

Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:

Committee Room 1 – Senedd

Meeting date: 7 October 2019

Meeting time: 12.10

For further information contact:

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Committee Clerk

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- 1 Introduction, apologies, substitutions and declarations of interest**
12.10

- 2 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3**
12.10–12.15 (Pages 1 – 4)
CLA(5)–27–19 – Paper 1 – Statutory instruments with clear reports
Negative Resolution Instruments
- 2.1 SL(5)444 – The Local Authorities (Change to the Years of Ordinary Elections) (Wales) Order 2019**
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CLA(5)–27–19 – Paper 2 – Welsh Government written statement
- 2.2 SL(5)447 – The Agriculture (Calculation of Value for Compensation) (Revocations) (Wales) Regulations 2019**

Affirmative Resolution Instruments
- 2.3 SL(5)445 – The Agricultural Holdings Act 1986 (Variation of Schedule 8) (Wales) Order 2019**

- 3 Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3**
12.15–12.20
Negative Resolution Instruments



3.1 SL(5)446 – The Agriculture (Model Clauses for Fixed Equipment) (Wales) Regulations 2019

(Pages 6 – 37)

CLA(5)–27–19 – Paper 3 – Report

CLA(5)–27–19 – Paper 4 – Regulations

CLA(5)–27–19 – Paper 5 – Explanatory Memorandum

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

12.20–12.25

(Pages 38 – 39)

CLA(5)–27–19 – Paper 6 – Clear report

4.1 SL(5)449 – The Retained EU Law (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

5 Paper(s) to note

12.25–12.30

5.1 Letter from Lord Kinnoull, Chair of the European Union Committee, House of Lords: Interparliamentary forum on Brexit

(Page 40)

CLA(5)–27–19 – Paper 7 – Letter from Lord Kinnoull, 27 September 2019

5.2 Letter from the Counsel General to the Chair of the Finance Committee: Senedd and Elections (Wales) Bill

(Pages 41 – 45)

CLA(5)–27–19 – Paper 8 – Letter from the Counsel General to the Chair of the Finance Committee, 30 September 2019

5.3 Letter from the Minister for Health and Social Services: Transfer of responsibility for the Stop Smoking Wales Service from Public Health Wales NHS Trust to Local Health Boards

(Pages 46 – 52)

CLA(5)–27–19 – Paper 9 – Letter from the Minister for Health and Social Services, 30 September 2019

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

12.30

7 National Health Service (Indemnities) (Wales) Bill: Technical briefing

12.30–13.00

Frances Duffy, Director of Primary Care and Health Science, Welsh Government

Ken Alexander, Head of GP Professional Indemnity, Welsh Government

Dylan Hughes, First Legislative Counsel, Welsh Government

Sarah Tyler, Lawyer – Social Care, Welsh Government

Date of the next meeting – 14 October

Statutory Instruments with Clear Reports

07 October 2019

SL(5)444 – The Local Authorities (Change to the Years of Ordinary Elections) (Wales) Order 2019

Procedure: Negative

This Order is made by the Welsh Ministers pursuant to the Local Government Act 2000 and comes into force on 6 November 2019. It changes the scheduled date of the next ordinary elections of councillors of county councils, county borough councils and community councils in Wales to the first Thursday of May in 2022, instead of the first Thursday of May in 2021. This will avoid the next local government elections coinciding with the next ordinary elections of the National Assembly.

The Order further provides (at Article 4) that the current term of office of existing councillors elected to county councils, county borough councils and community councils in Wales is accordingly extended by one year.

The Explanatory Memorandum to the Order (at section 4) notes that the “...Wales Act 2017 amended the Representation of the People Act 1983 and prevents the local government elections being taken on the same day as the National Assembly general election. Where both elections are scheduled to take place on the same day the Welsh Ministers must, by order, specify another day on which the ordinary local government elections are to be held”.

The Order also revokes the Local Authority Elections (Wales) Order 2014, which provided that the ordinary elections of councillors of county councils, county borough councils and community councils in Wales took place in 2017 instead of 2016.

Parent Act: Local Government Act 2000

Date Made: 17 September 2019



Date Laid: 20 September 2019

Coming into force date: 06 November 2019

SL(5)447 – The Agriculture (Calculation of Value for Compensation) (Revocations) (Wales) Regulations 2019

Procedure: Negative

These Regulations revoke the Agriculture (Calculation of Value for Compensation) Regulations 1978 in Wales, alongside 3 instruments that amended those Regulations.

By revoking the Agriculture (Calculation of Value for Compensation) Regulations 1978 (and amending regulations), landlords and tenants will be able to settle compensation claims (governed by the Agricultural Holdings Act 1986) using current market values and calculation methods that suit their individual circumstances.

Parent Act: Agricultural Holdings Act 1986

Date Made: 24 September 2019

Date Laid: 26 September 2019

Coming into force date: 01 November 2019

SL(5)445 – The Agricultural Holdings Act 1986 (Variation of Schedule 8) (Wales) Order 2019

Procedure: Affirmative

This Order amends Part 1 of Schedule 8 to the Agricultural Holdings Act 1986 as it applies to Wales.

Section 64 of the Agricultural Holdings Act 1986 entitles the tenant of an agricultural holding, on termination of the tenancy and quitting of the



holding, to compensation from the landlord for an improvement specified in Part 1 of Schedule 8 which the tenant has carried out on the holding.

Article 2 of this Order removes current paragraphs 5 and 6 of Part 1 of Schedule 8 and inserts new paragraphs 4B and 5B. The new paragraphs provide for compensation to be paid for improvements resulting from the application to the land of soil improvers, digestate, manure and fertiliser (with no limitation as to how those substances were acquired); and for improvements resulting from manure which is held in storage and has arisen from the consumption of corn (produced on the holding or not) or other feedingstuff not produced on the holding by livestock and members of the horse family on the holding.

Parent Act: Agricultural Holdings Act 1986

Date Made:

Date Laid: 24 September 2019

Coming into force date: 01 November 2019





**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **The Local Authorities (Change to the Years of Ordinary Elections (Wales) Order 2019**

DATE **23 September 2019**

BY **Julie James AM, Minister for Housing and Local Government**

I am using my powers under section 87 of the Local Government Act 2000 to lay before the National Assembly an Order which changes the year of the ordinary local government elections from the first Thursday in May 2021 to the first Thursday in May 2022.

In June 2016, the then Minister for Finance and Local Government, announced his decision to change the year of the ordinary local government elections from May 2016 to May 2017 so that the local government elections would not coincide with the National Assembly and Police and Crime Commissioner elections.

At the present time, the ordinary local government elections in Wales take place on the first Thursday in May every four years. The next elections are scheduled for May 2021. This is also the date for the next elections to the National Assembly for Wales.

The Wales Act 2017 amended the Representation of the People Act 1983 and prevents local government elections from being held on the same day as the ordinary elections to the National Assembly. In such situations the Welsh Ministers are required to change the year of the local government elections by Order.

The Local Authorities (Change to the Year of Ordinary Elections (Wales) Order 2019 does not change the cycle of local government elections. It will only move the next ordinary local government elections by one year from May 2021 to May 2022.

It is the intention of the Welsh Government to bring forward legislation to permanently move the term of office for local government elected members to five years. The Local Government and Elections (Wales) Bill is intended to be introduced in the autumn to provide for this.

Agenda Item 3.1

SL(5)446 – The Agriculture (Model Clauses for Fixed Equipment) (Wales) Regulations 2019

Background and Purpose

These Regulations revoke and replace, in relation to Wales, the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1973 (the “1973 Regulations”).

These Regulations prescribe terms, set out in Schedule 1, as to the maintenance, repair and insurance of fixed equipment. Such terms are deemed to be incorporated in every contract of tenancy of an agricultural holding, except where they would impose on one of the parties to a written agreement a liability which under the agreement is imposed on the other.

Schedule 1 divides between the landlord and the tenant of a holding the responsibility for maintaining, repairing and insuring fixed equipment, and imposes upon each party certain specific liabilities in regard to those matters.

Schedule 2 contains revocations, including the revocation of the 1973 Regulations.

Procedure

Negative.

Technical Scrutiny

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

Standing Order 21.2 (vii) - that there appear to be inconsistencies between the meaning of the English and Welsh texts

Regulation 7(3) of the Welsh text suggests that the landlord may recover the reasonable cost of the works from the tenant at pace, as it states “wrth y tenant yn ddi-oed”. However, the English text states that “the landlord may recover the cost without delay”. We would suggest that alternative wording is used, such as replacing “yn ddi-oed” with “heb oedi” (without delay).

