

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Video Conference via Zoom	Gareth Williams
Meeting date: 28 April 2020	Committee Clerk
Meeting time: 09.30	0300 200 6565
	SeneddLJC@assembly.wales

In accordance with Standing Order 34.19, the Chair has determined that the public are excluded from the Committee's meeting in order to protect public health. This meeting will be broadcast live on www.senedd.tv

Informal pre-meeting (09.00–09.30)

1 Introduction, apologies, substitutions and declarations of interest
09:30

**2 Instruments that raise issues to be reported to the Assembly
under Standing Order 21.2 or 21.3**
09:30–09:35

Negative Resolution Instruments

**2.1 SL(5)537 – The Single Use Carrier Bags Charge (Wales) (Amendment)
Regulations 2020**

(Pages 1 – 12)

CLA(5)–12–20 – Paper 1 – Report

CLA(5)–12–20 – Paper 2 – Regulations

CLA(5)–12–20 – Paper 3 – Explanatory Memorandum

CLA(5)–12–20 – Paper 4 – Letter from the Minister for Finance and Trefnydd
to the Llywydd, 8 April 2020

Made Affirmative Resolution Instruments

**2.2 SL(5)534 – The Health Protection (Coronavirus Restrictions) (Wales)
(Amendment) Regulations 2020**

(Pages 13 – 30)



CLA(5)-12-20 – Paper 5 – Report

CLA(5)-12-20 – Paper 6 – Regulations

CLA(5)-12-20 – Paper 7 – Explanatory Memorandum

CLA(5)-12-20 – Paper 8 – Letter from the First Minister to the Llywydd, 3
April 2020

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

09:35–09:40

(Page 31)

CLA(5)-12-19 – Paper 9 – Subordinate legislation with clear reports

3.1 SL(5)536 – The Abortion Act 1967 – Approval of a Class of Place for Treatment for the Termination of Pregnancy (Wales) 2020

4 Subordinate legislation that raises issues to be reported to the Assembly under Standing Order 21.7

09:40–09:45

4.1 SL(5)535 – Declaration of threat to public health in Wales due to coronavirus

(Pages 32 – 36)

CLA(5)-12-20 – Paper 10 – Report

CLA(5)-12-20 – Paper 11 – Declaration

4.2 C(5)040 – The Coronavirus Act 2020 (Commencement No. 1) (Wales) Regulations 2020

(Pages 37 – 41)

CLA(5)-12-20 – Paper 12 – Report

CLA(5)-12-20 – Paper 13 – Regulations

5 Standing Order 30B Report: The European Union (Withdrawal) Act and Common Frameworks

09:45–09:50

(Pages 42 – 62)

CLA(5)-12-20 – Paper 14 – Written statement

CLA(5)-12-20 – Paper 15 – Report

6 Paper(s) to note

09:50–09:55

6.1 Letters from the Minister for Housing and Local Government: Local Government and Elections (Wales) Bill

(Pages 63 – 85)

CLA(5)–12–20 – Paper 16 – Letter from the Minister for Housing and Local Government, 23 March 2020

CLA(5)–12–20 – Paper 17 – Letter from the Minister for Housing and Local Government to the Chair of the Equality, Local Government and Communities Committee, 23 March 2020

CLA(5)–12–20 – Paper 18 – Letter from the Minister for Housing and Local Government to the Chair of the Finance Committee, 23 March 2020

6.2 Letter from the Llywydd: Functions of the Legislation, Justice and Constitution Committee

(Pages 86 – 88)

CLA(5)–12–20 – Paper 19 – Letter from the Llywydd, 9 April 2020

CLA(5)–12–20 – Paper 20 – Letter to the Llywydd, 2 April 2020

6.3 Letter from the Minister for International Relations and the Welsh Language: Ministerial Forum for Trade

(Page 89)

CLA(5)–12–20 – Paper 21 – Letter from the Minister for International Relations and the Welsh Language, 21 April 2020

6.4 Letter from the First Minister to the Llywydd: The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 2) Regulations 2020

(Pages 90 – 102)

CLA(5)–12–20 – Paper 22 – Letter from the First Minister to the Llywydd, 24 April 2020

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

09:55

8 Forward Work Programme – discussion

09:55–10:20

(Pages 103 – 107)

CLA(5)–12–20 – Paper 23 – Discussion paper

9 Legislative Consent Memorandum on the Trade Bill – approach to scrutiny

10:20–10:30

(Pages 108 – 128)

CLA(5)–12–20 – Paper 24 – Legal Advice Note

CLA(5)–12–20 – Paper 25 – Research briefing

Date of the next meeting – 5 May (to be confirmed)

SL(5)537 – The Single Use Carrier Bags Charge (Wales) (Amendment) Regulations 2020

Background and Purpose

The Single Use Carrier Bags Charge (Wales) Regulations 2010 (“the 2010 Regulations”) require sellers of goods, who supply single use carrier bags for the purpose of allowing those goods to be carried away or delivered, to make a charge for each such bag supplied. However, Schedule 1 of the 2010 Regulations exempts certain types of single use carrier bags from the charge.

These Regulations amend Schedule 1 of the 2010 Regulations in order to exempt bags used solely for delivery or collection of groceries from the charge. The exemption is to be temporary, for a period of three-months from the date these regulations come into force.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

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

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

1. We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date subordinate legislation is laid before the Assembly and the date the subordinate legislation comes into force), and the explanation for the breach provided by Rebecca Evans, Minister for Finance and Trefnydd to the Llywydd in a letter dated 8 April 2020. In particular, we note what the letter says about these Regulations coming into force on the day after the day on which they were made:

“The 2020 Regulations were made and laid as soon as practicable on public health grounds, in order to minimise the risk to home delivery staff and other customers of spreading or contracting COVID-19 during the course of home deliveries. As a result, they have come into force less than 21 days after they were made.

Not adhering to the 21 day convention allows the Regulations to come into force on 9 April 2020 and in view of the circumstances surrounding this disease, the reduced period is therefore thought necessary and justifiable in this case.”

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 Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

20 April 2020



Cynulliad Cenedlaethol Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—
National Assembly for Wales

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Legislation, Justice and Constitution Committee

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

2020 No. 414 (W. 89)

**ENVIRONMENTAL
PROTECTION, WALES**

**The Single Use Carrier Bags
Charge (Wales) (Amendment)
Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under powers in the Climate Change Act 2008 and make amendments to the Single Use Carrier Bags Charge (Wales) Regulations 2010 (S.I. 2010/2880 (W. 238)) (“the 2010 Regulations”).

The 2010 Regulations, subject to certain exemptions, require sellers of goods who supply single use carrier bags for the purpose of allowing those goods to be carried away or delivered, to make a charge for each such bag supplied.

Regulation 3 of these Regulations, amends Schedule 1 (Exemptions), to the 2010 Regulations, by inserting a new provision to exempt bags used to carry goods purchased for delivery as part of a grocery delivery service, or for collection as part of a service that provides for collection of groceries, from the charge. The operation of the new exemption is made subject to a three month time limit.

The purpose of the temporary exemption is to increase efficiency of delivery systems, and to mitigate as far as possible, the risk of transmission of the COVID-19 virus (coronavirus), through delivery and collection systems, by the use of single use carrier bags to carry goods.

The emergency nature of the instrument means it has not been possible to prepare a Business and Regulatory Impact Assessment. The needs of business and, in particular, the retail sector have, however, closely informed the preparation of these Regulations.

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

2020 No. 414 (W. 89)

**ENVIRONMENTAL
PROTECTION, WALES**

**The Single Use Carrier Bags
Charge (Wales) (Amendment)
Regulations 2020**

Made at 12.45 p.m on 8 April 2020

Laid before the National Assembly for

Wales at 5.30 p.m on 8 April 2020

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

The Welsh Ministers, in exercise of the powers conferred by sections 77(1) and (2) and 90(3) of, and paragraph 1 of Schedule 6 to, the Climate Change Act 2008(1) make the following Regulations.

