will mitigate the risk to less I.T. literate individuals. Under Route 1, the light touch route, there will be a mandatory paper communication sent to the property if an electronic communication receives no response or is not used.

8.22. Disabled electors may be affected by the proposed alternative canvassing methods. We are aware from discussions with stakeholders, for example, that canvassing in person can be very beneficial for those with physical and mental disabilities. EROs have discretion over choosing in person (household visit) canvassing or telephone canvassing to fulfil this duty.

9. Post implementation review

9.1. UK Government will complete live testing of the data matching step with EMS suppliers from February to March 2020.

9.2. Metrics have been developed to be used by EROs for the following purposes:

- To monitor the effectiveness of their canvass strategy
- To monitor compliance to Canvass Reform legislation
- Identify potential improvements to their Canvass

9.3. Each ERO will be monitored by the EMS systems and information on each local authority area will be available following the canvass.

9.4. The impact of the proposal will be evaluated following the first annual canvass in 2020.

Julie James AC/AM
Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref JJ/03366/19

Mick Antoniw
Chair
Constitutional and Legislative Affairs Committee

10 December 2019

Dear Mick,

I will shortly be laying a Statutory Instrument, *The Representation of the People (Annual Canvass) (Amendment) (Wales) Regulations 2020* before the Assembly introducing new Regulations which will govern the annual electoral canvass from 2020 onwards. This Statutory Instrument will follow the affirmative procedure.

The new Regulations represent the culmination of a joint programme of work with the Scottish and UK Governments to modernise and reform the annual canvass. The Regulations will retain the robust elements of the current canvass but will allow more flexibility for Electoral Registration Officers to tailor the canvass to the households in their area.

As responsibility for electoral matters relating to local government elections in Wales and Assembly elections has now been devolved, in order to reform the canvass it has been necessary to introduce legislation in each of the three administrations. The UK Government has already done this through the introduction of *The Representation of the People (Annual Canvass) (Amendment) Regulations 2019* which were made on the 4th November 2019.

You will recall the Committee recently reported on a draft *Order in Council: The Government of Wales Act 2006 (Amendment) Order 2019* and that the Order in Council was necessary in order that the reform of the canvass Regulations can be made in Wales. The Order in Council has been approved by the Assembly and by the House of Commons and was due to be made in Privy Council on the 13th November. However, the Order could not be made as planned due to the General Election and I am assured the intention is the Order will be made at the first meeting of the Privy Council following the general election.

There is some urgency to the laying of *The Representation of the People (Annual Canvass) (Amendment) (Wales) Regulations 2020* so that important testing of new digital systems can take place in early February. In order to meet this challenging timetable, *The Representation of the People (Annual Canvass) (Amendment) (Wales) Regulations 2020* will be laid at a point in time when some of the provisions within it will be outside of the competence of the Assembly. However, the debate on the Statutory Instrument will only be scheduled once the Order in Council has been approved by the Privy Council.

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

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

I understand that this is not an ideal approach but the purpose of laying the instrument now is to allow the Assembly sufficient time for scrutiny. I hope you will appreciate the need to ensure that Electoral Registration Officers in Wales can participate in the necessary testing of new systems along with England and Scotland.

Yours sincerely

A handwritten signature in blue ink that reads "Julie James". The signature is written in a cursive style with a large initial 'J'.

Julie James AC/AM
Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government

Regulations 2019

Background and Purpose

The Welsh in Education Strategic Plans (Wales) Regulations 2019 (“the Regulations”) are being made using powers conferred by sections 84, 87 and 97 of the School Standards and Organisation (Wales) Act 2013 (“the Act”).

Section 84 of the Act requires a local authority to prepare a Welsh in education strategic plan, which must be submitted for the approval of the Welsh Ministers in accordance with section 85 of the Act.

The Regulations make provision for a local authority to prepare a 10 year plan, the first to have effect from 1 September 2021. The Regulations also make provision for:

- the form and content of the plan;
- the duration of the plan;
- the date by which the plan must be submitted to the Welsh Ministers for approval;
- the approval of the plan;
- arrangements for revising the plan;
- timescales for submitting a review report;
- arrangements for revising a plan;
- the persons and bodies that a local authority must consult on a draft plan;
- the date by which the plan must be published;
- the manner of publication of the plan;
- the revocation, with savings, of the Welsh in Education Strategic Plans and Assessing Demand for Welsh Medium Education (Wales) Regulations 2013.

Procedure

Negative.

Technical Scrutiny

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

1. That its drafting appears to be defective or it fails to fulfil statutory requirements.

Paragraph 7 in the Schedule refers to “latecomers”. This term is defined in a footnote. All definitions should be included in the regulation dealing with interpretation, in this instance, regulation 2, and not in a footnote.

Merits Scrutiny

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

2. 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 penultimate line of page 7 of the Explanatory Memorandum states that "Subject to the views of the Assembly, the Regulations will come into force on 1 January 2020". The Regulations are subject to the negative procedure and therefore come into force before the expiration of the 40 day period within which regulations may be annulled by a motion of the Assembly. In light of the Christmas recess, they will in fact come into force before they have been considered by the Constitutional and Legislative Affairs Committee. There is nothing in the Regulations or in sections 84, 87 or 97 of the Act which requires the Assembly to give "its views" on the Regulations. Clarification is therefore sought as to why the words "Subject to the views of the Assembly" have been included in the Explanatory Memorandum.

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

The Welsh Government has noted the point and confirm that "Subject to the views of the Assembly" was included in error. The Explanatory Memorandum will be withdrawn and corrected before re-laying.

Legal Advisers

Constitutional and Legislative Affairs Committee

11 December 2019



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

2019 No. 1489 (W. 269)

EDUCATION, WALES

**The Welsh in Education Strategic
Plans (Wales) Regulations 2019**

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 84 of the School Standards and Organisation (Wales) Act 2013 (“the 2013 Act”) requires a local authority to prepare a Welsh in education strategic plan (“plan”). Section 85 of the 2013 Act requires a local authority to submit its plan to the Welsh Ministers for approval prior to that plan being published.

These Regulations are made under sections 84, 87 and 97 of the 2013 Act. They make provision for a local authority to prepare a ten year plan, the first to have effect from 1 September 2021, subject to the Welsh Ministers’ approval. They also make provision for the following matters:

- (a) the form and content of the plan (regulation 3);
- (b) the duration of the plan (regulation 4);
- (c) the date by which the plan must be submitted to the Welsh Ministers for approval (regulation 5);
- (d) the approval of a plan (regulation 6);
- (e) timescales for submitting a review report (regulation 7);
- (f) arrangements for revising a plan (regulation 8);
- (g) the persons and bodies that a local authority must consult on the draft plan (regulation 9);
- (h) the date by which the plan must be published (regulation 10);
- (i) the manner of publication of a plan (regulation 11);
- (j) the revocation, with savings, of the Welsh in Education Strategic Plans and Assessing

Demand for Welsh Medium Education
(Wales) Regulations 2013 (regulation 12).

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Pupil Wellbeing Branch, the Support for Learners Division, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

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

2019 No. 1489 (W. 269)

EDUCATION, WALES

**The Welsh in Education Strategic
Plans (Wales) Regulations 2019**

Made 4 December 2019

Laid before the National Assembly for Wales 5
December 2019

Coming into force 1 January 2020

The Welsh Ministers, in exercise of the powers conferred on them by sections 84, 87 and 97 of the School Standards and Organisation (Wales) Act 2013(1), make the following Regulations:

Title, commencement and application

1.—(1) The title of these Regulations is the Welsh in Education Strategic Plans (Wales) Regulations 2019 and they come into force on 1 January 2020.

(2) These Regulations apply in relation to Wales.

Interpretation

2. In these Regulations—

“the 1998 Act” (“*Deddf 1998*”) means the School Standards and Framework Act 1998(2);

“the 2013 Act” (“*Deddf 2013*”) means the School Standards and Organisation (Wales) Act 2013;

“the 2014 Act” (“*Deddf 2014*”) means the Education (Wales) Act 2014(3);

“FEI” (“*SAB*”) means an institution within the further education sector in Wales as defined by section 91(3) of the Further and Higher Education Act 1992(4);

(1) 2013 anaw 1. See section 98 for the definition of “prescribed”.

(2) 1998 c. 31.

(3) 2014 anaw 5.

(4) 1992 c. 13.

“plan” (“*cynllun*”) means a Welsh in education strategic plan as described by section 84(1) of the 2013 Act;

“provider of initial school teacher training” (“*darparwr hyfforddiant cychwynnol athrawon ysgol*”) means a provider of a course or programme of initial school teacher training accredited by the Education Workforce Council under article 3(1)(a) of the Education Workforce Council (Accreditation of Initial Teacher Training) (Additional Functions) (Wales) Order 2017(1);

“reception” (“*blwyddyn derbyn*”) means a year group in which the majority of children will, in the school year, attain the age of 5;

“school learning support worker” (“*gweithiwr cymorth dysgu mewn ysgol*”) means a person who is registered with the Education Workforce Council in the category of school learning support worker as described in table 1 of Schedule 2 to the 2014 Act;

“school teacher” (“*athro neu athrawes ysgol*”) means a person who is registered with the Education Workforce Council in the category of school teacher as described in table 1 of Schedule 2 to the 2014 Act;

“school year” (“*blwyddyn ysgol*”) means the period beginning with the first school term to begin after July and ending with the beginning of the first such term to begin after the following July;

“Welsh in education planning forum” (“*fforwm cynllunio Cymraeg mewn addysg*”) means a body established by a local authority for the purpose of improving the provision of Welsh medium education, the members of which consist of local authority officers and such other persons as the local authority considers appropriate;

“year 1” (“*blwyddyn 1*”) means a year group in which the majority of children will, in the school year, attain the age of 6;

“year 10” (“*blwyddyn 10*”) means a year group in which the majority of children will, in the school year, attain the age of 15;

“year group” (“*grŵp blwyddyn*”) means a group of children at a school the majority of whom will, in a particular school year, attain the same age.

Form and content

3. Each plan must include provision dealing with the matters set out in the Schedule.

(1) S.I. 2017/154 (W. 45). As amended by S.I. 2017/1023 (W. 261).

Duration of ten year plans

4.—(1) A local authority’s plan has effect for the period commencing on 1 September 2021 and ending on 31 August 2031 (“the first ten year plan”).

(2) Each subsequent ten year plan has effect for the period of ten years commencing on 1 September in the year when the previous ten year plan expires.

(3) Paragraphs (1) and (2) are subject to regulations 6 (ten year plans not approved by 1 September) and 8 (revision of plans).

Submission of ten year plans to the Welsh Ministers

5.—(1) A local authority must submit its first ten year plan to the Welsh Ministers for approval no later than 31 January 2021.

(2) A local authority must submit each subsequent ten year plan to the Welsh Ministers for approval no later than 31 March in the year the plan will take effect.

Ten year plans not approved by 1 September

6.—(1) If the Welsh Ministers do not approve a ten year plan by 1 September in the year in which that plan is to have effect, then that plan has effect one calendar month after the Welsh Ministers approve the plan.

(2) Paragraph (1) does not affect the date on which the ten year plan will expire (as outlined under regulation 4), unless the plan is replaced by a revised plan in accordance with regulation 8.

Annual review report

7.—(1) A local authority must each year, commencing in 2022, submit a review report to the Welsh Ministers which outlines the progress made to meet the targets contained in its plan and the steps it has taken as a result of the statements in its plan.

(2) The first review report must be submitted to the Welsh Ministers no later than 31 July 2022 and will outline the progress made and the steps taken by the local authority in the period since the first ten year plan has effect.

(3) Subsequent review reports must be submitted to the Welsh Ministers at intervals not exceeding 12 months from the submission of the previous report and will outline the progress made and the steps taken by the local authority in the period since the submission of the previous report.

Revision of plans

8.—(1) During or following the preparation of the review report under regulation 7, if the local authority

decides to revise its plan, it must submit the revised plan to the Welsh Ministers for approval no later than 6 calendar months after the review report has been submitted.

(2) The plan which the revised plan replaces ceases to have effect one calendar month after approval of the revised plan.

(3) The revised plan has effect one calendar month after approval of the revised plan and has effect for the remainder of the period for which the plan it replaces originally had effect.

Preparation and consultation

9. The persons prescribed for the purposes of section 84(4)(f) of the 2013 Act (persons a local authority must consult in preparing a ten year plan or revised plan⁽¹⁾) are—

- (a) the Welsh Language Commissioner (within the meaning of section 2 of the Welsh Language (Wales) Measure 2011⁽²⁾);
- (b) the Early Years Development and Childcare Partnership (within the meaning of section 119 of the 1998 Act);
- (c) Her Majesty's Chief Inspector of Education and Training in Wales;
- (d) providers of initial school teacher training;
- (e) such organisations providing services to children and young people as the local authority considers appropriate; and
- (f) such other persons or bodies as appear to the local authority to be appropriate.

Timing of publication

10. A local authority must publish its plan (or revised plan) on or before the date the plan takes effect.

Manner of publication

11. A local authority must publish its plan (or revised plan) by—

- (a) placing it on its website; and
- (b) making copies of the plan available for inspection by members of the public at—
 - (i) each of its offices that are open to the public;
 - (ii) any other place it considers appropriate.

(1) These persons are in addition to those listed in section 84(4) of the 2013 Act.

(2) 2011 nawm 1.

Revocation and savings

12.—(1) Subject to paragraph (2), the Welsh in Education Strategic Plans and Assessing Demand for Welsh Medium Education (Wales) Regulations 2013⁽¹⁾ are revoked.

(2) A local authority's plan which has effect immediately prior to the coming into force of these Regulations will continue to have effect until the local authority's first ten year plan has effect.

Kirsty Williams

Minister for Education, one of the Welsh Ministers

4 December 2019

(1) S.I. 2013/3048 (W. 307).

SCHEDULE Regulation 3

1.—(1) A target outlining the expected increase of Year 1 children taught through the medium of Welsh in the local authority's area during the lifespan of the plan.

(2) In calculating the target, local authorities must have regard to guidance issued by the Welsh Ministers under section 87(4) of the 2013 Act.

2. A statement setting out how the local authority will achieve the expected increase in Year 1 children taught through the medium of Welsh during the lifespan of the plan.

3. A statement setting out how the local authority will use data derived from its review of the sufficiency of childcare provision for its area (under duties set out in regulation 3 of the Childcare Act 2006 (Local Authority Assessment) (Wales) Regulations 2016⁽¹⁾) to inform planning of Welsh medium education.

4.—(1) A target outlining the expected increase in the number of children in reception taught through the medium of Welsh in the local authority's area during the lifespan of the plan.

(2) A statement setting out how the local authority will achieve the expected increase in the number of children in reception taught through the medium of Welsh during the lifespan of the plan.

5. A statement setting out how applications the local authority makes for grant funding from the Welsh Ministers in respect of its maintained schools will take account of the target to increase the number of Year 1 children taught through the medium of Welsh during the lifespan of the plan.

6. A statement setting out how the local authority will work on a collaborative basis with other local authorities by exercising their functions jointly to ensure continuity in arrangements for persons accessing Welsh medium education outside its area.

7. A statement setting out the local authority's arrangements with regard to their provision for latecomers⁽²⁾ to Welsh medium education, including how and when information is provided to parents and guardians.

8. A statement setting out how the local authority has worked in partnership with its Welsh in education

(1) S.I. 2016/88 (W. 42).

(2) Children (aged 7 years or over) who do not speak Welsh but wish to access Welsh medium education after the end of the foundation phase.

planning forum (if established in the local authority's area) to prepare the authority's plan and how the forum will oversee its implementation and evaluation.

9. A statement setting out—

- (a) how the local authority will provide parents and guardians with information as to the availability and type of Welsh medium education provision on offer;
- (b) how it will provide parents and guardians with information stating that Welsh medium education is an option for persons regardless of their linguistic background;
- (c) how it will make best use of information regarding the benefits that bilingualism and multilingualism can bring.

10. A statement setting out how the local authority will ensure the continuation of persons taught in Welsh on transfer from one year group to another and plan accordingly if retention rates are a cause for concern for the authority.

11.—(1) A target outlining the expected increase during the lifespan of the plan in the amount of Welsh medium education provided in its maintained schools which provide education through the medium of both English and Welsh.

(2) A statement setting out how the local authority will achieve the expected increase during the lifespan of the plan in the amount of Welsh medium education provided in its maintained schools which provide education through the medium of both English and Welsh.

12.—(1) A target outlining the expected increase during the lifespan of the plan in the number and percentage of persons in year 10 and over in its maintained secondary schools who are studying for qualifications and are assessed through the medium of Welsh.

(2) A statement setting out how the local authority will achieve the expected increase during the lifespan of the plan in the number and percentage of persons in year 10 and over in its maintained secondary schools who are studying for qualifications and are assessed through the medium of Welsh.

13. A statement setting out how the local authority will support the continued provision of Welsh medium education for persons in year 10 and above by working collaboratively with other schools and FEIs if necessary.

14. A statement setting out how the local authority will work with its schools and FEIs (if necessary) to co-ordinate the provision of Welsh as a subject to

persons in year 10 and above in its maintained secondary schools.

15. A statement setting out how the local authority will improve the Welsh language skills of persons receiving Welsh medium education in any school it maintains in order to improve the standards of Welsh medium education.

16. A statement setting out how the local authority will use the findings of its reviews under section 63 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018⁽¹⁾ to improve Welsh language provision for persons with additional learning needs and for workforce planning within the additional learning needs sector.

