Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:
Committee Room 1 – Senedd
Meeting date: 13 January 2020
Meeting time: 13.00

For further information contact:
Gareth Williams
Committee Clerk
0300 200 6362
SeneddCLA@assembly.wales

1 Introduction, apologies, substitutions and declarations of interest

13.00

Items 2 and 3 will be taken together

2 Wales' Changing Constitution: Evidence session 4

13.00–14.30 (Pages 1 – 28)

Mark Drakeford AM, First Minister of Wales

Chris Warner, Deputy Director, Constitution and Justice

Des Clifford, Director General, Office of the First Minister

Rob Parry, Deputy Director European Transition Legislation

Reforming our Union: Shared Governance in the UK (PDF 184KB)

CLA(5)-02-20 – Briefing

CLA(5)-02-20 – Paper 1 – Letter from the Counsel General, 27 November 2019

3 Legislative Consent Memorandum on the European Union (Withdrawal Agreement) Bill

(Pages 29 – 81)

European Union (Withdrawal Agreement) Bill 2019-20

CLA(5)-02-20 – Background briefing

CLA(5)-02-20 – Paper 2 – Legislative Consent Memorandum

CLA(5)-02-20 – Paper 3 – Letter from the First Minister, 8 January 2020

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

14.30–14.35

Negative Resolution Instruments

4.1 SL(5)485 – The Building (Amendment) (Wales) Regulations 2019

(Pages 82 – 113)

CLA(5)-02-20 Paper 4 – Report

CLA(5)-02-20 Paper 5 – Regulations

CLA(5)-02-20 Paper 6 – Explanatory Memorandum

4.2 SL(5)486 – The Non-Domestic Rating (Small Business Relief) (Wales) (Amendment) Order 2019

(Pages 114 – 125)

CLA(5)-02-20 Paper 7 – Report

CLA(5)-02-20 Paper 8 – Order

CLA(5)-02-20 Paper 9 – Explanatory Memorandum

5 Paper(s) to note

14.35–14.40

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

(Pages 126 – 130)

CLA(5)-02-20 Paper 10 – Letter from the Deputy Minister for Health and Social Services, 7 January 2020

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

14.40

Items 7 and 8 will be taken together

7 Wales' Changing Constitution: Consideration of evidence

14.40–14.50

8 Legislative Consent Memorandum on the European Union (Withdrawal Agreement) Bill: Consideration of evidence

9 Correspondence from the Chair of the Committee on Assembly Electoral Reform

14.50-15.00 (Pages 131 - 132)

CLA(5)-02-20 Paper 11 - Letter from the Chair of the Committee on Assembly Electoral Reform, 16 December 2019

Date of the next meeting - 20 January

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

Llywodraeth Cymru
Welsh Government

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

27 November 2019

Dear Mick,

Thank you for your letter of 18 October and for welcoming the publication of my Written Statement on 18 September concerning the legal proceedings resulting from the prorogation of the UK Parliament. You also raised a number of important issues in connection with your inquiry into Wales' changing constitution.

You noted that the question of how "not normally" could be defined in the context of the Sewel Convention is covered in 'Reforming our Union: Shared Governance in the UK'. That policy document sets out the Welsh Government's views on this matter and we will continue to pursue it with the UK Government. I will keep you updated on progress. We would also welcome further discussion with the Committee about how the evidence you have received and the consideration you have given could inform the intergovernmental discussions.

You also asked seven specific questions, which I have reproduced below together with my answers:

Q1: Please could you clarify how the inter-governmental agreement has been the basis of ensuring the Assembly's consent has been integral to ensuring our statute book can function properly?

The Welsh Government invited the Assembly to consent to the European Union (Withdrawal) Bill in part on the basis that the Intergovernmental Agreement reiterated the UK Government's commitment to not normally use powers to amend domestic legislation in devolved areas without the agreement of the Welsh Government. Following the Assembly's decision to consent to the Bill, scrutiny of this arrangement was then enshrined in Standing Order 30C.

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Furthermore, the Intergovernmental Agreement, and the collaboration which flowed from it, have ensured that the UK Government has not brought forward regulations under section 12 of the European Union (Withdrawal) Act to restrict the Assembly's competence. In our view, this represents a significant achievement given that, as you will recall, the original Bill would have prevented the National Assembly from legislating in any of the space relating to devolved competence previously occupied by EU law.

Q2. Why are intergovernmental agreements appropriate for dealing with primary legislation that is passed by legislatures?

Intergovernmental agreements are a transparent way to set out the principles and mechanisms by which governments intend to work together to implement primary legislation passed by legislatures. They reflect the interconnectedness of the responsibilities of the governments of the UK and the shared role of those governments in the governance of the UK.

Q3: In relation to the UK Agriculture Bill and our consideration of Welsh Government LCMs, the Cabinet Secretary for Energy, Planning and Rural Affairs explained that the Welsh Government had entered into an agreement with the UK Government. Our report on the second LCM, expressed concern at the approach adopted. In your view, should such agreements also be subject in the future to formal consent by the National Assembly?

Intergovernmental agreements are by their nature, and should remain, the responsibility of the relevant executives, and should not be subject to consent by legislatures. The Welsh Government enters into a range of agreements, both legally binding and non-legally binding, and it would not be constitutionally appropriate given the separation of powers for the Assembly to consent to those, although of course Members can and do scrutinise them.

Where intergovernmental agreements are linked to primary legislation for which the Assembly's consent is sought, we would anticipate that consideration of the relevant intergovernmental agreement would be part of the Assembly's consideration. Furthermore, we would anticipate ongoing Assembly scrutiny of the operation of intergovernmental agreements under the mechanisms agreed in the inter-institutional agreement between the Assembly and the Welsh Government.

Q4: What risks are associated with intergovernmental agreements given that they are not legally binding and how can the Welsh Government seek to protect the Welsh devolution settlement in the event of future, different governments overriding these agreements?

The devolution settlement is not affected by the use of intergovernmental agreements, as they operate within the existing settlement.. We consider that the use of intergovernmental agreements maximises our influence over decision-making so that we can protect Welsh interests, for which we are held accountable by the Assembly.

Q5: How sustainable are the use of intergovernmental agreements and common frameworks over the longer term? If non-legislative common frameworks can be overridden or discontinued by future, new governments, how is this an appropriate way forward? It would be helpful if you confirm that both legislative and non-legislative common frameworks are intended to be a long-term solution.

Since 2017, successive UK governments have consistently committed to Common Frameworks and there has to date been no reluctance to continue to engage. The premise of Common Frameworks is the clear recognition of the benefits of intergovernmental working in areas of shared interest. They build on long-term official level relationships

across the UK that have been established since devolution, but formalise and clarify these in relation to the new responsibilities emerging in the context of the UK's decision to leave the EU. Both legislative and non-legislative frameworks and framework elements are important parts of this long-term relationship. Frameworks are intended to be a long-term commitment with explicit provision and mechanisms by which they can be reviewed and updated, and future legislatures and governments should be able to initiate a process of renegotiation. The provisions for review and assessment, and for monitoring procedures will enable them to evolve and adapt to developing policy landscapes.

Q6. How does the use of intergovernmental agreements and common frameworks impact on the complexity of the devolution settlement for citizens?

Firstly it needs to be recognised that intergovernmental agreements and common frameworks of this kind are only intended to operate in a context where the UK has left the EU. Leaving the EU would of course increase the direct involvement of the Welsh Government and the Assembly in areas of law within devolved competence. In this context, intergovernmental agreements and common frameworks aim to provide clarity around the impact of the devolution settlement for citizens. Citizens receive a mix of devolved and non-devolved services in Wales, and in reality devolved responsibilities and non-devolved ones impact on each other. In this context, a clear, published and scrutinised approach to how the Welsh Government is working with the other governments of the UK on shared areas of interest which have an impact on citizens is a significant step forward. Intergovernmental agreements which use plain language, remove confusion and include mechanisms for avoiding disputes can help to simplify and demystify processes to aid citizens' understanding and engagement.

Q7:There are at least 20 occasions in which the UK Government has amended primary legislation in devolved areas by using subordinate legislation powers under the EU (Withdrawal) Act 2018, this being done (almost always) with the agreement of the Welsh Government, but without the formal consent of the National Assembly.

- *(i) We would be grateful for your views on the implications of this approach for any future reform of the Sewel Convention.*
- *(ii) How the approach adopted by the Welsh Government in not tabling appropriate statutory instrument consent motions is consistent with proposition 5 of Reforming our Union.*

As the First Minister explained in his letter to you of 23 August, although Standing Orders place no obligation on Ministers to table a motion in respect of a SICM, the Welsh Government has not changed our overall approach: in normal circumstances, it remains our intention to table motions for SICMs. However, in respect of Brexit-related SIs, there were practical issues of timing to consider.

The First Minister also explained that the context for the approach we took was the programme of corrections to the statute book, to make sure it continued to work after EU Exit. This was an unprecedented undertaking: the volume of correcting SIs coming our way, and the limiting timescales surrounding them, meant that our normal practice regarding the handling of SICMs was simply not a practical proposition. We developed a way of working which ensured 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. In deciding not to ourselves table SICMs in respect of these pieces of secondary legislation, we were very conscious that where any Member believed that a SICM should be debated by the Assembly, it would be open to them to table a motion.

We would expect any reforms to the Sewel convention in line with our proposals in ‘Reforming our Union’ to take into account the challenges we experienced in this context as well as the views of your Committee.

I trust that these responses are helpful. Please do let me know if there is anything further I can do to assist with your inquiry, including further meetings and/or technical briefings with my officials. The constitutional implications of new Welsh Government functions, increased intergovernmental working, and development of international agreements are significant and I know that both your Committee and the External Affairs and Additional Legislation Committee are giving careful consideration to the implications for Assembly and interparliamentary scrutiny, which I welcome.

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

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

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LEGISLATIVE CONSENT MEMORANDUM

European Union (Withdrawal Agreement) Bill

1. This Legislative Consent Memorandum is laid under Standing Order ("SO") 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of, the National Assembly.

2. The European Union (Withdrawal Agreement) Bill (the "Bill") was introduced in the House of Commons on Thursday 19 December and passed Second Reading on the following day The Bill can be found at: https://publications.parliament.uk/pa/bills/cbill/58-01/0001/20001.pdf.

Policy Objective

3. The UK Government's stated policy objective is to enable the UK to leave the European Union in an orderly manner, with an implementation period to enable new arrangements to be put in place for the UK's future relationship with the EU.

Summary of the Bill

4. The Bill is sponsored by the Department for Exiting the European Union.

5. The Bill makes provision for the implementation of the Withdrawal Agreement in the UK by incorporating it into UK law and providing powers for further implementation where required. The Bill will also implement the separation agreements reached with the European Economic Area and European Free Trade Area (EEA EFTA) states and Switzerland in a similar way. It makes provision for citizens' rights after leaving the EU, and establishes an Independent Monitoring Authority for those rights. The Bill makes provision for Ministers of the Crown and Ministers in Devolved Administrations to have the necessary powers to implement the Withdrawal Agreement and for the transition to any future arrangements.

6. The clauses with particular relevance to matters within the legislative competence of the Assembly are:
    - Part 1 – Implementation Period;
    - Part 2 – Remaining implementation of withdrawal agreement etc. general;
    - Part 3 – clauses 12-14, 16-17 and Schedule 1 (implementation of Part 2 of the Withdrawal Agreement relating to citizens' rights where devolved application) and clause 15 and Schedule 2 (relating to the Independent Monitoring Authority);
    - Part 4 – clauses 18-19 (other separation issues), clauses 21-22 (Northern Ireland), clauses 25-28 (relationship to the European

Union (Withdrawal) Act 2018 ('EUWA') and ancillary fee charging power), clause 29 (review of EU legislation during implementation period) and clause 36 (repeal of unnecessary or spent enactments).

- Part 5 – clauses 38-42, Schedules 4 and 5 (general and final provisions).

Provisions in the Bill for which consent is required

The Bill confers a number of powers on the Welsh Ministers to make subordinate legislation. The relevant provisions, and the Assembly procedures, are set out in the Annex.

The Assembly's consent would be required for the following provisions:

Part 1 – Implementation Period

Clauses 1 and 2 - Saved law for implementation period

7. These clauses insert new sections 1A and 1B into the EU (Withdrawal) Act 2018 (EUWA) and save the European Communities Act 1972 (ECA) for the purpose of the implementation period during which the majority of EU law will continue to apply. They also provide for interpretative glosses to apply to EU derived domestic legislation, as defined by the new section 1B. They also provide that the Minister of the Crown may make additional modifications as appropriate for the purpose of Part 4 of the Withdrawal Agreement.

8. Consent would be required for these clauses because they modify the legislative competence of the National Assembly for Wales by continuing the requirement to comply with EU law. In saving the ECA so that it continues to apply in the UK this will affect the Assembly's legislative competence as the restrictions in complying with EU law will continue to apply, and the powers that return to the Assembly as a result of withdrawal will be once again constrained. Therefore clauses 1 and 2 would require the Assembly's consent as they modify the legislative competence of the Assembly.

9. These clauses will become protected enactments (see paragraph 31 of Schedule 5 to the Bill). Any additional protected enactments will consequently change the restrictions on the Assembly's legislative competence by virtue of expanding the scope of the protected enactments. This will be the case whether or not the content of that modification falls within devolved areas as the fact that a provision is classified as a protected enactment will prevent the Assembly making even consequential provision in the future. These clauses are presented for the Assembly to consider for consent as they will further modify the legislative competence of the Assembly in a different way from that explained in the preceding paragraph.

Clauses 3 and 4 - Supplementary powers

10. Clause 3 inserts section 8A into EUWA, which provides for supplementary powers in connection with the implementation period. Section 8A provides the Minister of the Crown with a power to make provision which, inter alia, the Minister considers appropriate for the purposes of, or otherwise in connection with, Part 4 of the Withdrawal Agreement. Equivalent power for the Welsh Ministers to make provision in areas of devolved competence[1] is made in clause 4, which inserts Part 1A into Schedule 2 to EUWA.

11. The powers in these clauses are wide and could be used to make provisions within devolved areas which implement the Withdrawal Agreement. On this basis, the Assembly's consent would be required for these provisions.

Part 2 - Remaining implementation of withdrawal agreement etc: General

Clauses 5 and 6 - General implementation of remainder of withdrawal agreement and general implementation of EEA EFTA and Swiss agreements

12. Clause 5 inserts section 7A into EUWA. Section 7A gives effect to Article 4 of the Withdrawal Agreement which provides for the Withdrawal Agreement to produce the same legal effects as those within the European Union and its Member States, including, for example, direct effect. Clause 6 inserts section 7B into EUWA, to achieve the same effect for the separation agreements with the EEA EFTA and Switzerland.

13. These clauses will become protected enactments. Therefore the Assembly's consent would be required on the basis that these clauses will modify the legislative competence of the Assembly by virtue of becoming protected enactments.

Part 3 – Citizens' Rights

Clauses 12 to 14 and 16-17 and Schedule 1 - Recognition of professional qualifications, co-ordination of social security systems and non-discrimination, equal treatment and rights of workers etc. and powers of devolved authorities under sections 12, 13 and 14

14. Part 3 of the Bill makes provision in respect of the citizens' rights part of the Withdrawal Agreement. Clauses 12 to 14 relate to aspects of the Withdrawal Agreement that may require domestic provision to be made to implement the obligations effectively, and as these areas intersect with areas within the legislative competence of the Assembly, powers have been conferred on the devolved authorities to make provision within areas of devolved competence[2].

[1] The meaning of 'devolved competence' for the purpose of this power is also provided within the clause.
[2] The meaning of 'devolved competence' for them purpose of these powers is provided in Schedule 1 to the Bill.

15. Clause 12 provides that an appropriate authority may make regulations for the purpose of implementing Chapter 3 of Title II of Part 2 of the Withdrawal Agreement, which relates to professional qualifications. “Appropriate authority” includes the Welsh Ministers when acting within devolved competence.

16. Clause 13 provides that an appropriate authority may make regulations for the purpose of implementing Title III of Part 2 of the Withdrawal Agreement, which relates to the co-ordination of social security systems. This includes measures relating to reciprocal healthcare, which is devolved. “Appropriate authority” includes the Welsh Ministers when acting within devolved competence.

17. Clause 14 provides that an appropriate authority may make regulations for the purpose of implementing certain provisions of the Withdrawal Agreement which relate to non-discrimination, equal treatment and rights of workers etc. “Appropriate authority” includes the Welsh Ministers when acting within devolved competence.

18. Schedule 1 contains details of how these powers can be exercised by the Devolved Authorities. It sets out when the Welsh Ministers may act independently, when they require Minister of the Crown consent before making regulations, and when the regulation-making powers must be exercised jointly or with consultation. These requirements are based on the legislative competence of the National Assembly and also other existing executive powers of the Welsh Ministers. Schedule 1 also imposes the same requirements for exercising regulation-making powers as apply where the Welsh Ministers could make the same provision under other acts.

19. Regulations made by the Welsh Ministers made under these provisions which amend, repeal or revoke primary legislation or retained directly applicable EU law must be made by affirmative procedure. Any other regulations made under this section are to be made by the negative procedure.

20. This clause confers a power on the Welsh Ministers to make regulations relating to the implementation of Part 2 of the Withdrawal Agreement on citizens’ rights where that implementation intersects with areas of devolved competence as set out above.

21. The Assembly’s consent would be required for clauses 12 to 14 as it is within the Assembly’s legislative competence to make provision which implements the Withdrawal Agreement in devolved areas.