Title and commencement

1.—(1) The title of these Regulations is the Single Use Carrier Bags Charge (Wales) (Amendment) Regulations 2020.

(2) They come into force on the day after the day on which they are made.

Amendment of the Single Use Carrier Bags Charge (Wales) Regulations 2010

2. The Single Use Carrier Bags Charge (Wales) Regulations 2010(2) are amended in accordance with regulation 3.

(1) 2008 c.27. By virtue of section 77(3)(b) of the Climate Change Act 2008, the Welsh Ministers are the relevant national authority for the purpose of making regulations under Schedule 6 to that Act. There are amendments to section 77 and Schedule 6 that are not relevant to these Regulations.

(2) S.I. 2010/2880 (W. 238), amended by S.I. 2011/2184 (W. 236); there are other amendments not relevant to these Regulations.

Amendment of Schedule 1

3. In Schedule 1, in paragraph 1—

(a) in sub-paragraph (1), at the end insert—

“(p) subject to sub-paragraph (1A), bags intended to be used solely for the purpose of carrying goods purchased—

(i) for delivery as part of a grocery delivery service; or

(ii) for collection as part of a service that provides for collection of groceries.”;

(b) after sub-paragraph (1) insert—

“(1A) Bags falling within paragraph (p) of sub-paragraph (1) are exempted from the charge under regulation 6 only until midnight on 8 July 2020.”

Hannah Blythyn

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

At 12.45 p.m on 8 April 2020

Explanatory Memorandum to the Single Use Carrier Bags Charge (Wales) (Amendment) Regulations 2020

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

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Single Use Carrier Bags Charge (Wales) (Amendment) Regulations 2020.

Hannah Blythyn
Deputy Minister for Housing and Local Government
8 April 2020

1. Description

These Regulations amend the Single Use Carrier Bags Charge (Wales) Regulations 2010 so that the requirement to charge for single use carrier bags (SUCBs) under those Regulations, does not apply to those bags used solely to carry goods purchased for delivery as part of a grocery delivery service, or for collection as part of a service that provides for collection of groceries.

This exemption from the SUCB charge is to be temporary, and will cease to have effect at the end of a period of three months from the coming into force of these Regulations. The three-month period may only be extended by making further subordinate legislation

2. Matters of special interest to the Legislation, Justice and Constitution Committee

It is considered that in the current public health crisis, the measure given effect by these Regulations, should be put in place as a matter of urgency. Consequently, they come into force on the day after the day on which they are made, and do not follow the convention that not less than 21 days should elapse between the laying of the Regulations and their coming into force.

3. Legislative background

These Regulations are made under powers in sections 77 and 90 of, and Schedule 6 to, the Climate Change Act 2008 (“the 2008 Act”) and make amendments to the Single Use Carrier Bags Charge (Wales) Regulations 2010 (S.I. 2010/2880 (W. 238)) (“the 2010 Regulations”). By virtue of the operation of section 77(4) and (5) of the 2008 Act, they are subject to negative resolution procedure.

4. Purpose & intended effect of the legislation

Background

The Single Use Carrier Bags Charge (Wales) Regulations 2010, subject to certain exemptions, require sellers of goods who supply SUCBs for the purpose of allowing those goods to be carried away or delivered, to make a charge for each such bag supplied. All types of SUCBs are, potentially, subject to the

charge, including those made wholly or partly of any type of plastic, paper or any type of plant based material or natural starch. However, Schedule 1 of the 2010 Regulations, exempts certain types of SUCBs described in the Schedule, from the charge.

These Regulations amend Schedule 1 of the 2010 Regulations, in order to exempt bags used solely for delivery or collection of groceries, from the charge. The exemption is to be temporary, for a period of three-months from the date these regulations come into force.

Since the introduction of the SUCB charge, a large number of supermarkets have either imposed a flat rate charge for any bags used with each home grocery delivery or have phased out bagged deliveries completely, favouring the use of a “bagless” option (this is where individual items are delivered in a crate and then unloaded by the customer in their property).

During the current Covid-19 outbreak, concerns have been raised over the risk posed by “bagless” deliveries, with the potential for the virus to be transmitted between delivery drivers and householders. To help reduce this risk, retailers have now removed the “bagless” option from their service and instead are leaving, where possible, deliveries in bags on the doorstep to avoid contact.

However, retailers were concerned that by adopting this approach they would effectively be “forcing” all customers to pay for a bag they may have not usually selected and, therefore, took the decision to cover the carrier bag charge themselves. This presented a legal concern, as they were not charging customers for bags as required under our 2010 Regulations.

To address these issues, the Welsh Government, in discussion with the UK Government, other Devolved Administrations and representatives from the Welsh retail sector, agreed to introduce a temporary exemption from the charge, for SUCBs used solely to carry goods purchased for delivery as part of a grocery delivery service, or for collection as part of a service that provides for collection of groceries. The purpose of the temporary exemption is, therefore, to increase efficiency of delivery systems and to mitigate as far as possible, the risk of transmission of the COVID-19 virus, through delivery and collection systems, by the use of single use carrier bags to carry goods (instead of crates). It also reduces the risk of a legal challenge being made against retailers who were not charging their customers for bags.

5. Consultation

In the circumstances, the Welsh Government was unable to carry out a formal Consultation on these changes. However, discussions have been held with the UK Government and other Devolved Administrations and with key representatives of the Welsh retail sector who were supportive of the change.

6. Regulatory Impact Assessment

The emergency nature of the instrument means it has not been possible to prepare a Business and Regulatory Impact Assessment. The needs of business and, in particular, the retail sector have, however, closely informed the preparation of these Regulations.

Specific impact tests

Welsh Language

There are no positive or adverse impact implications on the Welsh Language.

Children's Rights

No conflict with UNCRC has been identified and there are no negative impacts on children and young people.

Privacy

There are no impact implications on privacy matters.

Justice Impact Assessment (JIA)

Whilst no formal JIA has been undertaken, no impacts have been identified when considering these Regulations.

Competition Assessment

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



Ein cyf/Our ref MA-HB-1207-20

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

8 April 2020

Dear Llywydd,

The Single Use Carrier Bags Charge (Wales) (Amendment) Regulations 2020

In accordance with section 11A(4) of the Statutory Instruments Act 1946, as inserted by Sch.10 para 3 of the Government of Wales Act 2006, I am notifying you that this Statutory Instrument (SI) will come into force less than 21 days from the date of laying. The Explanatory Memorandum for these Regulations is attached for your information. The 2020 Regulations amend the Single Use Carrier Bags Charge (Wales) Regulations 2010 ("the 2010 Regulations"), which place a duty on all retailers to charge a minimum of 5p for each new single use carrier bag sold to enable goods to be taken away from their stores, including bags used to enable home delivery or collection services. Bags used for certain purposes are exempt from the need to charge.

The 2020 Regulations amend the 2010 Regulations by inserting an additional exemption into Schedule 1, Paragraph 1 to exempt single use carrier bags used solely for the purposes of carrying goods purchased as part of a grocery delivery or collection service. The 2020 Regulations were made and laid as soon as practicable on public health grounds, in order to minimise the risk to home delivery staff and other customers of spreading or contracting COVID-19 during the course of home deliveries. As a result, they have come into force less than 21 days after they were made.

Not adhering to the 21 day convention allows the Regulations to come into force on 9 April 2020 and in view of the circumstances surrounding this disease, the reduced period is therefore thought necessary and justifiable in this case.

An Explanatory Memorandum has been prepared and this has been laid, together with the Regulations, in Table Office.