The same issue occurs again at Regulation 14(3)(a).

Merits Scrutiny

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

Implications arising from exiting the European Union

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

Government Response

A government response is required.





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

2019 No. 1279 (W. 223)

**LANDLORD AND TENANT,
WALES**

AGRICULTURAL HOLDINGS

**The Agriculture (Model Clauses for
Fixed Equipment) (Wales)
Regulations 2019**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace, in relation to Wales, the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1973 (the “1973 Regulations”). They prescribe terms, set out in Schedule 1, as to the maintenance, repair and insurance of fixed equipment which are deemed to be incorporated in every contract of tenancy of an agricultural holding except where they would impose on one of the parties to a written agreement a liability which under the agreement is imposed on the other. Schedule 1 divides between the landlord and the tenant of a holding the responsibility for maintaining, repairing and insuring fixed equipment, and imposes upon each party certain specific liabilities in regard to those matters.

The main changes to the 1973 Regulations are as follows, references being to paragraphs in Schedule 1.

Certain items have been added to the general repair and replacement obligations of the landlord under paragraph 1 including the repair and replacement of the electrical supply system. The list of items in respect of which the landlord may recover one-half cost from the tenant has been extended (paragraph 7).

Certain items have been added to the general repair and maintenance obligations of the tenant under paragraphs 9 and 11 including fixed equipment generating heat or power and slurry, silage and effluent systems.

The circumstances in which the tenant may execute repairs or replacements which are the liability of the landlord has been extended under paragraph 12 so that the tenant may repair fire and carbon monoxide detectors and underground water pipes without notice served on the landlord. (See also paragraphs 14(3)(b) and (c)).

The limit on the tenant's liability for replacement of roof tiles or slates is increased from £100 to £500 (paragraph 9(2)(e)).

Paragraphs 6, 13 and 17 include provision for third party determination as an alternative to arbitration.

Regulation 3 prescribes time limits for the purposes of section 9 of the Agricultural Holdings Act 1986. Regulation 4 and Schedule 2 contain revocations.

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.

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

2019 No. 1279 (W. 223)

**LANDLORD AND TENANT,
WALES**

AGRICULTURAL HOLDINGS

**The Agriculture (Model Clauses for
Fixed Equipment) (Wales)
Regulations 2019**

Made 24 September 2019

Laid before the National Assembly for Wales
26 September 2019

Coming into force 1 November 2019

The Welsh Ministers make the following Regulations in exercise of the powers conferred by section 7(1) and (2) of the Agricultural Holdings Act 1986(1).

In accordance with section 7(1) of that Act, the Welsh Ministers have consulted such bodies appearing to represent the interests of landlords and tenants of agricultural holdings.

Title, application, commencement and interpretation

1.—(1) The title of these Regulations is the Agriculture (Model Clauses for Fixed Equipment) (Wales) Regulations 2019.

(2) These Regulations apply in relation to Wales.

(1) 1986 c. 5; section 96(1) defines “prescribed” as prescribed by the Minister by Regulations, and “the Minister” as the Secretary of State in relation to Wales. Functions of the Minister under the Act are now exercisable by the Welsh Ministers (in relation to Wales) by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672),) and section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32). Section 7(2) was amended by section 13 of, and paragraph 4 of Schedule 4 to, the Deregulation Act 2015 (c. 20) to include “third party determination”. See also section 84A inserted by paragraph 21 of that Schedule.

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

(4) In these Regulations “the Act” means the Agricultural Holdings Act 1986.

Incorporation of provisions in tenancy agreements

2.—(1) Schedule 1 contains model provisions for the maintenance, repair and insurance of fixed equipment for incorporation in every contract of tenancy of an agricultural holding to which the Act applies, whether made before or after the commencement of the Act, except in so far as they would impose on one of the parties to an agreement in writing a liability which under the agreement is imposed on the other.

(2) Paragraph 2(1) of Schedule 1 requiring the landlord to insure against loss or damage by fire does not apply to the following landlords—

- (a) where the interest of the landlord is held for the purposes of a Government Department,
- (b) where a person representing Her Majesty or the Duke of Cornwall under section 95 of the Act is deemed to be the landlord, and
- (c) where the landlord has made provision approved by the Welsh Ministers for defraying the cost of any works of repair or replacement as referred to in paragraph 2(2) of Schedule 1.

Prescribed periods for the purposes of section 9 of the Act

3.—(1) The prescribed period for the purposes of section 9(1) of the Act is one month.

(2) The prescribed period for the purposes of section 9(3) of the Act is one month.

(3) The prescribed period for the purposes of section 9(4) of the Act is three months.

Revocations

4. The Regulations specified in Schedule 2 are revoked.

Lesley Griffiths

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

24 September 2019

SCHEDULE 1 Regulation 2

Maintenance, repair and insurance of the
fixed equipment of an agricultural
holding

PART 1

Rights and liabilities of the landlord

Repairs and replacements

1.—(1) The landlord must repair or replace the following parts of the farmhouse, cottages and farm buildings—

- (a) roofs, bargeboards, fascias and soffits, eaves guttering and downpipes;
- (b) chimney stacks, chimney linings and chimney pots;
- (c) main walls and exterior walls, however constructed, including structural frames and cladding;
- (d) interior repair or decoration made necessary as a result of structural defect to the parts specified in paragraphs (a), (b) and (c);
- (e) walls and fences of open and covered yards and garden walls;
- (f) floors and floor joists;
- (g) ceiling joists and timbers;
- (h) exterior and interior staircases and fixed ladders (including bannisters or handrails) of the farmhouse and cottages;
- (i) doors, windows and skylights and their frames and sills but not door and window furniture including sash cord, locks, fastenings and glass and glass substitute unless the repair or replacement of glass or glass substitute is a consequence of the condition of the doors, windows, skylights or their frames;
- (j) roof and wall insulation; and
- (k) fireplaces, firebacks and firebricks.

(2) The landlord must repair or replace the following water and drainage systems—

- (a) underground water supply pipes, wells, boreholes, reservoirs and all connected underground installations (excluding removable covers and tops);
- (b) sewage disposal systems including septic tanks, filtering media, and cess pools (excluding removable covers and tops);

- (c) reed beds for water and sewage treatment; and
- (d) slurry, silage and other effluent systems excluding anaerobic digesters (excluding removable covers and tops).

(3) The landlord must repair or replace the following gas, electrical and safety detection systems—

- (a) gas pipes, fixed liquid petroleum and gas tanks;
- (b) the electrical supply system including the consumer board but excluding sockets, switches, light fittings and similar electrical furniture; and
- (c) fire and carbon monoxide detectors and alarms.

(4) In respect of sub-paragraph (3)(b), the landlord must—

- (a) have the electrical supply system regularly inspected, maintained and serviced;
- (b) keep full records of any work carried out; and
- (c) make the records of work available to the tenant if the tenant asks to see them.

(5) The landlord must replace anything specified in paragraph 9(1) (tenant's liability to repair) which has worn out or become incapable of repair unless the tenant is liable to replace it under paragraph 9(3).

Insurance

2.—(1) The landlord must insure the farmhouse, cottages and farm buildings to their full value against loss or damage by fire.

(2) Where any of the farmhouse, cottages and farm buildings, or any part of them, is damaged or destroyed by fire the landlord must—

- (a) execute all repairs and replacements to make good such damage or destruction; and
- (b) cause all money received from insurance entered into under sub-paragraph (1) in respect of such damage or destruction to be expended on those repairs and replacements.

(3) The recovery of one-half of the reasonable costs provided for under paragraph 7(1) does not apply to repairs and replacements falling within sub-paragraph (2) of this paragraph.

Maintenance

3.—(1) The landlord must paint, decorate or treat, as appropriate, to a proper standard using materials of suitable quality at intervals of not more than five years or whenever necessary to prevent deterioration, the following (which have been previously painted,

decorated or treated or which it is necessary to paint, decorate or treat to prevent deterioration)—

- (a) all outside wood and ironwork of the farmhouse, cottages and farm buildings;
- (b) the inside wood and ironwork of all external outward opening doors and windows of farm buildings; and
- (c) interior structural steelwork of open-sided farm buildings.

(2) In this paragraph “open-sided” means having the whole or the greater part of at least one side or end permanently open, apart from roof supports, if any.

No liability

4. The landlord is under no liability—

- (a) to repair, replace or insure buildings or fixtures which are the property of the tenant including buildings or fixtures erected or provided by the tenant during their tenancy; or
- (b) subject to paragraph 2(2), to execute repairs or replacements rendered necessary by the wilful act or the negligence of the tenant or of any of the tenant’s household members or employees.