17. A statement setting out the local authority's commitment to identify the workforce it requires to provide Welsh medium education during the lifespan of the plan in accordance with the plan's targets, and to calculate any anticipated shortfall in its workforce.

18. A statement setting out the local authority's commitment to work on a collaborative basis with other local authorities by exercising their functions jointly in planning and delivering support to improve the Welsh language skills of school teachers and school learning support workers in maintained schools in its area.

19. A statement setting out the local authority's commitment, in collaboration with other local authorities and other agencies, to ensure that the plan is taken into account during considerations regarding the Welsh medium educational standards of maintained schools in its area.

20. A statement setting out how the local authority, in collaboration with other local authorities as necessary, will promote access to education and training through the medium of the Welsh language in relation to learner transport in line with the duty set out under section 10 of the Learner Travel (Wales) Measure 2008⁽²⁾.

(1) 2018 anaw 2.

(2) 2008 nawm 2.

Explanatory Memorandum to the Welsh in Education Strategic Plans (Wales) Regulations 2019

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

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Welsh in Education Strategic Plans (Wales) Regulations 2019. I am satisfied that the benefits justify the likely costs.

Kirsty Williams

Minister for Education

18 December 2019

PART 1

Description

The Welsh in Education Strategic Plans (Wales) Regulations 2019 (“the 2019 Regulations”) make provision in relation to:

- Duration of the Welsh in Education Strategic Plan (“Plan”)
- Form and content of the Plan
- Submission of the Plan to Welsh Ministers
- Approval of the Plan
- Timing and manner of publication of the Plan
- Consultation of the Plan
- Review of the Plan
- Revision of the Plan
- Revocation, with savings, of the Welsh in Education Strategic Plans and Assessing Demand for Welsh Medium Education (Wales) Regulations 2013.

Matters of special interest to the Constitutional and Legislative Affairs Committee

There is no specific information which the Minister wishes to bring to the attention of the Committee.

Legislative background

These regulations are made under sections 84, 87 and 97 of the School Standards and Organisation (Wales) Act 2013 (“the 2013 Act”).

Section 84 of the 2013 Act requires a local authority to prepare a Welsh in Education Strategic Plan (“the Plan”) and outlines that a Plan should contain:

- a. a local authority's proposals on how it will carry out its education functions to:
 - i. improve the planning of the provision of education through the medium of Welsh (“Welsh medium education”) in its area;
 - ii. improve the standards of Welsh medium education and of the teaching of Welsh in its area;
- b. the local authority's targets for improving the planning of the provision of Welsh medium education in its area and for improving the standards of that education and of the teaching of Welsh in its area;
- c. report on the progress made to meet the targets contained in the previous plan or previous revised plan.

Section 84 also sets out with whom a local authority is required to consult in preparing or revising its Plan and provides the Welsh Ministers with a power to prescribe other persons with which the local authority must consult.

Under section 85 of the 2013 Act each local authority is required to submit its Plan to the Welsh Ministers for approval. The Welsh Ministers may approve, modify or reject a Plan (imposing its own plan in its place). Subsection (6) places a duty on a local authority to take all reasonable steps to implement its approved Plan.

Section 87 gives Welsh Ministers powers to make regulations which will make further provisions on matters such as the form and content of a Plan, its timing and duration, keeping the Plan under review, consultation and submission of the Plan for approval to the Welsh Ministers and its publication. Regulations may also make provision enabling a joint plan by two or more local authorities.

Section 87 also provides a power for the Welsh Ministers to issue guidance which local authorities must have regard to when exercising their functions.

Section 97 of the 2013 Act provides that a power of the Welsh Ministers to make an order or regulations under the Act includes power—

- (a) to make different provision for different cases or classes of case, different areas or different purposes;
- (b) to make different provision generally or subject to specified exemptions or exceptions or only in relation to specific cases or classes of case;
- (c) to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Welsh Ministers think fit.

The Welsh in Education Strategic Plans (Wales) Regulations 2019 will be made under the Negative procedure.

Purpose and intended effect of the legislation

The Regulations make provision for a local authority to prepare a ten year Plan, the first to have effect from 1 September 2021, subject to the Welsh Ministers' approval. They also make provision for the following matters:

- a) The form and content of a Plan (regulation 3)
- b) The duration of a Plan (regulation 4)
- c) The date by which the Plan must be submitted to the Welsh Ministers for approval (regulation 5)
- d) The approval of a Plan (regulation 6)
- e) Timescales for submitting a review report (regulation 7)
- f) Arrangements for revising a Plan (regulation 8)
- g) The persons and bodies that a local authority must consult on the draft Plan (regulation 9)

- h) The date by which the Plan must be published (regulation 10)
- i) The manner of publication of a Plan (regulation 11)
- j) The revocation, with savings, of the Welsh in Education Strategic Plans and Assessing Demand for Welsh Medium Education (Wales) Regulations 2013 (regulation 12)

The purpose of these regulations is to improve the planning of Welsh-medium education provision by local authorities in order to support the current and future expectation for growth in Welsh-medium education. Improving the planning of Welsh medium education will also support the long-term national ambition for the Welsh language as set out in the Welsh Government's *Cymraeg 2050: A Million Welsh speakers* Strategy and the introduction of a new curriculum for Wales.

The Welsh in Education Strategic Plans and Assessing the Demand (Wales) Regulations 2013 ("the 2013 Regulations") were the first Regulations made under the powers in the 2013 Act. They, along with the 2013 Act provide the statutory framework for the planning of Welsh-medium education provision by local authorities. The first statutory Plans covered the three year period from 2014 to 2017. We are now in the second iteration spanning 2017-2020.

Whilst the 2013 Regulations improved Welsh-medium education planning by enabling local authorities to plan Welsh-medium education within a structured framework, both the enquiry by the Assembly's Children, Young People and Education (CYPE) Committee in 2015 as well as a thematic review of Welsh in Education Strategic Plans by Estyn in 2016 came to similar conclusions that Plans were not well enough aligned with the Welsh Government's national, long-term vision for Welsh-medium education.

A Rapid Review of the Welsh in Education Strategic Plans (2017) was commissioned in response to the low level of commitment and ambition presented by local authorities in their draft Plans for 2017-21. One of the recommendations was to review the legislation underpinning Welsh-medium education planning.

An independent Advisory Board was established between May 2018 and March 2019. The Board considered the changes needed to the 2013 Regulations, within the context of the Rapid Review's recommendations and wider policy developments in education (such as curriculum reform, ALN Act, school designations according to its provision of Welsh, childcare and learner travel).

In light of the above, the Board concluded that the current structure supporting the statutory planning of Welsh-medium education provision through local authority Plans no longer supported the long-term national ambition for the Welsh language. The report published by the Advisory Board in May 2019 can be found here: <https://gov.wales/improving-planning-welsh-medium-education>

Improvements the subordinate legislation will make to the current situation

Extending the duration of a Plan from its current 3 year cycle to 10 years.

The Rapid Review of the Plans called for the timeframe for delivering Plans to be extended and recommended that the timeframe was better aligned with the Welsh Government's capital funding schemes. Also, the Census, which remains our most reliable source of data to assess the vitality of the Welsh language and is the main indicator of progress in line with the *Cymraeg 2050* trajectory, is conducted every 10 years. Other planning considerations relevant to the Plans operate over a longer term. These include Local Development Plans (10 years) and Childcare Sufficiency Assessments (5 years) required under the Childcare Act 2006 (Local Authority Assessment) (Wales) Regulations 2016/88. The aim is that Plans lead to better planning of Welsh-medium provision and an increase in the uptake of Welsh-medium education. However, effective planning can take a number of years to achieve, often beyond the three year lifespan of a Plan under the current system.

These Regulations require a local authority to prepare a Plan for the duration of 10 years. Plans will have effect from 1 September 2021 until 31 August 2031 (for the first Plan). This timeframe will ensure alignment with the 2031 *Cymraeg 2050* milestone. These Regulations also makes provision for a circumstance if, for whatever reason, the Welsh Ministers are unable to approve a Plan by 1 September, then that Plan will instead have effect one calendar month after the Welsh Ministers approve that plan. However, the Plan will still finish at the same time (31 August 2031) as all those Plans which have effect from 1 September.

Removing the duty to carry out a Welsh medium parental demand assessment and replace this duty with individual local authority 10 year targets, aligned with the Cymraeg 2050 national education target milestones.

Since the introduction of Welsh in Education Strategic Plans in 2013, the majority of local authorities have carried out at least one assessment of parental demand for Welsh medium-education. The assessments were originally intended to provide local authorities with direction and a better understanding of what Welsh-medium provision was needed, where and by when. Despite this, parental demand assessments have not, generally, led to a significant improvement to the way in which local authorities Plan their Welsh-medium provision. Due to the tendency of most local authorities to undertake an assessment once every three years, they quickly become out-dated and cannot reflect the linguistic changes seen in some rapidly changing communities.

These Regulations replace the duty to assess parental demand with a requirement for local authorities to outline in their Plan the expected increase of Year 1 children taught through the medium of Welsh in the local authority's area during the lifespan of the plan. Planning on the basis of an overarching long term target will encourage better, more strategic and ambitious planning.

With a target to aim for over a specific period of time, a local authority has the opportunity to consider the various routes and options available to it to reach that target and judge the preferred approach. It is intended that measuring the number and percentage of learners entering Welsh-medium education from the earlier Year 1 (a shift from the current indicator of 7 year olds) will enable a local authority to respond promptly and more efficiently to the demand for Welsh-medium school places. This was one of the recommendations made in the 2017 Rapid Review of the Plans.

Include provision in the Regulations requiring local authorities to have due regard to Welsh Government guidance when calculating their targets.

With regard to the individual local authority targets, the Welsh Government has introduced a methodology for calculating targets. This will be included in the guidance document to the Welsh in Education Strategic Plans (Wales) Regulations 2019 to be issued by the Welsh Ministers under section 87(4) of the 2013 Act. This methodology is consistent with the *Cymraeg 2050* milestones relating to the increase in learners in Welsh-medium education needed to reach the million Welsh speakers target by 2050. Calculations have been based on the number of Year 1 learners (5/6 year olds) taught through the medium of Welsh, according to information from the Pupil Level Annual School Census (PLASC). In addition, authorities have been grouped into different categories demonstrating the differences (whilst also acknowledging similarities) between the 22 local authorities.

We expect local authorities to calculate their 10 year target in accordance with the methodology outlined in the statutory Guidance to the Welsh in Education Strategic Plans (Wales) Regulations 2019, to which a local authority must have due regard. The Guidance will be published early February 2020.

Addressing matters relating to the form and content of a Plan

The Schedule to these regulations specifies the matters which are to be included in the Plan, which are to be set out in the form of specific targets and statements. The statements cover a broad spectrum of considerations necessary to enable strategic planning of Welsh-medium education. The Schedule in these regulations contains fewer statements than the 2013 Regulations (a reduction from 25 to 20). The statements in the Schedule to these Regulations also makes better use of data and knowledge to be collected through other legislation to inform planning of Welsh-medium education. An example of this is that the Plan must include a statement setting out how the local authority will use information derived through the Childcare Sufficiency Assessments, required under duties set out in regulation 3 of the Childcare Act 2006 (Local Authority Assessment) (Wales) Regulations 2016. Another is the requirement for the plan to use information derived from reviews required under section 63 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018.

Although the statutory requirement to prepare and implement a Plan is conferred on the local authority, experience has shown that where there is strong local, regional and national collaboration, the greater the gains. As such,

emphasis has been placed on developing effective partnerships to support local authorities to deliver the changes needed to their provision of Welsh-medium education over the 10 year period.

Although some statements from the 2013 Regulations have been removed, others have been merged and new statements have been introduced. New statements include:

- statements dealing specifically with the introduction of 10-year targets.
- the use of childcare sufficiency assessment data to inform early planning of Welsh-medium maintained nursery provision
- consideration around how a local authority will increase the number of reception age children taught through the medium of Welsh.
- Increased focus on collaboration and partnership work with other local authorities and regional education consortia

Review and revision of the plan

With regard to keeping the Plan under review, we are introducing a requirement for local authorities to submit an annual update in the form of a concise review report, which we believe to be reasonable and commensurate. The aim of this new reporting structure is to reduce bureaucracy, with focus placed firmly on implementation. This is the only annual report that would be submitted to the Welsh Government.

With regard to submitting a revised Plan, provisions are included in the 2019 Regulations to revise the Plan only if, after having submitted the annual review report, it is clear to the local authority that a revised Plan is necessary.

Changing requirements around any supporting information to be included in a Plan

These Regulations no longer specify what supporting information local authorities must include in their Plans, as is the case in the current Regulations. Instead we will detail in the statutory guidance document the supporting information that should be included in the local authority Plan. We want to ensure that these Regulations remain as relevant as possible, as well as being flexible enough to respond to changes that may affect the content of Plans as the new curriculum is introduced. The Education (Amendments Relating to Teacher Assessment Information) (Wales) Regulations 2018 is one example of legislation introduced as part of the curriculum reform process that prohibits the publication of certain school data under current reporting arrangements.

Revocation of the 2013 regulations and savings of the plans made under the 2013 regulations

The Regulations will come into force on 1 January 2020. It will be a statutory requirement for local authorities to submit draft Plans to the Welsh Ministers for approval in the first year on 31 January 2021 and thereafter every 10 years in compliance with the Regulations.

Plans approved and which have effect prior to the coming into force of these Regulations will continue to have effect until the local authority's first 10 year Plan has effect.

Risks if Regulations are not made

No change to the current legislative framework underpinning the planning of Welsh-medium education would have a detrimental effect on local authorities' ability to satisfy the primary aim of a Welsh in Education Strategic Plan which is to improve the planning and standard of Welsh-medium education provision.

Welsh Government's experience of monitoring Plans, coupled with consistent feedback from local authorities and external stakeholders, as well as the various reviews into the Welsh in Education Strategic Plans already mentioned, reaffirm the collective view that the 2013 Regulations no longer support the national ambition of expanding Welsh-medium education provision. We need to be in a position where there is a greater equivalence of access to Welsh-medium education provision so that more learners have the choice of not only a first class standard of education, but also the chance to develop their linguistic skills so that they may be confident and proficient speakers of both Welsh and English, as a minimum.

The current requirements relating to keeping a Plan under review are considered overtly bureaucratic, leaving little time to focus on implementing the commitments within them. Some requirements, such as the parental demand assessments, have proven to be ineffective. The assessments quickly become out-dated and the information contained within them is unreliable and they have not resulted in local authorities adopting better Welsh-medium planning approaches as intended. If the status quo position with regard to the regulations is chosen then this particular requirement will be working directly against the ambition set out in the *Cymraeg 2050* to respond robustly and proactively to growing Welsh-medium education provision.

The advantage of moving to a framework that has, as a starting point, a clear target from which to plan, is that there are greater opportunities for local authorities to take a confident and direct approach to growing and improving the provision of Welsh-medium education in their area. Planning considerations around authority wide school organisation, or co-ordinating provision with other local authorities and agencies are given the time to develop. This all makes for a planning approach that will ultimately lead to more choice, and better standard of provision through the medium of Welsh for all learners.

There is a risk that an opportunity to make a significant and important contribution in the way Welsh-medium education provision is planned for by local authorities is missed if these regulations are not made. There is no doubt that the Welsh Government's ambition to reach a million Welsh speakers by 2050 is changing the discourse around the Welsh language, bringing with it a greater awareness of the benefits of being bilingual and multi-lingual, not only in Wales but further afield. Building on the foundations of an already established Welsh-medium education model is critical to ensure the opportunities are there for children, young people and their families to develop the linguistic skills they are likely to need in a bilingual Wales.

Consultation

The Welsh Government published a 15-week consultation, between 30 May and 13 September 2019, to seek views on the draft Welsh in Education Strategic Plans (Wales) Regulations 2019 and Guidance.

During this consultation period, Welsh Government also held four public consultation events in schools in Ceredigion, Conwy, Newport, and Rhondda Cynon Taf. Approximately 100 stakeholders attended the engagement events, including head teachers; local education authority representatives; Welsh language stakeholders; Teacher union representatives; FE colleges and University representatives. The events also included discussions on the promotion of Welsh-medium education and the benefits of bilingualism. Furthermore, a young people's session was held on 1 June 2019 during the Urdd National Eisteddfod with members of Bwrdd Syr IfanC, (the Urdd's national youth committee).

In addition to the stakeholders already referred to above, written responses were received from education bodies such as ESTYN, WLGA, regional consortia, Qualification Wales and The Association of Directors of Education in Wales (ADEW); as well as the Welsh Language Commissioner, the Children's Commissioner, other bodies and individuals. Welsh Government received a total of 72 written responses to this consultation.

We are satisfied the changes proposed in the draft 2019 Regulations during consultation have been welcomed overall. Responses have been generally in favour of the two most significant changes which are extending the timeframe of a Plan to 10 years and removing the requirement to undertake a parental demand assessment and replacing it with an individually calculated target to reach by the end of the new 10 year timeframe.

Responses received reaffirmed our view that a 3 year planning cycle and the duty to undertake a costly and ineffective demand assessment is detrimental to our national commitment to develop Welsh-medium education provision and future bilingual citizens. The regulatory framework as it currently stands does not provide the necessary infrastructure needed to realise our ambitions for the Welsh language. For example, several responses voiced frustration around the

time spent currently updating the three-year Plan instead of developing and implementing the commitments within them. Others referred to the opportunity a 10-year Plan brings in terms of improved strategic planning and the benefits around working towards a long-term goal and vision.