22. Clause 16 makes supplementary provisions in respect of certain regulation making powers in Part 2 including clause 14. Clause 17 contains the definitions relating to Part 3 of the Bill, one of the definitions is used in clause 14. As set out above, clause 14 would be within the Assembly’s

legislative competence and therefore the Assembly's consent would be required for that aspect of these provisions.

Clause 15 and Schedule 2 – Independent Monitoring Authority for the Citizens' Rights Agreements

23. Clause 15 establishes the Independent Monitoring Authority (IMA) which will monitor the implementation and enforcement of Part 2 of the Withdrawal Agreement relating to citizens' rights. Schedule 2 sets out the constitution of the IMA, and its functions. As reflected in clauses 12 to 14, discussed above, part of the implementation of the citizens' rights aspect of the Withdrawal Agreement will fall within the Assembly's legislative competence. It is within the Assembly's legislative competence to make provision which would monitor the implementation and enforcement of those aspects of the Withdrawal Agreement in Wales.

24. The consent of the Assembly would be required on the grounds these provisions are within the legislative competence of the Assembly.

Part 4 – Other subject areas

Clauses 18 and 19 - Main power in connection with other separation issues and corresponding power relating to devolved authorities

25. Clause 18 inserts section 8B into EUWA which provides a power for the Minister of the Crown to make such provision as the Minister considers appropriate to implement Part 3 of the Withdrawal Agreement (the separation provisions), or provision which supplements the effect of section 7A (the direct effect of the Withdrawal Agreement) in relation to that Part, or otherwise for the purposes of dealing with matters arising out of, or related to, that Part.

26. Clause 19 inserts Part 1B into Schedule 2 to EUWA to make equivalent provision for the Devolved Administrations.

27. Matters included in Part 3 of the Withdrawal Agreement are wide ranging, but include matters relating to procurement which would fall within the Assembly's legislative competence, and it is possible that the effective implementation of the other matters may also require provision to be made in areas of devolved competence[3]. Certainly, it is recognised that the implementation of Part 3 may fall in areas within the Assembly's legislative competence which is why specific provision is made in clause 19 to confer an equivalent power on Welsh Ministers.

28. The consent of the Assembly would be required on the basis that these provisions are within the Assembly's legislative competence.

Northern Ireland

[3] As defined in the clause.

Clauses 21 and 22 – Main power in connection with Ireland/Northern Ireland Protocol and corresponding power involving devolved authorities.

29. Clause 21 inserts section 8C into EUWA to provide the Minister of the Crown with a power to make regulations to implement the Protocol on Ireland/Northern Ireland and make supplemental provision as required. Corresponding powers are given to the Devolved Administrations to act in devolved areas by clause 22 which inserts Part 1C into Schedule 2 to EUWA.

30. The consent of the Assembly would be required on the basis that these provisions are within the Assembly's legislative competence.

Clauses 25 to 27 – Relationship to EUWA

31. Clause 25 defers the retention of saved EU law from exit day to the end of the implementation period. It does this by textual amendments to sections 2, 3, 4, and 5 of EUWA and makes extra provision by inserting a new section 5A in EUWA which provides for savings and incorporation of saved EU law. Schedule 1 of EUWA is also amended to defer the operation of the savings provision to the end of the implementation period.

32. Clause 26 amends section 6 of EUWA (interpretation of retained EU law) to replace exit day for IP completion day, i.e. the end of the implementation period and makes other provision about the interpretation of retained EU law including defining 'relevant separation agreement law'. It also allows for a Minister of the Crown, acting after consultation, to provide regulations on how UK courts can interpret retained EU law, including providing for the circumstances under which relevant courts or tribunals are not bound by retained EU case law. The regulations may also set the test that is to be applied in deciding whether to depart from such retained EU case law. The regulations may, however, provide that the test may be determined by a given list of members of the judiciary.

33. Clause 27 amends section 8 of EUWA to take account of the implementation period and to extend the power so that it can be used in respect of Part 4 of the Withdrawal Agreement (the implementation period). It also makes amendments to EUWA so that references to exit day will now refer to IP completion day. These changes to section 8 of EUWA will read through to the Welsh Ministers' deficiency correcting power in paragraph 1 of Schedule 2 to EUWA.

34. These clauses will become protected enactments.

35. The consent of the Assembly would be required on the basis that these provisions modify the Assembly's legislative competence by virtue of becoming protected enactments.

Clause 28 - Ancillary fee-charging powers

36. Clause 28 amends the scope of the fee charging powers in Schedule 4 to EUWA to include, where appropriate, the new powers provided for by the Bill.

37. This clause will become a protected enactment.

38. The consent of the Assembly would be required on the basis that this provision modifies the Assembly's legislative competence by virtue of becoming a protected enactment.

Clause 29 – Review of EU legislation during implementation period

39. This clause inserts section 13A into the EUWA. It applies during the implementation period and provides a role for the European Scrutiny Select Committee in relation to EU legislation adopted by the EU during the implementation period and therefore applicable to and within the UK.

40. The Committee could consider EU legislation which relate to subject matters within the Assembly's legislative competence and therefore the Assembly's consent would be required.

Clause 36 – Repeal of unnecessary or spent enactments

41. This clause repeals certain unnecessary or spent enactments. The provisions of EUWA that are being repealed are protected enactments. Where the subject matter of the provision being repealed is within the competence of the Assembly, the repeal of the provision will modify the competence of the Assembly by virtue of the provision no longer being a protected enactment and therefore increasing the competence of the Assembly.

42. The consent of the Assembly would be required on the basis that this provision modifies the assembly's legislative competence by reducing the scope of protected enactments.

Part 5 – General and Final Provision

Clause 39 – Interpretation

43. These clauses make provision about the interpretation of the Bill.

44. The consent of the Assembly would be required on the basis that these provisions are within the Assembly's legislative competence.

Clause 40 and Schedule 4 – Regulations

45. Clause 40 and Schedule 4 make provision about the regulation-making powers in the Bill.

46. The consent of the Assembly would be required on the basis that these provisions are within the Assembly's legislative competence.

Clause 41 and Schedule 5 - Consequential Provisions

47. Clause 41 makes provision in respect of consequential amendments and introduces Schedule 5, which makes consequential provisions. Paragraph 1 of Schedule 5 makes provision that will defer certain SIs made in relation to exit day until the end of the implementation period. This includes a power for an appropriate authority to exempt SIs which do not require deferral and need to come into force on exit day. An appropriate authority includes the Welsh Ministers.

48. Consent is required for these provision because they fall within the legislative competence of the Assembly.

Reasons for making these provisions for Wales in the Bill

49. The Welsh Government agrees that legislation is necessary to provide clarity and certainty for citizens and businesses as we leave the EU. The Welsh Government also agrees that such legislation is best made by Parliament, for the UK as a whole, as this offers the greatest degree of clarity and certainty for citizens and businesses.

50. In terms of substance, we welcome the fact that the Bill would provide the much needed implementation (or transition) period and agree with the approach taken in the Bill in terms of broadly maintaining the status quo regarding the application of EU law in the UK during the transition period. We also welcome the fact that the Bill provides a significant degree of reassurance for EU citizens who have chosen to make their home in the UK and believe the provisions on the financial settlement reflect the appropriate commitment of the UK to meet its obligations. We have held intensive negotiations with the UK Government over the role of the devolved institutions in respect of the Independent Monitoring Authority.

51. In the Legislative Consent Memorandum we published for the Bill as it was introduced in October we said that we could not endorse the overall withdrawal 'deal' as advocated by the UK Government because the associated Political Declaration provided little assurance that the future relationship with the EU would be the very close partnership set out in our White Paper *Securing Wales Future*, a position that had been repeatedly endorsed by the National Assembly. We were also dissatisfied that the Withdrawal Agreement did not end the possibility of a no-deal exit at the end of the implementation period, and did not provide the protections we seek for workers' rights. These concerns with the deal remain.

52. The Welsh Government has a number of further concerns regarding the Bill as now introduced. Firstly, the removal, from the October version of the Bill, of the clause giving Parliament a role in the oversight of the negotiations on the future relationship with the EU is a step in the wrong

direction and should be re-inserted and, moreover, strengthened with a role for the devolved institutions as this is essential for us to be able to protect devolved competence.

53. Secondly, in another unwelcome change to the October version of the Bill, the prohibition on seeking an extension to the transition period further raises the possibility, at the end of the transition period, of either no deal for the future trade relationship with the EU or a rushed and therefore inadequate deal, with all the damage that this would do to Wales.

54. Thirdly, the regulation-making powers for the implementation of the Ireland/Northern Ireland Protocol have no restrictions placed upon them, meaning that the powers of the Secretary of State could be used to amend the Government of Wales Act 2006 (GoWA) and therefore modify the legislative competence of the Assembly without the Assembly's consent. If any changes were to be needed to modify the legislative competence of the Assembly, there is an established mechanism to modify Schedules 7A and 7B of GoWA provided for under section 109, which, importantly, requires the Assembly's consent.

55. Fourthly, clause 38, asserting Parliamentary sovereignty, should also contain references to the Acts of Parliament establishing the devolution settlements and to the UK Parliament not normally legislating with regard to devolved matters without the consent of the Devolved Legislatures.

56. We also have concerns about two of the more technical developments in the Bill as introduced in December. The new clause 26 on the interpretation of retained EU law and relevant separation agreement law should include the Welsh Ministers as statutory consultees for regulations to be made by UK Government Ministers providing for which courts or tribunals are not to be bound by any retained EU case law.

57. Finally, the Bill now enables the transfer of the functions of the Independent Monitoring Authority (IMA) for citizens' rights to other public bodies. We had secured, through negotiations with the UK Government, improvements in early drafts of the Bill to provide a means for the Welsh Ministers to protect Welsh interests with a role in the appointment of the non-executive member of the IMA with knowledge of conditions in Wales relating to the relevant matters. However, it will not be a requirement that this safeguard will be extended to the arrangements for any other public bodies taking on the functions of the IMA.

Financial implications

58. While there are no direct financial implications for the Welsh Government or the Assembly arising from the powers under the Bill, there will be significant financial implications for Wales from the withdrawal of the UK from the EU, both in its overall economic effect and in areas of funding currently derived from the EU, as set out in *Securing Wales' Future*.

Conclusion

59. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill as this will offer the greatest degree of consistency and certainty for citizens and businesses across the UK. But, for the reasons set out above, the Welsh Government cannot recommend that the National Assembly gives its consent to this Bill.

Mark Drakeford AM
First Minister
3 January 2020

ANNEX

LEGISLATIVE CONSENT MEMORANDUM: EU (WITHDRAWAL AGREEMENT) BILL – PROVISIONS WHICH CONTAIN POWERS FOR WELSH MINISTERS TO MAKE SUBORDINATE LEGISLATION

Provision	Description of Power	Legislative Procedure
Clause 4 Powers corresponding to section 3 involving devolved authorities inserts new Part 1A into Schedule 2 to the European Union (Withdrawal) Act 2018 (EUWA)	Provides the Welsh Ministers with a power to make supplementary provision in connection with the implementation period. The Welsh Ministers may act alone if provision is within devolved areas, or may act jointly with a Minister of the Crown.	Where the Welsh Ministers are acting alone, an SI containing regulations which amend, repeal or revoke; a) primary legislation, or b) retained direct principal EU legislation, is subject to the affirmative procedure. Any other regulations made under Part 1A of Schedule 2 to EUWA by the Welsh Ministers acting alone will be subject to the negative procedure. The same principle applies to regulations made acting jointly with the Minister of the Crown. See paragraphs 8B and 8C of Part 1A of Schedule 7 to EUWA as inserted by paragraph 51 of Schedule 5 to the Bill.
Clause 12(1) Recognition of professional qualifications	The Welsh Ministers may by regulations make provision as they consider appropriate to implement Chapter 3 of Title II of Part 2 of the Withdrawal Agreement (professional qualifications).	Where the Welsh Ministers make regulations acting alone which amend, repeal or revoke— (a) primary legislation, or

	The Welsh Ministers may act alone if provision is within devolved competence, or may act jointly with a Minister of the Crown. See also clause 16 for supplementary provision about regulations under Part 3 of the Bill.	(b) retained direct principal EU legislation, they are subject to the affirmative procedure. Any other statutory instrument containing regulations under section 12 of the Welsh Ministers acting alone is subject to the negative procedure. The same principle applies to regulations made acting jointly with the Minister of the Crown. See paragraphs 3 and 4 of Schedule 4 to the Bill.
Clause 12(2) Recognition of professional qualifications (EEA EFTA separation agreement)	The Welsh Ministers may by regulations make provision as they consider appropriate to implement Chapter 3 of Title II of Part 2 of the EEA EFTA Separation agreement (professional qualifications). The Welsh Ministers may act alone if provision is within devolved competence, or may act jointly with a Minister of the Crown. See also clause 16 for supplementary provision about regulations under Part 3 of the Bill.	Where the Welsh Ministers, acting alone, make regulations which amend, repeal or revoke— (a) primary legislation, or (b) retained direct principal EU legislation, they are subject to the affirmative procedure. Any other statutory instrument, containing regulations under section 12, of the Welsh Ministers acting alone is subject to the negative procedure. The same principle applies to regulations made acting jointly with a Minister of the Crown.

		See paragraphs 3 and 4 of Schedule 4 to the Bill.
Clause 12(3) Recognition of professional qualifications (Swiss citizens' rights agreement)	The Welsh Ministers may by regulations make provision as they consider appropriate to implement professional qualification provisions of the Swiss citizens' rights agreement. The Welsh Ministers may act alone if provision is within devolved competence, or may act jointly with a Minister of the Crown. See also clause 16 for supplementary provision about regulations under Part 3 of the Bill.	Where the Welsh Ministers, acting alone, make regulations which amend, repeal or revoke— (a) primary legislation, or (b) retained direct principal EU legislation, they are subject to the affirmative procedure. Any other statutory instrument, containing regulations under section 12, of the Welsh Ministers acting alone is subject to the negative procedure. The same principle applies to regulations made acting jointly with a Minister of the Crown. See paragraphs 3 and 4 of Schedule 5 to the Bill.
Clause 13(1) Co-ordination of social security systems	The Welsh Ministers may by regulations make provision as they consider appropriate to implement Title III of Part 2 of the Withdrawal Agreement (co-ordination of social security systems). The Welsh Ministers may act alone if provision is within devolved competence, or may act jointly with a Minister of the Crown. See also clause 16 for supplementary provision about	Where the Welsh Ministers, acting alone, make regulations which amend, repeal or revoke— (a) primary legislation, or (b) retained direct principal EU legislation, they are subject to the affirmative procedure. Any other statutory instrument, containing regulations under

	regulations under Part 3 of the Bill.	section 13, of the Welsh Ministers acting alone is subject to the negative procedure. The same principle applies to regulations made acting jointly with a Minister of the Crown. See paragraphs 3 and 4 of Schedule 4 to the Bill.
Clause 13(2) Co-ordination of social security systems (EEA EFTA separation agreement)	The Welsh Ministers may by regulations make provision as they consider appropriate to implement Title III of Part 2 of the EEA EFTA separation agreement (co-ordination of social security systems). The Welsh Ministers may act alone if provision is within devolved competence, or may act jointly with a Minister of the Crown. See also clause 16 for supplementary provision about regulations under Part 3 of the Bill.	Where the Welsh Ministers, acting alone, make regulations which amend, repeal or revoke— (a) primary legislation, or (b) retained direct principal EU legislation, they are subject to the affirmative procedure. Any other statutory instrument, containing regulations under section 13, of the Welsh Ministers acting alone is subject to the negative procedure. The same principle applies to regulations made acting jointly with a Minister of the Crown. See paragraphs 3 and 4 of Schedule 4 to the Bill.
Clause 13(3) Co-ordination of social security systems (Swiss citizens' rights agreement)`	The Welsh Ministers may by regulations make provision as they consider appropriate to implement social security co-ordination provisions of the Swiss citizens' rights agreement.	Where the Welsh Ministers, acting alone, make regulations acting alone which amend, repeal or revoke—

	The Welsh Ministers may act alone if provision is within devolved competence, or may act jointly with a Minister of the Crown. See also clause 16 for supplementary provision about regulations under Part 3 of the Bill.	(a) primary legislation, or (b) retained direct principal EU legislation, they are subject to the affirmative procedure. Any other statutory instrument, containing regulations under section 13, of the Welsh Ministers acting alone is subject to the negative procedure. The same principle applies to regulations made acting jointly with a Minister of the Crown. See paragraphs 3 and 4 of Schedule 4 to the Bill.
Clause 14(1) Non-discrimination, equal treatment and rights of workers etc.	The Welsh Ministers may by regulations make such provision as they consider appropriate for the purpose of implementing any of the following provisions of the Withdrawal Agreement: (a) Article 12 (prohibition of discrimination on grounds of nationality); (b) Article 23 (right to equal treatment); (c) Articles 24(1) and 25(1) (rights of workers and the self-employed); (d) Articles 24(3) and 25(3) (rights of employed or self-employed frontier workers) as regards rights enjoyed as workers. The Welsh Ministers may act alone if provision is within devolved competence, or may act jointly with a Minister of the Crown.	Where the Welsh Ministers, acting alone, make regulations which amend, repeal or revoke— (a) primary legislation, or (b) retained direct principal EU legislation, they are subject to the affirmative procedure. Any other statutory instrument containing regulations under section 14 of the Welsh Ministers acting alone is subject to the negative procedure. The same principle applies to regulations made acting jointly with a Minister of the