Landlord may execute repairs or replacements which are tenant liabilities

5. Where the landlord has given the tenant written notice (other than a notice to quit under section 26 of, and Schedule 3 to, the Act which includes a statement in accordance with Case D that is given by reason of the tenant’s failure to comply with a notice to do work) specifying necessary repairs, replacements or maintenance to be executed by the tenant for which the tenant is liable under paragraph 9 or 11(a) to (e), the landlord may enter and execute those repairs, replacements or maintenance—

- (a) if the tenant does not start work on the repairs, replacements or maintenance within two months of receiving that written notice; or
- (b) if the tenant fails to complete the repairs, replacements or maintenance within three months of receiving that written notice.

Tenant may contest liability

6.—(1) Subject to sub-paragraph (2), a tenant who wishes to contest liability to execute any repairs, replacements or maintenance specified in a notice from the landlord under paragraph 5 must within one month of the service of that notice serve a counter-notice in writing upon the landlord specifying the grounds on which, and the items of repair and replacement in

respect of which, liability is contested and requiring that the question of liability be determined by arbitration under the Act.

(2) Alternatively, the landlord and tenant may agree to refer the question of liability for third party determination.

(3) The operation of a notice given under paragraph 5 is suspended upon—

- (a) a counter-notice being served by the tenant on the landlord (to the extent of the items specified in the counter-notice); or
- (b) the parties referring the question of liability for third party determination (to the extent of the items specified in the referral).

(4) The suspension operates under—

- (a) sub-paragraph 3(a) until the date on which the arbitrator's award is delivered to the tenant; and
- (b) sub-paragraph 3(b) until the date on which the third party's determination is delivered to the tenant.

Recovery of costs

7.—(1) The landlord may recover from the tenant one-half of the reasonable cost of repairs or replacements executed under paragraph 1(1) to—

- (a) bargeboards, fascias and soffits, eaves-guttering and downpipes;
- (b) floorboards;
- (c) interior staircases and fixed ladders (including bannisters or handrails); and
- (d) doors, windows and opening skylights and their frames and sills (including glass or glass substitute repaired or replaced as a consequence of the door, window, skylight and frame repair or replacement).

(2) The landlord may recover from the tenant one-half of the reasonable cost of work carried out under paragraph 3(1) but, if such work is completed before the start of the fifth year of the tenancy, the sum which the landlord may recover from the tenant is restricted to an amount equal to the total of one-tenth part of such reasonable cost for each year that has elapsed between the commencement of the tenancy and the completion of the work to—

- (a) bargeboards, fascias and soffits, eaves-guttering and downpipes; and
- (b) doors and windows.

(3) Subject to sub-paragraph (4), the landlord may recover the reasonable cost of the works under paragraph 5 from the tenant without delay.

(4) Where the question of liability to execute repairs, replacements or maintenance under paragraph 5 has been referred to arbitration or third party determination, the landlord's right to recover the reasonable cost of the repairs, replacements or maintenance does not arise unless the question of liability to execute that work is first determined by arbitration or third party determination in favour of the landlord, and then arises from the date on which the arbitrator's award or third party's determination is delivered to the tenant.

PART 2

Rights and liabilities of tenant

Application

8. This Part does not apply in so far as any liability falls to be undertaken by the landlord under Part 1.

Repairs and replacements

9.—(1) The tenant must repair and leave clean and in good tenantable repair, order and condition the farmhouse, cottages and farm buildings together with the following (which are in or upon the holding, or which during the tenancy may be erected or provided upon the holding)—

- (a) fixtures and fittings (including fitted kitchens);
- (b) space heating and water heating systems (including the repair of any boiler but not its replacement), ranges, grates;
- (c) drains, sewers, gulleys and grease traps;
- (d) manholes and inspection chambers;
- (e) water supply systems and fittings situated above ground (including pipes, tanks, cisterns, sanitary fittings and drinking troughs), pumping equipment, and hydraulic rams whether above or below ground;
- (f) fences, hedges, field walls, stiles, cattle grids, gates and posts, and garden and yard doors;
- (g) bridges, culverts, ponds, watercourses, sluices and ditches;
- (h) roads and yards;
- (i) fixed equipment generating electricity, heat or power (including solar panels, heat pumps, wind turbines and anaerobic digesters) which is wholly for the use or benefit of the tenant;
- (j) vehicle fuel and oil tanks;
- (k) radon pumps;

- (l) insulation on water pipes; and
- (m) livestock handling systems and sheep dips.

(2) The tenant must repair or replace and leave in good tenable repair, order and condition the following—

- (a) door and window furniture including sashcords, locks and fastenings, glass and glass substitute except for glass or glass substitute which requires repair or replacement as a consequence of the condition of the door, window, skylight or their frames;
- (b) removable covers to any manhole, inspection chamber, sewage disposal system, slurry, silage or other effluent system excluding anaerobic digesters;
- (c) electrical sockets, switches, light fittings on or outside the surface of walls, ceilings and floors excluding switches that are part of the consumer board;
- (d) signs and notices; and
- (e) all broken or cracked roof tiles or slates and all slipped roof tiles or slates, as the damage occurs, providing that the reasonable cost of the work does not exceed £500 in any one year of the tenancy.

(3) Subject to paragraph 2(2)—

- (a) the tenant must repair or replace and, upon repair or replacement, adequately paint or otherwise treat with effective preservative material as may be proper, all items of fixed equipment, and to do any work, where such repair, replacement or work is rendered necessary by the wilful act or negligence of the tenant or of any of the tenant's household members or employees; and
- (b) the tenant must replace anything mentioned in sub-paragraph (1) which has worn out or otherwise become incapable of repair if its condition has been brought about by or is substantially due to the tenant's failure to repair it.

Careful use

10. For the parts of the holding listed in paragraph 1 which are the responsibility of the landlord to repair or replace, the tenant must—

- (a) use those parts carefully to protect from damage; and
- (b) report in writing immediately to the landlord any damage, however caused, to those parts of the holding.

Maintenance

11. The tenant must carry out the following maintenance—

- (a) keep clean and in good working order all roof valleys, eaves-guttering and downpipes, wells, septic tanks, cesspools, sewage disposal systems, silage and effluent systems excluding anaerobic digesters;
- (b) keep clear reed beds for water and sewage treatment;
- (c) keep clean and free of blockage all slurry systems;
- (d) properly clean, paint or otherwise treat with materials of suitable quality the inside of the farmhouse, cottages and farm buildings, including the interior of outward opening doors and windows of the farmhouse and cottages, which have been previously so treated, whenever necessary, and in any case at intervals of not more than seven years;
- (e) in the last year of the tenancy to lime wash the inside of buildings previously lime washed;
- (f) dig out, scour and cleanse all ponds, watercourses, ditches and grips as necessary to maintain them at sufficient width and depth; and
- (g) cut, trim and lay a proper proportion of the hedges in each year of the tenancy to maintain them in good and sound condition.

Tenant may execute repairs or replacements which are landlord liabilities

12.—(1) The tenant may execute repairs or replacements for which the landlord is liable in the following circumstances—

- (a) where the landlord fails to execute repairs or replacements, other than repairs to an underground waterpipe, within three months of receiving from the tenant a written notice specifying the necessary repairs or replacements and calling on the landlord to execute them;
- (b) where the landlord fails to execute repairs to an underground waterpipe within one week of receiving from the tenant a written notice specifying the necessary repairs and calling on the landlord to execute them;
- (c) where underground waterpipes are damaged; and
- (d) where fire or carbon monoxide detectors or alarms are not working.

(2) The tenant must serve a written notice upon the landlord of repairs or replacements executed under sub-paragraph (1)(c) or (d) immediately after their execution.

Landlord may contest liability

13.—(1) Subject to sub-paragraph (2), a landlord who wishes to contest liability to execute any repairs or replacements specified in a notice from the tenant under paragraph 12 must within one month of the service of that notice serve a counter-notice in writing upon the tenant specifying the grounds on which, and the items of repair or replacement in respect of which, liability is contested and requiring that the question of liability be determined by arbitration under the Act.

(2) Alternatively, the landlord and tenant may agree to refer the question of liability for third party determination.

(3) The operation of a notice given under paragraph 12(1)(a) is suspended upon—

- (a) a counter-notice being served by the landlord on the tenant (to the extent of the items specified in the counter-notice); or
- (b) the parties referring the question of liability for third party determination (to the extent of the items specified in the referral).

(4) The suspension operates under—

- (a) sub-paragraph 3(a) until the date on which the arbitrator's award is delivered to the tenant; and
- (b) sub-paragraph 3(b) until the date on which the third party's determination is delivered to the tenant.