Responses around the requirement for local authorities to outline in their Plan the expected increase of Year 1 children taught through the medium of Welsh in the local authority's area during the lifespan of the plan indicated that the introduction of these targets would be viewed as sensible and reasonable. The proposed methodology to calculate these targets, which formed part of the consultation on the draft 2019 Regulations and were generally welcomed by responders and stakeholders, demonstrates a clear link between individual targets per area and the *Cymraeg 2050* ambition.

Responses generally supported the move towards local authorities planning their Welsh-medium education provision in a much more proactive way. Even so, a few wished to note that there must be recognition of factors that are out of a local authority's control. Factors such as the current political climate, workforce capacity issues and financial insecurities.

We appreciate that a local authority is not able to respond to all elements of Welsh in education planning by itself, and that other stakeholders need to support this work. The shift in focus in some statements (outlined in the Schedule to regulation 3) relating to authorities working in partnership instead of being the sole deliverer is recognition of this fact.

We are clear that it is Welsh Government's responsibility to lead the national response to matters such as initial teacher education, learner travel, workforce and resource issues. However, we need local authorities and other stakeholders to support us in identifying the gaps that need addressing. This is why these matters continue to be included in Plan requirements.

Some minor changes have been made to the 2019 Regulations post-consultation. Regulation 7 has undergone some redrafting to ensure clarity around the annual reporting arrangements. Particular consideration has also been given to the Schedule to the Regulations, as, whilst many respondents agreed the manner in which the statements were set out, a few were critical of the wording, stating that clear targets were needed instead of statements, particularly around matters relating to learner progression. These matters have been addressed by some minor redrafting and by incorporating targets, where practicable to do so.

A summary of the consultation responses is available at:

<https://gov.wales/draft-welsh-education-strategic-plans-regulations-wales-2019-and-guidance>

PART 2 – REGULATORY IMPACT ASSESSMENT

1. Options

1.1 This Regulatory Impact Assessment considers two options.

- Option 1: Keep the status quo – Local Authorities would continue to prepare Welsh in Education Strategic Plans under the current arrangements.
- Option 2: Introduce the Welsh in Education Strategic Plans (Wales) Regulations 2019 as drafted.

2. Costs and benefits

OPTION 1: Keep the status quo (i.e. No change)

2.1 Currently, local authorities prepare plans under section 84 of the School Standards and Organisational (Wales) Act 2013. Plans are prepared in a 3-year cycle from 1 April to 31 March (for example 1 April 2015 – 31 March 2018) and draft new plans have to be submitted to the Welsh Ministers for approval in the December of the year before existing plans are due to end. Under this option these statutory arrangements will continue.

Costs

2.2 This is the no change option and as such there are no additional costs associated with this option. The following section presents a summary of the costs associated with the current requirements. The costs of the current system were originally estimated in the Regulatory Impact Assessment for the School Standards and Organisational (Wales) Act 2013¹.

Welsh Government Administration Costs

2.3 The administration costs for the Welsh Government are associated with administration of the processes involved in preparing and reviewing plans. Local authorities are required to submit their draft plans for approval and the plans are subject to annual monitoring once approved. This involves the deployment of staff to oversee the submission of plans and to undertake the approval and monitoring process.

2.4 The tasks undertaken by Welsh Government staff include assessing each individual draft Plan, providing written and verbal feedback to local authorities, receiving and responding to updates on progress and revisions, and advising Ministers on the content of Plans and on progress made. The work also includes undertaking project management duties associated with

¹[http://www.assembly.wales/Laid%20Documents/PRI-LD9157-EM%20-%20Revised%20Explanatory%20Memorandum%20-%20School%20Standards%20and%20Organisation%20\(Wales\)%20Bill-08012013-241929/pri-ld9157-em-e-English.pdf](http://www.assembly.wales/Laid%20Documents/PRI-LD9157-EM%20-%20Revised%20Explanatory%20Memorandum%20-%20School%20Standards%20and%20Organisation%20(Wales)%20Bill-08012013-241929/pri-ld9157-em-e-English.pdf)

implementation of Plans, for example, reviews into effective delivery of Plans by local authorities, research into models for delivering Welsh-medium education by schools including Welsh language latecomer provision, developing alternative teaching provision using digital technologies as well as monitoring effective delivery of Welsh-medium capital grants. These duties often change on an annual basis. The Welsh Government has administered the system since 2013 therefore have a firm evidence based understanding of the staffing levels required to deal with the system. The agreed complement of staff is currently 1 Executive Band 2; 4 full time equivalent (FTE) Management Band 1 officers and 1 FTE Management Band 2 officer deployed to work on the plans. These staffing levels would continue under this option. The current recurring annual staffing costs are as follows:

Staff Grade	Number	Cost*	Total Cost (to nearest £'000)
Executive Band 2	1	£76,308	£76,000
Management Band1	4	£57,977	£232,000
Management Band2	1	£45,644	£46,000
			£354,000

**Cost is based on the average annual gross salary costs for 2018-19. The staff costs include on-costs (i.e. the employer's National Insurance and pension contributions).*

In addition to the staff costs outlined above the travel costs incurred to meet with local authorities amount to approximately **£2,000 per annum**. These are annual recurring costs already funded from the Welsh Government Direct Running Costs.

The total cost to Welsh Government is therefore £356,000 per annum.

Local Authority estimated costs

2.5 Costs involved in the preparation and implementation of Plans:

Local authorities allocate officer time to prepare and submit Welsh in Education Strategic Plans, and respond to feedback from the Welsh Government. Officer time is also allocated to support the implementation of the plans in their local area, which includes leading on Welsh in education forums. As a rule, this is not a full time officer role within local authorities. On the basis of Welsh Government's experience of dealing with local authorities since these arrangements have been in place. We estimate that it entails the time of a FTE Management Band 1 and a Management Band 3 officer in each local authority for a period of approximately 4 months per year.

Local authorities are under duties to publish their Plans. They tend to do this by publishing them on their own websites and may print copies on demand if required. The costs associated with this are negligible and most local authorities do not routinely publish hard copies of their plans.

The recurring staffing costs per annum for all 22 local authorities in Wales are estimated to be as follows:

Staff Grade	Number	*Cost (to nearest £'000)
MB1	0.33	£19,132x 22 = £421,000
MB3	0.33	£11,576 x 22 = £255,000
Total		£676,000

**Cost is based on the Welsh Government average annual gross salary costs for 2018-19. The staff costs include on-costs (i.e. the employer's National Insurance and pension contributions)*

2.6 Conducting surveys to measure the demand for Welsh-medium education

The Welsh in Education Strategic Plans and Assessing the Demand (Wales) Regulations 2013 requires local authorities to assess parental demand for Welsh-medium education provision. The assessments are intended to provide local authorities with direction and a better understanding of what Welsh-medium provision is needed, where it is needed, and by when. This requirement would continue under option 1.

The average costs of administering and analysing surveys is estimated at a maximum of £15,000 per survey. The guidelines recommend undertaking surveys once every 3 years. Therefore, the likely maximum average cost for conducting such surveys is estimated at a recurring cost of £5,000 per annum, per local authority. Due to their mechanisms of categorising schools, Gwynedd and Anglesey local authorities do not conduct surveys therefore the cost relevant to 20 local authorities, not 22.

Total Cost: £5000 per annum in 20 local authorities = **£100,000** recurring cost per annum.

Total Administration Costs of the Status Quo option

2.7 The **total recurring administration per annum costs** are as follows:

Welsh Government staff costs	£356,000
Local authority staff costs	£676,000
Conducting Surveys	£100,000
TOTAL	£1,132,000

Costs of implementing the plans

- 2.8 Once the plans are approved by the Welsh Ministers they should be implemented by local authorities.
- 2.9 There are costs associated with increasing the provision of Welsh-medium education. These costs may include building new or repurposing schools, expanding current provision or running immersion centres. Whilst recognising the administrative, learner travel, staffing (nursery, statutory age as well as ALN co-ordinators) costs incurred as a result of these developments, this should be regarded as expenditure on the education system rather than expenditure on delivering Welsh language policy. To a degree, expenditure on increasing Welsh-medium education provision displaces expenditure that would be spent otherwise on educating through the medium of English.
- 2.10 Funding for statutory age education in schools in Wales, as for other services delivered by local government, is provided in the main by the Welsh Government through the local government revenue settlement which includes the Revenue Support Grant (“RSG”). The funding is not ring-fenced, as the Welsh Government considers that local authorities are best placed to judge local needs and circumstances and to fund schools accordingly. The Plans assist them in identifying Welsh-medium provision needs and deciding how to plan their schools expenditure. Once the RSG has been distributed to local authorities, it is the responsibility of individual authorities to set budgets for their schools which are determined by a local funding formula. The School Funding (Wales) Regulations 2010 require 70% of funding for schools’ budgets to be distributed on the basis of pupil numbers. However, local authorities may decide how to weight these pupil numbers according to a number of factors, such as Additional Learning Need and language medium.
- 2.11 Authorities have discretion, albeit within a context of competing priorities and tightening budgets, to distribute the remaining 30% on the basis of a range of factors so that they can take account of individual school circumstances. In accordance with the regulatory framework, local authorities may take into account in their funding formula whether a pupil is being educated through the medium of Welsh and fund schools accordingly, taking into account the costs involved with delivering the same service through the medium of the Welsh language.
- 2.12 The Welsh Government also distributes £150m per year via the four regional consortia in the form of the Regional Consortia School Improvement Grant (“RCSIG”). This is made up of a collection of other Welsh Government education grants for local authorities and schools, packaged into a single funding stream, of which £118m was the Education Improvement Grant (“EIG”). The purpose of this funding programme is to support the regional consortia and the related authorities within the consortia in delivering the aspirations and priorities for schools and education outlined within the Welsh Government’s national strategy, *Prosperity for All*, and our plan of action for education, *Education in Wales*:

Our national mission.

- 2.13 *Education in Wales: Our national mission* sets out how the school system will move forward over the period 2017-21, securing implementation of the new curriculum with a focus on leadership, professional learning, and excellence and equity within a self-improving system. The action plan focuses on raising standards for all, reducing the attainment gap, and delivering an education system that is a source of national pride and public confidence, which are our overarching aspirations for education in Wales.
- 2.14 One of the funding criteria agreed with the consortia is to support the delivery of local authority Welsh in Education Strategic Plans.
- 2.15 Therefore, the duty to ensure that suitable educational provision is made available to all children rests with local authorities and the amount of funding each authority sets aside for school budgets is entirely for the authority to determine. Local authorities are expected to organise their schools as efficiently as possible in order to make the best use of resources for the benefit of all pupils. Implementing their Plans and the costs linked to that should therefore be viewed within the wider context of funding the authority's education system.

Benefits and dis-benefits

- 2.16 The benefits of this current status quo option is the Welsh Ministers and local authorities take a shared responsibility for creating a more effective planning system for Welsh-medium education which reflects local needs. The statutory requirement on local authorities to prepare a plan, and the requirement that the Welsh Ministers must approve and monitor that plan, ensures that there is a local and national planning and accountability system for Welsh-medium education. The fact that plans are statutory has improved Welsh-medium education planning insofar as they enable local authorities to plan Welsh-medium education within a structured framework.
- 2.17 The main dis-benefit of this status quo option is that the current pace of change in Welsh-medium education provision is not sufficient in order to effectively contribute to the Government's target of a million Welsh speakers by 2050. As referred to in part 1, this has been supported by an enquiry by the Assembly's Children, Young People and Education Committee in 2015² and by a thematic review of Plans by Estyn in 2016³. Both came to similar conclusions which were that the plans were not well enough aligned with the Welsh Government's vision for Welsh-medium education and that the partnership between local authorities and the Welsh Government in setting targets in Plans could be strengthened.
- 2.18 The external reviews referred to in 2.17 (above), the Rapid Review, and the work of the Ministerial Advisory Board undertaken in 2017 (referred in

² <http://www.assembly.wales/laid%20documents/cr-ld10475/cr-ld10475-e.pdf>

³ <https://www.estyn.gov.wales/thematic-reports/local-authority-welsh-education-strategic-plans>

Part 1) , as well as Welsh Government's experiences in approving and monitoring Plans all point towards the main dis-benefit of the current system and strengthen the case for change. That being if the way most local authorities plan their Welsh-medium education provision does not change, the additional number of children needed in Welsh-medium education to deliver the national education targets set by *Cymraeg 2050* will not be met. These Regulations emanate from the recommendations made by the Advisory Group and address the dis-benefits of the status quo option.

OPTION 2: Introduce the Welsh in Education Strategic Plans (Wales) Regulations 2019

Costs

2.19 Option 1, above identifies the following categories of costs:

- Welsh Government Administration Costs
- Local Authority costs (administration / surveys)
- Costs of implementing the plans

2.20 We do not believe that following Option 2 and introducing these Regulations would have a significant impact on Administration Costs associated with preparing and monitoring Plans. The move from producing 3 year Plans to producing a 10 year Plan will reduce the number of Plans that have to be prepared by local authorities. Currently, local authorities consult upon and submit a revised Plan every year. On a practical basis this will not impact upon the Welsh Government's work of monitoring the Plans' implementation or on the work of advising authorities and updating Ministers on progress as the Plans will have to be continually monitored throughout their 10 year lifespan. Also, the fact that authorities will have to prepare an annual review report, and may have to produce revised plans if the progress is not satisfactory, will have a negligible impact upon the workload of local authorities.

2.21 The Regulations that will be presented if Option 2 is pursued removes the duties on local authorities to plan their provision of Welsh-medium education based on the results of a parental assessment of need. Under the costs section of Option 1, it was estimated that this duty incurs a total recurring cost per annum of £100,000 (total cost across 20 local authorities). Under Option 2 this cost would not be incurred therefore would be saved.

2.22 There are potential increased costs in the work of preparing Plans under Option 2 compared to the status quo. These costs would be administrative in the sense that authorities may have to engage with more staff during the initial target setting process, including statistical, finance and school organisational colleagues. However, this would not be an annual incurred cost but a one off cost which would be incurred during the preparation of the 10 year Plan.

2.23 It is the view of the Welsh Ministers that there are negligible differences in the administration costs between Options 1 and 2.

Costs of implementing the plans

2.24 As noted in Option 1, above, the costs of implementing Plans developed under the proposed Regulations will still have to be met from the local authorities' revenue settlement as provided to them by Welsh Government. Under this option, the regional consortia will also continue to receive EIG funding (incorporated within the RCSIG) from the Welsh Government to support the delivery of the aspirations and priorities for schools and education outlined within the Welsh Government's national strategy, *Prosperity for All*, and the plan of action for education, *Education in Wales: Our national mission*.

2.25 It is expected that the Regulations proposed under this Option 2 will lead to a step change in the planning and ultimately in the provision of Welsh-medium education. This will be required if the target of having a million Welsh speakers by 2050 is to be met. This will mean a re-organisation of education provision in many local authorities resulting in more learners receiving Welsh-medium education.

2.26 However, the Regulations in themselves will not lead to authorities having to educate more children as the Regulations will not impact upon population or demographic trends. But more school places may need to be considered in order to provide an adequate provision of school places.

2.27 As an indirect consequence of increasing Welsh-medium provision in line with the Plans, there is likely to be a need for additional Welsh-medium teaching capacity. This is already being considered as part of wider education reforms due to the targets in *Cymraeg 2050* to increase the Welsh-medium workforce. Therefore the costs involved are not being accounted for in this RIA. It is worth noting however, that the Welsh Government has during the past year announced cash incentives for new teachers, some aimed specifically at increasing provision of teaching Welsh as a subject and through the medium of Welsh. Alternative routes to teaching, such as part-time and distance learning are also being introduced.

2.28 The 1996 Education Act defines a local authority's 'education functions'. It states that local authorities have a statutory duty to secure provision of sufficient school places and, in so doing, to have regard to the general principle that pupils should be educated in accordance with the wishes of parents, so far as that is compatible with the provision of efficient instruction and the avoidance of unreasonable public expenditure. If the proposed Regulations are made then authorities would still have to comply with those core duties when planning their education provision.

Benefits and dis-benefits

2.29 The main benefit of introducing the Regulations as proposed in this option is policy related in that it responds to the challenges set by the Welsh Government's 2017 Welsh language strategy, *Cymraeg 2050*, and its headline target to have a million Welsh speakers by 2050. Expanding Welsh-medium education is critical to the successful implementation of the strategy. 438,000 additional Welsh speakers are needed to achieve the 1 million target by 2050. For this to be achieved, certain transformational changes within the education sector must take place. These include the following outcomes:

- More nursery children/3 year olds receiving their education through the medium of Welsh
- More reception class children/ 5 year olds receiving their education through the medium of Welsh
- More children continuing to improve their Welsh language skills when transferring from one stage of their statutory education to another
- More learners studying for assessed qualifications in Welsh (as a subject) and subjects through the medium of Welsh
- More opportunities for learners to use Welsh in different contexts in school.
- An increase in Welsh-medium education provision for learners with additional learning needs (in accordance with duties determined by the ALN Act)
- An increase in the number of teaching staff able to teach Welsh (as a subject) and teach through the medium of Welsh

2.30 Benefits will also arise from changing the plans from following a three year cycle as is the case in option 1, to a ten year cycle as proposed in this option. The introduction of Plans as 3-year plans emanate from financial rather than strategic policy delivery needs. Prior to the current arrangements, the Welsh Language Board had been using its powers under the Welsh Language Act 1993 to require local authorities to draw up and agree a Welsh Education Scheme (WES). These WES were produced in addition to local authorities' Welsh Language Schemes. Both schemes followed a 3-year cycle. Although this change entails preparing a single Plan for a 10 year period we do not believe that this will result in any financial cost savings as local authorities will still have to prepare an annual review report. Therefore the administrative tasks and workload associated with preparing, implementing and monitoring a plan is unlikely to decrease.