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

Bae Caerdydd • Cardiff Bay
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CF99 1NA

Gohebiaeth.Rebecca.Evans@llyw.cymru
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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.

A copy of this letter goes to Mick Antoniw AM, Chair of the Legislation, Justice and Constitution Committee, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans." The signature is written in a cursive style with a period at the end.

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

SL(5)534 – The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 (“the principal Regulations”) and came into force at 12.01 am on 7 April 2020.

Specifically, these Regulations amend regulations 5, 7 and 8 of the principal Regulations, insert new regulations 6A and 7A into the principal Regulations, and make further minor and consequential amendments to them. The new provisions inserted by these Regulations relate to general restrictions on places of work (regulation 6A) and guidance issued by the Welsh Ministers in maintaining a 2 metre gap between persons (regulation 7A).

These Regulations are made under sections 45C(1), (3)(c), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984 (“the 1984 Act”).

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 which causes the disease known as COVID-19 or “coronavirus”.

The purpose of the principal Regulations, which these Regulations amend, is to:

- put restrictions on the movement of individuals, setting out circumstances in which they may leave the place where they live and preventing gatherings of groups of more than two people, except in certain circumstances; and
- require the closure of certain businesses and impose requirements on other businesses, as well as duties to close certain public footpaths and land, to protect against the risks to public health arising from coronavirus.

The principal Regulations also revoked the Health Protection (Coronavirus, Business Closure) (Wales) Regulations 2020 (“the Business Closure Regulations”) and the Health Protection (Coronavirus: Closure of Leisure Businesses, Footpaths and Access Land) (Wales) Regulations 2020 (“the Leisure Businesses Regulations”).

Procedure

Made affirmative: the Regulations have already been made, but require Assembly approval for them to stay into force for more than 28 days.

Technical Scrutiny

The following 2 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

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



The third paragraph of the preamble of the English text is unclear. The text *“the Welsh Ministers consider that the person desachieve, which is a public response to that threat”* is unclear, and it appears that text may be missing.

The third paragraph of the preamble of the Welsh version is clear and translates as *“the Welsh Ministers consider that the amendments are proportionate with that which they are seeking to achieve, which is a public response to that threat”*.

A Government response is required to clarify the English text.

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

These Regulations, like the principal Regulations, are made in exercise of the powers conferred on the Welsh Ministers by sections 45C(1) and (3)(c), 45F(2) and 45P of the 1984 Act. Unlike the Business Closure Regulations and the Leisure Businesses Regulations, the Welsh Ministers have not relied on the enabling power contained in section 45C(4)(d) of the 1984 Act. Section 45C(4)(d) of the 1984 Act enables the Welsh Ministers to include in regulations a “special restriction or requirement”. For these purposes, a special restriction or requirement is “a restriction or requirement which can be imposed by a justice of the peace by virtue of section 45G(2), 45H(2) or 45I(2)” of the 1984 Act. Those restrictions and requirements include the closure of premises (section 45I(2)(a) of the 1984 Act).

Regulations 2 and 4 of these Regulations respectively amend regulations 5 and 7 of the principal Regulations, which require the closure of holiday accommodation and places of worship, during the emergency period. Regulation 7 of these Regulations also amends various provisions of the principal Regulations concerning the closure of premises. It appears that the Welsh Ministers should rely on the enabling powers under sections 45C(4)(d) of the 1984 Act in order to make regulations 2, 4 and 7 of these Regulations, as it did with the Leisure Businesses Regulations and the Business Closure Regulations.

A Government response is required to explain why the Welsh Government do not consider it necessary to rely on section 45C(4)(d) of the 1984 Act in order to make these Regulations.

Merits Scrutiny

The following 3 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 or public policy likely to be of interest to the Assembly.

The Explanatory Memorandum that accompanies these Regulations sets out the Welsh Government’s assessment of the interference with certain articles of the European Convention on Human Rights. The assessment does not appear to be complete:

- It appears that article 9 of the European Convention on Human Rights – freedom of thought, conscience and religion – is engaged in respect of regulations 4 and 6 of these Regulations (which amend regulations 7 and 8 of the principal Regulations). This right is a qualified right, which permits the Welsh Ministers to interfere with the exercise of the rights in the same manner as with articles 8 and 11 of the European Convention.
- Until the end of the transition period, the European Union Charter of Fundamental Rights will apply in the United Kingdom. There are corresponding protections to those in the European



Convention on Human Rights contained in the EU Charter of Fundamental Rights. Subject to the principle of proportionality, limitations which effect the rights under the Charter may be made if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

Although the Explanatory Memorandum does not expressly consider the interference with the rights under article 9 of the European Convention, nor the rights under the EU Charter of Fundamental Rights, the justification given by the Welsh Government in relation to articles 8 and 11 of the European Convention applies equally to the interference with the rights under the article 9 and the EU Charter.

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

In the Explanatory Note, at page 2, at the paragraph beginning with "*Regulation 3 inserts new regulation 6A...*" there is a missing bracket which should be inserted. The fourth line begins with the text "*(when such work is being carried out...*" however a closed bracket should be inserted after the text "*Schedule 1*" (as has been done in the Welsh language text). This is particularly relevant as brackets are used again, later on in the same sentence.

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

Similar provisions to those contained in the principal Regulations are contained in the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 ("the English Regulations"). Advice has been provided to Members in respect of the principal Regulations to highlight the material differences between the principal Regulations and the English Regulations. Amendments are not proposed to the English Regulations at this time.

The amendments under these Regulations create a further departure between the approaches adopted in England and Wales and may create inequality for some citizens in Wales, particularly those on the border with England.

A Government response is required to clarify the reasons for differences between the provisions in the principal Regulations that are amended by these Regulations and the English Regulations.

Implications arising from exiting the European Union

None.

Government Response

Given the current circumstances regarding coronavirus, a Welsh Government response is required as soon as is reasonably practicable.

Legal Advisers

Legislation, Justice and Constitution Committee

21 April 2020



Regulations made by the Welsh Ministers, laid before the National Assembly for Wales under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of the National Assembly for Wales within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.

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

2020 No. 399 (W. 88)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (Wales) (Amendment)
Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 2A of the Public Health (Control of Disease) Act 1984 enables the Welsh Ministers, by regulations, to make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Wales.

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

These Regulations amend regulations 5, 7 and 8 of the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 (the “principal Regulations”), insert new regulations 6A and 7A into the principal Regulations, and make further minor and consequential amendments to them.

Regulation 5 of the principal Regulations makes provision relating to providers of holiday accommodation which are subject to the requirement to cease carrying on their business under regulation 4(4) of the principal Regulations. **Regulation 2** amends paragraph (3) of, and adds a new paragraph (3A) to, regulation 5 to make it clear that all such businesses can continue to provide services online or

by telephone or post, and can open premises at the request of the Welsh Ministers or a local authority.

Regulation 3 inserts new regulation 6A into the principal Regulations which requires the person responsible for work being carried out at any place (when such work is being carried out during the emergency period and so long as the premises are not the premises of a business or service listed in Schedule 1 to take all reasonable measures to ensure that a distance of 2 metres is maintained between persons on the premises (unless the persons are members of the same household or are a carer and the person being cared for).

Regulation 4 amends regulation 7 of the principal Regulations so that the requirement to take all reasonable measures to ensure that a distance of 2 metres is maintained between persons in a place of worship, crematorium or community centre does not apply to persons from the same household or to carers and persons they are caring for. It also inserts a new paragraph (4A) into regulation 7 with the effect that a person responsible for a cemetery must take all reasonable measures to ensure that a distance of 2 metres is maintained between persons from different households attending a burial at the cemetery. Finally, a new paragraph (6) is inserted defining “cemetery” and “burial” for the purposes of regulation 7.