Payment and recovery of costs

14.—(1) If the last year of the tenancy is not a year in which—

- (a) cleaning, decorating or other treatment as stated in paragraph 11(d) or (e) is due to be carried out, the tenant must pay to the landlord at the end of that last year the estimated reasonable cost of that work or a sum equal to the total of one-seventh of that cost for each year that has elapsed since the last cleaning, decorating or other treatment was completed, whichever is less;
- (b) the landlord is liable under paragraph 3 to paint or otherwise treat the doors, windows, eaves-guttering and downpipes of buildings, the tenant must pay to the landlord at the end of that last year either one-half of the estimated reasonable cost of that work or a

sum equal to the total of one-tenth of that cost for each year that has elapsed since the last painting or other treatment was completed, whichever is less.

(2) In the assessment of any compensation payable by the tenant on the termination of the tenancy in respect of dilapidation, any accrued liability under sub-paragraph (1) must be taken into account.

(3) Subject to sub-paragraph (4), the tenant may recover the reasonable costs of repairs or replacements from the landlord—

- (a) in relation to repairs or replacements executed under paragraph 12(1)(a), without delay;
- (b) in relation to repairs or replacements executed under paragraph 12(1)(b) or (d), upon the expiry of one month from the execution of the repairs or replacements; and
- (c) in relation to repairs or replacements executed under paragraph 12(1)(c), upon the expiry of one month from the execution of the repairs or replacements and not to exceed £2,000 for each repair or replacement.

(4) Where the question of liability to execute repairs or replacements under paragraph 12(1) has been referred to arbitration or third party determination, the tenant's right to recover the reasonable cost of the repairs or replacements does not arise unless the question of liability to execute those repairs or replacements is first determined by arbitration or third party determination in favour of the tenant, and then arises from the date on which the arbitrator's award or third party's determination is delivered to the landlord.

PART 3

General provisions

Redundant fixed equipment

15.—(1) If the landlord or tenant is of the opinion that an item of fixed equipment is, or before the same was damaged or destroyed by fire was, redundant to the farming of the holding, the landlord or tenant may, by two months notice in writing served on the other, refer the question to arbitration under the Act unless the landlord and tenant agree to refer the question for third party determination.

(2) In any such arbitration or third party determination, no item of fixed equipment may be determined to be, or to have been before damage or destruction by fire, redundant to the farming of the holding, unless the arbitrator or third party is satisfied that the repair or replacement of such item is or was not reasonably required having regard to—

- (a) the landlord's responsibilities to manage the holding in accordance with the rules of good estate management;
- (b) the period for which the holding may reasonably be expected to remain a separate holding; and
- (c) the character and situation of the holding and the average requirements of a tenant reasonably skilled in husbandry.

(3) Where an arbitrator awards or a third party determines that the said item of fixed equipment is, or before such damage or destruction by fire was, redundant to the farming of the holding then, as from the date of the award or determination—

- (a) paragraph 16(b) applies to that item and both the landlord and tenant are relieved from all liability in respect of any antecedent breach of any obligation to maintain, repair or replace that item of fixed equipment; and
- (b) the landlord is entitled to demolish and remove that item of fixed equipment and to enter the holding for those purposes.

No liability for landlord and tenant

16. Nothing contained in Part 1 or Part 2 of this Schedule creates any liability for either the landlord or tenant—

- (a) to maintain, repair, replace or insure any item of fixed equipment which the landlord and the tenant agree in writing to be obsolete or redundant to the farming of the holding;
- (b) to maintain, repair, replace or insure any item of fixed equipment which, in the event of any dispute between the landlord and tenant as to whether it is, or before being damaged or destroyed by fire was, redundant to the farming of the holding, is awarded or determined to be redundant by an arbitrator or third party under paragraph 15; or
- (c) to execute any work if and so far as the execution of such work is rendered impossible (except at prohibitive or unreasonable expense) by reason of subsidence of any land or the blocking of outfalls which are not under the control of either the landlord or tenant.

Dispute mechanism

17. Any matter arising under these Regulations, unless otherwise provided for under these provisions, may, in default of agreement, be determined by arbitration or third party determination under the Act.

SCHEDULE 2 Regulation 4

Revocations

<i>(1)</i>	<i>(2)</i>
<i>Regulations revoked</i>	<i>References</i>
The Agriculture (Miscellaneous Time- Limits) Regulations 1959	S.I. 1959/171
The Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1973	S.I. 1973/1473
The Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) (Amendment) Regulations 1988	S.I. 1988/281
The Agriculture (Time- Limit) Regulations 1988	S.I. 1988/282

Explanatory Memorandum to the Agriculture (Model Clauses for Fixed Equipment) (Wales) Regulations 2019

This explanatory Memorandum has been completed by the Economy Science and Natural Resources Group and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Agriculture (Model Clauses for Fixed Equipment) (Wales) Regulations 2019. I am satisfied the benefits justify the likely costs.

Lesley Griffiths AM

Minister for Environment, Energy and Rural Affairs

26 September 2019

Part One – Explanatory Memorandum

1. Description

The Agriculture (Model Clauses for Fixed Equipment) (Wales) Regulations 2019 prescribes terms for the maintenance, repair and insurance of fixed equipment. These terms are deemed to be incorporated in every tenancy contract of an agricultural holding that falls under the Agricultural Holdings Act 1986 (the “1986 Act”), except where a written agreement by the parties specifies a different division of responsibilities. It also prescribes periods during which a referral to arbitration may be made where liability for fixed equipment is transferred.

2. Matters of Special Interest to the Constitutional and Legislative Affairs Committee

This Statutory Instrument revokes and replaces the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1973, in exercise of the powers conferred on the Welsh Ministers by Section 7(1) and (2) of the Agricultural Holdings Act 1986.

This brings the regulations up to date in terms of monetary values for compensatory payments between landlord and tenant and reflects a more modern agricultural industry.

3. Legislative Background

The Agriculture (Model Clauses for Fixed Equipment) (Wales) Regulations 2019 set out responsibilities of the landlord and tenant for maintaining, repairing and insuring specified fixed equipment on agricultural holdings. It applies to agricultural holdings, governed by the 1986 Act, entered into before the 1st September 1995 and to some tenancies granted after this date, namely succession tenancies.

4. Purpose and Intent of the Legislation

The relationship between a landlord and their agricultural tenant is governed partly by the terms of their individual tenancy agreement and partly by agricultural tenancy legislation.

The agricultural tenancy sector is crucial to Wales’ rural economy and the proposed reforms will help maintain cohesive farming communities across Wales to include areas where the Welsh language is prevalent. The goals of the Wellbeing of Future Generations (Wales) Act include making Wales prosperous. These proposals have the capacity to contribute towards the development a rural economy which generates wealth, provides employment opportunities and one which is ecologically, economically and socially resilient whilst promoting and protecting heritage and culture.

This Statutory Instrument is part of the Welsh Government’s endeavour to simplify and update the regulation of farming businesses. The changes introduced by this instrument are supported by the Tenancy Reform Industry Group (“TRIG”) which includes representatives of tenant farmers, landlords and agricultural valuers.

The relationship between a landlord and their agricultural tenant is governed partly by the terms of their individual tenancy agreement and partly by agricultural tenancy legislation. Under the 1986 Act the Minister may make regulations allocating liabilities between landlords and tenants for the maintenance, repair and insurance of fixed equipment on the holding. These are referred to as model clauses in the 1986 Act and were prescribed in the 1973 Regulations

The Government's policy objective is to allocate clear liabilities for fixed equipment so that agricultural holdings operate efficiently and productively and minimise disputes between landlord and tenant.

The 1973 Regulations are considered to be out of date by industry as they do not cover items now in common use, monetary caps are out of date, new technologies are not recognised and the drafting makes the liabilities difficult to understand. This instrument addresses these issues.

- a) New liabilities are included for items now in common use on holdings. For example, central heating, slurry and silage systems, renewable energy equipment, livestock handling systems and fixed equipment generating electricity or power;
- b) Monetary caps are updated to reflect current market costs. For example, the cap on tenant spend for minor repairs to roofs (renewing and replacing slipped, broken or cracked tiles or slates as the damage occurs) is increased from £100 to £500 to reflect the increased cost of carrying out such repairs;
- c) Existing liabilities are expanded or amended to include new items and deliver a more pragmatic split of responsibilities between the parties. For example, expanding the landlord's liability to repair or replace main and exterior walls to include frames and structural cladding and changing the liability for repairing the electrical supply system from the tenant to the landlord; and
- d) Modernises the language and structure of the 1973 Regulations so the liabilities are easier to understand.