2.31 The Plans developed under these Regulations should lead to more Welsh-medium schools opening, built or extended, as well as planning the implementation of other innovative proposals to enable more children the opportunity of becoming confident Welsh speakers. Major policy and capital developments such as these can take a number of years to achieve. Therefore there would be benefits associated in moving towards 10-year plans:

- The timeframe for plans would coincide with the Welsh Government's capital funding schemes.

- The Census, which remains our most reliable source of data to assess the vitality of the Welsh language and is the main indicator of progress in line with the *Cymraeg 2050* trajectory, is conducted every 10 years.
- Other planning considerations relevant to planning Welsh-medium education provision, such as the Childcare Sufficiency Assessments required under the Childcare Act 2006, and individual development plans (IDPs) for children and young people with additional learning needs (ALN) introduced by the Additional Learning Needs and Education Tribunal (Wales) Act 2018 as well as LDPs are conducted every 5 -10 years.

2.32 It is logical and beneficial therefore that the Plans developed under these Regulations are for a longer period than the current three years so that they are better aligned with the above planning cycles. It would encourage a more long-term, meaningful and ambitious planning of Welsh-medium education. In addition, the proposed Regulations would result in having Plans that would come into force on 1 September. Having Plans that operate in line with the academic school year allowing better analysis and review of school data, would also be beneficial to the planning process.

2.33 There is a risk that Option 2 could result in a dis-benefit by removing the statutory duty on local authorities to assess parental demand for Welsh-medium education - this option could create a void in locally sourced data and evidence. However, whilst the assessments were originally intended to provide local authorities with direction and a better understanding of what Welsh-medium provision was needed, there has not been sufficient evidence that they have given local authorities a robust evidence base on which to plan. In addition, the assessment can become quickly out-dated. Despite the potential dis-benefit removing the duty to assess parental demand, responses during consultation on the draft Regulations highlighted some benefits in continuing to gather information about parental need, others agreeing this could form part of knowledge gathering exercises related to Welsh-medium education promotional strategies or campaigns. We therefore believe that the approach proposed by Option 2, that will see local authorities setting their own targets having given due regard to Welsh Government guidance, will produce better planning approaches that will be consistent with the long-term strategic aims of *Cymraeg 2050*.

Conclusion

2.34 As noted above, the Welsh Government believes that the difference in administration costs incurred by Option 2 compared to option 1 would be negligible therefore the policy related benefits that would result from pursuing Option 2 are justified. It is likely that Option 2 would lead to increased implementation costs through having to create more school places to offer a genuine choice to parents. However this could still be within the constraints of the revenue support provided to authorities and would be subject to the local democracy process and the duty in the 1996 Education Act to secure provision whilst avoiding unreasonable public

expenditure. In terms of capital grant support, additional school capital funding has been channelled by Welsh Government to enable authorities prepare for the next cycle of Plans. The introduction of the Welsh in Education Strategic Plans support programme, aimed at providing practical advice and support to individual local authorities on aspects of implementation, as well as an annual conference to share good practice should further strengthen efficient delivery. Considering that this change is required in order to meet the aspirations of *Cymraeg 2050* the Welsh Ministers propose that option 2 is followed and believe that any additional costs are justified.

3. Consultation

3.1 The draft Regulations and RIA was subject to a public consultation between 30 May and 13 September 2019.

3.2 During the consultation events and in the written responses received, polar views were expressed around the approach taken in the draft RIA. Local authorities in particular expressed strong views around the increased financial implications changes proposed in the Regulations could, in their view, entail. Despite agreeing with the policy intent, many felt the current state of school budgets and the system in place for educational funding did not support development of Plans and separate, additional funding invested in education in Wales was needed. Others on the other hand, including some education bodies, agreed strongly with Option 2 of the RIA, noting that the benefits of making new Regulations outweighed the dis-benefits. The main benefit being the new Regulations respond robustly to the challenges presented by the *Cymraeg 2050: A million Welsh speakers strategy*.

3.3 Adequate funding to support the requirements outlined in the Schedule to the Regulations featured heavily in local authority responses. It should be noted that these Regulations include fewer statements than the 2013 Regulations (5 less). Any new statements propose that authorities use information and knowledge derived from duties that must already be adhered to by other legislation (regarding Childcare sufficiency and ALN provision). Making the best use of data and information already available has been a consistent drafting consideration of these Regulations. The remainder of the statements are already required under current Plan arrangements.

3.4 In terms of specific support, the Welsh Government established a combined Welsh medium Capital and Childcare offer grant fund of £46m in 2018 to support the growth in Welsh medium education provision. This enabled Welsh Government to support some 46 projects across 20 local authorities which will, when all projects are realised, lead to an additional 2818 school and childcare places for Welsh medium learners. This funding boost will go some way to support the increase in provision needed to respond to the *Cymraeg 2050* ambition and the new arrangements. This funding is included in the £110 million additional grant funding allocated to local

authorities and colleges via the Childcare Offer Capital Grant, Community Hubs Grant, Reducing Infant Class Sizes Grant, VA Urgent Repairs Grant, and Digital 2030 Grant.

3.5 This funding is also an addition to the rolling 21st century schools capital grant programme to support school modernisation and organisation, which forms part of the Government's delivery programme for Wales. The total investment from Welsh Government and delivery partners for Band A, 21st Century Schools and Colleges Capital Programme currently stands at £3.7 billion, with over £1.4 billion invested over the last five years, and a further £2.3 billion investment planned for the next phase.

3.6 That is not to say that we do not recognise the challenges faced by local authorities at a time when school funding locally, regionally and nationally is constrained. We remain confident, however, that the proposals introduced by the draft regulations will lead to better planning, reduced bureaucracy and greater efficiency.

4. Competition Assessment

4.1 The proposed legislation has no effect on business, charities or the voluntary sector therefore a competition assessment has not been undertaken.

5. Post implementation review

5.1 The new process for developing Plans outlined in the proposed legislation will include a proportionate level of monitoring in order for local authorities and Welsh Government to have a consistently clear understanding of progress made. A 10 year plan will be produced and annual review report submitted to the Welsh Government. This process will entail a consistent dialogue between the Welsh Government and local authorities over the lifetime of the Plan. This will enable local authorities and Welsh Government to quickly identify any difficulties with the legislation, as well as enable the Welsh Government to ascertain the support needed by local authorities.

SL(5)481 – The Renting Homes (Fees etc.) (Specified Information) (Wales) 2019

Agenda Item 3.3

Background and Purpose

These regulations set out information which must be provided to a prospective contract-holder by either the landlord or letting agent, before a holding deposit is paid. These regulations also specify the way in which the information must be provided.

If the information in regulation 2(2) is not provided to a prospective contract-holder before a holding deposit is paid, the landlord may not rely upon the exceptions set out in paragraphs 8, 9 and 10 of Schedule 2 to the Renting Homes (Fees etc.) (Wales) Act 2019 and the holding deposit must be repaid. Regulation 2(3) sets out how the information must be provided.

These Regulations revoke the Renting Homes (Fees etc.) (Specified Information) (Wales) Regulations 2019 (“the 2019 Regulations”). The 2019 Regulations were laid on 15 November, with a coming into force date of 13 December 2019. Since the 2019 Regulations were laid, the Minister for Housing and Local Government received correspondence from landlords, agents and representative bodies outlining concerns they had regarding the regulations. The concerns included the length of time that landlords and letting agents would have to implement the changes and the fact that landlords would be required to provide an address ahead of a holding deposit being taken from a contract-holder. These concerns have been addressed in these regulations.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

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

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

1. We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date subordinate legislation is laid before the Assembly and the date the subordinate legislation comes into force), and the explanation for the breach provided by Rebecca Evans AM, Minister for Finance and Trefnydd, in a letter to the Llywydd dated 6 December 2019.

The regulations breach the 21 day rule because the Welsh Government felt it was necessary to revoke the 2019 regulations owing to concerns raised by stakeholders before they came into force on 13 December. Legal Services note the Welsh Government’s explanations and have no further points to raise.

Implications arising from exiting the European Union

None.



Government Response

A government response is not required.

Legal Advisers

Constitutional and Legislative Affairs Committee

17 December 2019



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

2019 No. 1493 (W. 272)

HOUSING, WALES

**The Renting Homes (Fees etc.)
(Holding Deposit) (Specified
Information) (Wales) Regulations
2019**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out information which must be provided to a prospective contract-holder by either the landlord or their letting agent, before a holding deposit is paid in respect of a standard occupation contract. These Regulations also specify the way in which the information must be provided.

Regulation 2 revokes the Renting Homes (Fees etc.) (Specified Information) (Wales) Regulations 2019.

If the information in regulation 3(2) is not provided to a prospective contract-holder before a holding deposit is paid, the landlord or letting agent may not rely upon the exceptions set out in paragraphs 8, 9 and 10 of Schedule 2 to the Renting Homes (Fees etc.) (Wales) Act 2019 and the holding deposit must be repaid. Regulation 3(3) sets out how the information must be provided.

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

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

2019 No. 1493 (W. 272)

HOUSING, WALES

**The Renting Homes (Fees etc.)
(Holding Deposit) (Specified
Information) (Wales) Regulations
2019**

Made 4 December 2019

*Laid before the National Assembly for
Wales* 6 December 2019

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

The Welsh Ministers, in exercise of the power conferred on them by paragraph 11(3) and (4) of Schedule 2 to the Renting Homes (Fees etc.) (Wales) Act 2019(1), make the following Regulations.

Title and commencement

1.—(1) The title of these Regulations is the Renting Homes (Fees etc.) (Holding Deposit) (Specified Information) (Wales) Regulations 2019.

(2) These Regulations come into force on 10 December 2019 for the purpose of regulation 2 and 28 February 2020 for all other purposes.

Revocation

2. The Renting Homes (Fees etc.) (Specified Information) (Wales) Regulations 2019(2) are revoked.

(1) 2019 anaw 2 (“the 2019 Act”); *see* section 28 for the definition of “regulations”. Schedule 2 is introduced by section 9 of the 2019 Act.

(2) S.I. 2019/1466 (W. 258).

Specified information

3.—(1) These Regulations specify information which a landlord (or if instructed, their letting agent) must provide to a prospective contract-holder⁽¹⁾ before a holding deposit⁽²⁾ is paid to the landlord or letting agent in respect of a standard occupation contract and the way in which that information must be provided.

(2) The following information must be provided to a prospective contract-holder—

- (a) amount of holding deposit⁽³⁾,
- (b) address of the dwelling in respect of which the deposit is paid,
- (c) where a holding deposit is to be paid to a letting agent, the name and contact details of that letting agent,
- (d) where a holding deposit is to be paid to a landlord, the name and contact details of that landlord,
- (e) duration of the contract,
- (f) proposed occupation date,
- (g) amount of rent or other consideration,
- (h) rental period,
- (i) any proposed additional contract terms or proposed modifications to fundamental or supplementary terms or terms proposed to be omitted from the contract,
- (j) amount of any security deposit,
- (k) whether a guarantor is required and, if so, any relevant conditions,
- (l) reference checks the landlord (or letting agent) will undertake, and
- (m) information the landlord or letting agent requires from the prospective contract-holder.

(3) The information must be provided to a prospective contract-holder in writing and may be given in person or provided by electronic means if the prospective contract-holder consents to receiving it electronically.

(1) By virtue of regulation 3 of S.I. 2019/1151 (W. 201), the references in the 2019 Act to a contract-holder are to be read as references to a tenant under an assured shorthold tenancy under Part 1 of the Housing Act 1988 (c. 50).

(2) See paragraph 4 of Schedule 1 to the 2019 Act for the definition of “holding deposit”.

(3) Under paragraph 4(c) of Schedule 1 to the 2019 Act, a holding deposit must not exceed an amount equivalent to one week’s rent under the contract.

Julie James

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

4 December 2019

Explanatory Memorandum to the Renting Homes (Fees etc.) (Holding Deposit) (Specified Information) (Wales) Regulations 2019

This Explanatory Memorandum has been prepared by the Welsh Government's Education and Public Services Group 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 Renting Homes (Fees etc.) (Holding Deposit) (Specified Information) (Wales) Regulations 2019.

Julie James
Minister for Housing and Local Government

6 December 2019

PART 1

1. Description

- 1.1. This Explanatory Memorandum relates to the Renting Homes (Fees etc.) (Holding Deposit) (Specified Information) (Wales) Regulations 2019 (“the Regulations”). The Regulations are made under paragraph 11 of Schedule 2 Renting Homes (Fees etc.) (Wales) Act 2019 which provides the Welsh Ministers with power to make regulations specifying information to be provided to a prospective contract-holder before the payment of a holding deposit.
- 1.2. Regulation 2 of the Regulations revokes the Renting Homes (Fees etc.) (Specified Information) (Wales) Regulations 2019 (S.I. 2019/1466 (W. 258)).

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

- 2.1. In accordance with section 11A(4) of the Statutory Instruments Act 1946 (as inserted by Schedule 10 paragraphs 1 and 3 of the Government of Wales Act 2006), Regulation 2 of the Regulations will come into force less than 21 days from the date of laying.

3. Legislative background

- 3.1. The Regulations are made under paragraph 11 of Schedule 2 to the Renting Homes (Fees etc.) (Wales) Act 2019 (the Act).

Regulation 2 comes into force on 10 December 2019. The remainder of the Regulations come into force on 28 February 2020.

- 3.2. The Regulations follow the Assembly’s negative procedure.

4. Purpose and intended effect

- 4.1. The intention of the Regulations is to ensure that a landlord (or where instructed, their letting agent) provides specified information to a prospective contract-holder before a holding deposit is paid to the landlord or letting agent in respect of a standard occupation contract. The regulations also specify the way in which that information must be provided.
- 4.2. The Regulations mean a contract-holder receives information before the grant of a standard occupation contract and so they can make an informed choice about whether a tenancy is suitable before making a financial commitment. In particular, it is considered that information relating to the contract (eg whether a guarantor is required) should be made clear prior to

a holding deposit being taken as this could have a significant bearing on a contract-holder's ability to take up the contract.

- 4.3. If the specified information is not provided (referred to in paragraph 11 of Schedule 2 as "the condition" which must be met) the exceptions to the requirement to repay a holding deposit set out in paragraphs 8, 9 and 10 of Schedule 2 to the Renting Homes (Fees etc.) (Wales) Act 2019 Act may not be relied upon. The risk of not being able to rely on these exceptions ensures compliance with the Regulations.
- 4.4. The Regulations provide that the following information must be provided to a prospective contract-holder:
 - amount of holding deposit,
 - address of the dwelling in respect of which the deposit is paid,
 - where a holding deposit is to be paid to a letting agent, the name and contact details of that letting agent,
 - Where a holding deposit is to be paid to a landlord, the name and contact details of that landlord,
 - duration of the contract,
 - proposed occupation date,
 - amount of rent or other consideration,
 - rental period,
 - any proposed additional contract terms or proposed modifications or proposed modifications to fundamental or supplementary terms or terms proposed to be omitted from the contract,
 - amount of any security deposit,
 - whether a guarantor is required and, if so, any relevant conditions,
 - reference checks the landlord (or letting agent) will undertake, and
 - information the landlord or letting agent requires from the prospective contract-holder.
- 4.5. The information must be provided to a prospective contract-holder in writing and may be given in person or provided electronically if the prospective contract-holder consents to receiving it in that form.
- 4.6. Regulation 2 of the Regulations revokes the Renting Homes (Fees etc.) (Specified Information) (Wales) Regulations 2019.

5. Consultation

- 5.1. An eight week consultation was undertaken between 24 May 2019 and 19 July 2019 with regards to making regulations in relation to Payments in Default and Holding Deposits.
- 5.2. In total 303 responses were received to the consultation. The majority of respondents were either landlords or letting agents. Questions 7 and 8 of the consultation related specifically to what information a prospective tenant

should be provided with before a holding deposit is taken and how this information should be provided.

5.3. Responses to the question of to what information should be provided to a prospective tenant before a landlord or agent takes a holding deposits were as follows:

- 84% thought that basic details of all parties to be included in the agreement, (prospective tenant, landlord and agent) including contact details should be provided.
- 88% thought that length and type of tenancy to be entered into, including moving in date should be provided.
- 93% thought that the amount of rent should be provided.
- 92% thought that the amount of security deposit should be provided.
- 75% thought that the requirements for a guarantor should be provided.
- 84% thought that the details of the circumstances under which the holding deposit is refundable should be provided.
- 82% thought that details of how the holding deposit will be used should the tenancy go ahead, including how it will be protected should be provided.
- 84% thought that details of what will happen following a deposit being paid, including what checks will be undertaken by the landlord / agent should be provided.

5.4. Responses in relation to how this information should be provided to the contract-holder was overwhelmingly that the information should be provided in written format.

5.5. A detailed analysis of the responses to the consultation is available on the Welsh Government's website <https://gov.wales/renting-homes-fees-etc-wales-act-2019-default-fees-and-prescribed-information>

6. Stakeholder engagement

6.1. Engagement with stakeholders was undertaken during the passage of the Renting Homes (Fees etc) Bill and during the consultation period for the draft regulations.