Regulation 5 inserts new regulation 7A into the principal Regulations which requires any person who is subject to a requirement to take all reasonable measures to ensure that a distance of 2 metres is maintained between persons at a place to have regard to guidance from the Welsh Ministers about taking those measures.

Regulation 8(1) of the principal Regulations provides that, during the emergency period, no person may leave the place where they are living without reasonable excuse. Regulation 8(2) sets out a non-exhaustive list of activities that are to be regarded as reasonable excuses.

Sub-paragraph (g) of regulation 8(2) provides that attending a funeral is a reasonable excuse for a person if the funeral is that of a member of the person’s household (paragraph (i)); a close family member (paragraph (ii)); or a friend, where no member of the deceased’s household or close family member is attending (paragraph (iii)). **Regulation 6** amends regulation 8(2)(g) with the effect that attending the funeral is to be regarded as a reasonable excuse to leave the place where a person is living if the person is responsible for arranging the funeral or is invited (but note that there will be limits on the number of persons who may attend a funeral as a result of the restrictions imposed by regulation 7 of the principal Regulations).

Regulation 7 contains minor and consequential amendments including—

- inserting a definition of “premises” for the purposes of the principal Regulations, which makes it clear that any building or structure or any land (that is to say outdoor places) count as premises under the Regulations;
- permitting the Welsh Ministers to designate a person to receive payments of fixed penalties as an alternative to making payments to the local authority in whose area the offence is alleged to have occurred;
- adding aquacultural supplies shops and livestock markets and auctions to the list in Part 4 of Schedule 1 to the principal Regulations with the effect that they may remain open but must comply with the requirements of regulation 6(1) of the principal Regulations.

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 not been prepared as to the likely cost and benefit of complying with these Regulations.

Regulations made by the Welsh Ministers, laid before the National Assembly for Wales under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of the National Assembly for Wales within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.

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

2020 No. 399 (W. 88)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (Wales) (Amendment)
Regulations 2020**

Made 3 April 2020

*Laid before the National Assembly for
Wales* 6 April 2020

*Coming into force at 12.01 a.m. on 7 April
2020*

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 45C(1) and (3)(c), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984(1).

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

These Regulations amend the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020(2) and the Welsh Ministers consider that the person desachieve, which is a public health response to that threat.

(1) 1984 c. 22. Sections 45C, 45F and 45P were inserted by section 129 of the Health and Social Care Act 2008 (c. 14). The functions under these sections are conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister, as respects Wales, is the Welsh Ministers.

(2) S.I. 2020/353 (W. 80).

In accordance with section 45R of that Act the Welsh Ministers are of the opinion that, by reason of urgency, it is necessary to make this instrument without a draft having been laid before, and approved by a resolution of, the National Assembly for Wales.

Title, coming into force and application

1.—(1) The title of these Regulations is the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020 and they come into force at 12.01 a.m. on 7 April 2020.

(2) In these Regulations, “the principal Regulations” means the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020(1).

Holiday accommodation businesses providing online etc. services

2. In regulation 5 of the principal Regulations, for paragraph (3) substitute—

“(3) In so far as regulation 4(4) applies to any other business listed in Part 3 of Schedule 1, the obligation on the person responsible for carrying on the business applies subject to the need to provide accommodation for any persons staying in that accommodation when these Regulations come into force and who—

- (a) are unable to return to their main residence, or
- (b) are using the accommodation as their main residence.

(3A) In so far as regulation 4(4) applies to a business listed in Part 3 of Schedule 1, the obligation on the person responsible for carrying on the business applies subject to the need to—

- (a) carry on the business, or keep any premises used in the business open, for any purpose as may be requested by the Welsh Ministers or a local authority;
- (b) carry on the business by providing information or other services—
 - (i) through a website, or otherwise by on-line communication,
 - (ii) by telephone, including enquiries by text message, or
 - (iii) by post.”

(1) S.I. 2020/353 (W. 80).

Restriction on other places of work

3. After regulation 6 of the principal Regulations insert—

“General restriction on places of work

6A.—(1) A person responsible for work being carried out at premises where a person is working must, when such work is being carried out during the emergency period, take all reasonable measures to ensure that a distance of 2 metres is maintained between any persons on the premises (except between two members of the same household, or a carer and the person assisted by the carer).

(2) Paragraph (1) does not apply to premises used in the carrying on of a business, or provision of a service, listed in Schedule 1.”

Restrictions on places of worship, crematoriums, cemeteries and community centres

4. In regulation 7 of the principal Regulations—

- (a) in paragraph (2), after “worship”, where it first occurs, insert “(except between two members of the same household, or a carer and the person assisted by the carer)”;
- (b) in paragraph (4), after “crematorium”, where it first occurs, insert “(except between two members of the same household, or a carer and the person assisted by the carer)”;
- (c) after paragraph (4) insert—

“(4A) A person responsible for a cemetery must take all reasonable measures to ensure a distance of 2 metres is maintained between every person at a burial taking place in the cemetery during the emergency period (except between two members of the same household, or a carer and the person assisted by the carer).”

;
- (d) in paragraph (5)(b), after “premises” insert “(except between two members of the same household, or a carer and the person assisted by the carer)”;
- (e) after paragraph (5) insert—

“(6) For the purposes of this regulation—

 - (a) “burial” includes the interment of a dead person’s ashes;
 - (b) “cemetery” includes a burial ground and any other place for the interment of the dead.”;
- (f) in the heading, after “crematoriums” insert “, cemeteries”.

Guidance on maintaining distance of 2 metres between persons

5. After regulation 7 of the principal Regulations insert—

“Guidance on maintaining distance of 2 metres between persons

7A.—(1) A person subject to a requirement or restriction in—

- (a) regulation 4(1) as it applies to workplace canteens,
- (b) regulation 6(1),
- (c) regulation 6A(1), or
- (d) regulation 7(1), (3), (4A) or (5),

must have regard to guidance issued by the Welsh Ministers about reasonable measures to be taken to ensure that a distance of 2 metres is maintained between persons.

(2) The Welsh Ministers—

- (a) may revise guidance issued under paragraph (1), and
- (b) must publish the guidance (and any revisions).

(3) Guidance under this regulation may incorporate (by reference or transposition) guidance, codes of practice or other documents published by another person (for example, a trade association, body representing members of an industry or a trade union).”

Attendance at funerals

6. In regulation 8(2)(g) of the principal Regulations, for paragraphs (i) to (iv) substitute—

- “(i) as a person responsible for arranging the funeral,
- (ii) if invited by a person responsible for arranging the funeral, or
- (iii) as the carer of a person attending.”

Minor and consequential amendments

7.—(1) The principal Regulations are amended as follows.

(2) In regulation 1(3), after sub-paragraph (d) insert—

“(da) “premises” includes any building or structure and any land;”.

(3) In regulation 3(2), for “15” substitute “16”.

(4) In regulation 10—

- (a) in paragraph (1)(a), after “6” insert “, 6A”;
 - (b) in paragraph (12), after “6,” insert “6A,”.
- (5) In regulation 12(1)(a), after “6,” insert “ 6A,”.
- (6) In regulation 13—
- (a) in paragraph (2), for “a local authority specified in the notice.” substitute “—
 - (a) a local authority, or
 - (b) a person designated by the Welsh Ministers for the purposes of receiving payment under this regulation,as the notice may specify.”;
 - (b) after paragraph (2) insert—

“(2A) The Welsh Ministers may designate themselves under paragraph (2)(b).”;
 - (c) in paragraph (3), for “The local authority specified in the notice” substitute “Where a local authority is specified in the notice it”;
 - (d) in paragraph (8), after “£120” insert “and paragraph (7) does not apply”;
 - (e) in paragraph (11)(a), for “the local authority concerned, and” substitute “—
 - (i) the local authority, or
 - (ii) the person designated under paragraph (2)(b),specified in the fixed penalty notice to which the proceedings relate, and”.
- (7) In Schedule 1—
- (a) in paragraph 29, for “on”, where it first occurs, substitute “off”;
 - (b) for paragraph 44 substitute—

“**44.** Agricultural or aquacultural supplies shops.