	See also clause 16 for supplementary provision about regulations under Part 3 of the Bill.	Crown. See paragraphs 3 and 4 of Schedule 4 to the Bill.
Clause 14(2) Non-discrimination, equal treatment and rights of workers etc. (EEA EFTA separation agreement)	The Welsh Ministers may by regulations make such provision as they consider appropriate for the purpose of implementing any of the following provisions of the EEA EFTA separation agreement— (a) Article 11 (prohibition of discrimination on grounds of nationality); (b) Article 22 (right to equal treatment); (c) Articles 23(1) and 24(1) (rights of workers and the self-employed); (d) Articles 23(3) and 24(3) (rights of employed or self-employed frontier workers) as regards rights enjoyed as workers. The Welsh Ministers may act alone if provision is within devolved competence, or may act jointly with a Minister of the Crown. See also clause 16 for supplementary provision about regulations under Part 3 of the Bill.	Where the Welsh Ministers, acting alone, make regulations which amend, repeal or revoke— (a) primary legislation, or (b) retained direct principal EU legislation, they are subject to the affirmative procedure. Any other statutory instrument, containing regulations under section 14, of the Welsh Ministers acting alone is subject to the negative procedure. The same principle applies to regulations made acting jointly with a Minister of the Crown. See paragraphs 3 and 4 of Schedule 4 to the Bill.
Clause 14(3) Non-discrimination, equal treatment and rights of workers etc. (Swiss citizens' rights agreement)	The Welsh Ministers may by regulations make such provision as they consider appropriate for the purpose of implementing any of the following provisions of the Swiss citizens' rights agreement— (a) Article 7 (prohibition of discrimination on grounds of nationality); (b) Article 18 (right to take up employment etc.); (c) Article 19 (rights of employed or self-employed persons etc.); (d) Article 20(1) (rights of frontier	Where the Welsh Ministers, acting alone, make regulationswhich amend, repeal or revoke— (a) primary legislation, or (b) retained direct principal EU legislation, they are subject to the affirmative procedure. Any other statutory

	workers); (e) Article 23(1) (rights of persons providing services). The Welsh Ministers may act alone if provision is within devolved competence, or may act jointly with a Minister of the Crown. See also clause 16 for supplementary provision about regulations under Part 3 of the Bill.	instrument, containing regulations under section 14, of the Welsh Ministers acting alone is subject to the negative procedure. The same principle applies to regulations made acting jointly with a Minister of the Crown. See paragraphs 3 and 4 of Schedule 4 to the Bill.
Clause 19 Powers corresponding to section 18 involving devolved authorities Inserts new Part 1B into Schedule 2 EUWA Paragraph 11G(1) provision in connection with certain other separation issues	The Welsh Ministers may by regulations make such provision as the devolved authority considers appropriate to implement Part 3 of the Withdrawal Agreement (separation provisions). The Welsh Ministers may act alone if provision is within devolved competence, or may act jointly with a Minister of the Crown.	Where the Welsh Ministers, acting alone, make regulations which amend, repeal or revoke— (a) primary legislation, or (b) retained direct principal EU legislation, They are subject to the affirmative procedure. Any other statutory instrument, containing regulations under Part 1B of Schedule 2, of the Welsh Ministers acting alone is subject to the negative procedure. The same principle applies to regulations made acting jointly with a Minister of the Crown. See paragraphs 8D and 8E of Part 1A of Schedule 7 to EUWA as inserted by paragraph 51 of Schedule 5 to the Bill.

Clause 19 Powers corresponding to section 18 involving devolved authorities Inserts new Part 1B into Schedule 2 EUWA Paragraph 11G(3) provision in connection with certain other separation issues (EEA EFTA separation agreement)	The Welsh Ministers may by regulations make such provision as the devolved authority considers appropriate to implement Part 3 of the EEA EFTA separation agreement (separation provisions). The Welsh Ministers may act alone if provision is within devolved competence, or may act jointly with a Minister of the Crown.	Where the Welsh Ministers, acting alone, make regulations which amend, repeal or revoke— (a) primary legislation, or (b) retained direct principal EU legislation, They are subject to the affirmative procedure. Any other statutory instrument, containing regulations under Part 1B of Schedule 2, of the Welsh Ministers acting alone is subject to the negative procedure. The same principle applies to regulations made acting jointly with a Minister of the Crown. See paragraphs 8D and 8E of Part 1A of Schedule 7 to EUWA as inserted by paragraph 51 of Schedule 5 to the Bill.
Clause 22 Powers corresponding to section 21 involving devolved authorities Inserts new Part 1C into Schedule 2 to EUWA Paragraph 11M power in connection with	The Welsh Ministers may by regulations make such provision as they consider appropriate to implement the Protocol on Ireland/Northern Ireland in the Withdrawal Agreement. The Welsh Ministers may act alone if provision is within devolved competence, or may act jointly with a Minister of the Crown.	Where the Welsh Ministers, acting alone, make regulations which contain the following: (a) amend, repeal or revoke primary legislation or retained direct principal EU legislation, (b) establish a public authority, (c) relate to a fee in respect of a function exercisable by a public authority in the

Protocol on Ireland/Northern Ireland		United Kingdom, (d) create, or widen the scope of, a criminal offence, (e) creates or amends a power to legislate or (f) facilitate access to the market within Great Britain of qualifying Northern Ireland goods; are subject to the affirmative procedure Any other statutory instrument, containing regulations under Part 1C of Schedule 2, of the Welsh Ministers acting alone is subject to the negative procedure. The same principle applies to regulations made acting jointly with a Minister of the Crown. See paragraphs 8F and 8G of Part 1A of Schedule 7 to EUWA as inserted by paragraph 51 of Schedule 5 to the Bill.
Paragraph 1(3) of Schedule 5 Consequential and transitional provision etc.	Paragraph 1 of Schedule 5 to the Bill provides for a mass deferral of the coming into force of EU Exit SIs from exit day until the end of the implementation period. This mass deferral captures SIs which come into force with reference to exit day. Paragraph 1(3) of Schedule 6 provides the Welsh Ministers may by regulations provide for the	Where regulations are made by the Welsh Ministers, acting alone, before exit day, no procedure applies. Where regulations are made by the Welsh Ministers, acting alone, on or after exit day, they are subject to the negative procedure.

	deferral in sub-paragraph (1) not to apply to any extent in particular cases or descriptions of case, or make different provision in particular cases or description of case.	The same principle applies to regulations made acting jointly with a Minister of the Crown. See paragraphs 8 and 9 of Schedule 4 to the Bill.
Paragraph 3(2) of Schedule 5 devolved preparatory legislation of a kind mentioned in paragraph 41(3) to (5) of Schedule 8 to EUWA	Paragraph 3(1) of Schedule 5 provides that any provision of primary legislation which is made before exit day by virtue of sub-paragraphs (3) to (5) of paragraph 41 of Schedule 8 to EUWA and that is due to come into force by reference to exit day, shall be read as if it comes into force at the end of the implementation period. Paragraph 3(2) provides that the Welsh Ministers may by regulations (a) provide for sub-paragraph (1) not to apply to any extent in particular cases or descriptions of case; (b) make different provision in particular cases or descriptions of case to that made by sub-paragraph (1), or (c) make such provision as the Welsh Ministers consider appropriate in consequence of sub-paragraph (1) (including provision restating the effect of that sub-paragraph).	A statutory instrument, containing regulations under paragraph 3(2) of Schedule 5, made by the Welsh Ministers on or after exit day is subject to the negative procedure. Where regulations are made before exit day, they are subject to no procedure. See paragraph 10 of Schedule 4 to the Bill.

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

Llywodraeth Cymru
Welsh Government

Mick Antoniw AM
Chair of CLA Committee
SeneddCLA@assembly.wales

8 January 2020

Dear Mick,

EUROPEAN UNION (WITHDRAWAL AGREEMENT) BILL

I am writing to inform you that I have written on behalf of the Welsh Government to the Lord Speaker of the House of Lords, inviting Peers to consider tabling amendments to the EU (Withdrawal Agreement) Bill which are intended to protect the interests of the devolved institutions.

I have attached a copy of the letter to the Lord Speaker and the text of the amendments.

Best wishes,

Mark.

MARK DRAKEFORD

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

Llywodraeth Cymru
Welsh Government

The Rt. Hon. The Lord Fowler
Lord Speaker of the House of Lords
House of Lords
Westminster
SW1A 0PW

8 January 2020

Dear Lord Fowler,

EUROPEAN UNION (WITHDRAWAL AGREEMENT) BILL

I am writing on behalf of the Welsh Government to invite Peers to consider tabling amendments to the European Union (Withdrawal Agreement) Bill which are intended to protect the interests of the devolved institutions.

While these amendments focus on securing an appropriate role for the devolved institutions as we leave the EU, they also serve the purpose of entrenching the rights of Parliament in respect of oversight of the forthcoming negotiations, which the UK Government has sought to remove from earlier drafts of the Bill.

While the conduct of international relations is a reserved matter under the devolution settlements, we are responsible for implementing international agreements. The Future Economic Partnership with the EU will inevitably have very serious impacts on areas within devolved competence, such as agriculture and rural affairs, education, economic development, research and development, including requiring changes to devolved legislation. It is essential that the devolved institutions are fully engaged with these negotiations – and indeed the negotiation of other international trade agreements – in order to ensure that we are not required to make changes within our competence which are at odds with the values and interests of our nations.

In brief, the amendments aim to:

- Ensure that the very wide-ranging Henry VIII powers in respect of the Northern Ireland Protocol (Clauses 21 and 22) are limited in a way other such powers are in the Bill, and were in the EU (Withdrawal) Act. This includes a restriction on amending the Government of Wales Act and other enactments fundamental to the devolved settlements in Scotland and Northern Ireland.

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- Provide for appropriate transparency and scrutiny by Parliament and the devolved legislatures at all stages of the negotiations (New Clause 30B inserting sections 13C to 13G to the EU (Withdrawal) Act): this is based on the model proposed in the version of the Bill published in October, noting that in the current version any role for Parliament has been stripped out.
- Ensure that where the UK Government sets negotiation positions, and prior to ratification, the agreement of the devolved governments is normally obtained (New Clause 30B inserting section 13H to the EU (Withdrawal) Act).

- Remove the prohibition on the UK Government from agreeing to an extension to the transition period (remove Clause 33) and provide a process for requiring the Government to request an extension of the transition period if no agreement on the future relationship is likely to be in place by December 2020 (New clause 30A inserting section 13C to the EU (Withdrawal) Act).

- Amend the clause on Parliamentary sovereignty (amendment to Clause 38) to make clear that this makes no changes to the current devolved settlements.

- Amend clause 26 to ensure that the Welsh Ministers are consulted before any regulations under clause 26 relating to the interpretation of retained EU law are made.

- Amend the provisions for transferring the functions of the Independent Monitoring Authority (amendment to Schedule 2, paragraph 39), to make equivalent provision for the transferee to have knowledge of practice in Wales.

While these amendments have been prepared and are proposed by the Welsh Government, they are supported by the Scottish Government.

I hope that members of the House will be prepared to table and support these amendments.

I am copying this letter to the Leader of the House of Lords, the Shadow Leader of the House of Lords, the leader of the Liberal Democrats in the House of Lords, the Convenor of the Crossbench peers, and the First Minister of Scotland.

Yours sincerely,

Mark Drakeford

MARK DRAKEFORD

European Union (Withdrawal Agreement) Bill

[DRAFT]

WELSH GOVERNMENT PROPOSED AMENDMENTS

Clause 21

Page 25, line 14, at end insert—

"(6) But regulations under subsection (1) may not—

(a) impose or increase taxation or fees,

(b) make retrospective provision,

(c) create a relevant criminal offence,

(d) establish a public authority,

(e) amend, repeal or revoke the Human Rights Act 1998 or any subordinate legislation made under it, or

(f) amend or repeal the Scotland Act 1998, the Government of Wales Act 2006 or the Northern Ireland Act 1998 (unless the regulations are made by virtue of paragraph 21(b) of Schedule 7 to this Act or are amending or repealing any provision of those Acts which modifies another enactment)."

Explanatory statement

The new section 8C to be inserted into the European Union (Withdrawal) Act 2018 by clause 21 confers power on a Minister of the Crown to make regulations relating to the Ireland/Northern Ireland Protocol in the withdrawal agreement. The new subsection (6) proposed provides that the regulations may not make provision of the form mentioned in paragraphs (a) to (f), including amending the Scotland Act 1998, the Government of Wales Act 2006, and the Northern Ireland Act 1998 (except in limited circumstances). This is identical to equivalent restrictions on the Minister of the Crown's power to make regulations under the new section 8B of the European Union (Withdrawal) Act 2018 (proposed to be inserted by clause 18).

Clause 22

Page 26, line 25, at end insert—

"(7) But regulations under this Part may not—

(a) impose or increase taxation or fees,

(b) make retrospective provision,

(c) create a relevant criminal offence,

(d) establish a public authority,

(e) amend, repeal or revoke the Human Rights Act 1998 or any subordinate legislation made under it, or

(f) amend or repeal the Scotland Act 1998, the Government of Wales Act 2006 or the Northern Ireland Act 1998 (unless the regulations are made by virtue of paragraph 21(b) of Schedule 7 to this Act or are amending or repealing any provision of those Acts which modifies another enactment)."

Explanatory statement

The new paragraph 11M to be inserted into Schedule 2 to the European Union (Withdrawal) Act 2018 by clause 22 confers power on the devolved authorities to make regulations relating to the Ireland/Northern Ireland Protocol in the withdrawal agreement. The new sub-paragraph (7) proposed provides that the regulations may not make provision of the form mentioned in paragraphs (a) to (f), including amending the Scotland Act 1998, the Government of Wales Act 2006, and the Northern Ireland Act 1998 (except in limited circumstances). This is identical to equivalent restrictions on the devolved authorities' power to make regulations under new paragraph 11G of Schedule 2 to the European Union (Withdrawal) Act 2018 (proposed to be inserted by clause 19).

Clause 26

Page 31, line 11 leave out "and" and at end insert—

"(f) the Scottish Ministers,

(g) the Welsh Ministers, and

(h) the First Minister and deputy First Minister in Northern Ireland or the Executive Office in Northern Ireland, and"

Explanatory statement

The new subsection (5A) proposed to be inserted into section 6 of the European Union (Withdrawal) Act 2018 by clause 26(1)(d) confers power on the Minister of the Crown to make regulations relating to how courts in the UK are to apply, and be bound by, retained EU case law. Proposed new subsection (5C) provides that before making the regulations, the Minister of the Crown must consult particular persons. The new paragraphs (f) to (h) to be inserted by this amendment provide for consultation with the Scottish Ministers, the Welsh Ministers, and the First Minister and deputy First Minister in Northern Ireland or the Executive Office in Northern Ireland.

After Clause 30

Insert the following new clauses—

"Approval of extension of implementation period

After section 13B of the European Union (Withdrawal) Act 2018 (certain dispute procedures under withdrawal agreement) (for which see section 30 above) insert—

"13C Extension of implementation period

(1) This section applies where no statement that political agreement has been reached has been made by 13 June 2020.

(2) A Minister of the Crown must—

(a) before 17 June 2020, submit a request to the Joint Committee asking for an extension of two years to the implementation period, and

(b) seek to achieve an extension of that duration or, if an extension of that duration is not agreed, an extension of the longest duration than can be agreed.

(3) But subsection (2) does not apply if, at any time before 17 June 2020, conditions 1 to 4 are met.

(4) Condition 1 is that a Minister of the Crown has prepared a statement (a "no extension statement")—

(a) providing that despite no statement that political agreement has been reached having been made, an extension to the implementation period should not be sought, and

(b) setting out reasons why an extension to the implementation period should not be sought.

(5) Condition 2 is that a Minister of the Crown has—

(a) laid the no extension statement before each House of Parliament,

(b) sent the no extension statement to the First Minister for Scotland, who must, within three days—

(i) lay it before the Scottish Parliament, and

(ii) table a motion for the Parliament to take note of it,

(c) sent the no extension statement to the First Minister for Wales, who must, within three days—

(i) lay it before the National Assembly for Wales and

(ii) table a motion for the National Assembly to take note of it,

(d) sent the no extension statement to the Executive Office in Northern Ireland, or to the First Minister and deputy First Minister in Northern Ireland who may, within three days—

(i) lay it before the Northern Ireland Assembly and

(ii) table a motion for the Assembly to take note of it.

(6) Condition 3 is that—

(a) the motion tabled by the First Minister for Scotland in accordance with subsection (5)(b)(ii)—

(i) has been debated by the Scottish Parliament, or

(ii) the Parliament has not concluded a debate on the motion before the end of the period of five sitting days beginning with the first sitting day after the day on which the motion is tabled,

(b) the motion tabled by the First Minister for Wales in accordance with subsection (5)(c)(ii)—

(i) has been debated by the National Assembly for Wales, or

(ii) the National Assembly has not concluded a debate on the motion before the end of the period of five sitting days beginning with the first sitting day after the day on which the motion is tabled, and

(c) if a motion has been tabled by the First Minister and deputy First Minister in Northern Ireland in accordance with subsection (5)(d)(ii), it—

(i) has been debated by the Northern Ireland Assembly, or

(ii) the Assembly has not concluded a debate on the motion before the end of the period of five sitting days beginning with the first sitting day after the day on which the motion is tabled.

(7) Condition 4 is that after conditions 1 to 3 have been met—

(a) a motion for the House of Lords to take note of the no extension statement has been tabled in that House by a Minister of the Crown and—

(i) the House of Lords has debated the motion, or

(ii) the House of Lords has not concluded a debate on the motion before the end of the period of five Lords sitting days beginning with the first Lords sitting day after the day on which the motion is tabled, and

(b) the House of Commons has subsequently passed a motion in the form set out in subsection (8).