7. Regulatory Impact Assessment

7.1. The Welsh Ministers' Code of Practice on carrying out Regulatory Impact Assessments was considered in relation to the Regulations. As a result, it was not considered necessary to carry out an RIA as to the likely costs and benefits of complying with these Regulations. Costs associated with the primary legislation under which these Regulations are made have been accounted for under the RIA for The Renting Homes (Fees etc.) (Wales) Act 2019.

Rebecca Evans AC/AM
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref MA/JJ/5782/19

Elin Jones AM
Llywydd
National Assembly for Wales
Cardiff Bay
CF99 1NA

6 December 2019

Dear Llywydd,

The Renting Homes (Fees etc.) (Holding Deposit) (Specified Information) (Wales) Regulations 2019

In accordance with section 11A(4) of the Statutory Instruments Act 1946 (as inserted by Schedule 10 paragraph 3 of the Government of Wales Act 2006), I am notifying you that the statutory instruments referred to above come into force less than 21 days from the date of laying. The Explanatory Memoranda for these Regulations are attached for your information.

The Renting Homes (Fees etc.) (Specified Information) (Wales) Regulations 2019 ("the Regulations") were laid on 15 November, with a coming into force date of 13 December 2019.

Since the Regulations were laid, the Minister for Housing and Local Government received correspondence from landlords, agents and representative bodies outlining concerns they had regarding the Regulations.

The Regulations specify information which must be provided to a prospective contract-holder by a landlord and if instructed their letting agent, before a holding deposit is taken. The concerns were, firstly, the length of time that landlords and letting agents would have in order to implement any changes as a result of the Regulations. The second concern was the landlord having to provide an address ahead of a holding deposit being taken from a contract-holder.

The Minister for Housing and Local Government decided to address their concerns through The Renting Homes (Fees etc.) (Holding Deposit) (Specified Information) (Wales) Regulations 2019 (the "Replacement Regulations").

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Correspondence.Rebecca.Evans@gov.wales
Gohebiaeth.Rebecca.Evans@llyw.cymru

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

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

The Replacement Regulations are being made which will revoke The Renting Homes (Fees etc.) (Specified Information) (Wales) Regulations 2019 before the coming into force date of 13 December 2019 and replace them with Regulations which will come into force on 28 February 2020.

The coming into force date of the Renting Homes (Fees etc.) (Holding Deposit) (Specified Information) (Wales) Regulations 2019 is 80 days from the date they will be laid. This should address concerns raised about the length of time that landlords and letting agents would have in order to implement any changes as a result of the Regulations. It also makes it clear that, where a holding deposit is to be paid to a landlord, that they should supply the “name and **contact details** of that landlord”. Where a holding deposit is to be paid to an agent they should supply “the name and **contact details** of that letting agent”.

Independent research was commissioned to support public consultation on the Regulations, alongside an 8 week public consultation which was carried out between 24 May and 19 July 2019 in relation to the original Regulations. The consultation responses are analysed in the Explanatory Memorandum which has been prepared and laid, together with the Replacement Regulations, in the Table Office.

I am copying this letter to Mick Antoniw AM, Chair of the Constitutional and Legislative Affairs Committee and Sian Wilkins, Head of Chamber and Committee Services.

Yours sincerely,

A handwritten signature in cursive script that reads "Rebecca Evans".

Rebecca Evans AC/AM
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

Agenda Item 3.4 SL(5)484 – The Whelk Fishing (Wales) (Amendment) Order 2019

Background and Purpose

The Whelk Fishing (Amendment) (Wales) Order (the Amending Order) amends the Whelk Fishing (Wales) Order 2019 (the Principal Order) so as to narrow the scope of the existing ban on carriage of undersized whelk by UK fishing boats within the Welsh zone. Specifically, UK fishing boats which have not fished in the Welsh zone but travel through it will be exempted from the carriage ban. This change will affect a very limited number of fishers. The Amending Order will also make a minor textual amendment to the Principal Order by changing 'purpose' to 'purposes' in article 4.

Procedure

No procedure.

Technical Scrutiny

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

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

Sections 1(3) and (6) of the Sea Fish (Conservative) Act 1967 contain the enabling powers relied on to make the Amending Order. Section 20(3) of the Sea Fish (Conservation) Act 1967 requires an order made under section 1 to be laid before the Parliament. The National Assembly for Wales (Transfer of Functions) Order 1999 transfers the order making function to the Welsh Ministers, and by virtue of paragraphs 30 and 33 of Schedule 11 to the Government of Wales Act 2006, the Amending Order must be laid before the Assembly rather than Parliament.

The incorrect procedure has been selected for the Amending Order. The enabling powers require the Amending Order to be laid but do not require the negative procedure to be followed. By following the negative procedure the Amending Order could be subject to annulment by the Assembly.

Merits Scrutiny

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

Implications arising from exiting the European Union

The Explanatory Memorandum explains that the Welsh Government only has powers to legislate for UK vessels fishing in the Welsh zone and the possibility of legislating for non-UK vessels fishing within the Welsh zone will be considered in the light of the new legislative landscape after the UK exits from the EU.

Government Response

The Welsh Government accepts the technical point noted in the CLAC report on the Whelk Fishing (Wales) (Amendment) Order 2019. In future, the Welsh Government will ensure that the correct procedure is used for Orders made under the Sea Fish (Conservation) Act 1967.





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

2019 No. 1498 (W. 274)

SEA FISHERIES, WALES

CONSERVATION OF SEA FISH

**The Whelk Fishing (Wales)
(Amendment) Order 2019**

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Whelk Fishing (Wales) Order 2019 (S.I. 2019/1042 (W. 184)) (“the Principal Order”).

Article 5 of the Principal Order currently prohibits the carriage of whelk with a size of less than the specified minimum size by British fishing boats within the Welsh zone. The “specified minimum size” for whelk is defined in article 2 of the Principal Order.

Article 2(2) of this Order replaces “purpose” with “purposes” in the English language text of article 4 of the Principal Order.

Article 2(3) substitutes a new article 5 in the Principal Order. The effect of this substitution is that a British fishing boat may carry whelks with a size of less than the specified minimum size within the Welsh zone if it has not fished in the Welsh zone during that particular fishing trip.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with this Order. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

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

2019 No. 1498 (W. 274)

SEA FISHERIES, WALES

CONSERVATION OF SEA FISH

**The Whelk Fishing (Wales)
(Amendment) Order 2019**

Made *10 December 2019*

Laid before the National Assembly for Wales
12 December 2019

Coming into force *15 January 2020*

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

-
- (1) 1967 c. 84 (“the 1967 Act”). Section 1 of the 1967 Act was substituted by the Fisheries Act 1981 (c. 29), section 19(1). Section 1(3) of the 1967 Act was substituted by the Marine and Coastal Access Act 2009 (c. 23) (“the 2009 Act”), section 194(1) and (4). See section 1(9) of the 1967 Act 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. 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.
- (2) The functions of the Ministers under section 1(3) and (6) so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales (as constituted under the Government of Wales Act 1998 (c. 38)): see article 2(a) of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 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 section 1(3) and (6) of the 1967 Act, were transferred to the Welsh Ministers by article 4(1)(b) of the Welsh Zone (Boundaries and Transfer of Functions) Order 2010 (S.I. 2010/760).

Title and commencement

1. The title of this Order is the Whelk Fishing (Wales) (Amendment) Order 2019 and it comes into force on 15 January 2020.

Amendment of the Whelk Fishing (Wales) Order 2019

2.—(1) The Whelk Fishing (Wales) Order 2019⁽¹⁾ is amended as follows.

(2) In article 4, in the English language text, for “purpose” substitute “purposes”.

(3) For article 5 substitute—

“Prohibition on carriage of specified whelk

5.—(1) For the purposes of section 1(3) of the Act (which prohibits the carriage on specified fishing boats of any sea fish of any description which does not meet the requirements as to size prescribed in relation to sea fish of that description), whelk with a size of less than the specified minimum size may not be carried by a British fishing boat that has fished in the Welsh zone during that boat’s current fishing trip.

(2) In this article, “current fishing trip” means the time from when the fishing boat departed from a port to the time when it returns to a port.”

Lesley Griffiths

Minister for Environment, Energy and Rural Affairs,
one of the Welsh Ministers
10 December 2019

(1) S.I. 2019/1042 (W. 184).

Explanatory Memorandum to the Whelk Fishing (Amendment) (Wales) Order 2019

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

Minister's Declaration

In my view this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Whelk Fishing (Amendment) (Wales) Order 2019.

I am satisfied that the benefits justify the likely costs.

Lesley Griffiths

Minister for Environment, Energy and Rural Affairs

12 December 2019

Description

The Whelk Fishing (Amendment) (Wales) Order (the Amending Order) will amend the Whelk Fishing (Wales) Order 2019 (the Principal Order) so as to narrow the scope of the existing ban on carriage of undersized whelk by UK fishing boats within the Welsh zone. Specifically, UK fishing boats which have not fished in the Welsh zone but travel through it will be exempted from the carriage ban. This change will affect a very limited number of fishers. The Amending Order will also make a minor textual amendment to the Principal Order by changing 'purpose' to 'purposes' in article 4.

Matters of special interest to the Constitutional and Legislative Affairs Committee

None.

Legislative Background

The amendment of the carriage ban can be achieved using Section 1 of the Sea Fish (Conservation) Act 1967, the same power used to implement the current ban. Section 1(3) and (6) of the Sea Fish (Conservation) Act 1967 gives the Welsh Ministers the power to make the Order in relation to *the carriage of sea fish as prescribed by the Order*.

The relevant functions of the Secretary of State of the Sea Fish (Conservation) Act 1967 were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and then to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

The Order is made under the Assembly's negative resolution procedure.

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

Purpose and intended effect

Currently, the Principal Order prohibits any UK boat carrying whelk below the new Welsh minimum size (55mm at the present time) under any circumstances. Therefore, even fishers who catch whelk under the prescribed minimum size outside the Welsh zone and intend to land them outside Wales but travel through the Welsh zone whilst carrying the whelk would be guilty of an offence. Prohibiting such activity does nothing to protect whelk living in Welsh waters.

To avoid the possibility of committing such an offence fishers may be forced to make longer journeys to avoid the Welsh zone. This may result in greater expense and risks to fishers, particularly in bad weather.

The Amending Order will prevent the problems discussed above by dis-applying the ban for vessels which have not fished in the Welsh zone during that fishing trip.

A minor textual amendment to article 4 of the Principal Order has been made to bring it into line with other comparable legislation.

REGULATORY IMPACT ASSESSMENT

Options

This Regulatory Impact Assessment considers two options:

- Option 1: Business as usual – under this option, no amendment would be made to the Whelk Fishing (Wales) Order 2019.
- Option 2: amend the Whelk Fishing (Wales) Order 2019 so that UK fishing boats which have not fished in the Welsh zone will be exempted from the carriage restriction on undersized whelk.

Costs and benefits

Option 1: Business as usual

This is the baseline option and as such there are no additional costs and/or benefits associated with this option.

Option 2: Amend the Whelk Fishing (Wales) Order 2019

Cost to Industry

There is not expected to be an additional cost to industry as a result of the Amending Order. The minimum size prescribed in the Principal Order will continue to apply for whelks caught in the Welsh zone or landed in a Welsh port (provided they are caught or landed by a UK fishing boat).

The number of UK fishers who catch whelk outside of the Welsh zone and who may then wish to transit the Welsh zone with whelk under the Welsh minimum size is not known, however, the number is believed to be small. There is a potential time and cost saving to these businesses from being allowed to transit the Welsh zone, however, this is not expected to have a significant impact on competition.

Cost to Welsh Government

There is not expected to be an additional cost to Welsh Government as a result of the Amending Order. Marine Enforcement Officers (MEOs) will continue to carry out routine compliance checks at sea and at the point of landing to ensure minimum size requirements are adhered to. Furthermore, MEOs already have the ability to monitor a vessel's activity and to determine whether a vessel is (or has been) fishing in the Welsh Zone or simply transiting the Zone.

Benefit to fishing industry

The scope of the Amending Order is so narrow that it should not have any significant impact, on the industry. It will ensure that the Principal Order operates in a fair and equitable manner.

The Amending Order will avoid unnecessarily criminalising a small group of fishers wishing to transit the Welsh zone with whelk fished exclusively outside of the Welsh zone.

The Amending Order removes the unintended consequence of fishers taking unnecessarily long or potentially dangerous journeys to avoid Welsh waters.

Consultation

The initial proposal which resulted in the Principal Order was the result of a 12 week public consultation in 2017 where fishers were invited to comment on management proposals. No subsequent consultation was undertaken for the proposed amendments. The effect of the Amending Order is solely to ensure the Principal Order operates in a fair and equitable manner and in line with the original policy intent.

Post Implementation Review

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

Competition Assessment

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

Agenda Item 4.1

SL(5)476 – The Meat (Official Control Charges) (Wales) (Amendment) (EU Exit) Regulations 2019

Background and Purpose

The Meat (Official Controls Charges) (Wales) (Amendment) Regulation 2019 (“Regulations”) amend the Meat (Official Control Charges) (Wales) Regulations 2009 (“2009 Regulations”), to partially implement EU regulations on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products. Similar regulations are being made in all other administrations of the UK.

The Regulations maintain the requirement upon the Food Standards Agency (“FSA”) to charge operators of approved meat premises in Wales, in order to recover a percentage of the costs incurred by the FSA in carrying out official controls at such premises to check for compliance with applicable meat hygiene and animal welfare and slaughter requirements. No changes to the charges themselves are made by the Regulations.

These Regulations are being made using powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

Three 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

1.1 We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date subordinate legislation is laid before the Assembly and the date the subordinate legislation comes into force), and the explanation for the breach provided by Rebecca Evans AM, Minister for Finance and Trefnydd, in a [letter to the Llywydd dated 28 November 2019](#).

In particular, we note what the letter says about these Regulations being “critical to maintaining official controls and enforcement” and that if these Regulations do not come into force on 14 December 2019, this would leave Wales “without a legal framework to enforce official controls and therefore puts public health at risk (as well as animal health and welfare), undermines business and consumer confidence and risks market access to the EU. Without the [Regulations] coming into force on 14 December, the [Food Standards Agency] and other enforcement authorities in Wales will not have the legislative powers to enforce food and feed safety laws.”



1.2 The Welsh Ministers had a choice of which procedure to apply to these Regulations under section 2(2) of, and paragraph 2 of Schedule 2 to, the European Communities Act 1972. The choice of procedure appears to be appropriate.

1.3 These Regulations amend regulation 2 of the 2009 Regulations as follows:

- regulation 3(c)(ii) removes paragraph (b) from the definition of “cutting plant”, which gives an additional definition of a cutting plant for the purpose of the 2009 Regulations, stating that it is a cutting plant which (although lacking the approval or conditional approval that it requires under Article 4.3 of Regulation 853/2004) was, on 31 December 2005, operating as a licensed cutting premises under the Wild Game Meat (Hygiene and Inspection) Regulations 1995;
- regulation 3(e)(ii) removes paragraph (b) from the definition of “game-handling establishment”, which gives an additional definition of a game-handling establishment for the purpose of the 2009 Regulations, stating that it is a game-handling establishment which (although lacking the approval or conditional approval that it requires under Article 4.3 of Regulation 853/2004) was, on 31 December 2005, operating as a licensed wild game processing facility under the Wild Game Meat (Hygiene and Inspection) Regulations 1995; and
- regulation 3(i)(ii) removes paragraph (b) from the definition of “slaughterhouse”, which gives an additional definition of a slaughterhouse for the purpose of the 2009 Regulations, stating that it is a slaughterhouse which (although lacking the approval or conditional approval that it requires under Article 4.3 of Regulation 853/2004) was, on 31 December 2005, operating as a licensed slaughterhouse under the Wild Game Meat (Hygiene and Inspection) Regulations 1995.

The effect of the provisions listed above could be that some plants/establishments/slaughterhouses which were previously authorised for the purposes of the 2009 Regulations may no longer be authorised. The Explanatory Memorandum does not give any information as to whether, and if so how, this will affect the plants/establishments/slaughterhouses which are authorised under the 2009 Regulations. It may be the case that these categories of authorisation are no longer relevant as Regulation 853/2004 has been superseded and the Wild Game Meat (Hygiene and Inspection) Regulations 1995 have been repealed, but further information is required from the Welsh Government to confirm what the effect of provisions listed above will be.

Implications arising from exiting the European Union

We note that the drafting of these Regulations was delayed as a result of uncertainty around the status of the United Kingdom being a member state of the European Union.

Government Response

A government response is required in respect of reporting point 3.

Legal Advisers

Constitutional and Legislative Affairs Committee

4 December 2019



**Ymateb y Llywodraeth: Rheoliadau Cig (Ffioedd Rheolaethau Swyddogol)
(Cymru) (Diwygio) 2019**

Pwynt Craffu Technegol _ : *Ymateb*

Ddim yn Berthnasol

Pwynt Craffu ar Rinweddau _ : *Ymateb*

Nodwyd 3 phwynt craffu ar rinweddau i'w hadrodd o dan Reol Sefydlog 21.3 mewn perthynas â Rheoliadau Cig (Ffioedd Rheolaethau Swyddogol) (Cymru) (Diwygio) 2019 ("Rheoliadau 2019"). Gofynnwyd am ymateb gan y Llywodraeth mewn perthynas â phwynt adrodd 3.