44A. Livestock markets or auctions.”;
 - (c) in the Schedule heading, after “subject to” insert “specific”.

Mark Drakeford

The First Minister, one of the Welsh Ministers
3 April 2020

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020

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

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020.

Vaughan Gething
Minister for Health and Social Services
7 April 2020

1. Description

These Regulations amend the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 (“the principal Regulations”) which

- put restrictions on the movement of individuals, setting out circumstances in which they may leave the place where they live and preventing gatherings of groups of more than two people, and;
- require the closure of certain businesses and impose requirements on other businesses, as well as duties to close certain public footpaths and land, to protect against the risks to public health arising from coronavirus.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

These Regulations are made under the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984 (c. 22) (“the 1984 Act”). The Regulations are made without a draft having been laid and approved by the National Assembly for Wales. It is the opinion of the Welsh Ministers that, by reason of urgency, it is necessary to make the Regulations without a draft being so laid and approved so that public health measures can be taken in order to quickly respond to the threat to human health from coronavirus.

The Regulations cease to have effect at the end of the period of 28 days (excluding recess) beginning with the day on which the instrument is made unless, during that period, the Regulations are approved by the National Assembly for Wales.

European Convention on Human Rights.

Article 8 – right to respect for private and family life; Article 11 - freedom of assembly and association; and Article 1 of the First Protocol – protection of property.

Each of these are qualified rights, which permit the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. The necessity of the situation that has given rise to these Regulations is the basis relied upon to justify the interference with these rights as a proportionate means of achieving the legitimate aim of protecting the citizens of Wales

3. Legislative background

The Regulations are made under sections 45C(1) and (3)(c), 45F(2) and 45P of the 1984 Act.

The 1984 Act and Regulations made under it provide a legislative framework for health protection in England and Wales. Part 2A of the 1984 Act was inserted by the Health and Social Care Act 2008, and provides a legal basis to protect the public from threats arising from infectious disease.

Section 45C of the 1984 Act provides a power for the appropriate Minister to make regulations for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination. It includes powers to impose restrictions or requirements on or in relation to persons, things or premises in the event of, or in response to, a threat to public health. Section 45F enables the making of supplementary provision including provision for the enforcement of restrictions and requirements imposed under the Regulations and the creation of offences.

The functions under these sections are conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister, as respects Wales, means the Welsh Ministers.

4. Purpose and intended effect of the legislation

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) which causes the disease known as COVID-19 or “coronavirus”.

These Regulations amend the principal Regulations to make it clear that all businesses under restrictions can continue to provide services online or by telephone or post, and can open premises at the request of the Welsh Ministers or a local authority.

These Regulations requires the person responsible for work being carried out to take all reasonable measures to ensure that a distance of 2 metres is maintained between persons on the premises (unless the persons are members of the same household or are a carer and the person being cared for). This applies to all places of work unless already subject to restrictions under the principal regulations or required to close under those regulations.

The principal Regulations are amended so that the duty to take all reasonable measures to ensure that a distance of 2 metres is maintained between persons in a place of worship, crematorium or community centre which is imposed on the person responsible for those premises does not require the person to take those measures in respect of persons from the same household or carers and persons they are caring for.

A new requirement is inserted into the principal regulations imposing a duty on a person responsible for a cemetery to take all reasonable measures to ensure that a distance of 2 metres is maintained between persons from different households attending a burial at the cemetery.

The Regulations insert a new provision into the principal regulations for any person to whom the duty to take all reasonable steps to ensure the 2 meter distance requirement is maintained to have regard to guidance about that requirement issued by the Welsh Ministers. The Welsh Ministers are under a duty to publish that guidance and may revise it from time to time. The new provision also allows that guidance to incorporate guidance, codes of practice or other documents published by other bodies if the Welsh Ministers choose to do so. The Guidance is available at <https://gov.wales/taking-all-reasonable-measures-maintain-physical-distancing-workplace>

These Regulations amend the principal Regulations so that attending a funeral is to be regarded as a reasonable excuse to leave a home if the person is responsible for arranging the funeral or is invited (but note that there will be limits on the number of persons who may attend a funeral). This replaces the previous list of persons who would be regarded as having a reasonable excuse to leave home to attend a funeral (that is members of the deceased's household or close family, or a friend if no member of the household or family is attending). Note that a carer of a person attending a funeral may still attend with the person they care for.

The Welsh Ministers are required to keep the need for the restrictions under review every 21 days, the first review will take place by 16 April. As soon as the Welsh Ministers consider that the restrictions are no longer necessary to prevent, protect against, control or provide a public health response to the incidence or spread of infection in Wales with coronavirus, the Welsh Ministers must publish a direction. Closure of the businesses, therefore, lasts until a direction is given by the Welsh Ministers.

These Regulations expire at the end of the period of six months beginning with the day on which they come into force.

It is critical to take all reasonable steps to limit onward transmission of coronavirus. Coronavirus was declared a Public Health Emergency of International Concern on 11 March 2020 by the World Health Organisation, and steps are being taken worldwide to limit its transmission. The Chief Medical Officer for Wales together with the other Chief Medical Officers across the UK assess the risks to public health stemming from coronavirus to be high. The number of transmissions and admissions to hospital in Wales has been increasing and an urgent response is essential.

The Welsh Ministers consider that restrictions and requirements imposed by the Regulations are proportionate to what they seek to achieve, which is to respond to a serious and imminent threat to public health.

The restrictions form part of the UK response to coronavirus. Restrictions have also been put in place by regulations made by the Secretary of State in relation to businesses, public spaces and the movement of individuals in England.

5. Consultation

Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, there has been no public consultation in relation to these amending Regulations. Individuals and businesses have been informed about the restrictions in the principal Regulations through wide scale and ongoing public information broadcasts across the UK, including by the Chief Medical Officer for Wales, the First Minister of Wales and the Prime Minister.

6. Regulatory Impact Assessment (RIA)

There has been no regulatory impact assessment in relation to these Regulations due to the need to put them in place urgently to deal with a serious and imminent threat to public health.



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

3 April 2020

Dear Elin

The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020

I have today made the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020 under sections 45C(1) and (3)(c), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984, which come into force at 12.01am on 7 April 2020. I attach a copy of the statutory instrument which I intend to lay, with an accompanying Explanatory Memorandum, once the statutory instrument has been registered.

In accordance with the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984, this instrument must be approved by the National Assembly for Wales by 30 April 2020 in order for it to remain in effect. In these circumstances I understand Standing Order 21.4A is relevant and the Business Committee may establish and publish a timetable for the responsible committee or committees to report.

I am copying this letter to Rebecca Evans AM, Minister for Finance and Trefnydd, Mick Antoniw AM, Chair of the Legislation, Justice and Constitution Committee, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely,

MARK DRAKEFORD

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
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YP.PrifWeinidog@llyw.cymru • ps.firstminister@gov.wales

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

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

Subordinate Legislation with Clear Reports 27 April 2020

SL(5)536 – The Abortion Act 1967 – Approval of a Class of Place for Treatment for the Termination of Pregnancy (Wales) 2020

Background and Purpose

This Approval is made by the Welsh Ministers under powers given to them by the Abortion Act 1967. The Approval provides that:

- the home of a registered medical practitioner is approved as a class of place for treatment for the termination of pregnancy for the purposes only of prescribing the medicines known as Mifepristone and Misoprostol;
- the home of a pregnant woman who is undergoing treatment for the purposes of termination of her pregnancy is approved as a class of place where the treatment for termination of pregnancy may be carried out.