(8) The form of motion mentioned in subsection (7)(b) is: "That this House, for the purposes of section 13C of the European Union (Withdrawal) Act 2018, agrees in accordance with the no extension statement laid before this House on [...] under section 13C(5) of that Act that no extension to the implementation period should be sought."

Explanatory statement

This amendment proposes that a new section 13C be inserted into the European Union (Withdrawal) Act 2018 which provides that unless a Minister of the Crown has made a statement by 13 June 2020 that political agreement has been reached with the EU on a draft treaty on the future relationship of the UK with the EU, a Minister of the Crown must request a two year extension to the implementation period at the Joint Committee and must seek to achieve that extension.

This duty does not apply where conditions 1 to 4 in subsections (4) to (7) are met. The conditions require a Minister of the Crown to prepare a statement explaining why no extension should be sought. And both Houses of Parliament and the devolved administrations and legislatures must be given an opportunity to consider and debate the statement. The final condition is that the House of Commons must pass a motion agreeing that no extension should be sought to the implementation period.

Oversight of negotiations for future relationship

After section 13C of the European Union (Withdrawal) Act 2018 (approval of extension of implementation period) (for which see section 30A above) insert—

"13D Objectives for future relationship: statement

(1) A Minister of the Crown must, before the end of the period of 30 Commons sitting days beginning with the day on which exit day falls, make a statement on objectives for the future relationship with the EU (an "objectives statement").

(2) Before making the initial objectives statement the Minister of the Crown must consult—

(a) the Scottish Ministers,

(b) the Welsh Ministers, and

(c) the First Minister and deputy First Minister in Northern Ireland or the Executive Office in Northern Ireland.

(3) A Minister of the Crown may, at any time after the initial objectives statement is made, make a revised objectives statement.

(4) Before making a revised objectives statement the Minister of the Crown must consult—

(a) the Scottish Ministers,

(b) the Welsh Ministers, and

(c) the First Minister and deputy First Minister in Northern Ireland or the Executive Office in Northern Ireland.

(5) An objectives statement made under this section must contain an assessment of the impact a future relationship treaty that is consistent with those objectives would have on the economic, social and environmental well-being of the people of England, of Scotland, of Wales and of Northern Ireland.

13E Negotiations for future relationship: preconditions

(1) A Minister of the Crown may not engage in negotiations on the future relationship with the EU unless conditions 1 to 4 are met.

(2) Condition 1 is that an objectives statement has been laid before each House of Parliament.

(3) Condition 2 is that a Minister of the Crown has—

(a) sent the objectives statement to the First Minister for Scotland, who must, within three days—

(i) lay it before the Scottish Parliament, and

(ii) table a motion for the Parliament to take note of it,

(b) sent the objectives statement to the First Minister for Wales, who must, within three days—

(i) lay it before the National Assembly for Wales and

(ii) table a motion for the National Assembly to take note of it,

(c) sent the objectives statement to the Executive Office in Northern Ireland, or to the First Minister and deputy First Minister in Northern Ireland who may, within three days—

(i) lay it before the Northern Ireland Assembly and

(ii) table a motion for the Assembly to take note of it.

(4) Condition 3 is that—

(a) the motion tabled by the First Minister for Scotland in accordance with subsection (3)(a)(ii)—

(i) has been debated by the Parliament, or

(ii) the Parliament has not concluded a debate on the motion before the end of the period of five sitting days beginning with the first sitting day after the day on which the motion is tabled,

(b) the motion tabled by the First Minister for Wales in accordance with subsection (3)(b)(ii)—

(i) has been debated by the National Assembly, or

(ii) the National Assembly has not concluded a debate on the motion before the end of the period of five sitting days beginning with the first sitting day after the day on which the motion is tabled, and

(c) if a motion has been tabled by the First Minister and deputy First Minister in Northern Ireland in accordance with subsection (3)(c)(ii), it—

(i) has been debated by the Assembly, or

(ii) the Assembly has not concluded a debate on the motion before the end of the period of five sitting days beginning with the first sitting day after the day on which the motion is tabled.

(5) Condition 4 is that after conditions 1 to 3 have been met—

(a) a motion for the House of Lords to take note of the objectives statement has been tabled in that House by a Minister of the Crown and—

(i) the House of Lords has debated the motion, or

(ii) the House of Lords has not concluded a debate on the motion before the end of the period of five Lords sitting days beginning with the first Lords sitting day after the day on which the motion is tabled, and

(b) the House of Commons has subsequently approved the objectives statement on a motion moved by a Minister of the Crown.

(6) In conducting negotiations on the future relationship with the EU, a Minister of the Crown must seek to achieve the objectives set out in the most recent objectives statement to have been approved by a resolution of the House of Commons on a motion moved by a Minister of the Crown.

13F Negotiations for future relationship: reporting on progress

(1) After the end of each reporting period, a Minister of the Crown must—

(a) lay before each House of Parliament a report on the progress made, by the end of the period, in negotiations on the future relationship with the EU, including—

(i) the Minister's assessment of the extent to which the outcome of those negotiations is likely to reflect the most recent objectives statement to have been approved by the House of Commons, as mentioned in section 13E(5), and

(ii) if the Minister's assessment is that the future relationship with the EU is, in any respect, not likely to reflect that statement, an explanation of why that is so,

(b) send the report to the First Minister for Scotland, who must lay it before the Scottish Parliament,

(c) send the report to the First Minister for Wales, who must lay it before the National Assembly for Wales, and

(d) send the report to the Executive Office in Northern Ireland, or to the First Minister and deputy First Minister in Northern Ireland who may lay it before the Northern Ireland Assembly.

(2) Subsections (3) and (4) relate to any of the objectives set out in the objectives statement and apply if 8 months before the end of the implementation period—

(a) a Minister of the Crown makes a statement that no agreement in principle can be reached with the EU on the objective, or

(b) there is no agreement in principle on the objective.

(3) A Minister of the Crown must make a statement setting out how Her Majesty's Government proposes to proceed within the period of 14 days beginning with—

(a) the day on which the statement mentioned in subsection (2) is made, or

(b) (if no statement is made) the day that is 8 months before the end of the implementation period.

(4) The Minister of the Crown must—

(a) lay the statement made under subsection (3) before each House of Parliament,

(b) send the statement to the First Minister for Scotland who must lay it before the Scottish Parliament and, within the period of seven sitting days beginning with the day on which the statement is made, move a motion for the Parliament to take note of it,

(c) send the statement to the First Minister for Wales who must lay it before the National Assembly for Wales and, within the period of seven sitting days beginning with the day on which the statement is made, move a motion for the National Assembly to take note of it,

(d) send the statement to the Executive Office in Northern Ireland, or the First Minister and deputy First Minister in Northern Ireland who may lay it before the Northern Ireland Assembly and, within the period of seven sitting days beginning with the day on which the statement is made, move a motion for the Assembly to take note of it, and

(e) make arrangements for—

(i) a motion, to the effect that the House of Commons has considered the statement, to be moved by a Minister of the Crown within the period of seven sitting days beginning with the day on which the statement is made, and

(ii) a motion for the House of Lords to take note of the statement to be moved by a Minister of the Crown within the period of seven sitting days beginning with the day on which the statement is made.

13G Ratification of future relationship

(1) This section applies if, in the opinion of a Minister of the Crown, an agreement in principle has been reached with the EU on a treaty the principal purpose of which is to deal with all or part of the future relationship with the EU.

(2) A Minister of the Crown must lay before each House of Parliament—

(a) a statement that political agreement has been reached, and

(b) a copy of the negotiated future relationship treaty.

(3) A Minister of the Crown must also send the documents mentioned in subsection (2) to—

(a) the First Minister for Scotland, who must lay them before the Scottish Parliament and move a motion for the Parliament to take note of them,

(b) the First Minister for Wales, who must lay them before the National Assembly for Wales and move a motion for the National Assembly to take note of them, and

(c) the Executive Office in Northern Ireland, or to the First Minister and deputy First Minister in Northern Ireland who may lay them before the Northern Ireland Assembly and move a motion for the Assembly to take note of them.

(4) A treaty in the same form, or to substantially the same effect, as the negotiated future relationship treaty may be ratified only if conditions 1, 2 and 3 have been met.

(5) Condition 1 is that—

(a) the motion mentioned in subsection (3)(a)—

(i) has been debated by the Scottish Parliament, or

(ii) the Parliament has not concluded a debate on the motion before the end of the period of 14 sitting days beginning with the first sitting day after the day on which the motion is tabled,

(b) the motion mentioned in subsection (3)(b)—

(i) has been debated by the National Assembly for Wales, or

(ii) the National Assembly has not concluded a debate on the motion before the end of the period of 14 sitting days beginning with the first sitting day after the day on which the motion is tabled, and

(c) if the motion mentioned in section (3)(c) has been tabled, it—

(i) has been debated by the Northern Ireland Assembly, or

(ii) the Assembly has not concluded a debate on the motion before the end of the period of 14 sitting days beginning with the first sitting day after the day on which the motion is tabled.

(6) Condition 2 is that—

(a) the House of Lords has not resolved, within the period of 21 Lords sitting days beginning with the day on which the negotiated future relationship treaty is laid before that House, that any treaty resulting from it should not be ratified, or

(b) if the House of Lords has so resolved within that period, a Minister of the Crown has laid before each House of Parliament a statement indicating that the Minister is of the opinion that the treaty should nevertheless be ratified and explaining why.

(7) Condition 3 is that the negotiated future relationship treaty has subsequently been approved by a resolution of the House of Commons on a motion moved by a Minister of the Crown.

(8) Section 20 of the Constitutional Reform and Governance Act 2010 (treaties to be laid before Parliament before ratification) does not apply in relation to a treaty if this section applies in relation to the ratification of that treaty.

13H Consent of devolved authorities normally to be obtained

(1) This section applies in relation to the functions of a Minister of the Crown—

(a) to make an objectives statement in accordance with section 13D(1),

(b) to make a revised objectives statement (where applicable) in accordance with section 13D(3), and

(c) to lay a statement that political agreement has been reached with the EU on a treaty for the future relationship with the EU and to lay a copy of the negotiated future relationship treaty in accordance with section 13G(2).

(2) It is recognised that before exercising those functions, the Minister of the Crown is expected to obtain the consent of—

(a) the Scottish Ministers in relation to their impact on Scotland;

(b) the Welsh Ministers in relation to their impact on Wales;

(c) the First Minister and deputy First Minister in Northern Ireland in relation to their impact on Northern Ireland.

(3) Where consent has not been obtained, the Minister of the Crown must, before exercising the function, lay before each House of Parliament—

(a) where the Minister has not sought the consent of a person referred to in subsection (2), a statement explaining why consent was not sought, and

(b) where the Minister has sought the consent of a person referred to in subsection (2) and that consent has not been given, a statement—

(i) noting that consent has not been given, and

(ii) recording any reason provided by that person as to why consent has not been given.

13I Interpretation

In sections 13C to 13H—

"devolved legislature" means—

(a) the Scottish Parliament,

(b) the National Assembly for Wales, or

(c) the Northern Ireland Assembly;

"future relationship with the EU" means the main arrangements which are designed to govern the security and economic aspects of the long-term relationship between the United Kingdom and the EU after IP completion day and to replace or modify the arrangements which apply during the implementation period, but does not include the withdrawal agreement;

"negotiated future relationship treaty" means a draft of a treaty identified in a statement that political agreement has been reached;

"negotiations" means negotiations the opening of which, on behalf of the EU, has been authorised under Article 218 of the Treaty on the Functioning of the European Union;

"no extension statement" means a statement made in accordance with section 13C(4);

"objectives statement" means a statement on objectives for the future relationship with the EU"—

(a) made in writing by a Minister of the Crown setting out proposed objectives of Her Majesty's Government in negotiations on the future relationship with the EU, and

(b) published in such manner as the Minister making it considers appropriate;

"reporting period" means—

(a) the period of three months beginning with the first day on which an objectives statement is approved by a resolution of the House of Commons on a motion moved by a Minister of the Crown, and

(b) each subsequent period of three months;

"sitting day" means—

(a) in relation to the House of Commons, a day on which the House of Commons is sitting (and a day is only a day on which the House of Commons is sitting if the House begins to sit on that day);

(b) in relation to the House of Lords, a day on which the House of Lords is sitting (and a day is only a day on which the House of Lords is sitting if the House begins to sit on that day);

(c) in relation to the Scottish Parliament, any working day falling within a week in which the Parliament sits in plenary;

(d) in relation to the National Assembly for Wales, any working day falling within a week in which the National Assembly sits in plenary;

(e) in relation to the Northern Ireland Assembly, any working day falling within a week in which the Assembly sits in plenary;

"statement that political agreement has been reached" means a statement made in writing by a Minister of the Crown which—

(a) states that, in the Minister's opinion, an agreement in principle has been reached with the EU on a treaty the principal purpose of which is to deal with all or part of the future relationship with the EU, and

(b) identifies a draft of that treaty which, in the Minister's opinion, reflects the agreement in principle;

"treaty" has the same meaning as in Part 2 of the Constitutional Reform and Governance Act 2010 (see section 25(1) and (2) of that Act);

"working day" means any day unless it is—

(a) a Saturday or a Sunday,

(b) Christmas Eve, Christmas Day, Maundy Thursday or Good Friday,

(c) a day which is a bank holiday in Wales under the Banking and Financial Dealings Act 1971, or

(d) a day appointed for public thanksgiving or mourning.""

Explanatory statement

This amendment proposes that new sections be inserted into the European Union (Withdrawal) Act 2018 relating to parliamentary oversight of the negotiations and ratification of the future relationship with the EU.

Sections 13D and 13E require a Minister of the Crown to prepare a statement on objectives for the future relationship with the EU (referred to as an "objectives statement"). It must include an assessment of the impact a treaty complying with those objectives would have on the people of each of England, Scotland, Wales, and Northern Ireland. Both Houses of Parliament and the devolved administrations and legislatures must be given an opportunity to consider and debate the statement.

Section 13F relates to reporting on progress made in negotiations with the EU. In particular it provides that if no agreement in principle has been reached with the EU 8 months before the end of the implementation period, a Minister of the Crown is required to make a statement setting out how the UK Government proposes to proceed. The statement must be shared with the devolved administrations and legislatures.

Section 13G provides a role for the UK Parliament and the devolved legislatures in the ratification of a future relationship treaty, once agreement in principle has been reached between the UK Government and the EU. Ultimately, the treaty may only be ratified if it is approved by a resolution of the House of Commons.

Section 13H provides that a Minister of the Crown is expected to seek the consent of the devolved administrations before making an objectives statement (or a revised statement), and before laying a draft future relationship treaty before the UK Parliament.

Clause 33

Leave out Clause 33.

Explanatory statement

This amendment would omit clause 33 which proposes to insert a new section 15A into the European Union (Withdrawal) Act 2018 that prohibits a Minister of the Crown from agreeing to an extension of the implementation period in the Joint Committee .

Clause 38

Page 37, line 39, at end insert—

"(4) But it is also recognised for the purposes of ratifying and implementing a negotiated future relationship treaty, that—

(a) in accordance with section 28(8) of the Scotland Act 1998, the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament;

(b) in accordance with section 107(6) of the Government of Wales Act 2006, the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the National Assembly for Wales."

Explanatory statement

This clause makes provision recognising that nothing in the Bill derogates from the sovereignty of the UK Parliament. This amendment provides that it is also recognised that in relation to ratifying and implementing a future relationship treaty with the EU (in accordance with the Scotland Act 1998 and the Government of Wales Act 2006), the UK Parliament will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament and the National Assembly for Wales.

Schedule 2

Page 59, line 31, at end insert—

"(4) Sub-paragraph (5) applies for the purpose of ensuring that the transferee has knowledge of conditions relating to the relevant matters in—

(a) Scotland,

(b) Wales, and

(c) Northern Ireland.

(5) Regulations under sub-paragraph (1) must, so far as possible, make provision equivalent to paragraphs 4 and 5 in respect of the transferee."

Explanatory statement

Schedule 2 to the Bill makes further provision about the constitution and functions of the Independent Monitoring Authority (IMA). Paragraph 4(2) provides that the Secretary of State must, so far as possible, ensure that the non-executive members of the IMA include members with knowledge about conditions in Scotland, Wales and Northern Ireland relating to the (defined) "relevant matters". Paragraph 5 gives each devolved authority a role in the appointment of the non-executive member.

Paragraph 39(1) allows the Secretary of State to make regulations to transfer the functions of the IMA to another relevant public authority (the "transferee"). This amendment provides that if the Secretary of State were to exercise the power under paragraph 39(1), the regulations made must, so far as possible, make provision equivalent to paragraphs 4 and 5 to ensure that the transferee has knowledge of conditions in all of the devolved areas.

SL(5)485 – The Building (Amendment) (Wales) Regulations 2019

Background and Purpose

These Regulations amend the Building Regulations 2010 ("the 2010 Regulations") to restrict the materials that may become part of an external wall, or certain attachments to an external wall, of particular buildings.

The amendments apply to buildings at least 18 metres in height where:

i) the building contains at least one dwelling;
ii) the building contains a room for residential purposes, including student accommodation and school dormitories; or
iii) the building is used as living accommodation for, or for the treatment, care or maintenance of persons (as defined in regulation 2(1) of the 2010 Regulations).

Procedure

Negative.