5. Consultation

The consultation, published on the 1 December 2016 and closed on 23 February 2017, sought the views on proposed changes to secondary legislation governing the repair and maintenance of fixed equipment and end of tenancy compensation, in relation to agricultural tenancies in Wales which are governed by the 1986 Act.

The proposals are designed to support the continued existence of an efficient and effective agricultural tenanted sector in Wales. Amendments to existing legislation aim to clarify regulatory requirements, such as liabilities between a landlord and tenant for fixed equipment on a holding. Other planned changes outline a method to calculate compensation payable to outgoing tenants as the current legislation does not adequately compensate tenants for the value of certain improvements they have made to the land. This, in turn, can encourage tenants to invest in and farm the land more sustainably in the last years of their tenancies.

The proposed changes have been based on the recommendations of the Tenancy Reform Industry Group (TRIG), a non-statutory advisory body which represents the interests of agricultural landlords and tenants. The UK Government has enacted similar changes following public consultation in England in 2014 to reform the agricultural tenancy legislative framework. The proposed changes will ensure tenants and landlords in Wales are subject to the same regulatory requirements as farmers in England and are not disadvantaged when it comes to the repair and maintenance of fixed equipment and the calculation the level of compensation and the type of work for which compensation can be claimed for.

Consultation Period and Distribution

The consultation document was available on the Welsh Government website and was circulated directly to key stakeholders. Nine responses were received during the 12 week consultation period. All of these have been considered and analysed to provide the Welsh Government's formal response.

List of respondents:

- Agricultural Land Tribunal (Wales)
- Pontypool Park Estate Office
- Anonymous – Tenant Farmers
- The Tenant Farmers Association
- NFU Cymru
- CAAV (Central Association of Agricultural Valuers)
- Anonymous
- CLA – Country Landowners Association

6. Summary of Changes

The 1973 Regulations need modernising to include items now in common use, to update monetary caps set at outdated values and to provide a more pragmatic split of some existing liabilities. Government intervention is necessary as the 1973 Regulations are deemed to be incorporated into every agricultural holding made under the 1986 Act. They need updating and modernising to be fit for purpose.

Objectives of the Regulations

The policy objective is to ensure an efficient and effective agricultural tenanted sector. The new instrument will clearly set out the division of liabilities between a landlord and tenant for fixed equipment on a holding. It replaces the 1973 Regulations and reduces the number of legislative instruments. The effect of these changes will be to simplify and modernise the legislative framework governing agricultural holdings in Wales.

The 1973 Regulations allocate the responsibility between the landlord and tenant of an agricultural holding for maintaining, repairing and insuring fixed equipment. The 1973 Regulations apply to agricultural tenancies governed by the 1986 Act. The 1973 Regulations are out of date as:

- a) They do not prescribe the terms for the maintenance, replacement and repair of fixed equipment developed since the regulations were drafted and for items now in common use;
- b) They include fixed monetary caps which need to be updated; and
- c) A different division of liabilities for certain items would be more pragmatic for the parties concerned.

Regulatory Impact Assessment

Rationale for intervention

The 1973 Regulations are incorporated into tenancy agreements governed by the 1986 Act. No new tenancy agreements can be set up under the 1986 Act except under succession rules. For the agreements already in place in Wales, it is imperative that the 1973 Regulations are updated so that responsibilities are defined for items now in common use on holdings, monetary caps reflect current market costs and responsibilities for new technologies developed since the regulations were drafted are included. This will help to avoid disputes on where responsibility sits for the liabilities that might arise under a tenancy agreement, i.e. the landlord or tenant.

The rationale for government intervention can be divided into two broad categories. These are **unclear liability** and **outdated prices** as a result of the 1973 Regulations becoming out of date.

Unclear liability: the responsibility of liability for certain modern items is not specified in the 1973 Regulations. Unclear liability through outdated legislation may unnecessarily inhibit the efficient running of the farm, create uncertainty between landlord and tenant and lead to the following problems:

- Inequitable distribution of maintenance, repair and replacement costs between landlord and tenant. This will have financial and welfare impacts for individual parties. Welfare impacts will vary according to individual holdings depending on how uncertain liability is currently handled;
- It can generate disputes which incur cost to resolve. A dispute may also lead to repairs being delayed which can lead to further deterioration of fixed equipment;
- Health and safety may be compromised, e.g. neglect of testing gas and electrical systems; and
- Insufficient provision for immediate emergency repair to underground water pipes may lead to greater water damage costs than are necessary.

To modernise the 1973 Regulations this instrument adds new liabilities and makes changes to some existing liabilities.

Outdated prices: Fixed cash limits do not reflect current prices. Outdated prices are currently found in two areas of the 1973 Regulations:

- Tenants have a duty of care to roofs and are liable to repair and replace broken, cracked or slipped roof tiles and slates, as the damage occurs, up to £100 a year. If the cost exceeds £100 the landlord is responsible.
- Where the landlord is liable to execute replacements but fails to act within 3 months of receiving written notice from the tenant, the tenant may execute the replacement and recover the reasonable cost of that work up to £2,000 or their annual rent (whichever is less) per year.

Insufficient fixed annual cash limits will reduce the incentive for tenants to carry out appropriate maintenance work. For the maintenance of roof tiles and slates, the £100 limit is a crude method to distinguish between repairs that might be considered minor or major.

Over time the fixed limit will push maintenance originally considered the responsibility of the tenant onto the landlord. Tenant cost recovery claims for replacements are likely to cost more today than in 1973 for the same work done. Whilst tenants can make claims of any size, the landlord is only required to pay back a maximum of £2,000 per year. A claim of more than £2,000 can be paid back over multiple years, tying up tenants' capital which might have otherwise been spent in more productive ways. The current cash limits may also pose the following problems:

- Low annual cash limits may incentivise tenants to undertake only partial repairs which may deteriorate and lead to large future repairs or replacement costs which could have been avoided; and
- Productivity may fall if delayed repairs reduce functionality of fixed equipment.

Policy Options

Option 1

Do Nothing:

Leave the 1973 Regulations unchanged. This will result in them becoming further out of date and may lead to more disputes.

Option 2

Update and consolidate this instrument:

This is the preferred option. It has the support of all key industry bodies who asked for this change and it has the support of the majority of the responses to the public consultation. It will resolve the current problems of outdated monetary caps and unclear liabilities for fixed equipment now in common use on holdings. This will also bring Welsh legislation in line with other UK administrations.

Summary of Preferred Option

The preferred option is to make the following changes:

- 1) Update the schedule of equipment and responsibility for liability between landlord and tenant. This includes the provision of new liabilities and amends some existing liabilities to extend their scope and/or change liability for those items;
- 2) Update the tenant's duty of care for broken, cracked and slipped tiles from £100 to £500 per year.

- 3) Remove the existing monetary cap so the tenant can recover in full the 'reasonable cost' of any replacements they make.

Doing nothing will result in the 1973 Regulations becoming further outdated and exacerbate current issues strengthening the rationale for intervention. The frequency of disputes is expected to rise, health and safety risks will increase and maintenance of fixed equipment will decline.

Updating the schedule of equipment and responsibility for liability and modernising cash limits presents the most effective way to overcome unclear liability and outdated prices. There are two limitations of this preferred approach. Firstly, it cannot reliably future proof the instrument as new technologies and fixed equipment develop. Secondly, updating the fixed cash limit for the care of roofs will not account for changes to the cost of maintenance in the future. However, a cash limit must be retained to delineate minor repairs.

7. Costs and Benefits

The Regulations are not expected to result in an additional economic cost but instead result in a redistribution/transfer of costs between landlords and tenants. There is no information available on how often the existing Regulations have been used and so it is not possible to determine the scale of the transfer.

No familiarisation costs are expected. This is because tenants and landlords will already need to refer to the schedule to identify current liabilities.

Tenants will now be responsible for paying up to £500 a year to repair and replace broken, cracked, or slipped roof tiles or slates as damage occurs. Landlords will benefit from no longer being responsible for repairs to broken and slipped tiles which cost between £100 and £500.

The removal of an annual fixed cash limit for tenants to recover costs from landlords will prevent some landlords benefitting by keeping capital in assets more productive than the holding's fixed equipment. This will generate a cost to a small number of landlords who use this regulation for such a purpose. There is a corresponding benefit to tenants as the removal of the fixed cash limit ends the opportunity cost of tenants having capital tied up in unproductive assets.