The treatment must be carried out in the following manner:

- the pregnant woman has— (i) attended an approved place (i.e. a hospital in Wales, as authorised under section 1(3) of the Abortion Act 1967, or a place in Wales approved under that section); (ii) had a consultation with an approved place via video link, telephone conference or other electronic means, or (iii) had a consultation with a registered medical practitioner via video link, telephone conference or other electronic means, and
- the pregnant woman is prescribed Mifepristone and Misoprostol to be taken for the purposes of the termination of her pregnancy and the gestation of the pregnancy has not exceeded nine weeks and six days at the time the Mifepristone is taken.

The Approval will reduce the need for social contact and thus reduce unnecessary risk of expose to coronavirus.

Procedure

No procedure.

Parent Act: Abortion Act 1967

Date Made: 01 April 2020

Date Laid:

Coming into force date:



Agenda Item 4.1

SL(5)535 – Declaration of threat to public health in Wales due to coronavirus

Background and Purpose

Part 4 of Schedule 22 to the Coronavirus Act 2020, gives the Welsh Ministers powers relating to events, gatherings and premises in Wales in the event of a serious and imminent threat to public health in Wales due to coronavirus.

Paragraph 26 of that Schedule enables the Welsh Ministers to make a declaration under that paragraph if they are of the view that:

- (a) the incidence or transmission of coronavirus constitutes a serious and imminent threat to public health in Wales, and
- (b) the powers in the Schedule will be an effective means of— (i) preventing, protecting against, delaying or otherwise controlling the incidence or transmission of coronavirus in Wales, or (ii) facilitating the most appropriate deployment of medical or emergency personnel and resources in Wales.

Before making a declaration under paragraph 26 of Schedule 22, the Welsh Ministers must consult the Chief Medical Officer or one of the Deputy Chief Medical Officers for Wales.

Having come to the view outlined above and having consulted the Chief Medical Officer for Wales, the Welsh Ministers have made this declaration under paragraph 26 of Schedule 22.

The effect of the declaration is to enable the Welsh Ministers to use the powers conferred on them by Part 4 of Schedule 22 to the Coronavirus Act 2020.

Part 4 of Schedule 22 gives powers to the Welsh Ministers to make directions relating to the prohibition or restriction of events or gatherings and to the closure of premises or imposition of restrictions on persons entering or remaining inside premises.

The directions may be made or varied from the time this declaration is made and until such time as the declaration is revoked. The period beginning with the making of this declaration and the revoking of it is referred to as a “public health response period” in Schedule 22 to the Coronavirus Act 2020.

Procedure

No procedure.

Scrutiny under Standing Order 21.7

One point is identified for reporting under Standing Order 21.7 in respect of this declaration.

1. Accessibility of the law

We note that this declaration has triggered the availability of significant powers that can now be used by the Welsh Ministers under Schedule 22 to the Coronavirus Act 2020.



We also note that these powers can be exercised by the Welsh Ministers by the mere giving of a direction (directions are not always easy to find online) and that it is a criminal offence to fail to comply with such a direction without reasonable excuse.

It is therefore vital that the public will be made aware of these directions and the consequences of failing to comply with them.

It will also be vital for the public to understand, and not be confused by, the relationship between:

- directions made by the Welsh Ministers under Schedule 22 to the Coronavirus Act 2020, and
- regulations made by the Welsh Ministers under the Public Health (Control of Disease) Act 1984 (several of which have been made, and laid before the Assembly, in response to the coronavirus).

It is our understanding that, at the time of publishing this report, the Welsh Ministers have not exercised the powers to make directions under Schedule 22.

Implications arising from exiting the European Union

None.

Government Response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

20 April 2020



DECLARATION BY THE
WELSH MINISTERS

2020 (WG20-15)

PUBLIC HEALTH, WALES

**Declaration of threat to public
health in Wales due to coronavirus**

EXPLANATORY NOTE

(This note is not part of the declaration)

Part 4 of Schedule 22 to the Coronavirus Act 2020, gives the Welsh Ministers powers relating to events, gatherings and premises in Wales in the event of a serious and imminent threat to public health in Wales due to coronavirus.

Paragraph 26 of that Schedule enables the Welsh Ministers to make a declaration under that paragraph if they are of the view that—

- (a) the incidence or transmission of coronavirus constitutes a serious and imminent threat to public health in Wales, and
- (b) the powers in the Schedule will be an effective means of—
 - (i) preventing, protecting against, delaying or otherwise controlling the incidence or transmission of coronavirus in Wales, or
 - (ii) facilitating the most appropriate deployment of medical or emergency personnel and resources in Wales.

Before making a declaration under paragraph 26 of Schedule 22, the Welsh Ministers must consult the Chief Medical Officer or one of the Deputy Chief Medical Officers for Wales.

Having come to the view outlined above and having consulted the Chief Medical Officer for Wales, the Welsh Ministers have made this declaration under paragraph 26 of Schedule 22.

The effect of the declaration is to enable the Welsh Ministers to use the powers conferred on them by Part 4 of Schedule 22 to the Coronavirus Act 2020.

Part 4 of Schedule 22 gives powers to the Welsh Ministers to make directions relating to the prohibition or restriction of events or gatherings and to the closure

of premises or imposition of restrictions on persons entering or remaining inside premises.

The directions may be made or varied from the time this declaration is made and until such time as the declaration is revoked. The period beginning with the making of this declaration and the revoking of it is referred to as a “public health response period” in Schedule 22 to the Coronavirus Act 2020.

DECLARATION BY THE
WELSH MINISTERS

2020 (WG20-15)

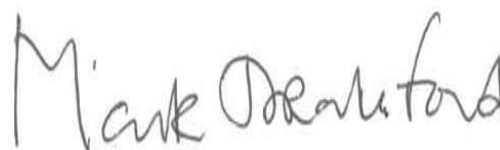
PUBLIC HEALTH, WALES

**Declaration of threat to public
health in Wales due to coronavirus**

Made

The Welsh Ministers, having consulted the Chief Medical Officer for Wales, declare under paragraph 26 of Schedule 22 to the Coronavirus Act 2020(1) that they are of the view that—

- (a) the incidence or transmission of coronavirus constitutes a serious and imminent threat to public health in Wales, and
- (b) the powers conferred by Part 4 of Schedule 22 to the Coronavirus Act 2020 will be an effective means of—
 - (i) preventing, protecting against, delaying or otherwise controlling the incidence or transmission of coronavirus in Wales, and
 - (ii) facilitating the most appropriate deployment of medical and emergency personnel and resources in Wales.



Mark Drakeford
First Minister, one of the Welsh Ministers
Date 29 March 2020

(1) 2020 c.7.

C(5)040 – The Coronavirus Act 2020 (Commencement No. 1) (Wales) Regulations 2020

Background and Purpose

These Commencement Regulations bring into force certain provisions of the Coronavirus Act 2020 (**the Act**).

Regulation 2 brings into force at 9 a.m. on 27 March 2020 section 10 of, Part 1 of and paragraphs 11, 12 and 13 of Schedule 8 to, the Act so that the Mental Health Review Tribunal for Wales does not have to comply with certain requirements under the Mental Health Act 1983. Part 1 of Schedule 8 contains introductory provision and paragraphs 11 and 12 remove the requirement that there must be at least three members to constitute a tribunal and provides that in specified circumstances cases may be determined without a hearing. Paragraph 13 provides that if the President of the Tribunal is temporarily unavailable the President of Welsh Tribunals may nominate another legal member to act as deputy.