Mae pwynt adrodd 3 yn ymwneud â'r darpariaethau a ganlyn o Reoliadau 2019:

1. Rheoliad 3(c)(ii), sy'n diwygio'r diffiniad o "safle torri" yn rheoliad 2(1) o Reoliadau Cig (Ffioedd Rheolaethau Swyddogol) (Cymru) 2009 ("y Prif Reoliadau");
2. Rheoliad 3(e)(ii), sy'n diwygio'r diffiniad o "sefydliad trin anifeiliaid hela" yn rheoliad 2(1) o'r Prif Reoliadau; a
3. Rheoliad 3(i)(ii), sy'n diwygio'r diffiniad o "lladd-dy" yn rheoliad 2(1) o'r Prif Reoliadau.

Mae'r darpariaethau hyn yn eu tro yn dileu'r paragraff (b) cyfredol o bob un o'r diffiniadau hyn.

Materion a nodwyd mewn perthynas â phwynt adrodd 3.

Mae angen mynd i'r afael â nifer o wallau ym mhwynt adrodd 3 cyn ymateb iddo.

Mae'r pwynt bwled cyntaf a'r trydydd ym mhwynt 3 (sy'n ymdrin â'r diwygiad i'r diffiniad o "safle torri" a "lladd-dy") yn cynnwys cyfeiriadau anghywir at Reoliadau Cig Anifeiliaid Hela Gwylt (Hylendid ac Arolygu) 1995. Mae paragraff (b) cyfredol pob un o'r diffiniadau hyn yn cyfeirio at yr offerynnau a ganlyn:

- Rheoliadau Cig Ffres (Hylendid ac Arolygu) 1995; a
- Rheoliadau Cig Dofednod, Cig Adar Hela a Ffermir a Chig Cwningod (Hylendid ac Arolygu) 1995.

Ym mharagraff olaf pwynt 3, nodir:

"Effaith bosibl y darpariaethau a restrir uchod yw na fyddai rhai safleoedd/sefydliadau/lladd-dai a oedd wedi'u hawdurdodi at ddibenion Rheoliadau 2009 yn y gorffennol wedi'u hawdurdodi mwyach."

Nid yw'r datganiad hwn yn gywir. Nid yw'r Prif Reoliadau yn darparu ar gyfer awdurdodi'r sefydliadau dan sylw. Maent yn darparu ar gyfer gweithredu agweddau ar Reoliad (EC) Rhif 882/2004 (erthyglau 26 a 27), mewn perthynas ag adennill

ffioedd sy'n ymwneud â chostau sy'n deillio o reolaethau swyddogol sy'n cael eu cyflawni mewn sefydliadau perthnasol. Ymdrinnir ag awdurdodi sefydliadau o'r fath mewn man arall yn nhrefn yr UE.

Hefyd, mae'r paragraff olaf yn nodi bod "*Rheoliad 853/2004 wedi'i ddisodli*". Nid yw hynny'n wir – mae Rheoliad (EC) 853/2004 yn parhau mewn grym, ond nid yw'n berthnasol i'r mater hwn pa un bynnag am y rheswm sy'n cael ei nodi yn y paragraff blaenorol. Fodd bynnag, mae Rheoliad (EC) 882/2004 yn cael ei ddisodli ar 14 Rhagfyr 2019 (yn yr un modd â Rheoliad (EC) 854/2004 – y ddau yn cael eu diddymu gan Reoliad (EU) 2017/625).

Ymateb y Llywodraeth i bwynt adrodd 3

Mae'r Prif Reoliadau yn darparu ar gyfer gweithredu erthyglau 26 a 27 o Reoliad (EC) Rhif 882/2004, mewn perthynas ag adennill ffioedd sy'n ymwneud â chostau sy'n deillio o reolaethau swyddogol sy'n cael eu cyflawni mewn sefydliadau perthnasol. Mae'r Rheoliad hwnnw gan yr UE yn ffurfio rhan o drefn ehangach sy'n cynnwys pecyn o Reoliadau'r UE a ddaeth i rym yn bennaf ym mis Ionawr 2006 (daeth rhai agweddau i rym ar ddyddiadau diweddarach).

Mae'r pecyn hwnnw o Reoliadau'r UE (sy'n cynnwys Rheoliadau (EC) 852/2004, 853/2004, 854/2004 ac 882/2004) yn gwneud darpariaeth mewn perthynas â rheolaethau swyddogol, ymysg pethau eraill, mewn sefydliadau a oedd ar y pryd yn cael eu rheoleiddio o dan yr offerynnau statudol a ganlyn:

- Rheoliadau Cig Ffres (Hylendid ac Arolygu) 1995;
- Rheoliadau Cig Dofednod, Cig Adar Hela a Ffermir a Chig Cwningod (Hylendid ac Arolygu) 1995; a
- Rheoliadau Cig Anifeiliaid Hela Gwyllt (Hylendid ac Arolygu) 1995.

Cafodd y tri offeryn statudol hyn eu diddymu yn gyfan gwbl o ran Cymru ar 1 Ionawr 2006, drwy reoliad 33 o Reoliadau Hylendid Bwyd (Cymru) 2005/3292, ac Atodlen 7 iddynt, fel rhan o weithredu'r pecyn o Reoliadau'r UE a grybwyllir uchod. Cafodd Rheoliadau 2005 eu diddymu wedi hynny a'u disodli gan Reoliadau Hylendid Bwyd (Cymru) 2006/31.

Trefn yr UE sy'n parhau i gymeradwyo'r sefydliadau perthnasol (gweler hefyd Reoliadau Hylendid Bwyd (Cymru) 2006), ac nid y Prif Reoliadau. Mae'r Prif Reoliadau yn delio ag adennill costau rheolaethau swyddogol yn unig. Wrth lunio'r Prif Reoliadau, ystyriwyd bod angen cynnwys darpariaeth a oedd yn sicrhau bod modd adennill costau rheolaethau swyddogol gan yr holl sefydliadau er gwaethaf pontio o'r drefn flaenorol i'r drefn bresennol. Mae'r ddarpariaeth bontio honno bellach yn cael ei dileu gan nad oes ei hangen. Nid oes sefydliadau yng Nghymru mwyach sydd angen i'r ddarpariaeth bontio honno barhau i gael ei chynnwys.

Government Response: *The Meat (Official Controls Charges) (Wales) (Amendment) Regulations 2019*

Technical Scrutiny point _ : *Response*

N/A

Merit Scrutiny point _ : *Response*

3 merit points have been identified for reporting under Standing Order 21.3 in respect of the Meat (Official Controls Charges) (Wales) (Amendment) Regulations 2019 (“the 2019 Regulations”). A government response has been requested in relation to reporting point 3.

Reporting point 3 concerns the following provisions of the 2019 Regulations:

4. Regulation 3(c)(ii), which amends the definition of “cutting plant” in regulation 2(1) of the Meat (Official Controls Charges) (Wales) Regulations 2009 (“the Principal Regulations”);
5. Regulation 3(e)(ii), which amends the definition of “game-handling establishment” in regulation 2(1) of the Principal Regulations; and
6. Regulation 3(i)(ii), which amends the definition of “slaughterhouse” in regulation 2(1) of the Principal Regulations.

These provisions respectively remove the current paragraph (b) from each of these definitions.

Issues identified in relation to reporting point 3.

There are a number of inaccuracies in reporting point 3 that need to be addressed prior to responding the point.

The first and third bullets of point 3 (dealing with the amendment to the definition of “cutting plant” and “slaughterhouse”) contain incorrect references to the Wild Game Meat (Hygiene and Inspection) Regulations 1995. The current paragraph (b) of each of those definitions references the following instruments:

- The Fresh Meat (Hygiene and Inspection) Regulations 1995;and
- The Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995.

In the final paragraph of point 3, it states:

“The effect of the provisions listed above could be that some plants/establishments/ slaughterhouses which were previously authorised for the purposes of the 2009 Regulations may no longer be authorised.”

This statement is not correct. The Principal Regulations do not provide for the authorisation of the establishments in question. They provide for the implementation

of aspects of Regulation (EC) No. 882/2004 (articles 26 and 27), in relation to the recovery of fees relating to costs arising from official controls performed at relevant establishments. The actual authorisation of such establishments is dealt with elsewhere in the EU regime.

Also in the final paragraph, it states that “*Regulation 853/2004 has been superseded*”. That is not the case – Regulation (EC) 853/2004 remains in effect, but in any event is not relevant to this matter for the reason set out in the previous paragraph. Regulation (EC) 882/2004 however, is superseded as of 14 December 2019 (as is Regulation (EC) 854/2004 – both repealed by Regulation (EU) 2017/625).

Government Response to reporting point 3

The Principal Regulations provide for the implementation of articles 26 and 27 of Regulation (EC) No. 882/2004, in relation to the recovery of fees relating to costs arising from official controls performed at relevant establishments. That EU Regulation forms part of a wider regime made up of a package of EU Regulations that principally came into effect in January 2006 (some aspects applied from later dates).

That package of EU Regulations (which includes Regulations (EC) 852/2004, 853/2004, 854/2004 and 882/2004) makes provision in relation to, inter alia, official controls at establishments that, at the time, were regulated under the following statutory instruments:

- The Fresh Meat (Hygiene and Inspection) Regulations 1995;
- The Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995; and
- The Wild Game Meat (Hygiene and Inspection) Regulations 1995.

These three statutory instruments were, in relation to Wales, revoked in their entirety as of 1 January 2006, by regulation 33 of, and Schedule 7 to, the Food Hygiene (Wales) Regulations 2005/3292 – as part of the implementation of the package of EU Regulations mentioned above. The 2005 Regulations was subsequently revoked and replaced by Food Hygiene (Wales) Regulations 2006/31.

Approval of the relevant establishments remains governed by the EU Regime (see also the Food Hygiene (Wales) Regulations 2006), not by the Principal Regulations, which deal only with recovery of costs of official controls. It was considered necessary, when making the Principal Regulations to include provision that ensured that costs of official controls could be recovered from all relevant establishments notwithstanding the transition from the previous to the current regimes. That transitional provision is now being removed as it is redundant. There are no longer establishments in Wales that require the continued inclusion of that transitional provision.

Agenda Item 5

Subordinate Legislation with Clear Reports 06 January 2020

SL(5)479 – Code of Practice for the Welfare of Meat Chickens and Meat Breeding Chickens

Background and Purpose

This Code of Practice (“the Code”) is issued under section 14 of the Animal Welfare Act 2006 (“the Act”). It applies to all Meat Chickens and Meat Breeding Chickens for which a person is responsible.

The Code was originally considered by the Constitutional and Legislative Affairs Committee on 30 September 2019. Due to several errors, it was subsequently withdrawn on 2 October 2019 and re-laid on 5 December 2019.

The existing Code of Practice reflected the science and legislation in force at the time. A review was required to capture any changes in those areas and to ensure the standards being advised are still appropriate. It also replaces the interim guidance for keepers of conventionally reared meat chickens in relation to the Welfare of Farmed Animals (Wales) Regulations 2007 as amended by the Welfare of Farmed Animals (Wales) (Amendment) Regulations 2010, issued in 2011.

The purpose of the Code is to ensure that those who are responsible for an animal are aware they have a legal duty to take reasonable steps to ensure welfare needs are met. The Code of Practice explains what you need to do to meet the standard of care the law requires.

Breach of a provision of the Code is not an offence in itself but, if proceedings are brought against someone for a welfare offence under the Act, the Court may take into account the extent to which they have complied with the Code in deciding whether they have committed an offence or have met the required standard of care.

Procedure: Negative

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



There is a transitional provision in paragraph 34 of Schedule 11 of the Government of Wales Act 2006 that states where there is a corresponding function exercisable by a Minister of the Crown, the relevant Parliamentary procedure applies to any function conferred on Welsh Ministers. The Minister of the Crown must use the negative procedure, set out by section 15 of the Act, and so the Code is being laid using the negative resolution procedure; the Assembly may resolve that the Code be annulled no later than 40 days after it is laid.

Parent Act: Animal Welfare Act 2006

Date Made:

Date Laid: 05 December 2019

Coming into force date: 01 March 2020

SL(5)480 – Code of Practice for the Welfare of Laying Hens and Pullets

Background and Purpose

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

This Code of Practice applies in Wales only, is issued by the Welsh Ministers and comes into force on 1 March 2020. It covers all parts of the laying hen production sector, including pullets and breeding birds, and all types of husbandry systems. It covers single or multiple laying hens kept on a smallholding (hobby/backyard flock), as well as commercial laying hen producers.

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

Procedure: Negative

The Code of Practice is issued under section 14 of the 2006 Act, which allows the National Assembly for Wales to publish practical guidance in respect of any provision under the Act. The power to publish guidance was transferred from the Assembly to Welsh Ministers by paragraph 30 of Schedule 11 of the 2006 Act. Section 16 requires



that a draft of the Code is published, consulted on, and any consultation responses are considered. These steps have been taken.

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

If no such resolution is made, the Welsh Ministers must issue the code (in the form of the draft) and the code comes into force in accordance with its provisions. The intended date in this case is 1 March 2020.

Parent Act: Animal Welfare Act 2006

Date Made:

Date Laid: 05 December 2019

Coming into force date: 01 March 2020



STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Pilotage Act 1987 (Amendment) Regulations 2019

1. This Statutory Instrument Consent Memorandum is laid under Standing Order (“SO”) 30A.2. SO 30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the National Assembly for Wales (“the Assembly”) if a UK Statutory Instrument (SI) makes provision in relation to Wales amending primary legislation within the legislative competence of the Assembly.
2. *The Pilotage Act 1987 (Amendment) Regulations 2019* were laid before Parliament on 4 October 2019 and is now being laid before the Assembly. The Regulations can be found at:
<http://www.legislation.gov.uk/uksi/2019/1305/made>

Summary of the Statutory Instrument and its objective

3. The objective of the SI is to update the definition of ‘EEA State’ in the Pilotage Act 1987. This relates to the acceptance of qualifications from states that are party to the EEA Agreement. As currently drafted, the definition of EEA State in the Pilotage Act 1987 does not include states that became a party to the EEA Agreement after May 2003 when the definition was inserted into the Act.
4. The SI and accompanying Explanatory Memorandum is available here:
<http://www.legislation.gov.uk/uksi/2019/1305/memorandum/contents>
5. This SI makes amendsto the following legislation:
 - o The Pilotage Act 1987

Relevant provision to be made by the SI

6. The primary legislation that is within the legislative competence of the Assembly that is amended by the draft SI is **the Pilotage Act 1987**.
7. The relevant provision in the SI is regulation 2.
8. It is the view of the Welsh Government that the provisions described above fall within the legislative competence of the National Assembly for Wales in so far as they relate to ‘devolved pilotage’, that is pilotage that
 - a. relates to a harbour wholly in Wales that is not a reserved trust port, and
 - b. is provided in a pilotage jurisdiction that does not extend beyond Wales.

9. The Regulations to which this SICM relates have the territorial extent of the UK.
10. The SI to which this Statutory Instrument Consent Memorandum relates has been laid in the UK Parliament under the negative procedure, which will automatically become law unless there is an objection from a member of either House of Parliament. If there is no such objection, the provisions that amend the primary legislation referenced in this Memorandum will come into force on 26 October 2019.

Why it is appropriate for the SI to make this provision

11. As set out under paragraph 3, there is a need to amend an out of date references to European law prior to the UK's exit from the EU.
12. It is the view of the Welsh Government that it is appropriate and proportionate to deal with these amendments in these Regulations, The change made is purely technical and uncontroversial and there is no change to policy.
13. The amendment to definition of "EEA state" is made by the in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. The Secretary of State is designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to maritime transport. However, the Welsh Ministers have not been designated in relation to such measures, and therefore could not make this amendment.

Ken Skates AM
Minister for Economy and Transport
December 2019

EXPLANATORY MEMORANDUM TO
THE PILOTAGE ACT 1987 (AMENDMENT) REGULATIONS 2019
2019 No. 1305

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument amends the Pilotage Act 1987 (“the Pilotage Act”) to update an out of date definition of ‘EEA State’ so that it has the meaning given by Schedule 1 to the Interpretation Act 1978. The definition within the Pilotage Act does not include states that became a party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992, as adjusted by the Protocol signed at Brussels on 17th March 1993 (‘the EEA Agreement’) after May 2003 when the definition was inserted into the Pilotage Act.

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 territorial extent of this instrument is England and Wales, Scotland and Northern Ireland.
- 4.2 The territorial application of this instrument is England, Wales, Scotland and Northern Ireland.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State for Transport, Nusrat Ghani MP, has made the following statement regarding Human Rights:

“In my view the provisions of The Pilotage Act 1987 (Amendment) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The Pilotage Act governs the operation of maritime pilotage in the United Kingdom. A maritime pilot is a seafarer not part of the ship’s crew who has detailed knowledge of a port approach or dangerous navigational area, expertise in ship manoeuvring and uses

that knowledge to ensure the safe passage of a vessel within a specified area. The Pilotage Act established each United Kingdom port as a Competent Harbour Authority ('CHA') and granted CHAs full control over pilotage services for ships navigating in, or in the approaches of their harbours. The Pilotage Act requires CHAs to keep under consideration what pilotage services are needed to secure the safety of ships and gives them powers to: make pilotage compulsory within their pilotage district and levy charges for the use of a pilot; grant pilotage exemption certificates to any master or first mate who has the skill, experience or local knowledge to pilot their own ship in a compulsory pilotage area; and authorise pilots within their district.