This instrument will remove unclear liability and reduce the likelihood of disputes occurring. Benefits may arise from improvements to health and safety standards and timelier repair of fixed equipment. The latter may lead to farm productivity benefits and lower costs. These perceived benefits are difficult to quantify.

The responsibility for repairs and replacements for both the landlord and tenant can be found at **Annexes A and B**.

There is no perceived cost to Welsh Government by implementing this legislation.

Conclusions

In conclusion, Option 2 offers the greater benefit to the tenanted farming sector.

8. Sector Impacts

Impacts on Local Government

The changes in legislation will result in local authorities facing increased costs from having to compensate outgoing tenants on local authority farms at the going market value for a larger number of improvements eligible for end-of-tenancy compensation. This is consistent with private landlords.

Impact on Voluntary Sector

There are no foreseen impacts on the Voluntary Sector.

Impact of Small Business

As with Local Government, the impact on small businesses will be positive as tenants will have a clear guide as to their roles and responsibilities. It will also give them greater confidence in investing in farm infrastructure.

Duties / Impact Assessments

An Integrated Impact Assessment has been carried out. With limited available data no negative impacts have been foreseen in equality, Welsh language or biodiversity; the Welsh Government's three mandatory areas for assessment.

9. Competition Assessment

Please see **Annex C**

10. Post Implementation Review

The Welsh Government will monitor the impact of the regulations and will gather data regarding farm tenancies in Wales. The Welsh Government will continue to have a dialogue with key stakeholders in order to collate feedback on the impact of the new legislation and consider future changes to the regulatory regime. Amendment to the policy and legislation may be considered following the UK's exit from the European Union.

Guidance will be issued once the new regulations come into force.

Annex A

The **landlord** must repair or replace the following parts of the farmhouse, cottages and farm buildings;

- roofs, bargeboards, fascias and soffits, eaves guttering and downpipes;
- chimney stacks, chimney linings and chimney pots;
- main walls and exterior walls, however constructed, including structural frames and cladding;
- interior repair or decoration made necessary as a result of structural defect to the parts specified in paragraphs (a), (b) and (c);
- walls and fences of open and covered yards and garden walls;
- floors and floor joists;
- ceiling joists and timbers;
- exterior and interior staircases and fixed ladders (including bannisters or handrails) of the farmhouse and cottages;
- doors, windows and skylights and their frames and sills but not door and window furniture including sash cord, locks, fastenings and glass and glass substitute unless the repair or replacement of glass or glass substitute is a consequence of the condition of the doors, windows, skylights or their frames;
- roof and wall insulation; and
- fireplaces, firebacks and firebricks.
- The landlord must repair or replace the following water and drainage systems—
 - underground water supply pipes, wells, boreholes, reservoirs and all connected underground installations (excluding removable covers and tops);
 - sewage disposal systems including septic tanks, filtering media, and cess pools (excluding removable covers and tops);
 - reed beds for water and sewage treatment; and
 - slurry, silage and other effluent systems excluding anaerobic digesters (excluding removable covers and tops).
- The landlord must repair or replace the following gas, electrical and safety detection systems—
 - gas pipes, fixed liquid petroleum and gas tanks;
 - the electrical supply system including the consumer board but excluding sockets, switches, light fittings and similar electrical furniture; and
 - fire and carbon monoxide detectors and alarms.
- In respect of sub-paragraph (3)(b), the landlord must—
 - have the electrical supply system regularly inspected, maintained and serviced;
 - keep full records of any work carried out; and
 - make the records of work available to the tenant if the tenant asks to see them.
- The landlord must replace anything specified in paragraph 9(1) (tenant's liability to repair) which has worn out or become incapable of repair unless the tenant is liable to replace it under paragraph 9(3).

Annex B

The **tenant** must repair and leave clean and in good tenantable repair, order and condition the farmhouse, cottages and farm buildings together with the following (which are in or upon the holding, or which during the tenancy may be erected or provided upon the holding)

- fixtures and fittings (including fitted kitchens);
- space heating and water heating systems (including the repair of any boiler but not its replacement), ranges, grates;
- drains, sewers, gulley's and grease traps;
- manholes and inspection chambers;
- water supply systems and fittings situated above ground (including pipes, tanks, cisterns, sanitary fittings and drinking troughs), pumping equipment, and hydraulic rams whether above or below ground;
- fences, hedges, field walls, stiles, cattle grids, gates and posts, and garden and yard doors;
- bridges, culverts, ponds, watercourses, sluices and ditches;
- roads and yards;
- fixed equipment generating electricity, heat or power (including solar panels, heat pumps, wind turbines and anaerobic digesters) which is wholly for the use or benefit of the tenant;
- vehicle fuel and oil tanks;
- radon pumps;
- insulation on water pipes; and
- livestock handling systems and sheep dips.
- The tenant must repair or replace and leave in good tenantable repair, order and condition the following—
 - door and window furniture including sashcords, locks and fastenings, glass and glass substitute except for glass or glass substitute which requires repair or replacement as a consequence of the condition of the door, window, skylight or their frames;
 - removable covers to any manhole, inspection chamber, sewage disposal system, slurry, silage or other effluent system excluding anaerobic digesters;
 - electrical sockets, switches, light fittings on or outside the surface of walls, ceilings and floors excluding switches that are part of the consumer board;
 - signs and notices; and
 - all broken or cracked roof tiles or slates and all slipped roof tiles or slates, as the damage occurs, providing that the reasonable cost of the work does not exceed £500 in any one year of the tenancy.
- the tenant must repair or replace and, upon repair or replacement, adequately paint or otherwise treat with effective preservative material as may be proper, all items of fixed equipment, and to do any work, where such repair, replacement or work is rendered necessary by the wilful act or negligence of the tenant or of any of the tenant's household members or employees; and

- the tenant must replace anything which has worn out or otherwise become incapable of repair if its condition has been brought about by or is substantially due to the tenant's failure to repair it.

Annex C

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

Agenda Item 4

Statutory Instruments with Clear Reports, that were previously considered for sifting and are now subject to scrutiny under Standing Orders 21.2 and 21.3

07 October 2019

The following instrument was previously considered for sifting in accordance with Standing Order 21.3B. In the sift process, the Committee agreed that the appropriate procedure for the Regulations was the negative resolution procedure. Now the instrument is subject to usual scrutiny in accordance with Standing Orders 21.2 and 21.3.

SL(5)449 – The Retained EU Law (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Procedure: Negative

These Regulations make minor technical corrections to the drafting of the following Welsh EU Exit SIs and other Welsh Primary and Secondary legislation that improve on the drafting and that are necessary for the statute book to be operable after exit day:

- The Food (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019
- The Flood and Water (Amendments) (England and Wales) (EU Exit) Regulations 2019
- The Seed Potatoes (Wales) (Amendment) (EU Exit) Regulations 2019
- The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019
- Welsh Language (Wales) Measure 2011
- The Central Rating List (Wales) Regulations 2005
- The Controlled Drugs (Supervision of Management and Use) (Wales) Regulations 2008
- The Pupil Information (Wales) Regulations 2011
- Land Transaction Tax and Anti-Avoidance of Devolved Taxes (Wales)

Act 2017



These Regulations are being made using powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018, with the exception of regulation 10 which is made under Section 78 (1) of the Land Transaction Tax and Anti-Avoidance of Devolved Taxes (Wales) Act 2017.

Some of the amendments made concern technical points reported on previously by the Committee and referred to in the Explanatory Memorandum.

Parent Act: European Union (Withdrawal) Act 2018 and Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017

Date Made: 24 September 2019

Date Laid: 26 September 2019

Coming into force date:



Agenda Item 5.1



HOUSE OF LORDS

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Mick Antoniw AM
Chair, External Affairs and Additional Legislation Committee
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27 September 2019

Dear Mick

I am writing to let you know that, on 9 September, I was appointed as the Chair of the House of Lords European Union Committee, in succession to Lord Boswell of Aynho, who has retired after seven years of service in post. I know how grateful Lord Boswell has been to you and your Scottish Parliament colleagues for your assistance to him and to the Committee during his time in post, both in Committee visits to Cardiff and in the context of the Interparliamentary Forum on Brexit.

I have taken on the role at an important and uncertain moment, in the context of the Brexit negotiations themselves, and in terms of the UK's future relationship with the EU, and the implications for the devolution settlement. In that context, I and the Committee stress the vital importance of effective channels of communication between us at this sensitive time.

I look forward to opportunities to engage with you in the coming weeks and months, including at the next meeting of the Forum in Cardiff. I would also be delighted to meet you in Cardiff, or if you are ever scheduled to be in London.