Regulation 3 brings into force on 1 April 2020 section 15 of, and Part 2 of Schedule 12 to, the Act so that local authorities in Wales do not have to comply with certain duties in relation to meeting needs, and carrying out assessments, under the Social Services and Well-being (Wales) Act 2014 (**the 2014 Act**), and to modify duties to meet needs under the 2014 Act, until such time as regulations are in force under section 88 of the Act (power to suspend and revive provisions of the Act), or the Act is no longer in force.

Procedure

No procedure.

Scrutiny under Standing Order 21.7

One point is identified for reporting under Standing Order 21.7 in respect of these Commencement Regulations.

1. Significance of these Commencement Regulations

While commencement regulations / orders are often seen as technical matters that receive little scrutiny (especially as they usually involve no formal Assembly procedure), we note the particular importance of these Commencement Regulations.

When the Mental Health Review Tribunal for Wales was established and when the Assembly passed the Social Services and Well-being (Wales) Act 2014, the changes that are being commenced by these Commencement Regulations would have been inconceivable.

We expect the Welsh Government to:

- keep under close review the need for these changes to remain in force, and
- report to the Assembly of any further changes.

Implications arising from exiting the European Union

None.



Government Response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

20 April 2020



Cynulliad Cenedlaethol Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—
National Assembly for Wales

Legislation, Justice and Constitution Committee

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

2020 No. 366 (W. 81) (C. 19)

MENTAL HEALTH, WALES

SOCIAL CARE, WALES

The Coronavirus Act 2020
(Commencement No. 1) (Wales)
Regulations 2020

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations bring into force certain provisions of the Coronavirus Act 2020 (“the Act”).

Regulation 2 brings into force at 9 a.m. on 27 March 2020 section 10 of, Part 1 of and paragraphs 11, 12 and 13 of Schedule 8 to, the Act so that the Mental Health Review Tribunal for Wales does not have to comply with certain requirements under the Mental Health Act 1983. Part 1 of Schedule 8 contains introductory provision and paragraphs 11 and 12 remove the requirement that there must be at least three members to constitute a tribunal and provides that in specified circumstances cases may be determined without a hearing. Paragraph 13 provides that if the President of the Tribunal is temporarily unavailable the President of Welsh Tribunals may nominate another legal member to act as deputy.

Regulation 3 brings into force on 1 April 2020 section 15 of, and Part 2 of Schedule 12 to, the Act so that local authorities in Wales do not have to comply with certain duties in relation to meeting needs, and carrying out assessments, under the Social Services and Well-being (Wales) Act 2014 (“the 2014 Act”), and to modify duties to meet needs under the 2014 Act, until such time as regulations are in force under section 88 of the Act (power to suspend and revive provisions of the Act), or the Act is no longer in force.

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

2020 No. 366 (W. 81) (C. 19)

MENTAL HEALTH, WALES

SOCIAL CARE, WALES

The Coronavirus Act 2020
(Commencement No. 1) (Wales)
Regulations 2020

Made

26 March 2020

The Welsh Ministers make these Regulations in exercise of the powers conferred by section 87(4) of the Coronavirus Act 2020(1).

The Welsh Ministers are satisfied that the condition specified in section 87(5) of that Act, is satisfied in relation to the provisions commenced by these Regulations.

Title, application and interpretation

1.—(1) The title of these Regulations is the Coronavirus Act 2020 (Commencement No. 1) (Wales) Regulations 2020.

(2) These Regulations apply in relation to Wales.

(3) In these Regulations, “the Act” means the Coronavirus Act 2020.

Provisions coming into force on 27 March 2020

2. The following provisions of the Act come into force at 9 a.m. on 27 March 2020—

- (a) section 10 (temporary modification of mental health and mental capacity legislation);
- (b) Part 1 of Schedule 8 (introductory provision);
- (c) paragraphs 11, 12 and 13 of Schedule 8 (constitution and proceedings of the Mental Health Review Tribunal for Wales).

(1) 2020 c.7.

Provisions coming into force on 1 April 2020

3. Section 15 (local authority care and support) of, and Part 2 of Schedule 12 (powers and duties of local authorities in Wales) to, the Act come into force on 1 April 2020.

Vaughan Gething
Minister for Health and Social Services, one of the
Welsh Ministers
26 March 2020



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The European Union (Withdrawal) Act and Common Frameworks**

DATE **23 March 2020**

BY **Jeremy Miles AM, Counsel General and Minister for European Transition**

The Welsh Government has worked with the Senedd to reprioritise government business to reflect the unprecedented nature of the Coronavirus (COVID 19) crisis. While this statement is being issued to update members, COVID 19 related Written Statements will continue to be issued as a priority.

The European Union (Withdrawal) Act requires the UK Government to report to Parliament periodically on matters relating to Common Frameworks and the use if any made by the UK Government of powers under section 12 of the Act (the so-called 'freezing powers') temporarily to maintain existing EU law limits on devolved competence.

I am notifying Members that the sixth such report was laid in Parliament on 19 March.

<https://www.gov.uk/government/publications/european-union-withdrawal-act-and-common-frameworks-report--4>



Cabinet Office

The European Union (Withdrawal) Act and Common Frameworks

26 September 2019 to 25 December 2019

March 2020



Cabinet Office

The European Union (Withdrawal) Act and Common Frameworks

26 September 2019 to 25 December 2019

**Presented to Parliament pursuant to paragraph 4 of Schedule 3 to the European Union
(Withdrawal) Act 2018**

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Lancaster and Minister for the
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Foreword

The UK Government is committed to working collaboratively and constructively with the governments of Scotland, Wales and Northern Ireland to establish common frameworks.

Recognising the importance of accountability and transparency as common frameworks are developed, the UK Government committed in Schedule 3 of the European Union (Withdrawal) Act to report to Parliament every three months on steps that have been taken towards implementing UK-wide common frameworks. This report details the progress made in the sixth reporting period (26 September 2019 to 25 December 2019). As this is the last full reporting period of 2019, this report also highlights some of the achievements of the programme throughout the year. The report is shared with the devolved administrations upon its publication.

Common frameworks are being developed under the principles agreed between the UK Government and Scottish and Welsh Governments at the Joint Ministerial Committee (European Negotiations) (JMC(EN)) in October 2017. As the programme progresses, the UK Government is committed to maintaining these principles.

Over the period covered by this report, policy officials in the UK Government and the devolved administrations have continued to work productively; for example, in developing detailed outline frameworks. These set out the proposed approach for each policy area, along with the operational elements of the framework, such as how decisions will be made and the roles and responsibilities of each administration.

The UK Government produced six publications on common frameworks in 2019, including four European Union (Withdrawal) Act and Common Frameworks statutory reports, a Revised Frameworks Analysis, and an update on progress in Common Frameworks, including the outline framework for Hazardous Substances (Planning).

This report would also include details on the use of powers in section 12 of the EU (Withdrawal) Act to temporarily maintain the existing EU law limits on devolved competence until common frameworks are in place, if those powers had been used. As a result of the continuing joint progress and collaboration on common frameworks, the UK Government has not sought to bring forward any section 12 regulations to date.

Implementation of Future Common Frameworks

- 1.1 Part 2 of Schedule 3 to the European Union (Withdrawal) Act 2018 requires that a Minister of the Crown report to Parliament at three month intervals on various matters pertaining to common frameworks, and the use of the powers in section 12 of, and Schedule 3 to, the 2018 Act to temporarily maintain the existing EU law limits on devolved competence. Reports are shared with the devolved administrations to enable them to maintain a concurrent level of scrutiny. The last report was published on 24 October 2019 and covered the reporting period 26 June 2019 to 25 September 2019.¹
- 1.2 The purpose of these reports is to ensure that the process of developing common frameworks, in collaboration with the devolved administrations, is transparent and subject to robust parliamentary scrutiny.