- 6.2 This instrument relies on section 2(2) of the European Communities Act 1972 ("ECA") to update the definition of 'EEA State' in the Pilotage Act. This relates to the acceptance of qualifications from states that are party to the EEA Agreement. As currently drafted, the definition of EEA State in the Pilotage Act does not include states that became a party to the EEA Agreement after May 2003 when the definition was inserted into the Pilotage Act.

7. Policy background

What is being done and why?

- 7.1 The Pilotage Act contains outdated references to 'EEA State' which are corrected using the powers in section 2(2) of the ECA. While this anomaly has existed for a considerable period of time, the Government has decided to make this change now because the ability to make this change through secondary legislation under the ECA will be lost when the UK leaves the European Union.

8. Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 There are currently no plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

- 10.1 No formal consultation has been undertaken, due to the limited impact of the change to the definition of 'EEA State'.

11. Guidance

- 11.1 No guidance will be issued in relation to this instrument due to the limited impact of the change to the definition of 'EEA State'.

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 it maintains the policy status quo and has no impact on businesses, charities, voluntary bodies or the public sector.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation will be through communication with key stakeholder groups.

14.2 The Regulations do not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Nusrat Ghani MP, Parliamentary Under Secretary of State, has made the following statement:

“Having had regard to sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015, and the statutory guidance under section 31 of that Act, I have decided that it is not appropriate to make provision for review in this instrument because it would be disproportionate to do so taking into account the economic impact of the Regulations. There are no additional factors which would make it desirable to include such a clause.”

15. Contact

15.1 Caroline Wall (Maritime International and Trade) at the Department for Transport tel: 020 7944 6251 or email: Caroline.Wall@dft.gov.uk can be contacted with any queries regarding the instrument.

15.2 Haroona Chughtai, Deputy Director for Maritime International and Trade, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Nusrat Ghani MP, Parliamentary Under Secretary of State at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.

2019 No. 1305

PILOTAGE

The Pilotage Act 1987 (Amendment) Regulations 2019

Made - - - - *4th October 2019*

Laid before Parliament *7th October 2019*

Coming into force in accordance with regulation 1

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a).

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to maritime transport(b) and measures relating to the safety of ships and the health and safety of persons on them(c).

Citation and commencement

1. These Regulations may be cited as the Pilotage Act 1987 (Amendment) Regulations 2019 and come into force on the 22nd day after the day on which they are laid.

Amendment of the Pilotage Act 1987

2. In the Pilotage Act 1987(d), in Schedule A1 (recognition of EEA qualifications and experience in relation to pilotage in inland waters), in paragraph 1(2), for the definition of “EEA State” substitute—

““EEA State” has the meaning given by Schedule 1 to the Interpretation Act 1978(e)”.

Signed by authority of the Secretary of State for Transport

Chris Heaton-Harris
Minister of State
Department for Transport

4th October 2019

(a) 1972 c. 68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3 of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).
(b) S.I. 1994/757.
(c) S.I. 1993/595.
(d) 1987 c. 21. Schedule A1 was inserted by S.I. 2003/1230.
(e) 1978 c. 30. Definition of “EEA State” was inserted by the Legislative and Regulatory Reform Act 2006 (c. 51) and prospectively amended by the European Union (Withdrawal) Act 2018 (c. 16). There are other amending instruments but none are relevant.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision, under section 2(2) of the European Communities Act 1972, updating the definition of EEA State in the Pilotage Act 1987 (c. 21) to accord with the definition in the Interpretation Act 1978.

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

An Explanatory Memorandum is published alongside this instrument on www.legislation.gov.uk.

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£4.90

UK201910041006 10/2019 19585

<http://www.legislation.gov.uk/id/uksi/2019/1305>

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ISBN 978-0-11-119025-8



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Our Ref: MA/KS/5217/19

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

17 December 2019

Dear Mick,

This letter is to inform you that I have laid a Statutory Instrument Consent Memorandum in the National Assembly for Wales in respect of *The Pilotage Act 1987 (Amendment) Regulations 2019*, as required by Standing Order 30A (SO30A).

This SI was made on the 4th October following a decision by the Department for Transport to separate the provisions of a previous SI related to EU Exit on the basis that the provisions with the regulations depended upon section 2(2) of the European Communities Act 1972. Section 2(2) was subject to repeal upon the planned Exit day of 31 October. It was made under negative resolution and the objection period is predicted to end in early January.

Welsh Government was not informed of this development until after the decision to make the SI had been taken. The objective of the SI is to update the definition of 'EEA State' in the Pilotage Act 1987. This relates to the acceptance of qualifications from states that are party to the EEA Agreement. As currently drafted, the definition of EEA State in the Pilotage Act 1987 does not include states that became a party to the EEA Agreement after May 2003 when the definition was inserted into the Act.

SO30A provides that any Member may table a motion for a debate on this SI. The First Minister's position, due to the volume of correcting SIs and limiting timescales, was to develop a compromise to ensure that Brexit related SICMs would be dealt with in a timely manner, whilst also ensuring that they would be brought to the Assembly's attention, always recognising that where any Member believed that a SICM should be debated by the Assembly, it would be open to them to table a motion.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
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Correspondence.Ken.Skates@gov.wales

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

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

In correspondence with you in August the First Minister stated that, as the majority of the programme to correct the statute book has been substantially completed, the time is right to re-examine this approach and revert to the normal procedure whereby Welsh Government table Motions for SICMs.

I will therefore be tabling a motion for debate in early January to ensure the Assembly has an opportunity to consider the SI before the expiry 40-day 'praying period', which enables MPs to reject the instrument.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ken', with a long, sweeping flourish above the name.

Ken Skates AC/AM

Gweinidog yr Economi a Thrafnidiaeth
Minister for Economy and Transport

Document is Restricted

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

Llywodraeth Cymru
Welsh Government

David Rees AM
Chair, External Affairs and Additional Legislation Committee
National Assembly for Wales
Cardiff Bay
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9 December 2019

Dear David,

Thank you for your letter of 7 October enclosing your discussion paper on Assembly scrutiny of international agreements. I am sorry for the delay in replying, but I thought it important that before doing so I gave due consideration to your paper in the light of our work on the Withdrawal Agreement Bill and related matters.

I read the paper with interest and am grateful for the consideration you have been giving to this matter.

The Welsh Government set out detailed proposals for a robust approach to scrutiny of UK-EU negotiations, with a strong role for the Assembly, in the draft clauses for the Withdrawal Agreement Bill which we published on 11 March. The clauses can be found at: <https://gov.wales/sites/default/files/inline-documents/2019-03/draft-clauses.pdf>. These clauses have wider relevance beyond the specific context of negotiations with the EU.

I am pleased that the proposals set out in your discussion paper chime with our views. As you identify, your approach will rely on the UK Government ensuring that the Welsh Government has a meaningful role in the process. This remains the subject of intergovernmental discussion. We will need to revisit the detail of your proposals once the position is clearer, to ensure that any scrutiny arrangements that are put in place reflect how the negotiations process will work in practice. For example, it is our understanding that the “deviation from the mandate that might emerge during negotiations” to which you refer should not be possible in practice – a change in the mandate generally needs Ministerial agreement and this largely takes place in between negotiating rounds.

I note that you propose that Assembly consent should be required at two stages in the process: agreement of a negotiating mandate, and ratification. Whilst we are keen to facilitate Assembly scrutiny throughout the process, we are concerned that requiring Assembly consent would blur the roles of the legislatures and the executives involved and would not reflect the constitutional settlement.

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It is for the executive branch of government, in light of views expressed by the relevant legislature, to agree negotiating mandates, and to be held to account for those. Furthermore, even fully federal constitutions do not give governments below federal level a veto over trade agreements. Doing so would of course make the role of the federal government in conducting international negotiations unworkable.

I am nevertheless firmly of the opinion that the Assembly's views should be taken into account before the agreement of a treaty which impacts on Wales, especially where the agreement covers policy areas within the Assembly's legislative competence. It is therefore imperative that the Assembly should receive information relating to international agreements which cover policy areas within devolved competence, and/or affect Wales, at the same time as the UK Parliament.

However, I do not consider that acceding to international agreements would adjust the devolved competence of the Assembly. Therefore the application of a consent convention, similar to the Sewel convention which the paper envisages under option 1, would not necessarily fit with the constitutional position in respect of international agreements. The Sewel convention applies where the UK Parliament is performing a function that the Assembly could also perform or where the UK Parliament is modifying the Assembly's legislative competence. Ratifying international agreements does not fit into either of those categories.

Under our current constitutional arrangements the conduct of international relations is a matter for the executive. This is true of the UK and also Wales. The Sewel convention, which is a convention between legislatures, is therefore not directly relevant to the conduct of such relations. Where there is domestic implementing legislation needed pre-ratification then the Assembly will play a key role, either by scrutinising and passing legislation to implement any obligations in relation to Wales, or giving consent to an UK Bill which implements the international agreement for the entire of the UK, where that Bill contains provision within the legislative competence of the Assembly or modifies the legislative competence of the Assembly.

I hope that these observations are helpful and I look forward to continuing engagement with you on this matter.

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

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'M. E. Morgan'.

Eluned Morgan AC/AM

Gweinidog y Gymraeg a Chysylltiadau Rhyngwladol
Minister for International Relations and the Welsh Language

Lesley Griffiths AC/AM

Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

Agenda Item 7.2



Llywodraeth Cymru
Welsh Government

Elin Jones AM
Llywydd
National Assembly for Wales

11

December 2019

Dear Elin

Withdrawal of The Sustainable Drainage (Enforcement) (Wales) (Amendment) Order 2019

I wish to inform you that the Welsh Government intends to withdraw The Sustainable Drainage (Enforcement) (Wales) (Amendment) Order 2019 which was approved by the National Assembly in Plenary on 26 November.

Normally I would have signed the Order soon after the Plenary session. However subsequent to the Assembly debate, it was noticed Article 1(2)) had not been completed and so the Instrument approved by the Assembly did not contain any provision for it to come into force.

My officials have sought to identify whether this information could now be included, or the intention for commencement achieved by some other means. However, the conclusion we have reached is the error prevents the instrument being able to come into force at all.

As a result, unfortunately there is no available solution other than to withdraw the Instrument and re-lay it after the Christmas recess. As such, the scrutiny process will need to start afresh and a further plenary debate will be required to seek approval to a new Statutory Instrument. Fortunately, the legal change we are seeking to bring about is not time critical.

We have introduced additional steps within our internal checking processes to seek to avoid such a situation arising on another Statutory Instrument, and will be sharing the learning from this incident within the teams that work on the preparation of Subordinate Legislation.

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

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

I apologise for any inconvenience to the National Assembly which will result from having to consider the Order again, albeit in a slightly revised form and that we have not been able to make the SI in accordance with the Assembly's approval. However, I hope you will agree this is the most appropriate solution in the circumstances.

I am copying this letter to Mick Antoniw AM, Chair of the Constitutional and Legislative Affairs Committee.

Regards
Lesley

Lesley Griffiths AC/AM

Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

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

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

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

17 December 2019

Dear Mick,

UK regulations relating to exiting the European Union

Thank you for your letter requesting information on the possible impact on the Assembly's legislative and executive competence in respect of the Agriculture (Miscellaneous Amendments) (EU Exit) Regulations 2019 and the Health and Safety (Amendment) (EU Exit) Regulations 2018. This information was provided to the Clerk of the Constitutional and Legislative Affairs Committee as set out in my letter dated 11 November, however, please see a copy of that information.

The Agriculture (Miscellaneous Amendments) (EU Exit) Regulations 2019

The Agriculture (Miscellaneous Amendments) (EU Exit) Regulations 2019 transferred functions to the Secretary of State to recognise producer organisations and to publicise a list of recognised producer organisations as well as to permit producer organisations to outsource any of their activities in specified sectors (Regulation 1299/2007 and Regulation 2016/232). The Secretary of State also has the function of making a determination of equivalence before any eggs may be imported into the UK (Regulation 589/2008). In addition, functions have been transferred to the Secretary of State in relation to the fixing of export refunds and the operational running of the export refund system for agricultural produce (Regulation 1370/2013) and in respect of marketing standards of agricultural products. The amendments have effect so as to transfer power to the Secretary of State to set terms and conditions in relation to contractual relations within the milk and milk products sector. Power has also been transferred to the Secretary of State in relation to the export refund system for agricultural produce. As regards Regulations 1370/2013 and Regulation 510/2014, the Secretary of State has functions concerning the fixing of export refunds and the operational running of the export refund system for agricultural produce.

In respect of Regulation 511/2012, Article 149(2) (c) of Regulation EU 1308/2013 provides the legal basis for Regulation 511/2012. Article 149(2) (c) relates to contractual relations and negotiations in the milk and milk products sector. Article 2 of Regulation 511/2012 relates to

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notifications of the volumes of raw milk covered by contractual negotiations. These notifications will now have to be made to the Competition and Markets Authority.

The Agriculture (Miscellaneous Amendments) (EU Exit) Regulations 2019 transfer functions of both an administrative and legislative nature to the Secretary of State, exercisable by them alone. Functions transferred to the Secretary of State constitute functions of a Minister of the Crown for the purposes of Schedule 7B to the Government of Wales Act 2006 (“GoWA”). A future Assembly Bill seeking to remove or modify these functions could trigger a requirement to consult the UK Government.

The conferral of an administrative function on the Competition and Markets Authority potentially engages paragraph 10 of Schedule 7B to GoWA. This provides that a provision of an Act of the Assembly cannot remove or modify, or confer power by subordinate legislation to remove or modify, any function of a public authority other than a devolved Welsh authority, unless the appropriate (UK) Minister consents to the provision. A future Assembly Bill seeking to remove or modify these functions would require the consent of the appropriate Minister of the Crown.

The Health and Safety (Amendment) (EU Exit) Regulations 2018

The amendments made by Health and Safety (Amendment) (EU Exit) Regulations 2018 to the Genetically Modified Organisms (Contained Use) Regulations 2014 and the Control of Major Accident Hazards Regulations 2015 do not have effect so as to transfer any functions.

The Genetically Modified Organisms (Contained Use) Regulations 2014 cover all aspects of contained use involving genetically modified micro-organisms (GMMs) and the human health aspects of the contained use of larger GMOs (for example, GM animals and plants). Acting jointly, the Health and Safety Executive (HSE) and the Secretary of State for Defra are the competent authority in England and Wales responsible for the 2014 Regulations. These functions are delegated to officials of the HSE and Defra. Although not part of the competent authority, officials of the Welsh Government are involved in all matters related to GMO contained use in Wales. The amendments made by the Health and Safety (Amendment) (EU Exit) Regulations 2018 remove a redundant reference and amend requirements for the competent authority to notify European Economic Area (EEA) States and report to the European Union which will no longer be appropriate once the UK leaves the EU.

The Control of Major Accident Hazards Regulations 2015 are intended to prevent on-shore industrial major accidents and to limit their consequences to people and the environment. The Regulations lay down rules for the prevention of major accidents which might result from certain industrial activities sites involving the production, use or storage of dangerous substances at or above certain thresholds, and the limitations of their consequences. The amendments made by the Health and Safety (Amendment) (EU Exit) Regulations 2018 relate to the provision of information, the requirement to provide information to and advise Member States, provide information to the European Commission and in relation to the contents of external emergency plans which will no longer be appropriate once the UK leaves the EU. A new definition of ‘international organisation’ is also being inserted by these Regulations for consistency under the domestic regime. The functions in respect of the provision of information are conferred on the competent authority which, under the Control of Major Accident Hazards Regulations 2015, means, in relation to an establishment in Wales, the Natural Resources Body for Wales acting jointly with the Health and Safety Executive.

The Health and Safety (Amendment) (EU Exit) Regulations 2018, have no impact on the National Assembly for Wales’ legislative competence, nor do they impact on the Welsh Ministers ability to exercise functions in relation to Wales.”

I note your request for an update on S109 Order and I am happy to you provide this information by 30 January.

I am copying this letter to Jeremy Miles AM, Counsel General and Brexit Minister.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans". The signature is written in a cursive style with a large initial 'R' and a distinct 'E'.

Rebecca Evans AC/AM
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd



Llywodraeth Cymru
Welsh Government

Sarah Sargent
Clerk of Chair of Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
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2 December 2019

Dear Sarah

UK regulations relating to exiting the European Union

The response from the Minister for Environment, Energy and Rural Affairs dated 11 November to the Chair of Constitutional and Legislative Affairs Committee (CLAC) promised that officials would provide further information in respect on the impact on legislative and executive competence. I now enclose that information in relation to following two statutory instruments.

The Agriculture (Miscellaneous Amendments) (EU Exit) Regulations 2019

The Agriculture (Miscellaneous Amendments) (EU Exit) Regulations 2019 transferred functions to the Secretary of State to recognise producer organisations and to publicise a list of recognised producer organisations as well as to permit producer organisations to outsource any of their activities in specified sectors (Regulation 1299/2007 and Regulation 2016/232). The Secretary of State also has the function of making a determination of equivalence before any eggs may be imported into the UK (Regulation 589/2008). In addition, functions have been transferred to the Secretary of State in relation to the fixing of export refunds and the operational running of the export refund system for agricultural produce (Regulation 1370/2013) and in respect of marketing standards of agricultural products. The amendments have effect so as to transfer power to the Secretary of State to set terms and conditions in relation to contractual relations within the milk and milk products sector. Power has also been transferred to the Secretary of State in relation to the export refund system for agricultural produce. As regards Regulations 1370/2013 and Regulation 510/2014, the Secretary of State has functions concerning the fixing of export refunds and the operational running of the export refund system for agricultural produce.