Technical Scrutiny

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

1. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

Regulation 3 makes transitional provisions so that the amendments made by regulation 2 will not apply where a building notice or initial notice has been given to, or full plans deposited with, a local authority before the date these Regulations come into force (13 January 2020) and the building work has already started or is started within eight weeks beginning with that date. The explanatory note states that the timescale is two months, not eight weeks, which could lead to confusion and uncertainty for the reader.

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 These Regulations are in response to the Grenfell Tower fire in June 2017, and the subsequent independent Review by Dame Judith Hackitt of Building Regulations and Fire Safety (the Hackitt report). In response to the Hackitt report, the then Minister for Housing and Regeneration made a commitment in a written statement on 23 May 2018 that subject to consultation, the Welsh Government would move to ban the use of combustible materials in cladding systems on high-rise residential buildings in Wales. The explanatory memorandum confirms that these Regulations deliver on that commitment (as well as extending the Regulations to some non-residential high-rise buildings). The proposed ban has been the subject of several media news stories and public interest.

1.2 Paragraph 4.4 of the explanatory memorandum potentially causes confusion when explaining one of the ways in which a building with a storey over 18m above ground level may currently meet the 2010 Regulations requirement for resisting fire spread over external walls. It explains that one of the ways is by meeting the guidance in paragraph 13.7 of Approved Document B on Fire Safety Volume 2 (Buildings other than Dwellinghouses) in relation to insulation materials/products. However we read Approved Document B (see paragraph 13.5) as requiring that external walls in such buildings should meet guidance in relation to the external surfaces of walls (paragraph 13.6) and cavity barriers (paragraph 13.8 and 13.9), as well as the guidance in relation to insulation products/materials.

1.3 The footnote relating to transfer of functions explains that the Secretary of State's functions under section 34 of the Building Act 1984 were transferred to the Welsh Ministers by the Welsh Ministers (Transfer of Functions) (No. 2) Order 2009. However we believe that the functions under section 34 transferred to the National Assembly for Wales by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999, and subsequently to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

Implications arising from exiting the European Union

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

Government Response

Technical Scrutiny point :
Inconsistency between regulation 3(1)(b) and paragraph 7 of the Explanatory Note.

The reporting point is noted and accepted in principle, although it is noted that there is no technical defect nor legal uncertainty as the Explanatory Note is not part of the instrument. The government will seek to correct this point by way of correction slip.

Merits Scrutiny :
Point 1 – The proposed ban has been the subject of several media news stories and public interest.
The reporting point is noted and accepted.
Point 2 – The explanatory memorandum potentially causes confusion when explaining one of the current ways in which a building with a storey over 18m above ground level may meet the 2010 Regulations.
The reporting point is noted and accepted.
In accordance with standard practice when there is a change of policy, the Government has issued an amendment slip to Approved Document B which can be found at https://gov.wales/building-regulations-guidance-amendments-approved-documents-b-volume-12-and-7. It is clear from the wording of the amendment slip as to how the requirements may be met for buildings with a storey over 18m above ground. The Approved Document (as may be amended from time to time) is what the industry refers to in practice to establish methods of compliance.
Point 3 – Incorrect footnote in relation to the transfer of functions under section 34 of the Building Act 1984.

The reporting point is not accepted. Section 34 attaches to the power to make building regulations in section 1 of the Building Act 1984 as well as to powers to make directions or instruments elsewhere in that Act. In this context it is relied upon to enable section 1 to be used in a particular manner. So it is the Government's view that the relevant transfer for the purposes of this instrument took place at the time of

the transfer of the powers under section 1, which was under SI 2009/3019. For accessibility, the footnote does not explain the earlier partial transfer for purposes which are not relevant to this instrument.

Legal Advisers
Constitutional and Legislative Affairs Committee
7 January 2020

WELSH STATUTORY INSTRUMENTS

2019 No. 1499 (W. 275)

BUILDING AND BUILDINGS, WALES

The Building (Amendment) (Wales) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Building Regulations 2010 ("the 2010 Regulations").

Regulation 2(2) inserts definitions for "external wall" and "specified attachment" in regulation 2 (interpretation).

Regulation 2(3) amends regulation 4(2) (requirements relating to building work) to clarify its application to the requirements of regulation 7 (as amended).

Regulation 2(4) and (5) amends regulation 5 (meaning of material change of use) and 6 (requirements relating to material change of use) respectively to provide for the introduction of a new requirement for the materials contained in the external wall or specified attachment of a building which, following a change of use, is used as a building described in the new regulation 7(4). Such materials must achieve European Classification A2-s1, d0 or A1.

Regulation 2(6) amends regulation 7 to provide that, subject to the exempted items in new regulation 7(3), only materials which achieve European Classification A2-s1, d0 or A1 may become part of an external wall or specified attachment of a "relevant building". New regulation 7(4) provides the definition for "relevant building".

Regulation 2(7) makes amendments to regulation 37A to correct minor errors.

Regulation 3 makes transitional provisions so that the amendments made by regulation 2 will not apply where a building notice or initial notice has been given to, or full plans deposited with, a local authority before

13 January 2020 and the building work has already started or starts within two months of that date.

The Regulations were notified in draft (Notification No. 2019/0384/UK on 30 July 2019) to the European Commission in accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council (OJ No L 241, 17.9.2015, p. 1), which lays down a procedure for the provision of information in the field of technical standards and regulation.

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 Welsh Government, Cathays Park, Cardiff, CF10 3NQ and on the website at www.gov.wales.

Copies of the British Standard referred to in these Regulations will be made available for inspection free of charge by contacting the Building Regulations Policy Team at Welsh Government at the address above.

WELSH STATUTORY INSTRUMENTS

2019 No. 1499 (W. 275)

BUILDING AND BUILDINGS, WALES

The Building (Amendment) (Wales) Regulations 2019

Made	*11 December 2019*
Laid before the National Assembly for Wales	*13 December 2019*
Coming into force	*13 January 2020*

The Welsh Ministers, in exercise of the powers conferred on the Secretary of State by sections 1 and 34 of, and paragraphs 7, 8 and 10 of Schedule 1 to, the Building Act 1984(**1**), now exercisable by them(**2**), having consulted the Building Regulations Advisory Committee for Wales and such other bodies as appear to them to be representative of the interests concerned in accordance with section 14(7) of the Building Act 1984(**3**), make the following Regulations.

Title, application, commencement and interpretation

1.—(1) The title of these Regulations is the Building (Amendment) (Wales) Regulations 2019.

(**1**) 1984 c. 55. Section 1 was amended by section 1 of the Sustainable and Secure Buildings Act 2004 (c. 22) ("the 2004 Act"). Paragraph 7 of Schedule 1 was amended by section 3 of the 2004 Act and by section 11 of the Climate Change and Sustainable Energy Act 2006 (c. 19); and paragraph 8 of Schedule 1 was amended by section 3 of the 2004 Act and section 40 of the Flood and Water Management Act 2010 (c. 29).

(**2**) The functions conferred on the Secretary of State by sections 1 and 34 of, and paragraphs 7, 8 and 10 of Schedule 1 to, the Building Act 1984 were, insofar as exercisable in relation to Wales, transferred to the Welsh Ministers by the Welsh Ministers (Transfer of Functions) (No.2) Order 2009 (S.I. 2009/3019) ("the 2009 Order") and in relation to excepted energy buildings in Wales by section 54 of the Wales Act 2017 (c. 4).

(**3**) Section 14(7) was added by the 2009 Order.

(2) These Regulations apply in relation to Wales, except as provided for in paragraph (3).

(3) Regulation 2(7) of these Regulations does not apply in relation to excepted energy buildings in Wales.

(4) These Regulations come into force on 13 January 2020.

(5) In these Regulations "the 2010 Regulations" means the Building Regulations 2010(**1**).

Amendments to the 2010 Regulations

2.—(1) The 2010 Regulations are amended as follows.

(2) In regulation 2 (interpretation) after paragraph (5) insert—

"(6) In these Regulations—

(a) any reference to an "external wall" of a building includes a reference to—

(i) anything located within any space forming part of the wall;

(ii) any decoration or other finish applied to any external (but not internal) surface forming part of the wall;

(iii) any windows and doors in the wall; and

(iv) any part of a roof pitched at an angle of more than 70 degrees to the horizontal if that part of the roof adjoins a space within the building to which persons have access, but not access only for the purpose of carrying out repairs or maintenance; and

(b) "specified attachment" means—

(i) a balcony attached to an external wall; or

(ii) a solar panel attached to an external wall."

(3) In regulation 4(2) (requirements relating to building work) after "Schedule 1" insert "(in addition to the requirements of regulation 7)".

(4) In regulation 5 (meaning of material change of use)—

(a) after paragraph (i) omit "or"; and

(**1**) S.I. 2010/2214; regulation 37A was inserted by S.I. 2013/2730 (W. 264) and by S.I. 2018/558 (W. 97) in relation to excepted energy buildings in Wales.

(b) after paragraph (j) insert—

"; or

(k) the building is a building described in regulation 7(4)(a), where previously it was not".

(5) In regulation 6 (requirements relating to material change of use) after paragraph (2) insert—

"(3) Subject to paragraph (4), where there is a material change of use described in regulation 5(k), such work, if any, must be carried out as is necessary to ensure that any external wall, or specified attachment, of the building only contains materials of a minimum European Classification A2-s1, d0 or A1, classified in accordance with BS EN 13501-1:2018 entitled "Fire classification of construction products and building elements. Classification using test data from reaction to fire tests" (ISBN 978 0 580 95726 0) published by the British Standards Institution on 14th January 2019.

(4) Paragraph (3) does not apply to the items listed in regulation 7(3)."

(6) Regulation 7 (materials and workmanship) is amended as follows—

(a) regulation 7 is renumbered as paragraph (1) of that regulation.

(b) after regulation 7(1) (as renumbered) insert—

"(2) Subject to paragraph (3), building work must be carried out so that materials which become part of an external wall, or specified attachment, of a relevant building are of a minimum European Classification A2-s1, d0 or A1, classified in accordance with BS EN 13501-1:2018 entitled "Fire classification of construction products and building elements. Classification using test data from reaction to fire tests" (ISBN 978 0 580 95726 0) published by the British Standards Institution on 14th January 2019.

(3) Paragraph (2) does not apply to—

(a) cavity trays when used between two leaves of masonry;

(b) any part of a roof (other than any part of a roof which falls within paragraph (iv) of regulation 2(6)) if that part is connected to an external wall;

(c) door frames and doors;

(d) electrical installations;

(e) insulation and water proofing materials used below ground level;

(f) intumescent and fire stopping materials where the inclusion of the materials is

necessary to meet the requirements of Part B of Schedule 1;

(g) membranes;

(h) seals, gaskets, fixings, sealants and backer rods;

(i) thermal break materials where the inclusion of the materials is necessary to meet the thermal bridging requirements of Part L of Schedule 1; or

(j) window frames and glass.

(4) In this regulation—

(a) a "relevant building" means a building with a storey (not including roof-top plant areas or any storey consisting exclusively of plant rooms) at least 18 metres above ground level and which—

(i) contains one or more dwellings;

(ii) contains an institution; or

(iii) contains a room for residential purposes (excluding any room in a hostel, hotel or boarding house);

(b) "above ground level" in relation to a storey means above ground level when measured from the lowest ground level adjoining the outside of a building to the top of the floor surface of the storey.

(7) In regulation 37A (provision of automatic fire suppression systems), in paragraph (1)(a)—

(a) after "care homes" insert ", which";

(b) after "2016", for "are" substitute "is".

Transitional provision

3.—(1) The amendments made by regulation 2 do not apply in any case where a building notice or an initial notice has been given to, or full plans deposited with, a local authority before the day these Regulations come into force and either the building work to which it relates—

(a) has started before that day; or

(b) is started within 8 weeks beginning with that day.

(2) In this regulation, "building notice", "initial notice" and "full plans" have the meanings given in the 2010 Regulations.

Julie James
Minister for Housing and Local Government, one of the Welsh Ministers
11 December 2019

Explanatory Memorandum to The Building (Amendment) (Wales) Regulations 2019

This Explanatory Memorandum has been prepared by the Building Regulations Team, Planning Directorate within the Natural Resources Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Building (Amendment) (Wales) Regulations 2019. I am satisfied that the benefits justify any likely costs.

Julie James
Minister for Housing and Local Government
13 December 2019

1 Description

1.1 These Regulations amend the Building Regulations 2010 (S.I.2010/2214) ("the 2010 Regulations") to restrict the materials that may become part of an external wall, or certain attachments to an external wall, of particular buildings.

1.2 The amendments apply to buildings at least 18 metres in height where:

i) The building contains at least one dwelling;

ii) The building contains a room for residential purposes, including student accommodation and school dormitories;

iii) The building is used as living accommodation for, or for the treatment, care or maintenance of persons (as defined in regulation 2(1) of the 2010 Regulations).

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

2.1 None.

3 Legislative background

3.1 Section 1 of the Building Act 1984 ("the 1984 Act") provides a power to make building regulations for a number of purposes with respect to the design and construction of buildings and the services, fittings and equipment provided in or in connection with buildings. These purposes are securing the health, safety, welfare and convenience of persons in and about buildings, furthering the conservation of fuel and power, preventing waste, undue consumption, misuse or contamination of water, furthering the protection or enhancement of the environment, facilitating sustainable development and furthering the prevention or detection of crime. Schedule 1 to the 1984 Act further relates to matters for which building regulations may provide.

3.2 The Building Regulations 2010 have been made pursuant to the powers in 1984 Act.

3.3 The majority of the Secretary of State's functions conferred by or under the 1984 Act were, so far as exercisable in relation to Wales, transferred to the Welsh Ministers on 31st December 2011, by the Welsh Ministers (Transfer of Functions) (No.2) Order 2009 (S.I. 2009/3019) ("the 2009 order"). In relation to excepted energy buildings in Wales, they were transferred by section 54 of the Wales Act 2017.

3.4 These regulations are being made under sections 1 and 34 of, and paragraphs 7, 8 and 10 of Schedule 1 to the Building Act 1984, and will follow the negative procedure.

4 Purpose and intended effect of the legislation

4.1 Following the Grenfell Tower fire in June 2017, the UK Government commissioned Dame Judith Hackitt to undertake an independent Review of Building Regulations and Fire Safety ('the Hackitt report'). The final report makes recommendations for significant changes in the treatment of high risk residential buildings of 10 storeys or more from their construction through to occupation. The review has looked at the existing regulatory regimes in England, however in the case of fire safety and building regulations, the systems across the UK generally mirror those of England making the review findings equally relevant to Wales.

4.2 As an immediate response to the Hackitt report, the then Minister for Housing and Regeneration made a commitment that subject to a consultation, the Welsh Government will move to ban the use of combustible materials in cladding systems on high-rise residential buildings in Wales.

4.3 In relation to Part B (Fire Safety) of the 2010 Regulations, requirements are made to secure reasonable standards of health and safety for persons in and around the building (and any others who may be affected by buildings, or matters connected with buildings). The 2010 Regulations require that external walls on all buildings adequately resist the spread of fire over the walls and from one building to another (paragraph B4 of Schedule 1).

4.4 Statutory guidance in Approved Document B on Fire Safety Volume 2 (Buildings other than Dwelling Houses) sets out two ways that a building with a storey over 18m above ground, may meet the Building Regulations requirement for resisting fire spread over the external walls:-

- The first is that any insulation product, filler material (not including gaskets, sealants and similar) etc. used in the external wall construction should be of limited combustibility:–
- The second is to meet the performance criteria given in BR135 for cladding systems using full scale test data from BS8414.

4.5 The ban will remove for buildings in scope the discretion to use either of these approaches to demonstrate compliance. It will leave no room for doubt as to what is suitable for use on external walls of relevant buildings 18m or more in height. The ban, by default, will also remove the option of undertaking an assessment of the performance of an external wall system in lieu of tests for buildings in scope.

4.6 In response to comments raised in the consultation, the ban will apply to all new high rise residential buildings (including flats, student accommodation, care homes), and hospitals 18 metres or more in height and will apply to the complete wall assembly and certain attachments to the external wall, including balconies and solar panels.

5 **Consultation**

5.1 The Welsh Government consultation provided proposals to ban combustible cladding on all new residential buildings (flats, student accommodation, care homes) over 18m in height through amendments to the Building Regulations.

5.2 The consultation ran between 19 July and 13 September and generated 71 responses from a variety of different sectors. There was generally strong support for the proposed ban on combustible cladding systems.

5.3 The consultation proposed that the ban would apply to residential building such as blocks of flats, student accommodation and care homes as these present the greatest risk to life. The consultation asked respondents if other buildings should also be covered by the ban; these included hospitals, hotels, offices and a variety of other uses. In line with the comments from consultees, the ban will include hospitals, however, in line with expert advice it is considered unnecessary to apply the ban to buildings which adopt a simultaneous evacuation strategy, such as offices.

5.4 The ban will only apply to existing buildings (blocks of flats, student accommodation, care homes and hospitals) where building work is being carried out and which falls within the scope of the Building Regulations, unless the building works have started on site or an initial notice, building notice or full plans has been deposited and work has started on site within a period of 8 weeks.

5.5 Under the 1984 Act the Welsh Ministers must consult with the Building Regulations Advisory Committee for Wales prior to any amendments or introduction of new policy.

5.6 A BRACW meeting was held prior to the consultation and the laying of the draft regulations. Each area of the consultation proposals and the responses were presented and discussed. BRACW members were in agreement with the outcome of the consultation and the decisions made in relation to the proposals to be taken forward, detailed within this Explanatory Memorandum, and those where the decision was made not to take forward proposals.