If I or my Committee can be of assistance to you at any time, please do not hesitate to get in touch.

Yours sincerely

Lord Kinnoull
Chair of the European Union Committee



Llyr Gruffydd AM
Chair, Finance Committee
SeneddFinance@assembly.wales

30 September 2019

Dear Llyr,

Thank you for inviting me to give evidence to your Committee on 25 September. I welcomed the opportunity to discuss with Members the Welsh Government's proposed amendments to the Senedd and Elections (Wales) Bill to provide for accountability and financing arrangements for the Electoral Commission which reflect the devolution of Welsh local government and Assembly elections.

I appreciate that the Committee would have preferred me to present a joint proposal agreed with the Llywydd, rather than our presenting separate proposals to you. I want to reassure you that I will continue my dialogue with the Llywydd in advance of Stage 2 proceedings to explore whether such an agreement can be reached.

I am grateful for your report on these matters, and that you have produced it so quickly following the meeting.

My response to your recommendations is set out below:

Recommendation 1. The Committee recommends the Counsel General gives a commitment to ensuring the mechanism for determining the value of transfer to be made into the Welsh Consolidated Fund to cover the cost of funding the Electoral Commission's work in relation to devolved Welsh elections and referendums, will not lead to insufficient funds being transferred to Wales.	As the funding transfer is dependent on intergovernmental negotiations which are not within the control of the Welsh Government, I am unable to provide this commitment. I can commit, however, that the Welsh Government will pursue this as its policy aim.
Recommendation 2. The Committee recommends the Counsel General provides the Assembly with an explanation as to why he is of the view that option 3 (as set out in his letter of	It was not my intention to give the impression that option 3, the Llywydd's and the Committee's preferred option, is not within the Assembly's legislative competence.

Bae Caerdydd • Cardiff Bay
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

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

<p>20 September 2019) to fund the Electoral Commission directly out of the Welsh Consolidated Fund is not within the Assembly's legislative competence. Option 3 is the Committee's preferred option, and the Counsel General will need to persuade the Committee that option 3 is out of competence and unworkable for that reason.</p>	<p>The option which raises legislative competence issues is option 1: adding the Electoral Commission to the list of relevant persons at section 124(3) of the Government of Wales Act 2006 (GoWA). A provision of an Act of the Assembly cannot modify section 124 of the GoWA (see paragraph 7 of Schedule 7B to GoWA).</p> <p>Option 3 would be the appropriate way forward if a separate Electoral Commission (EC) for Wales was being created. Providing for a body to be funded directly from two Consolidated Funds would be a novel approach for which there is no precedent as far as we are aware. As a minimum we would need to introduce similar accounting and audit requirements around Welsh Consolidated Fund funding as the EC have for UK Consolidated Fund funds. This would require preparation of separate audited financial statements for the EC in Wales and amendments to the Speaker's Committee estimates processes. The principle on which we have designed our preferred option is that the EC should continue to operate as a UK body with as little operational impact from the legislative changes as possible, whilst delivering the accountability to and funding from the Assembly which is our main policy objective.</p>
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In addition, I do not agree with conclusions 3 and 4 in your report. I do agree that the timing and practical issues, as well as the question of Accounting Officer responsibilities, which you identify are important issues. However, as these can be addressed through procedural and process changes outside of the legislative provisions, I do not consider them to be barriers to implementing my preferred option.

In advance of the Plenary debate on 1 October on the financial resolution for the Bill, as promised I set out below the estimated costs associated with the Electoral Commission amendments which I shared with you in draft and have tabled today.

My officials have worked closely with Assembly Commission and Electoral Commission colleagues, to whom I am very grateful, to prepare these estimates.

Costs for the relevant Senedd body

We have prepared the estimates for the relevant Senedd body based on the following jointly agreed assumptions that:

- the relevant Senedd body would meet two or three times per year;
- Members' time would not be costed on the basis that Members' salaries, resources or other costs would not change;
- the relevant Senedd body would meet for 2 – 3 hours per year (10-15 hours over a five-year period) on the following basis:
 - a total of ~ 1 hour to question the Electoral Commission (in relation to its budget and, potentially, audit report);
 - a total of ~ 1 hour to note documents and agree the annual Committee report;
 - potentially up to an additional hour to deal with any other matters that may arise (consideration of a supplementary budget, discretionary value for money work, etc.).

The RIA for the Bill provides estimates based on 12 committee hours over a five-year period, which are unlikely to be very different from the costs of the 10-15 hours assumed above. Therefore our estimate of the cost for the relevant Senedd body to undertake the duties prescribed in our amendments is the same as in the RIA: £39,200 over a five-year period (which equates to £7,840 per annum).

Costs for Assembly Commission administration

In the event that the Electoral Commission's funding is included within the Assembly Commission's budget, there will be staffing implications for the Assembly Commission in relation to the administration of funding the Electoral Commission.

Initial estimations of the staffing resource required to carry out assurance and scrutiny work to support the Assembly Commission's Accounting Officer indicate that the equivalent of one SEO working at between 0.5 FTE and 1 FTE per year will be required across the various services affected by the work. The cost of this work is an ongoing cost of £35,000 to £70,000 per annum (i.e. £175,000-£350,000 over 5 years). There are also likely to be some limited initial non-recurring costs associated with establishing this function, but it is not possible to quantify these at this time.

The resourcing implications for the Assembly Commission in relation to making changes to processes depend on the final decisions taken by the Assembly, both in relation to primary legislation and arrangements in Standing Orders. It is likely that staff time, Business Committee time and Assembly time would be required to review and adjust Standing Orders and working practices. However, in practice, such activity would form part of the Assembly Commission's "business as usual", as Standing Orders and Assembly working practices are routinely kept under review. As such, for the purpose of this assessment, this cost is considered as £0.

Costs for the Electoral Commission

The RIA set out anticipated costs to the Electoral Commission for engaging with Assembly scrutiny. These were again based on 12 committee hours over a five-year period. As this is within the same range as the assumptions we have made for the time taken by the relevant Senedd body to undertake the duties set out in our amendments, we are content to estimate that the Electoral Commission staff time required over a five-year period would cost the same as set out in the RIA: £19,600 (which equates to £3,920 per annum).

The Electoral Commission has indicated during scrutiny that it will require resources to administer the new scrutiny arrangements. These costs are likely to be absorbed within the Electoral Commission’s future Welsh budget, and depend on the cost apportionment method agreed in the inter-institutional agreement. It is not possible to quantify these costs at this time.

Costs for the Welsh Government

Our amendments place a duty on the relevant Senedd body to consult the Welsh Ministers on the Electoral Commission budget estimates, and on the Electoral Commission to consult the Welsh Ministers about codes of practice on attendance of observers at devolved elections in Wales and performance standards for devolved elections and referendums in Wales. Staff time will be required to provide advice to the Welsh Ministers about these matters. However, in practice, such activity would form part of the Welsh Government’s “business as usual”. As such, for the purpose of this assessment, this cost is considered as £0.

Summary

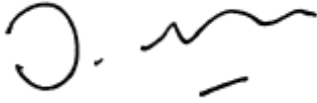
For ease of reference, the costs described above are set out in the table below:

Organisation	Type of cost	One off cost	Annual recurring cost	Five-year cost
Assembly Commission	Relevant Senedd body	£0	£7,840	£39,200
Assembly Commission	Internal administration	Not known	£35,000 to £75,000	£175,000 to £350,000
Assembly Commission	Procedural changes	£0	£0	£0
Electoral Commission	Engaging with relevant Senedd body	£0	£3,920	£19,600
Electoral Commission	Internal administration	£0	Not known	Not known
Welsh Government	Advice to Ministers	£0	£0	£0
TOTALS:			£46,760 to £86,760	£233,800 to £408,800

As you are aware, the Electoral Commission has estimated that the annual costs of their administration in relation to Welsh elections and referendums would vary between £500,000 and £1.6 million over the 2018/19 – 2022/23 period.

I hope that this information is helpful. I have asked that a copy of this letter be made available to all Members before the Plenary debate on the financial resolution. I am also copying this letter to the Llywydd, to the Chair of the Constitutional and Legislative Affairs Committee and to the Head of the Electoral Commission Wales.

Yours sincerely

A handwritten signature in black ink, consisting of a stylized 'J' followed by a series of wavy lines and a short horizontal stroke at the end.

Jeremy Miles AM

Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA-L/VG/0720/19

Mick Antoniw AM
Chair of the Constitutional and Legislative Affairs Committee

1 October 2019

Dear Mick

Transfer of responsibility for the Stop Smoking Wales Service from Public Health Wales NHS Trust to Local Health Boards

I wish to bring a procedural matter to your attention.