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Back Page 132
We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

In respect of Regulation 511/2012, Article 149(2) (c) of Regulation EU 1308/2013 provides the legal basis for Regulation 511/2012. Article 149(2) (c) relates to contractual relations and negotiations in the milk and milk products sector. Article 2 of Regulation 511/2012 relates to notifications of the volumes of raw milk covered by contractual negotiations. These notifications will now have to be made to the Competition and Markets Authority.

The Agriculture (Miscellaneous Amendments) (EU Exit) Regulations 2019 transfer functions of both an administrative and legislative nature to the Secretary of State, exercisable by them alone. Functions transferred to the Secretary of State constitute functions of a Minister of the Crown for the purposes of Schedule 7B to the Government of Wales Act 2006 (“GoWA”). A future Assembly Bill seeking to remove or modify these functions could trigger a requirement to consult the UK Government.

The conferral of an administrative function on the Competition and Markets Authority potentially engages paragraph 10 of Schedule 7B to GoWA. This provides that a provision of an Act of the Assembly cannot remove or modify, or confer power by subordinate legislation to remove or modify, any function of a public authority other than a devolved Welsh authority, unless the appropriate (UK) Minister consents to the provision. A future Assembly Bill seeking to remove or modify these functions would require the consent of the appropriate Minister of the Crown.

As CLAC has previously been informed, we have engaged with the UK Government and reached an agreement in principle that this will be addressed by way of amendments to legislative competence in a s.109 Order; specifically, amendments to the consent requirements in paragraphs 8 and 11 of Schedule 7B of GoWA.

The Health and Safety (Amendment) (EU Exit) Regulations 2018

The amendments made by Health and Safety (Amendment) (EU Exit) Regulations 2018 to the Genetically Modified Organisms (Contained Use) Regulations 2014 and the Control of Major Accident Hazards Regulations 2015 do not have effect so as to transfer any functions.

The Genetically Modified Organisms (Contained Use) Regulations 2014 cover all aspects of contained use involving genetically modified micro-organisms (GMMs) and the human health aspects of the contained use of larger GMOs (for example, GM animals and plants). Acting jointly, the Health and Safety Executive (HSE) and the Secretary of State for Defra are the competent authority in England and Wales responsible for the 2014 Regulations. These functions are delegated to officials of the HSE and Defra. Although not part of the competent authority, officials of the Welsh Government are involved in all matters related to GMO contained use in Wales. The amendments made by the Health and Safety (Amendment) (EU Exit) Regulations 2018 remove a redundant reference and amend requirements for the competent authority to notify European Economic Area (EEA) States and report to the European Union which will no longer be appropriate once the UK leaves the EU.

The Control of Major Accident Hazards Regulations 2015 are intended to prevent on-shore industrial major accidents and to limit their consequences to people and the environment. The Regulations lay down rules for the prevention of major accidents which might result from certain industrial activities sites involving the production, use or storage of dangerous substances at or above certain thresholds, and the limitations of their consequences. The amendments made by the Health and Safety (Amendment) (EU Exit) Regulations 2018 relate to the provision of information, the requirement to provide information to and advise Member States, provide information to the European Commission and in relation to the contents of external emergency plans which will no longer be appropriate once the UK leaves the EU. A new definition of ‘international organisation’ is also being inserted by these Regulations for consistency under the domestic regime. The functions in respect of the provision of

information are conferred on the competent authority which, under the Control of Major Accident Hazards Regulations 2015, means, in relation to an establishment in Wales, the Natural Resources Body for Wales acting jointly with the Health and Safety Executive.

The Health and Safety (Amendment) (EU Exit) Regulations 2018, have no impact on the National Assembly for Wales' legislative competence, nor do they impact on the Welsh Ministers ability to exercise functions in relation to Wales."

Yours sincerely

[Redacted signature]

[Redacted name]

Rural Economy and Legislation

Rebecca Evans AM
Minister for Finance and Trefnydd

22 November 2019

Dear Rebecca

UK regulations relating to exiting the European Union

Thank you for your letter dated 11 November 2019 in which you respond to matters we put to you following our committee meeting on 16 September.

We considered your letter at our meeting this week. We noted that, as regards the information we have requested in relation to The Agriculture (Miscellaneous Amendments) (EU Exit) Regulations 2019 and The Health and Safety (Amendment) (EU Exit) Regulations 2018 and the possible impact on legislative and executive competence, you said that the information will be provided to the Clerk of the Committee by Welsh Government officials as soon as possible. Respectfully, in line with normal practice, this information should be provided in correspondence to the Committee in a format which is suitable for formal consideration and publication.

I note your comments regarding progress being made on the making of the section 109 Order. Given the constitutional importance of this Order, it would be helpful if you could commit to providing an update early in the New Year and by 30 January 2020 at the latest.

I am copying this letter to Jeremy Miles AM, the Counsel General.

Yours sincerely



Mick Antoniw AM

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.





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

11 November 2019

Dear Mick,

UK regulations relating to exiting the European Union

Thank you for your letter dated 18 October regarding EU Exit statutory instruments and points raised by the Committee, which are addressed below.

I can confirm that all disputes over devolved matters with the UK Government, continue to be addressed in the same way. In all instances the Minister for Environment, Energy and Rural Affairs has written to Defra Ministers setting out our concerns with discussions ongoing. In terms of the two statutory instruments you have cited, I can assure you they do in fact achieve our overarching policy objectives of securing and maintaining the effective functioning of agricultural markets in the UK.

You have also requested additional information on the impact on legislative and executive competence in relation to two statutory instruments. This information will be provided to the Clerk of your Committee by officials as soon as possible.

In relation the final point in your letter, it is correct that where SIs have created concurrent and/or so called “concurrent plus” functions, there is a potential impact on the legislative competence of the Assembly. This is because there is a risk that the removal of such functions in an Assembly Act could engage the consent requirements in Schedule 7B to the Government of Wales Act 2006. In consequence of the identified risk we have engaged with the UK Government and reached an agreement in principle that the issue will be addressed by way of amendments to legislative competence in a s.109 Order; specifically, amendments to the consent requirements in paragraphs 8 and 11 of Schedule 7B. The agreement for the carve out is stated to be an agreement in principle because it now comes with the caveat that this agreement is subject to the views of any new Ministers in light of the scheduled election.

Prior to the dissolution of Parliament the Office of the Secretary of State for Wales shared a draft of the Order with us and we have provided our detailed comments on that draft. It

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included a carve out from the consent requirements as agreed although we await their response to the specific points we have raised.

Finally, on the issue of timing, we do not currently have a clear indication of when this Order will be made as certain articles within it are contingent on when the UK exits the EU and under what circumstances. Until the position on this becomes clear, there will be no settled timetable for this Order. A s.109 Order is an Order in Council and pursuant to the provisions of s.109, must be approved by each House of Parliament and the Assembly before a recommendation is made to the Queen to make the Order. Furthermore, Standing Order 25 requires that a proposed Order is laid before the Assembly to allow for an appropriate committee to report on it before the draft Order is then laid for approval. There will therefore, be opportunities for scrutiny of this Order by the Assembly before it is made.

I am copying this letter to the Counsel General and Brexit Minister.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans." The signature is written in a cursive, flowing style.

Rebecca Evans AC/AM
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

Rebecca Evans AM
Minister for Finance and Trefnydd

18 October 2019

Dear Rebecca

UK regulations relating to exiting the European Union

The Constitutional and Legislative Affairs Committee considered a number of Welsh Government written statements, issued under Standing Order 30C, for the following regulations at its meeting on 16 September 2019:

- The Agriculture (Miscellaneous Amendments) (EU Exit) Regulations 2019
- The Health and Safety (Amendment) (EU Exit) Regulations 2018
- The Common Organisation of the Markets in Agricultural Products (Transitional Arrangements etc.) (Amendment) (EU Exit) Regulations 2019
- The Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments etc.) (EU Exit) (No. 2) Regulations 2019
- The Import of and Trade in Animals and Animal Products (Amendment etc.) (EU Exit) (No. 2) Regulations 2019

There are a number of overlapping concerns which we wish to draw to your attention.

Dispute over devolved matters

The written statement for The Agriculture (Miscellaneous Amendments) (EU Exit) Regulations 2019 indicates that there has been disagreement with the UK Government as to whether the Common Organisation of the Markets (CMO) and Common Agricultural Policy (CAP) are devolved or reserved, meaning the UK Government did not ask for the consent of the Welsh Government. A similar dispute is referenced in the written statement for The Common Organisation of the Markets in Agricultural Products (Transitional Arrangements etc.) (Amendment) (EU Exit) Regulations 2019.

However, we noted that the Welsh Government's subsequent handling of each of the Regulations appears to be different. With regards to the former, the written statement indicates that, despite the dispute over whether consent was needed, the Welsh Government was content with the effect of the Regulations. With the latter, we noted from the statement that Welsh Government initiated correspondence with the UK



Government informing it that it is not appropriate for UK Government Ministers to take unilateral decisions on matters which have a direct effect upon areas of devolved competence. We would welcome clarification on why different actions were taken. We would also be grateful if you could provide details of the UK Government's response to the correspondence.

Impact on legislative and/or executive competence

The second matter which we wish to highlight relates to the impact that regulations may have on legislative and/or executive competence. We are concerned that the written statements for both The Agriculture (Miscellaneous Amendments) (EU Exit) Regulations 2019 and The Health and Safety (Amendment) (EU Exit) Regulations 2018 do not specify which legislative powers of the National Assembly or executive powers of the Welsh Ministers are affected by the regulations.

As you will be aware, Standing Order 30C.3(ii) requires the written statement to "specify any impact the statutory instrument may have on the Assembly's legislative competence and/or the Welsh Minister's executive competence". We would therefore be grateful if you would clarify which powers are affected in each case.

Impact on legislative and/or executive competence - concurrent functions

The final matter we wish to draw to your attention relates to the potential negative impact on the National Assembly's legislative competence by the exercise of concurrent functions.

We have, over the past year, regularly raised the issue of concurrent functions impacting negatively on the National Assembly's legislative powers (by virtue of engaging paragraph 11 of Schedule 7B to the Government of Wales Act 2006). This matter is relevant to: The Agriculture (Miscellaneous Amendments) (EU Exit) Regulations 2019, The Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments etc.) (EU Exit) (No. 2) Regulations 2019, and The Import of and Trade in Animals and Animal Products (Amendment etc.) (EU Exit) (No. 2) Regulations 2019.

However, there are differences in how the respective written statements comment on the issue. In respect of the latter mentioned regulations, the written statement states that Welsh Government officials are working with the Office of the Secretary of State for Wales with a view to amending Schedule 7B to the *Government of Wales Act 2006* by an Order under section 109A of that Act. This information is not provided in the written statements for the first and second sets of regulations mentioned above. The Counsel General's letter to us, dated 9 April 2019, stated that a section 109 Order was being considered by the Welsh and UK Governments. In evidence to us on 16 September, the Counsel General said he had not received a draft of the section 109 Order, and suggested there was a possibility that the UK Government was considering whether the Order should tackle issues identified to date or whether it would address broad principles.



We would be grateful for clarification on whether the issues identified in all three above-mentioned regulations will be addressed in a forthcoming section 109 Order. We would also welcome an update on the position and timing of a forthcoming section 109 Order (or Orders), including whether any such Order(s) will address only the specific issues raised to date or whether it/they will make broader changes to the test set out in paragraph 11 of Schedule 7B.

I am copying this letter to Jeremy Miles AM, the Counsel General.

Yours sincerely

A handwritten signature in black ink that reads "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

Mick Antoniw AM

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.



Ein cyf/Our ref: DET/65/19

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

19 December 2019

Dear Mick,

Thank you for your letter of 7 November, following my written statement on 29 October about the Creative Europe Programme and Europe for Citizens Programme (Revocation) (EU Exit) Regulations 2019. My statement explained the context for the SI and the rationale for Welsh Ministers agreeing both to the SI and to entering into an Agency Agreement with DCMS in relation to these programmes. This was to allow EU regulations relating to these programmes to be revoked when the UK leaves the European Union, and to enable the Secretary of State to provide financial assistance to participants of these Programmes in Wales under the HMG Guarantee in the event that the UK leaves the EU without a withdrawal agreement in place.

In my statement, I also explained that this SI was Made and Laid before Parliament without our knowledge in March this year, although we were not made aware of this at the time. I also explained the exchange of Ministerial correspondence that took place after it became clear that a breach of the Intergovernmental Agreement between our Governments had occurred, as well as my eventual decision, in consultation with the Counsel General and Minister for Brexit, to consent to the Agency Agreement and to grant retrospective consent for the SI.

In your letter you acknowledge that this was an unintended breach of the Intergovernmental Agreement by the UK Government, but note that the National Assembly was not notified of the breach of 29 October, requesting further explanation about the timing in this case.

I agree that the length of time between the breach of the Intergovernmental Agreement occurring and National Assembly being notified of it in this case was longer than usual and not ideal. Unfortunately, many of the issues associated with Brexit are complex and without precedent. When, as in this case, established agreements and legal processes designed to enable Ministers and officials to deal with such matters are not adhered to, it can be difficult and time consuming to ensure retrospectively that our proposed actions remain legally sound and compliant.

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

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

Our priority throughout this process, necessitated by the SI, has been to ensure that a legal mechanism was put in place to allow Creative Europe and Europe for Citizens recipients in Wales who may be entitled to funding under the HMG Guarantee to receive it promptly, without disadvantage. It was also critical to ensure that this mechanism properly respects the devolution settlement and causes no diminishment to the power of Welsh Ministers.

In these circumstances, the Counsel General and I took the view that it was not sufficient simply to write to Assembly Members about the breach of the Intergovernmental Agreement; we should also be able to assure Members that there were no ongoing legal issues as a result and that an appropriate mechanism to protect Welsh funding recipients had been agreed.

I hope you will accept my assurance that my written statement was made as soon as possible once I was able to confirm and explain all of the above.

For your information, I have attached at Annex 1 a timeline of key events during the course of this work.

A handwritten signature in black ink, appearing to read 'Elis-Thomas'.

Yr Arglwydd Elis-Thomas AC/AM

Y Dirprwy Weinidog Diwylliant, Chwaraeon a Thwristiaeth
Deputy Minister for Culture, Sport and Tourism

Timeline

- October 2018: Welsh Government and DCMS officials opened discussions about the need for a mechanism to protect Welsh funding recipients in the event of a no deal exit.
- January 2019: Welsh Government officials confirmed to DCMS counterparts the need for consent to be sought from Welsh Ministers before the SI progresses through Parliament.
- February – March 2019: The SI was Laid and Made in Parliament.
- Late April 2019: Welsh Government officials become aware for the first time that the SI has been Laid and Made.
- May – early July 2019: Welsh Government officials conferred with DCMS counterparts to establish the circumstances of the breach of the Intergovernmental Agreement, and to point out the need for an urgent letter to Welsh Ministers from the Secretary of State, apologising for the breach and seeking retrospective consent for the SI.

[Note: We accepted assurances from DCMS that the breach was inadvertent and unintended; the result of staff churn, volume of work and other factors.]

- 16 July 2019: The then Secretary of State, Jeremy Wright QC MP, wrote to me seeking retrospective consent. He acknowledged and apologised for an unintended breach of the intergovernmental agreement.
- 12 August 2019: I replied to the new Secretary of State, the Rt Hon Nicky Morgan MP. I said I was reassured by her predecessor's statements that the failure was unintentional and that the UK Government remains committed to the Intergovernmental Agreement, but that I viewed these events extremely seriously - especially as the National Assembly had not been informed in good time. I said we would take further advice before responding to the request for retrospective consent.
- August – October 2019: Welsh Government officials, conscious of the delays to Brexit which had occurred during the period of this work, reviewed the SI, the request for retrospective consent and the Agency Agreement, to ensure that:
 - the breach of the Intergovernmental Agreement (i.e.; the failure to seek prior consent) had no bearing on the legality of the SI;
 - there would be no diminishment of the Welsh Ministers' power as the SI does not grant any new powers to the Secretary of State in relation to Wales;
 - the Agency Agreement was drafted appropriately, to enable HMG Guarantee funding to be delivered as needed to Welsh stakeholders until the current EU programmes conclude at the end of 2020, irrespective of the date before that upon which the UK might leave the EU.
- 29 October 2019: I laid my written statement about the Creative Europe Programme and Europe for Citizens Programme (Revocation) (EU Exit) Regulations 2019 before the National Assembly and approved the signing of the related Agency Agreement.

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

SeneddCLA@assembly.wales

20 December 2019

Dear Mick,

The Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2020

Thank you for your letter regarding the point raised in the report issued by the Committee on the above Regulations. You asked for further clarification as to why it was necessary to cite the enabling power in the Immigration Act when referring to article 3 of the 2019 Order.

As indicated in the initial response from officials, the reference to the enabling power was included because there was established precedent for doing so, and to be consistent with previous practice relating to regulations impacted by the exit from the EU.

The references to the relevant sections of the Immigration Act 1971 are not essential and the meaning of the provision would not be altered by their omission. However, we consider their inclusion to be a matter of drafting choice and, as we pointed out in the initial government response, there is precedent for this drafting approach particularly in relation to the Immigration Act 1971. The Principal Regulations we are amending contain similar provision (the relevant provisions are referred to in the initial response). We do not understand why the choice of drafting in this instance might be of political or legal importance or give rise to issues of public policy.

Yours sincerely,



Rebecca Evans AC/AM
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

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Agenda Item 9

By virtue of paragraph(s) vi of Standing Order 17.42

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