6 Guidance

6.1 The Welsh Ministers will issue a Circular to explain how the 2010 Regulations have been amended
https://gov.wales/building-regulations-circulars

5. Regulatory Impact Assessment

5.1 A regulatory impact assessment has been carried out (please see **Part 2**) and published in respect of the proposed amendments to the 2010 Regulations.

PART 2 – Regulatory Impact Assessment

7 Options

Implement Legislation to ban combustible materials in cladding systems on high-rise residential buildings in Wales

7.1 The Welsh Government has powers under the Building Act 1984 ("the 1984 Act") to make building regulations for a number of purposes with respect to the design and construction of buildings and includes securing the ***health, safety, welfare and convenience*** of persons in and about buildings.

7.2 Following the Grenfell Tower fire in June 2017, the emerging "Hackitt report' makes recommendations for significant changes in the treatment of high risk residential buildings of 10 storeys or more from their construction through to occupation.

7.3 The proposal to amend the Building Regulations 2010 in order to ban combustible materials in cladding systems on high-rise residential buildings in Wales will meet the required changes needed in the treatment of high risk residential building, making them safe and preventing the spread of fire.

7.4 The ban will remove for buildings in scope the discretion to use current approaches which allow them demonstrate compliance utilising methods which are open to interpretation. It will also leave no room for doubt as to what is suitable for use on external walls of buildings 18m or more in height. The ban, by default, will also remove the option of undertaking an assessment of the performance of an external wall system in lieu of tests for buildings in scope

8 Costs and Benefits

8.1 Adroit Economics have undertaken a Regulatory Impact Assessment, including a costs analysis of the implantation of the legislation.

Summary

8.2 This analysis assesses the impact of a proposed ban on the use of combustible materials in external wall systems and balconies in 18m+ residential buildings in Wales[1]. Policy proposals will only allow materials

1 Buildings in scope include flats, student accommodation, care-homes and schools with accommodation. Hospitals are included within the ban however for the purposes of the impact assessment it has been concluded that no private hospitals include residential accommodation in buildings over 18m and that all public hospitals are already subject to an effective ban in that the policy requirement for funding is that combustible cladding is not to be used in buildings over 2 storeys)

that are A2-s1, d0 rated[2] (elsewhere referenced as A2 rated) and above (subject to exemptions[3]).

8.3 There are estimated to be a total of 10 to 20 cladding/façade projects on 18m+ residential buildings in Wales per annum. The projects include facades on the exterior of new buildings, façade replacements on existing buildings and retrofitting cladding to existing buildings. Most of the projects are on either blocks of flats or student accommodation. In addition, each year an estimated 2 to 3 of the new build 18m+ residential buildings will also have balconies.

8.4 The policy option is considered against the counterfactual 'Do Nothing' option under which there would be no ban on the use of combustible materials in external wall systems and balconies

8.5 Under the counterfactual, an estimated 15%-30% of projects are using non-A rated components in the facades[4][5]. In addition, an estimated 40%-90% of balconies on new buildings are using non-A rated components. These projects would be required to use A rated components under the policy option.

8.6 The 10 year NPV cost of the policy option to business is estimated to be £1.8m - £2.7m (central estimate of £2.2m). This is broken down as follows:

8.7 One-off transition cost of £70,000 as industry familiarises itself with the changes

8.8 Equivalent annual net direct compliance costs to developers and owners of £210,000-£310,000 (central estimate of £260,000)[6].

2 The minimum performance of A2,s1-d0 has been selected over the current standard of A2,s3-d2 because we believe that no A2 rated facade materials achieve any worse performance for smoke and droplets than s1 or d0 respectively. Consequently, we propose to include the minimum standard of A2,s1-do in the new legislation

3 See Annex A

4 PRP Estimate

5 This is based on a risk-based approach following Grenfell and English ban legislation

6 Since the ban on non-A rated external wall components in England was introduced the cost difference between A2 and non-A2 has changed significantly for several components. This assessment for Wales uses the latest prices (as at 2019). For comparison purposes only, the policy option costs for Wales have also been assessed using the 2018 prices quoted prior to the cladding ban in England. On this basis, the equivalent annual net direct cost to developers and owners is estimated to be £280,000-£430,000 (central £360,000). Transition costs remain the same.

Buildings in scope and number of cladding projects

8.9 The analysis costs the following building types (all over 18m): blocks of flats, student accommodation, residential care homes and dormitories in boarding schools.

Figure 4.1: Current stock and buildings over 18m		
Building Type	Buildings over 18m	Notes
Residential	136	Figures provided by Welsh Assembly Government
Student Accommodation	80	based on pro-rata of England estimate
nursing homes	2	UK figure from CMA market report apportioned to Wales using population. Assume 1% are in buildings over 18m
schools (residential accommodation)	8	based on pro-rata of England estimate

Estimated number of cladding projects

8.10 The analysis considers 3 types of projects, which involve external wall facades that would be subject to building regulations – new buildings; façade replacements and retrofitting cladding onto existing buildings.

8.11 In total the estimated number of external cladding/façade projects per annum for buildings over 18m in Wales are:

- to 12 blocks of flats per annum
- 4 to 9 student accommodation buildings per annum
- For residential care homes and dormitories of boarding schools, because of the limited number of buildings that are over 18m, there is estimated to be only 2 to 3 external cladding projects in total over the 10-year period.

Estimated number of new residential buildings with balconies

8.12 There are estimated to be 2 to 3 new residential buildings over 18m in Wales built with balconies per annum

Policy options assessed

One policy option is assessed, against the counterfactual

- **Option 1 – Counterfactual / Do Nothing**. Under this option there would be no ban on the use of combustible materials in external wall systems. For this option, the undertaking of BS8414 tests and

assessments in lieu of tests would still be a permitted route to demonstrate compliance of an external wall build up with the Regulations.

- **Option 2 – Policy Option – Ban combustible materials in external wall systems of the buildings in scope**. In this option, changes would be made to Building Regulations which would ban the use of combustible materials in external wall systems and balconies. This analysis assumes that blocks of flats, student accommodation, registered care premises, hospitals, and dormitories in boarding schools (all over 18m) are in scope for the ban. This option would require that materials used in external wall systems and balconies require a minimum performance of Class A2 or above under the relevant European classification system set out in BS EN 15301. This analysis assumes that some key materials which are unable to meet the requirement are exempted. **AM to check Annex B - exemptions

Costs and Benefits of each option

Costs Option One: Do Nothing

8.13 The costs of option 1 reflect the total cost of the construction industry continuing to use a mixture of A1, A2 and non-A rated materials in construction projects relating to cladding and balconies. Over 10 years, the present value of discounted costs is estimated to total £225m-£332m. These costs are discounted at the Green Book discount rate of 3.5% over 10 years. In this option a proportion (15%-30%) of projects[7] are estimated to use non-A rated materials. There is also a significant proportion of projects estimated to voluntarily use A2 rated materials and above (70%-85%)[8]. In the do nothing scenario, balconies will continue to use timber decking and joists, which are non-A rated materials. 90% of galvanised steel balconies use non-A rated materials, while for concrete balconies this number is 40%. Only 55%-60% of residential buildings have balconies.

Costs Option Two: A2 rated and above

8.14 The most significant costs of this option are for the cladding and balcony costs for residential buildings over 18m, with student accommodation being the second biggest contributor. The assessment is based on the following estimated number of buildings that will be either installing a façade as part of a new build or refurbishing the façade of an existing building (over a 10-year period):

- 80-100 residential buildings (over 18m)
- 50-80 student accommodation buildings (over 18m).

8.15 The analysis assumes that a proportion of building projects already being carried out in the counterfactual is meeting A2 or even A1 fire standards. In this option, there would be no non-A rated systems installed, owing to the ban. It is assumed that the same proportion of

7 Projects are defined as new build, retrofit of cladding and refurbishments of cladding.
8 Based on estimates provided by the Adroit Economics Consortium.

projects would use A1 rated systems (20%-35%) as in the counterfactual. This is for reasons other than this specific policy (e.g. insurance requirements). A higher proportion would use A2 rated systems under this preferred option (65%-80%) compared to the counterfactual (35%-50%). See Figure 4.2 below:

Figure 4.2: Proportion of A1, A2 and Non-A rated depending on option		
	Option 1	Option 2
A1	20%-35%	20%-35%
A2	35%-50%	65%-80%
Non-A rated	15%-30%	0%

8.16 There are significant differences in the costs per building for refurbishment/retrofit for A2 or above compared to the counterfactual[9].

8.17 The net difference in the costs per building of A2 rated systems compared to non-A rated (counterfactual) differs depending on if it is new build or refurbishment/retrofit. This reflects costs to developers/owners and includes on-costs[10].

Figure 4.3: Cost per building (non-A into A2) option 2 compared to counterfactual			
	Low building	Mid building	High building
New build – Brick	£ 39,000	£ 102,100	£ 150,000
New build – cladding system	£ 20,000	£ 51,000	£ 75,000
Refurbishment – cladding system	£ 19,000	£ -	£ -

8.18 In terms of balconies, the impact per building will depend on the types of balcony installed and the number per building. There are three types of balcony that have been included; recessed galvanised steel (40%), projected galvanised steel (40%) and recessed concrete (20%).

Figure 4.4: Proportion of balcony types depending on option		
	Option 1	Option 2
Recessed Galvanised steel	40%	25%
Projected Galvanised steel	40%	40%
Recessed Concrete	20%	35%

8.19 The cost per balcony ranges from £325-£975, as timber decking and joists are replaced. Please see Annex C a full break down of costs per

9 We used three reference buildings to obtain detailed cost estimates for these different systems. The costs are based on 3 reference buildings of 8 storeys (Low), 15 storeys (Medium) and 21 storeys (High).

10 On-costs include design and development contingencies, contractor preliminaries, professional fees and contractor profits and overheads.

balcony by building type. This means the cost of mandating newly built balconies have A2 or above materials will have an equivalent annual net cost of £120,000-£160,000, compared to the counterfactual.

8.20 For the preferred option as a whole, over 10 years, the present value of discounted costs is estimated to total £227m-£334m. These costs are also discounted at the Green Book discount rate of 3.5% over 10 years. The total transition costs are estimated to be £70k, reflecting the time taken by members of industry to understand the change in policy. The equivalent annual net direct cost to developers and owners of option two over option one is £209k-£311k (central £260k).

8.21 For option 2 the total social cost is £173m-£259m (central £216m), and the net social EANC is £165k-£243k (central £204k). These social costs do not include pure economic transfers, such as VAT.

Figure 4.5: Summary cost table (Business Costs)

	Present value costs (10 years) £m		
	Option 1	Option 2	Net cost
Transition costs	-	0.07	0.07
Total costs	225.3-331.6 (central estimate 278.4)	227.0-334.2 (central estimate 280.6)	1.7-2.8 (central estimate 2.2)
	Equivalent annual cost £m		
Annual cost	26.2-38.5 (central estimate 32.3)	26.4-38.8 (central estimate 32.6)	0.2-0.3 (central estimate 0.3)

Non-Monetised Impacts

8.22 Some of the consultation responses raised the issue of unintended consequences of the ban, in particular a potential loss of space. The reason for this is that A1 rated materials like mineral wool insulation are likely to be bulkier. We have worked with consultants to analyse the potential impact of this. Please see the annex C for further details.

Benefits

8.23 The main benefits that derive from option 2 relative to the counterfactual are that it will make routes to compliance clearer. The experience of Grenfell and from the numbers of high rise residential buildings which have subsequently been discovered to have combustible cladding has revealed that the provisions in the Building Regulations' guidance were not being followed. The purpose of the ban is to make clear exactly what materials can and cannot be used. This will make compliance easier to identify for designers, installers and building control bodies.

8.24 Better compliance will ensure that fire safety risks are better managed and that an event like Grenfell cannot happen in the future. Therefore, this policy should also lead to people feeling safer in their homes and provide reassurance. We have not monetised these benefits.

8.25 Another consequence of the ban will be to rule out the opportunity to use assessments in lieu of tests for external wall systems which may have led to inappropriate approaches to the design and installation of external wall systems incorporating combustible cladding. A clear ban will rule this out.

8.26 By explicitly banning most non-A materials there will be greater clarity about what is permitted to be used on site and in the construction process. This clarity makes it harder for the incorrect materials to be procured and then used in the construction process without being noticed, reducing unintentional non-compliance.

8.27 There are minor cost savings for the design stage of building construction. This is because less time is spent on considering and deciding between the different types of materials and external wall systems, now that there are fewer options to choose from. The costs of undertaking whole system wall tests (BS 8414 tests) will also be avoided.

Risks and Assumptions

8.28 The costs of the policy options are estimated using a number of assumptions. The key areas where assumptions are made are:

- Forecast stock and rate of new build of blocks of flats, student accommodation, registered care premises, hospitals and dormitories in boarding schools over 18m.
- Number and type of external cladding/insulation projects that are installed each year.
- The proportion of buildings and flats that have balconies installed.
- The proportion of projects and balconies that already meeting A1 rating and above and A2 rating and above.
- Differences in the costs per building for refurbishment/retrofit and new build for A1, A2 and non-A rated systems.

8.30 The costs of particular materials such as brick and ACM facades are based on detailed cost estimates produced by the Adroit Economics consortium. These are obtained from a sample of quotes from industry. See Annex A for further details

8.31 We do not expect the ban to have a significant impact on housing supply. As indicated above, a significant proportion of new projects are already using materials which would meet the new requirements. For those which are affected, the extra costs incurred will be small in proportion to the total build cost. See Annex A for per building costs.

8.32 As indicated above, there is a risk that additional space required will add cost. However, after discussions with the Adroit Economics Consortium, we have concluded that outward adjustments to the external wall can be made in most instances. Significant costs are only likely to occur where space constrained buildings already have planning permission or have started on site. Overall, the costs due to space considerations are likely to be modest. More detailed consideration of potential space issues can be found in the annex.

8.33 The Price Base Year and the Present Value Base Year are 2019 and the discount rate of 3.5% is in line with Green Book guidance.

8.34 There is a degree of uncertainty about the estimates and the assumptions. Sensitivity analysis and production of high and low estimates has been carried out to reflect this uncertainty.

9 Competition Assessment

9.1 The main markets affected by proposed changes to Part B (Fire Safety) of the Building Regulations will be the supply chains producing the materials used in the building of the wall assembly, including the inner leaf, insulation and the façade or cladding on high rise residential buildings.

9.2 The proposed changes to regulations will mean that building contractors will have to comply with more stringent regulations in respect to the ban of combustible materials in high rise building.

9.3 It is envisaged that the changes will not have a significant cost impact as suppliers move to provide material that will comply with BS EN 13501. The cost impact on construction companies is envisaged as being low risk, as new build requirements are low and the cost will likely be passed to the consumer through land costs or eventual ownership. For refurbishment requirements, where appropriate, again it is envisaged the cost impact will be low.

10 Impact Assessments

Equality, diversity, inclusion and human rights

10.1 It is envisaged that the proposals will have no impact on human rights. There will also be no additional burdens on the justice system. It is not envisaged that the proposal will have any negative impact on equality in Wales (including equality issues concerning age, disability, faith, gender, race, sexual orientation or transgender), or a negative impact on diversity, social inclusion or human rights, including the rights of children.

Children's Rights Impact Assessment

10.2 It is envisaged that the proposals will have no impact on the rights of children.

Welsh language

10.3 It is not envisaged that the proposals will have an impact on the Welsh language.

Privacy Impact Assessment

10.4 A Privacy Impact Assessment (PIA) has not been undertaken as no personal information, related to groups or individuals, is collected, stored, protected, shared and managed as a consequence of the policy proposals.

Post Implementation Review

10.5 The Department will seek feedback from building control bodies responsible for checking compliance to monitor the operation of the ban. The Department will also use bodies such as the Building Regulations Advisory Committee for Wales to advise on the impacts of the ban.

Annex A: Cost methodology

The equivalent annual cost is calculated by finding the net cost between option 1 and option 2.

The cost of each option is calculated by using the number of building projects with cladding in a year, and multiplying that by the cost of materials for that type of project. The number of projects is a function of the rate of new build and the retrofit/refurbishment rate of the current stock. The cost of materials depends on the size of the building and type of façade. Costs will also depend on whether the building is using spandrel panels or has balconies.

Annex B: Exemptions

Exemptions are:

EPDM (e.g. for sealing windows to external lining board in rainscreen facades)

Vapour barriers

Seals, gaskets and thermal breaks

It should be noted that additional fire safe materials are emerging but are not yet widely available.

A detail list of exemptions is compiled below.

Product	**Definition**
Membranes	Membranes is a common term used in the industry and does not need any specific definition
Roofing materials	Components of a roof that extends to the junction of the external wall
Internal decorative wall finish	Internal wall finish - inner most surfaces directly exposed to the interior of the building on the external wall
Windows	Windows made out of glass and transparent and associated window frame including glazing, features, fixings and ironmongery
Doors	Doors and door sets located on the external wall including associated frames and ironmongery.
Thermal breaks,	Thermal breaks where they are necessary to prevent thermal bridging and meet the requirements of Schedule 1 Paragraph L.
Cavity trays	Cavity trays as part of a masonry wall systems including two leaves of masonry construction
Seal, fixings, gaskets, sealants and backer rod.	Seal, fixings, gaskets, sealants and backer rod
Electrical installations	All electrical installations as defined in the Building Regulation already.
Fire stopping and Intumescent Materials	Fire stopping and intumescent materials where they are necessary to meet the requirements of paragraph B of Schedule 1
Insulation used under ground location	Insulation used where it is located underground.