The “Stop Smoking Wales” service (‘SSW’) is a national service that is funded by the Welsh Government and currently provided by Public Health Wales NHS Trust (‘PHW’). Following a review of smoking cessation services in Wales, I decided to transfer responsibility for SSW from PHW to Local Health Boards (LHBs). As smoking cessation services have become part of mainstream NHS service provision, it is logical for this specialist front line cessation service to be planned, organised and managed by LHBs.

SSW comprises of staff, employed by PHW, who manage and run SSW smoking cessation clinics. To effect the transfer of SSW staff from PHW to LHBs, I have made the attached Order, utilising the powers in paragraph 24 of Schedule 2 to the National Health Service (Wales) Act 2006. The Order will come into force on 1 October 2019. As Section 203(3)(c) of the 2006 Act states that the power of Welsh Ministers to make an Order under paragraph 24 of Schedule 2 is not exercisable by way of a statutory instrument, the Order will not be subject to any statutory procedure.

I have also written to PHW and the LHBs, to direct the transfer of responsibility for the delivery of SSW, with effect from 1 October 2019. I attach a copy of this letter for your reference.

Yours sincerely,

Vaughan Gething AC/AM

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

CC Dai Lloyd AM, Chair of the Health, Social Care and Sport Committee

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

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



Ein cyf/Our ref MA-L/VG/0720/19

Chief Executive and Chair, Public Health Wales
Chief Executives and Chairs, Health Boards/NHS Trusts

30 September 2019

Dear colleague,

Transfer of responsibility for the Stop Smoking Wales Service from Public Health Wales NHS Trust to Local Health Boards

I write further to the letter of Dr Frank Atherton, Chief Medical Officer/Medical Director NHS Wales, dated 26th October 2018, to confirm the decision to transfer responsibility for the delivery of the Stop Smoking Wales (SSW) service from Public Health Wales NHS Trust to Local Health Boards (LHBs), with effect from 1st October 2019.

As a result of the transfer, LHBs will be responsible for the planning, organisation and delivery of all face-to-face smoking cessation services within their areas.

To retain the specialist expertise in the Stop Smoking Wales Service, those PHW employees currently providing face-to-face services will be transferred to the employment of the LHBs.

Public Health Wales NHS Trust will continue to provide the 'once-for-Wales' functions in the Help Me Quit system, including marketing, workforce training and development, and quality assurance and improvement, to support local delivery by LHBs. System leadership will continue to be provided by the Tobacco Control Strategic Board.

The Welsh Ministers will continue to fund the transferred services, but will re-allocate the funding from PHW to each LHB, accordingly. A recurrent transfer of £1.073m per annum from the PHW core allocation into the main LHBs allocation will take place. As the transfer will take place on 1st October 2019, these allocations will be prorated. Details of the funding to be provided to each LHB from 1st October 2019, for the service, is provided in Annex A. This funding is to be ring-fenced for smoking cessation activity.

To support the transfer, a further recurrent financial transfer of £67,435 will be provided to the main Health Boards Allocation by the Welsh Government. Costs for 2019-20 will be prorated. Details of the supplementary funding provided to each LHB is also provided in Annex A.

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

Yours sincerely,

A handwritten signature in black ink that reads "Vaughan Gething". The signature is written in a cursive, flowing style.

Vaughan Gething AM

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

Annex A

Funding to be provided to Health Boards for the Stop Smoking Wales service from 1st October 2019

Health Board	Annual Stop Smoking Wales budget	Pro-rata budget (1 October 2019- 31 March 2020)	Annual Supplementary Funding from the Welsh Government	Pro-rata Supplementary Funding from the Welsh Government (1 October 2019- 31 March 2020)	Annual total budget (SSW budget and supplementary Welsh Government funding)
Aneurin Bevan	204,970	102,485	17,897	8,949	222,867
Cardiff and Vale	145,232	72,616	11,767	5,884	156,999
Cwm Taf	161,852	80,926	5,296	2,648	167,148
Betsi Cadwaladar	226,918	113,459	11,702	5,851	238,620
Hywel Dda	125,513	62,757	6,963	3,482	132,476
Powys	56,844	28,422	2,141	1,071	58,985
Swansea Bay	151,688	75,844	11,669	5,835	163,357
Total	1,073,017	536,509	67,435	33,718	1,140,452

NATIONAL HEALTH SERVICE, WALES

The Transfer of Staff (Stop Smoking Wales Service) Order 2019

Made 26 September 2019

Coming into force 1 October 2019

The Welsh Ministers make the following Order in exercise of the power conferred by paragraph 24 of Schedule 2 to the National Health Service (Wales) Act 2006⁽¹⁾.

Title and commencement

1.—(1) The title of this Order is the Transfer of Staff (Stop Smoking Wales Service) Order 2019.

(2) This Order comes into force on 1 October 2019.

Interpretation

2. In this Order—

“the Act” (“*y Ddeddf*”) means the National Health Service (Wales) Act 2006;

“Local Health Board” (“*Bwrdd Iechyd Lleol*”) means a Local Health Board established in accordance with section 11(2) of the Act;

“Public Health Wales NHS Trust” (“*Ymddiriedolaeth GIG Iechyd Cyhoeddus Cymru*”) means the NHS Trust established by the Public Health Wales National Health Service Trust (Establishment) Order 2009⁽²⁾;

“PHW” (“*ICC*”) means Public Health Wales NHS Trust;

“SSW” (“*DSC*”) means the Stop Smoking Wales Service;

“the transfer date” (“*y dyddiad trosglwyddo*”) means 1 October 2019;

“the transferee Local Health Board” (“*y Bwrdd Iechyd Lleol sy'n drosglwyddai*”) means the Local Health Board to whose employment a person was informed in writing by PHW, prior to the transfer

(1) 2006 c. 42.

(2) S.I. 2009/2058 (W. 177).

date, that they would be transferring on the transfer date.

Transfer of staff to Local Health Boards

3.—(1) This article applies to a person who—

- (a) immediately before the transfer date is employed by PHW in connection with the functions of SSW, and
- (b) has been notified in writing by PHW prior to the transfer date that they are to be transferred to the employment of a Local Health Board on the transfer date.

(2) The contract of employment of a person to whom paragraph (1) applies is, on the transfer date, to be transferred to the transferee Local Health Board.

(3) The contract of employment of a person whose employment has transferred to a Local Health Board under paragraph (2)—

- (a) is not terminated by the transfer, and
- (b) has effect from the transfer date as if originally made between that person and the transferee Local Health Board.

(4) Without prejudice to paragraph (3)—

- (a) all the rights, powers, duties and liabilities of PHW under, or in connection with, the contract of employment of a person whose employment transferred to the transferee Local Health Board on the transfer date under paragraph (2), are to transfer to the transferee Local Health Board, and
- (b) any act or omission before the transfer date by, or in relation to, PHW, in respect of that person or that person's contract of employment, is deemed to have been an act or omission of, or in relation to, the transferee Local Health Board.

(5) Paragraphs (2) to (4) do not have effect to transfer the contract of employment of a person to whom paragraph (1) applies, or any rights, powers, duties and liabilities under, or in connection with, that contract, if, before the transfer date, that person informs PHW that they object to becoming employed by the transferee Local Health Board.

(6) Where a person to whom paragraph (1) applies has objected to the transfer of that person's contract of employment to the transferee Local Health Board as described in paragraph (5), the transfer operates so as to terminate that person's contract of employment with PHW.

(7) Subject to paragraph (8), a person whose contract of employment is terminated in accordance with

paragraph (6) is not to be treated, for any purpose, as having been dismissed by PHW.

(8) Where the transfer involves or would involve a substantial change in the working conditions to the material detriment of a person whose employment is or would have been transferred under paragraph (2), that person may treat the contract of employment as having been terminated, and that person is to be treated for any purpose as having been dismissed by PHW.

(9) No damages are to be payable by PHW or a Local Health Board as a result of a dismissal falling within paragraph (8) in respect of any failure by PHW to pay wages to a person in respect of a notice period which the person has failed to work.

(10) Paragraphs (2), (3), and (5) to (8) are without prejudice to any right of a person arising apart from this article to terminate that person's contract of employment without notice in acceptance of a repudiatory breach of contract by the employer.

(11) Records of PHW relating to the employment of those persons to whom paragraph (1) applies whose contracts of employment are to transfer pursuant to this article are to transfer to the transferee Local Health Board, on the transfer date.

Vaughan Gething

Minister for Health and Social Services, one of the
Welsh Ministers

26 September 2019