Annex C: A2 external wall system cost breakdown

Using consultants and empirical data we have estimated the cost of the attributes of the three reference buildings and their make-up, including ACM coverage, European fire rating type and external wall system materials. The costs reflect different architectural design methods, and take into account spandrel panels where appropriate. The costs will differ depending on the façade (brick or ACM) and the type of building project (new build or retrofit/refurbishment). See table below for the cost per building of using A2 instead of non-A rated materials:

Figure AC1	low building	mid building	high building
New build – Brick	£ 39,359	£ 102,308	£ 150,453
New build - Cladding system	£ 19,679	£ 51,154	£ 75,227
Refurbishment - Cladding system	£ 19,493	£ -	£ -

Balconies

Balconies will be affected by this policy. New build residential projects with balconies will no longer have non-A rated materials, resulting in more expensive decking and joists in some buildings. Because not all flats in a building have balconies, the cost per building will depend on the size of that building. See below for the cost difference of having A2 or above standard materials in balconies compared to the counterfactual, including on-costs. Recessed Galvanised steel is the most expensive type.

Additional cost per building of balconies being A2 compared to the counterfactual

Figure AC2: Low Building			
Low Building	**low cost**	**mid cost**	**high costs**
Recessed Galvanised Steel	£ 70,095	94,476	£ 118,857
Projected Galvanised Steel	£ 64,000	91,429	£ 118,857
Recessed Concrete	£ 39,619	39,619	£ 39,619

Figure AC3: Medium building			
	low cost	**mid cost**	**high costs**
Recessed Galvanised Steel	£ 96,922	130,634	£ 164,346
Projected Galvanised Steel	£ 88,494	126,420	£ 164,346
Recessed Concrete	£ 54,782	54,782	£ 54,782

Figure AC4: Tall Building			
	low cost	**mid cost**	**high costs**

Recessed Galvanised Steel	£ 140,933	189,953	£ 238,973
Projected Galvanised Steel	£ 128,678	183,825	£ 238,973
Recessed Concrete	£ 79,658	79,658	£ 79,658

Timber building

The policy prohibits the use of timber materials in the external wall of buildings within the scope. Currently the number of projects above 18m in height where load bearing structural timber elements are used remains relatively small. The effect of the ban on the use of engineered timber remains limited short term. There is however a growing number of buildings above 18m in height using engineered timber as part of their structure. Engineered timber offers an alternative to traditional methods of construction in building within the scope of the policy. It is therefore likely to slow down the use of engineered timber in future development in the medium to long term.

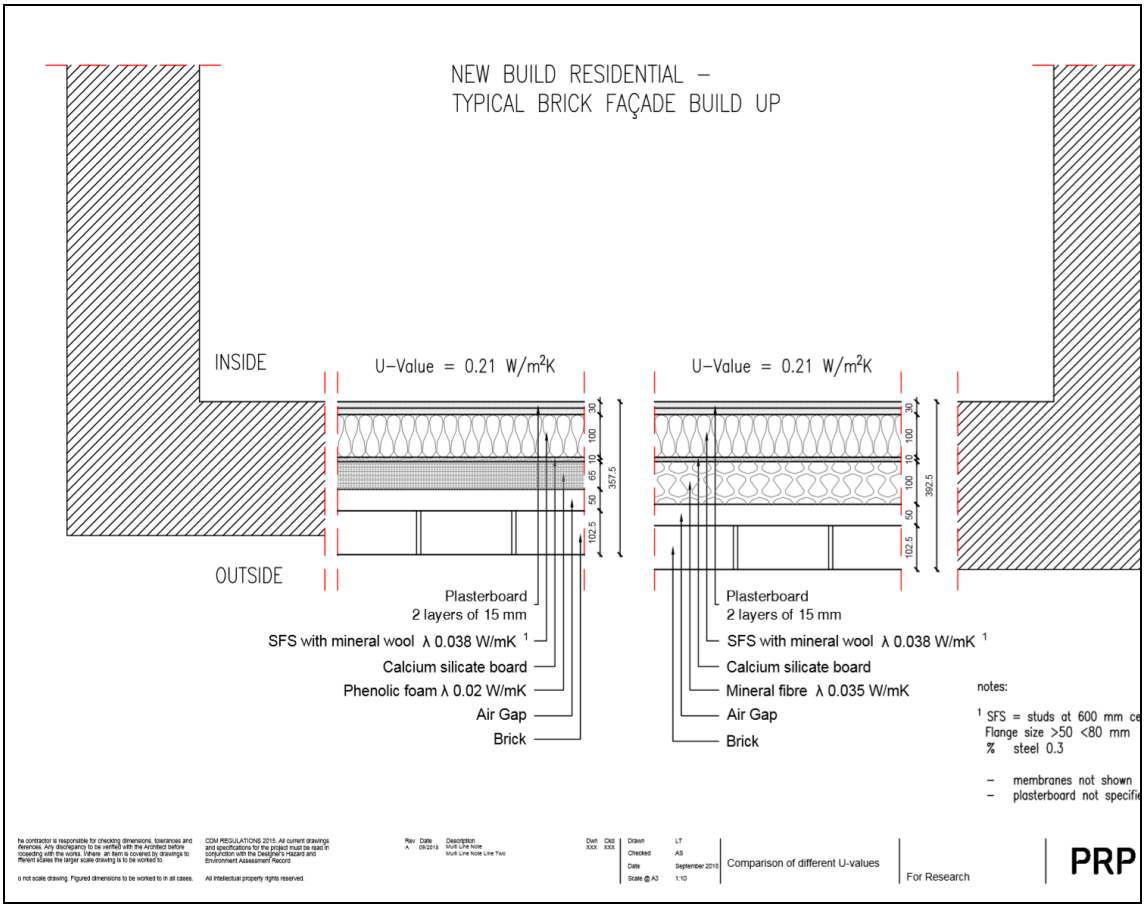
Impact on space requirements

As walls get thicker, ties, brackets, fixings, flashings and structural supports all get deeper which adds costs. This adds weight, along with the thicker insulation, which may impact in the foundation depth and size. However, these costs are estimated to be modest, and therefore it was considered not proportionate to monetise these.

To understand the potential impact of bulkier materials as a consequence of higher fire safety ratings, two drawings of a wall build up for brick and rainscreen ACM facades have been produced to show the impact on wall thickness of changing phenolic insulation to mineral fibre. These drawings can be found below. For both of these, the U value is typical for a new build residential building. If a building is being designed, then any extra wall thickness will result in the wall growing outwards into the external space. The drawings in the annex and Table 9 below show that the impact is minimal.

Figure AC5:: Impact of Mineral fibre on wall thickness			
	Phenolic foam	Mineral Fibre	Differences
New build – Brick façade	357.5mm	392.5mm	35mm
New build – Rainscreen ACM façade	293mm	333mm	40mm

Figure AC5 above indicates that for a new build brick façade, an additional 35mm of space would be needed whereas for a rainscreen ACM façade an additional 40mm would be needed from using Mineral fibre insulation rather than phenolic foam. We have concluded that only where a site is very constrained would the impact potentially affect the internal space, and these cases are expected to be rare.



Annex D: Defining the Counterfactual

The analysis assumes that a proportion of building work related to facades already carried out in the counterfactual is meeting A2 or even A1 fire performance standards. For instance, in the counterfactual it is assumed that around 20%-35% are built to an A1 standard and 25%-50% are built to an A2 standard. This is for reasons other than this specific policy (e.g. previous building regulations advice, developer risk, mortgage or insurance requirements).

Where a standard of A2+ is required (Option 2) it is assumed that the same proportion of building will be built to A1 as in the counterfactual. The assumptions for flats are set out below:

Figure AD1: Counterfactual assumptions – Facades		
	Option 1 (counterfactual / do nothing)	Option 2 (Policy)
A1	20%-35%	20%-35%
A2	35%-50%	65%-80%
Non-A rated	15%-30%	0%

Under the counterfactual, the majority of balconies constructed using a galvanised steel structure will include combustible components, such as timber decking.

Figure AD2: Counterfactual assumptions – Balconies		
	Option 1 (counterfactual / do nothing)	Option 2 (Policy)
Recessed Galvanised Steel		
A2+	10%	100%
Non-A rated	90%	0%
Projected Galvanised Steel		
A2+	10%	100%
Non-A rated	90%	0%
Recessed Concrete		
A2+	60%	100%
Non-A rated	40%	0%

Annex E: Cost changes since the England ban

Facades

Construction cost changes were estimated across three reference buildings, representing different height buildings[11].

The net difference in the costs per building of A2 rated systems compared to non-A rated (counterfactual) differs depending on if it is new build or refurbishment/retrofit. This reflects costs to developers/owners and includes on-costs

Figure AE1: Cost per building (non-A into A2) option 2 compared to counterfactual				
		Low building	**Mid building**	**High building**
New Build – Brick	Scenario 1 & 2	£ 40,000	£ 100,000	£ 150,000
New Build – Cladding System	Scenario 1 & 2	£20,000	£50,000	£80,000
Refurbishment – Cladding System	Scenario 1 (2019 prices)	£20,000	-	-
	Scenario 2 (2018 prices)	£70,000	£40,000	£50,000

Balconies

Balconies will also be affected by a ban on combustible material and the impact per building will depend on the types of balcony installed and the number per building. We have assessed the impacts for the 3 main types of balcony.

Figure AE2: Types of balcony assessed		
	Option 1 (counterfactual)	**Option 2 (Policy)**
Recessed Galvanised steel	40%	25%
Projected Galvanised steel	40%	40%
Recessed Concrete	20%	35%

We have assessed the cost differences for A2 compared with the counterfactual for three types of balconies. We have estimated low and high cost estimates for each of the balcony options – The mid cost difference for the different building types are

Figure AE3: Balcony cost scenarios			
	Low building	**Medium building**	**High building**
Recessed Galvanised steel	90,000	130,000	190,000
Projected Galvanised steel	90,000	130,000	180,000

11 The three reference buildings were developed to support the MHCLG assessment - 8 storeys (Low), 15 storeys (Medium) and 21 storeys (High). Design specifications were prepared by PRP and costs assessed by RLF. The costs reflect the cost to the owner so include on-costs and VAT.

Recessed Concrete	40,000	50,000	80,000

Assessment of Fire Performance Costs

We have assumed that under the policy option, the façade is not required to be tested since the components are A2 rated.

Annex F: Impact calculations

Average Annual Equivalent Costs

The equivalent annual net direct cost to developers and owners is estimated to be £210,000-£310,000 (central £260,000).

	Total Costs (10-year NPV)			Equivalent Annual Net Cost (EANDCB)		
External Wall Façade - Costs	Low	Mid	High	Low	Mid	High
Option 1 - Counterfactual	208.20	251.41	294.63	24.19	29.21	34.23
Option 2 - Policy Option: A2+	208.90	252.37	295.85	24.27	29.32	34.37
Balconies installed on New Build Residential - Costs						
Option 1 - Counterfactual	17.10	27.02	36.93	1.99	3.14	4.29
Option 2 - Policy Option - A2+	18.12	28.22	38.32	2.10	3.28	4.45
Transition Costs						
Option 2	0.07	0.07	0.07	0.01	0.01	0.01
Net Policy Costs						
Option 2 - Net Policy Costs	1.80	2.24	2.68	0.21	0.26	0.31

Figure 9.1: Net Policy Costs (£m)

For comparison purposes only, net policy costs using pre-England ban costs

The equivalent annual net direct cost to developers and owners is estimated to be £280,000-£430,000 (central £360,000).

Figure 8.2: Net Policy Costs (£m) based on pre-England ban units costs

	Total Costs (10-year NPV)			Equivalent Annual Net Cost (EANDCB)		
External Wall Façade - Costs	Low	Mid	High	Low	Mid	High
Option 1 - Counterfactual	135.59	167.52	199.46	5.75	19.46	23.17
Option 2 - Policy Option: A2+	137.10	169.57	202.03	15.93	19.70	23.47
Balconies installed on New Build Residential - Costs	Low	Mid	High	Low	Mid	High
Option 1 - Counterfactual	13.13	20.78	28.43	1.53	2.41	3.30
Option 2 - Policy Option - A2+	13.92	21.72	29.52	1.62	2.52	3.43
Transition Costs						
Transition Costs - Option 2 & 3	0.07	0.07	0.07	0.01	0.01	0.01
Net Policy Costs						
Option 2 - Net Policy Costs	**2.38**	**3.06**	**3.74**	**0.28**	**0.36**	**0.43**

SL(5)486 – The Non-Domestic Rating (Small Business Relief) (Wales) (Amendment) Order 2019

Background and Purpose

This Order amends the Non-Domestic Rating (Small Business Relief) (Wales) Order 2017 ("the 2017 Order"). The 2017 Order provides for a non-domestic rate relief scheme ("the scheme") which applies to certain categories of hereditament.

The effect of the amendments made by this Order is to ensure that hereditaments which are used exclusively for automatic teller machines do not benefit from small business rates relief under the scheme.

This is as a result of the ruling of the High Court in *Cardtronics UK Limited v Pembrokeshire County Council* [2018] EWHC 1167 (Admin) that automatic teller machines were not "electronic communication apparatus" within the meaning of the Non-Domestic Rating (Small Business Relief) (Wales) Order 2015, and were therefore eligible for small business rates relief.

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.

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 interst to the Assembly

While the Explanatory Memorandum to this Order correctly refers to the enabling power in section 43(4B)(b) of the Local Government Finance Act 1988 ("the 1998 Act"), paragraph 10 of the Explanatory Memorandum also refers to the enabling power in paragraph 2(8) of Schedule 6 to the 1988 Act, which does not seem to be relevant to this Order.

Implications arising from exiting the European Union

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

Government Response

A government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
8 January 2020

WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

RATING AND VALUATION, WALES

The Non-Domestic Rating (Small Business Relief) (Wales) (Amendment) Order 2019

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Non-Domestic Rating (Small Business Relief) (Wales) Order 2017 (S.I. 2017/1229 (W. 293)) ("the 2017 Order"). The 2017 Order provides for a non-domestic rate relief scheme ("the scheme") which applies to certain categories of hereditament.

The effect of the amendments made by this Order is to ensure that hereditaments which are used exclusively for automatic teller machines do not benefit from small business rates relief under the scheme.

This follows the ruling of the High Court in *Cardtronics UK Limited v Pembrokeshire County Council* [2018] EWHC 1167 (Admin) that automatic teller machines were not "electronic communication apparatus" within the meaning of the Non-Domestic Rating (Small Business Relief) (Wales) Order 2015 (S.I. 2015/229 (W. 11)), and were therefore eligible for small business rates relief.

This Order amends article 2 of the 2017 Order by inserting a new definition of an "automatic teller machine" and includes that definition within the definition of "excepted hereditament". This means that automatic teller machines will not be eligible for small business rates relief with effect from 1 April 2020.

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 Local

Government Strategic Finance Division, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

RATING AND VALUATION, WALES

The Non-Domestic Rating (Small Business Relief) (Wales) (Amendment) Order 2019

Made *18 December 2019*

Laid before the National Assembly for Wales *20 December 2019*

Coming into force *1 April 2020*

The Welsh Ministers make the following Order in exercise of the powers conferred on the National Assembly for Wales by section 43(4B)(b) of the Local Government Finance Act 1988(**1**) and conferred on the Secretary of State by sections 143(1) and 146(6) of that Act and now vested in them(**2**).

Title and commencement

1.—(1) The title of this Order is the Non-Domestic Rating (Small Business Relief) (Wales) (Amendment) Order 2019.

(2) This Order comes into force on 1 April 2020.

(**1**) 1988 c. 41. Subsection (4B) of section 43 of the Local Government Finance Act 1988 was inserted by section 61(1) and (3) of the Local Government Act 2003 (c. 26). The functions of the National Assembly for Wales under section 43(4B) of the Local Government Finance Act 1988 were transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

(**2**) The functions of the Secretary of State under sections 143(1) and 146(6) of the Local Government Finance Act 1988 so far as exercisable in relation to Wales transferred to the National Assembly for Wales by virtue of article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). The functions of the National Assembly for Wales were subsequently transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

Amendments to the Non-Domestic Rating (Small Business Relief) (Wales) Order 2017

2.—(1) The Non-Domestic Rating (Small Business Relief) (Wales) Order 2017(**1**) is amended as follows.

(2) In article 2—

(a) in the appropriate place insert the following definition—

""automatic teller machine" ("*peiriant arian awtomatig*") means an automated facility providing self-service access to a range of banking services;";

(b) in the definition of "excepted hereditament" ("*hereditament a eithrir*"), after paragraph (f) insert—

"(g) which is used exclusively for an automatic teller machine;".

Rebecca Evans
Minister for Finance and Trefnydd, one of the Welsh Ministers

18 December 2019

(**1**) S.I. 2017/1229 (W. 293).

Explanatory Memorandum to the Non-Domestic Rating (Small Business Relief) (Wales) (Amendment) Order 2019

This Explanatory Memorandum has been prepared by Local Government Strategic Finance 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 Non-Domestic Rating (Small Business Relief) (Wales) (Amendment) Order 2019. I am satisfied the benefits outweigh any costs.

Rebecca Evans
Minister for Finance and Trefnydd
20 December 2019

PART 1 – EXPLANATORY MEMORANDUM

Description

1. Non-domestic rates (NDR) are a local tax which raise revenue on properties used for non-domestic purposes. These properties include uses such as parking, advertising rights, telecommunications masts and automatic teller machines (ATMs). It is estimated that non-domestic rates in Wales will generate over £1 billion (net) in 2019-20. All the revenue is distributed to local government to help fund local services in Wales.

2. The Small Business Rates Relief (SBRR) scheme was introduced to provide support to small businesses. It excludes certain types of property from eligibility on the grounds that they do not, in themselves, constitute 'small businesses'. The exclusions include car parks, advertising rights (eg billboards) and electronic communications apparatus (ECA).

3. The exclusion of ECA covers a wide range of equipment, including ATMs. The exclusions to the scheme were considered as part of the consultation on the permanent SBRR scheme introduced on 1 April 2018. Such equipment was also excluded from the previous temporary schemes which the permanent scheme replaced. The exclusion applies to ATMs which are identified and valued separately from other property for rating purposes. Many ATMs are not valued separately but are included within the valuation of the building of which they are part (eg banks and shops). The exclusion does not affect the eligibility of such host properties for rates relief.

4. In January 2018, a rating agent acting on behalf of an ATM ratepayer, Cardtronics UK Ltd, brought a legal challenge against a local authority for the non-award of SBRR in relation to its ATM sites in the county. Cardtronics UK Ltd is part of a multi-national company which operates ATMs at sites across the UK.

5. The High Court concluded that ATMs were not ECA and were not excepted hereditaments for the purposes of SBRR. This has created confusion as to whether ATMs, and potentially other ECA, are eligible for SBRR. It also conflicts with the policy intention behind the scheme which was developed for the purpose of supporting small businesses.

6. This statutory instrument, the Non-Domestic Rating (Small Business Relief) (Wales) (Amendment) Order 2019 (the 2019 Order), clarifies the treatment of ATMs in respect of SBRR. It amends the Non-Domestic Rating (Small Business Relief) (Wales) Order 2017 (the 2017 Order), to clarify that ATMs are not eligible for SBRR, in line with the purpose of the scheme.

Matters of special interest to the Constitutional and Legislative Affairs Committee

7. No matters of special interest to the Constitutional and Legislative Affairs Committee have been identified.

Legislative background

8. The powers of Welsh Ministers to make an order providing relief for certain ratepayers are contained in section 43(4B)(b) of the Local Government Finance Act 1988. One such Order is the 2017 Order.

9. Article 2 of the 2017 Order clarifies the meaning of an excepted hereditament for the purposes SBRR. Amending article 2, through the 2019 Order, provides clarity on the treatment of ATMs in respect of SBRR.

10. The powers of the Secretary of State in paragraph 2(8) of Schedule 6 to the 1988 Act were transferred, in relation to Wales, to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999. The Local Government Finance Act 1988 is an enactment referred to in Schedule 1 and transferred by Article 2 of that Order. The functions of the National Assembly for Wales were subsequently transferred to the Welsh Ministers under section 162 and paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

Purpose and intended effect of the legislation

Primary purpose of the legislation

11. A form of SBRR has been in place in Wales since 2008. Since its inception, it has been designed to provide support for occupied small business premises. It is established Welsh Government policy to exclude separately valued ATMs from eligibility for SBRR.

12. The primary purpose of this statutory instrument is to revise the criteria for eligibility for SBRR, to clarify that separately valued ATMs are not eligible for SBRR, in line with the long-standing policy position. The instrument would not affect the eligibility of small businesses which meet the criteria for SBRR.

13. This would have the effect of amending the 2017 Order and make it clear that such ATMs are not eligible for SBRR from 1 April 2020, regardless of whether they are considered to be electronic communications apparatus.

The Impact on ATMs and SBRR

14. Following the court ruling, certain ATMs may be eligible for SBRR. This has resulted in increased costs for the scheme and reduced the contribution these properties make to the non-domestic rates pool. Importantly, it means resources intended to support small businesses are diverted elsewhere.

15. As a result of the ruling, it is estimated that around 350 separately valued ATMs could be eligible for SBRR, increasing the cost of the Small Business Rates Relief by almost £700,000. The instrument would exclude these ATMs in Wales from relief. Separately valued ATMs were not previously eligible for relief and may have seen a reduction in their NDR bill as a result of the court ruling. The effect of the legislation is to confirm the intended treatment of such property.

16. The 2019 Order would not preclude ATMs from benefitting from other forms of rates relief if this is considered appropriate or necessary. For example, where an individual ATM is considered to be of particular community value, a local authority may make use of its share of the £2.4m additional funding provided by Welsh Government in 2019-20 for discretionary relief. Targeted relief for ATMs would represent more effective use of the available resources.

Consultation

17. A public consultation sought views on draft legislation. The technical consultation was launched on 18 September 2019 and closed on 30 October.

18. It asked stakeholders for views on the proposed order with respect to how the provisions could be administered and enforced.

19. The consultation was published on the Welsh Government website and was issued to the following organisations:

    - Members of the Welsh Ratepayers Forum
    - Welsh Retail Consortium
    - Federation of Small Businesses
    - Confederation of British Industry Wales
    - All local authorities
    - Welsh Local Government Association
    - Valuation Tribunal for Wales
    - Valuation Office Agency
    - Institute of Revenues, Rating and Valuation

20. Nine consultation responses were received. The breakdown of responses is as follows.

    - Five local authorities
    - Welsh Local Government Association
    - Two professional bodies
    - One individual

21. Respondents generally expressed appreciation for the clarity provided by the draft 2019 Order. Local authority responses raised the need for changes to be made by January 2020 at the latest to allow for processed to be adapted in time for 1 April 2020.

22. Around half of respondents commented on the impact on rural communities, with one respondent suggesting extended use should be made of discretionary relief for ATMs.

23. The purpose of the consultation was to gather views on the technical aspects of the draft 2019 Order. The policy position has been long-standing since a form of SBRR was introduced in 2008. The 2017 Order provides the basis for the permanent SBRR scheme introduced on 1 April 2018.

24. The consultation prior to the introduction of the permanent scheme referred to the exclusion of ATMs from eligibility for the relief. Following the consultation, ATMs were not considered small businesses and as such should not be eligible for SBRR.

25. The consultation on the 2019 Order and the summary of responses can be found at: https://gov.wales/non-domestic-rating-small-business-relief-wales-amendment-order-2019

Regulatory Impact Assessment

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

27. A Regulatory Impact Assessment has been conducted and is given in Part 2 of this document.

PART 2 – REGULATORY IMPACT ASSESSMENT

OPTIONS

Option 1 – Do nothing: accept the changes resulting from the High Court ruling and allow SBRR to be awarded for separately valued ATMs

No changes would be made to legislation and the effect of the court ruling would remain, allowing certain separately valued ATMs to be eligible for SBRR.

Option 2 – Legislative amendments to make it explicit that separately valued ATMs are not eligible for SBRR relief

The effect of amendments would be to confirm the long-standing policy position and separately valued ATMs would not be eligible for SBRR.

COSTS AND BENEFITS

The options have been costed using the latest available information.

Option 1 – Do nothing: accept the changes resulting from the High Court ruling and allow SBRR to be awarded for separately valued ATMs

Costs

The effect of making no change would be to increase the cost of the SBRR scheme on a permanent basis. For 2019-20, the cost of providing SBRR to separately valued ATMs is estimated to be almost £700,000. This would be a direct and recurring cost to the Welsh Government Budget.

Benefits

If eligible for SBRR, the operational costs for separately valued ATMs would be reduced.

Option 2 – Make legislative amendments to make it explicit that separately valued ATMs are not eligible for SBRR relief

Costs

This could result in increased rates bills for 350 separately assessed ATMs. There is a risk that excluding ATMs from eligibility for the relief might impact on the number and location of ATMs in Wales. This risk was considered and accepted prior to the introduction of the permanent scheme.

Benefits

Removing separately assessed ATMs from the SBRR scheme would ensure the relief supports small businesses as intended. It would reduce the overall cost of the scheme and increase the contribution to the NDR pool made by ratepayers.

This would result in additional revenue for local services and ensure rates relief for businesses is targeted more effectively.

The Order would also provide clarity for ratepayers and local authorities regarding eligibility for SBRR.

Competition Assessment

The Order has been scored against the competition filter test which indicated that there will be no detrimental effect on competition.

Post implementation review

The Welsh Government reviewed the Small Business Rates Relief Scheme before introducing the permanent scheme on 1 April 2018. We are continuing to develop the scheme and to monitor its impact.

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

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA/JM/5235/19

Lynne Neagle AM
Chair
Children, Young People and Education Committee

Llŷr Gruffydd AM
Chair
Finance Committee

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee

7 January 2020

Dear Chairs,

I am writing to inform you that an updated Explanatory Memorandum (EM) was laid before the National Assembly today, in respect of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill.

The EM reflects the changes made to the Bill by the Children, Young People and Education (CYPE) Committee during the Stage 2 proceedings and also provides new or additional data and evidence that has become available since the publication of the original EM at introduction of the Bill in March 2019.

Stage 2 of the legislative process took place between 18 September and 24 October 2019. Government amendments in relation to a duty to raise awareness and to undertake a post implementation review – both recommendations from Stage 1 scrutiny Committee Reports – were agreed. Also agreed was the Government amendment to provide certainty in relation to commencement of the Bill's core provision: the removal of the defence of reasonable punishment.

There have been developments in relation to the availability of baseline data for social services. I have written separately on this issue to the Chair of the Children, Young People and Education Committee and the Finance Committee.

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CF99 1NA

The main material changes to note in the updated EM are:

Chapter 2 (Legislative Competence)

This section has been updated to provide further information on the Welsh Government's analysis of the Bill's compatibility with Article 8 and 9 of convention rights and European Union law (paragraph 2.3).

Chapter 3 (Policy objective and purpose and intended effect of the legislation)

- The section 'Context' has been updated to reflect the latest legislative developments in relation to the Bill (paragraphs 3.8 and 3.9).

- In the section 'Purpose and intended effect of the Bill' information is provided on the research commissioned by the Welsh Government on attitudes to physical punishment which was published after the legislation was introduced in March. The Committee was informed about this research when it was published in June. To take account of this research we have also updated the following sections of the Explanatory memorandum –paragraphs xi and xii; 3.32, 3.56 - 3.59.

- The section, 'Supporting the implementation of the Bill' has been updated to reflect developments to the delivery of parenting support which includes updating our Parenting. Give it time campaign, which we intend to expand to cover a wider age range of parents (paragraph 3.70); and delivery of the Healthy Child Wales programme and associated resources (paragraph 3.72, 3.73 and 3.74).

Chapter 4 (Consultation)

- 'Support for parents' - an update on our Parenting Expert Group (PEAG) has been provided. PEG will work with the Welsh Government to consider the results of the mapping exercise we carried out to examine the extent of parenting support currently provided across Wales (paragraph 4.8).
- 'Impact on public bodies' and 'Guidance/ training to support frontline professionals' – information is provided in these sections on the Strategic Implementation Group and associated task and finish groups (paragraph 4.13 - 4.18)
- Paragraph 4.15 reflects the changes to commencement arrangements made to the Bill by the Children, Young People and Education Committee during the Stage 2 proceedings.

Chapter 5 (Power to make subordinate legislation)

The table has been updated to reflect the power in the Bill as amended after Stage 2 proceedings.

Chapters 6 to 8 (Regulatory Impact Assessment (RIA))

Chapter 6: Summary of RIA

This section has been updated with revised figures for administrative costs for organisations to update guidance; out of court disposals, post implementation review (surveys of awareness and attitudes) and awareness raising.

In response to recommendation 20 of the CYPE Committee the section 'Unquantified costs' has been updated with further information where a best estimate of such costs has now been provided or to explain why we have been unable to do this.

The section 'Key evidence, assumptions and uncertainties' has been updated to provide information on the research commissioned by the Welsh Government on attitudes to physical punishment which was published in June.

Chapter 8: Costs and benefits

The following sections have been updated:

- 'Introduction to Chapters 8 and 9' – paragraph 8.2 notifies the reader that the EM has been updated to take account of changes since the Bill was introduced. Paragraph 8.9 provides information on the Strategic Implementation Group and associated task and finish groups
- 'Option 1: Do nothing' – costs for Welsh Government programmes have been updated
- 'Option 2: Legislate to remove the defence of reasonable punishment'
    - Paragraph 8.22 provides an update on the order making power contained in the Bill.
    - Welsh Government costs for awareness raising have been updated to take account of the Deputy Minister for Health and Social Services' commitment to a high intensity communications and awareness raising campaign (Paragraph 8.28 – 8.32).
    - In response to recommendation 10 of the CYPE Committee, a new section 'Awareness Raising with Children', provides information on the Welsh Government's plans, and associated costs, for awareness raising with children.
    - 'A note on using New Zealand data to give an indication of potential impact of the legislation on social services, the police and justice system' – this has been updated to provide further information on differences between New Zealand and Wales (paragraph 8.44).
    - 'Local Authorities – Social Services' – In response to recommendation 4 of the Finance Committee and recommendation 6 of the CYPE Committee Stage 1 reports an update has been provided on attempts to provide accurate data for a baseline of referrals to social services and an estimate of the scale of increase in referrals following commencement of the legislation.
    - In response to recommendation 5 of the Finance Committee Stage 1 report a new section 'Out of Court Disposals' has been added to the RIA to provide a best estimate of costs associated with a diversion scheme.
    - In response to recommendation 6 of the Finance Committee the section 'Ministry of Justice - Her Majesty's Courts and Tribunals Service' provides an

analysis of whether a link can be established between estimated referrals to the police and prosecutions for offences that previously would have been covered by the defence of reasonable punishment (paragraphs 8.50- 8.58).

- A new section 'Supporting implementation' has been added to provide costs associated with implementation. In response to recommendation 9 of the Finance Committee this includes the costs associated with the post implementation review. In response to recommendation 8 of the Finance Committee's Stage 1 report this section provides the costs associated with the Welsh Government's Strategic Implementation Group and associated task and finish groups. I agreed to provide the costs associated with resourcing the activities of the Implementation Group separately, however for the convenience of the Committee, and to enable this expenditure to be seen within the overall context of costs associated with implementation activity I am providing this information in the RIA.
- In response to recommendation 7 of the Finance Committee a new section 'Transitional costs – updating guidance and training' has been added to the RIA to provide a best estimate of costs associated with organisations updating guidance and providing training for their staff.
- The 'Cost summary table' has been updated to take account of additional costs which have been added to the RIA.

Chapter 9 (Specific Impact Assessments)

The integrated impact assessment summary and the annexes relating to Children's rights, Equality and the Welsh Language have been reviewed and will be published on the Welsh Government's website ahead of Stage 3.

Chapter 10 (Post Implementation Review)

This section has been updated to provide further information on the Welsh Government's plans for implementation.

Explanatory Notes

The Explanatory Notes, which accompany the revised EM, reflect the amendments to the Bill made at Stage 2.

Annexes

Annex 4: Potential impacts on individuals and organisations

The following sections have been updated:

- 'Evidence from children' - provides further information from the Ministry of Justice on numbers of active Registered Intermediaries (paragraph 29).
- 'Cafcass Cymru' - further information is provided on Cafcass Cymru's consideration of how to monitor numbers of allegations of parental physical punishment in the context of litigation between separated couples (paragraphs 45 – 47).
- 'Impact on process' - gives the title of the Social Services and Wellbeing (Wales) Act 2014 Part 7 statutory guidance (paragraph 55).

- ‘Teachers’ safeguarding responsibilities’ - provides further information on the duties of teachers to report safeguarding concerns (paragraph 58).

Annex 5: Criminal Records and Disclosure and Barring Service

In the section ‘Enhanced checks’ further information is provided on the disclosure of non-conviction information, including data relating to enhanced DBS checks (paragraphs 10,11,16,18,19 and 20).

Annex 6: Using New Zealand data as a proxy for estimates in Wales

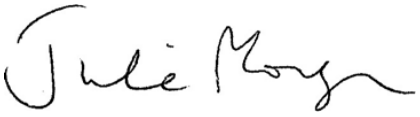
In the section **‘**Differences in the Legislation in New Zealand and what is proposed in Wales’ additional information has been provided on commencement periods in New Zealand and Wales (paragraph 9).

Annex 8: High Level Implementation Work Plan

In response to recommendation 8 of the Finance Committee a new section has been added, which provides information about the main activities of our Strategic Implementation Group and associated task and finish groups. It also covers our plans in relation to awareness raising. This is a living document that may need to evolve as the work around implementation progresses.

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

Yours sincerely



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

Committee Chairs
National Assembly for Wales

16 December 2019

Dear Chair,

Committee on Assembly Electoral Reform

As you will be aware, the **Committee on Assembly Electoral Reform** was established by the National Assembly for Wales in September 2019 with a remit to examine the recommendations of the **Expert Panel on Assembly Electoral Reform**. I am writing to invite your views on the potential implications for Assembly committees of any change in the size of the Assembly.

In particular, we would welcome the views of your Committee on:

- Whether the current size of the Assembly has given rise to any implications or limitations for your Committee's work or the way in which you approach policy, legislative and financial scrutiny of the issues within your remit.
- How any recent or anticipated changes to the Assembly's powers or responsibilities, or the broader constitutional context, might affect your Committee's remit or how you undertake your role.
- Any implications an increase in the size of the Assembly might have for the work of Assembly committees, including the support services they receive.

We would also welcome information about how your Committee assesses the impact of its scrutiny work, and examples of effective scrutiny or missed opportunities. It would be helpful to receive your response **by Monday 27 January 2020**.

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I will be making an oral statement in Plenary on Wednesday 8 January 2020 to provide an update on the Committee's work. In the meantime, if you have any questions about the work of the Committee, or would find it helpful to meet to discuss these issues, please contact the Committee clerk, Helen Finlayson, at **seneddreform@assembly.wales** or on 0300 200 6341.

Yours sincerely,

Dawn Bowden AM
Chair, Committee on Assembly Electoral Reform

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.