Principles for Common Frameworks

- 1.3 Under the Withdrawal Agreement EU law will continue to apply to, and in, the UK during the transition period. Under the devolution settlements, the devolved legislatures and administrations cannot act incompatibly with EU law. The EU laws that are in place create common UK-wide approaches even where those policy areas otherwise fall within devolved competence. The UK, Scottish and Welsh Governments have agreed that common approaches will continue to be required in some areas after the UK leaves the EU.
- 1.4 In October 2017, the Joint Ministerial Committee (European Negotiations) (JMC(EN)) agreed upon principles to guide the work to create common frameworks². These principles are set out below:

1. *Common frameworks will be established where they are necessary in order to:*
 - *enable the functioning of the UK internal market, while acknowledging policy divergence;*
 - *ensure compliance with international obligations;*
 - *ensure the UK can negotiate, enter into and implement new trade agreements and international treaties;*
 - *enable the management of common resources;*
 - *administer and provide access to justice in cases with a cross-border element;*

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/841824/The_European_Union_Withdrawal_Web_Accessible.pdf

²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/652285/Joint_Ministerial_Committee_communique.pdf

- *safeguard the security of the UK.*

2. *Frameworks will respect the devolution settlements and the democratic accountability of the devolved legislatures, and will therefore:*

- *be based on established conventions and practices, including that the competence of the devolved institutions will not normally be adjusted without their consent;*
- *maintain, as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory, as is afforded by current EU rules;*
- *lead to a significant increase in decision-making powers for the devolved administrations.*

3. *Frameworks will ensure recognition of the economic and social linkages between Northern Ireland and Ireland and that Northern Ireland will be the only part of the UK which shares a land frontier with the EU. They will also adhere to the Belfast Agreement.*

1.5 These principles continue to guide all discussions between the UK Government and the devolved administrations on common frameworks. Details of how these principles have been taken into account are included in this report, and will be included in future iterations of this publication.

Progress Towards Establishing Future Frameworks

1.6 The following section sets out the steps taken during this reporting period by the UK Government, in collaboration with the devolved administrations, towards implementing long-term common frameworks. It also outlines how the frameworks principles have been considered.

Frameworks Delivery Plan

1.7 Frameworks will be implemented depending on the requirements of the particular policy area. This may require a combination of legislative and non-legislative measures. The delivery process accounts for frameworks to be implemented in different ways, with some activity undertaken concurrently, to ensure that all of the due process has been undertaken. As a result, frameworks will be implemented at different points in time, depending on their individual requirements.

1.8 The work to establish common frameworks has five phases. The delivery plan below illustrates how a framework moves through these phases of development. Each framework moves through this process at a different pace.

- **Phase 1: Principles and proof of concept:** First phase of multilateral “deep dives” (involving UK Government and devolved administration officials) across legislative framework areas, as well as key non-legislative areas and cross-cutting issues.
- **Phase 2: Policy development:** Multilateral engagement work to develop outline frameworks in each area; development of required frameworks legislation; the beginning of bilateral stakeholder engagement; a light-touch review of outline frameworks. At the end of this phase, ministers will be sighted on the outline framework, and will agree the direction of travel.
- **Phase 3: Review and consultation:** Policy finalisation and an exploration of the interaction between frameworks and other key workstreams (for example, international obligations and trade); multilateral stakeholder engagement, including high-level programme engagement, parliamentary engagement and technical engagement; and an in-depth review and assessment process. This phase will end with collective agreement of the policy approach, and a provisional framework confirmed by JMC(EN).
- **Phase 4: Preparation and implementation:** Collaborative work to prepare and deliver the implementation of legislative and non-legislative elements of individual frameworks, alongside stakeholder (in addition to UK Government and devolved administration) engagement as appropriate; some reappraisal of framework agreements may be required based on the outcomes of cross-cutting issues.
- **Phase 5: Post-implementation:** Post-implementation arrangements, alongside continued required reappraisal of frameworks agreements, based on the outcomes of cross-cutting issues.

1.9 Revised delivery timelines for the development and implementation of frameworks were agreed by JMC(EN) on 28 June 2019. These timelines aim for all frameworks to be provisionally confirmed and the majority implemented by the end of 2020.

Frameworks Development

- 1.10 Common frameworks continue to be developed through constructive discussions between the UK Government and devolved administrations. This has continued during the latest reporting period (26 September 2019 to 25 December 2019), though engagement was duly limited during the pre-election period ahead of the December 12 General Election (6 November 2019 to 12 December 2019).
- 1.11 During the reporting period there have been two Project Board meetings between officials from the UK Government and the devolved administrations. One of these was a joint Project Board between officials developing common frameworks and those conducting a review of intergovernmental relations (IGR). This meeting

provided an opportunity to discuss the progress made both in frameworks and on the IGR review, as well as the interdependencies between governance of common frameworks and other strands of the review, particularly dispute avoidance and resolution.

- 1.12 There have been regular Project Team meetings between officials in the UK Government and the devolved administrations, where fruitful collaborative work continues, for example in tracking the progress made in developing common frameworks.
- 1.13 Individual frameworks have continued to make progress through this reporting period. For example, the UK Government and the devolved administrations have progressed significant technical aspects of the Implementation of EU Emissions Trading Scheme (ETS) framework. The Radioactive Substances policy team are finalising proposals for a new working group structure to underpin this framework.
- 1.14 Multiple framework development sessions have taken place, including:
 - a. three sessions on Nutrition Health Claims, Composition and Labelling, with discussions focused on finalising this framework for review and assessment process, and latterly on post-election events and priorities
 - b. five Food and Feed Safety and Hygiene official-level meetings;
 - c. several ETS workshops and deep dives;
 - d. a Radioactive Substances roundtable; and
 - e. a Public Health common framework workshop with representatives from the UK Government, the devolved administrations and all four public health agencies (Public Health England, Health Protection Scotland, Public Health Wales and the Public Health Agency in Northern Ireland) on 9 Oct. This supplemented discussions between the UK Government and the devolved administrations that occur every four weeks as part of a four nations health protection EU Exit oversight group.
- 1.15 Work has intensified to develop the policy detail of those frameworks that are in the latter stages of Phase 2. This includes joint preparations between the UK Government and devolved administration officials for technical stakeholder engagement on frameworks.
- 1.16 Further to the work carried out in this reporting period, over the past year, the first frameworks have entered Phases 2 and 3 of the frameworks process. In collaboration with the devolved administrations, the UK Government has enhanced its understanding of opportunities for further constructive work to deliver frameworks, for example in developing the review and assessment process for frameworks and in exploring the opportunities offered in engagement on frameworks. The UK Government will seek to continue this productive joint work as the frameworks programme continues to progress throughout 2020.

- 1.17 In the absence of Northern Ireland Executive Ministers, officials from the Northern Ireland Civil Service continued to participate in frameworks development on a factual and analytical basis.
- 1.18 In parallel to developing common frameworks, the UK Government sought to develop a shared cross-cutting approach to the UK internal market with the Welsh Government and Scottish Government, and with factual input from the Northern Ireland Civil Service.
- 1.19 The UK Government is exploring the evidence base for the level of economic integration between different nations and across different sectors of the UK; considering relevant international examples; and exploring the case for principles and governance structures which could be applied to the UK internal market, including how these could be put into practice.
- 1.20 Alongside individual framework areas, the Welsh Government, the Northern Ireland Civil Service and the UK Government have been working together to explore a range of evidence and ideas, including reflecting on the experience of other countries that have formal structures to manage their internal market. This work aims to ensure that the interests of governments, businesses, workers and consumers are fully taken into account in decision-making in areas where frameworks are being considered.

Review and Consultation

- 1.21 The UK Government, Scottish Government and Welsh Government have agreed that a 'Review and Assessment' process for frameworks is required before they are confirmed by JMC(EN). All frameworks will have to complete two stages of joint UK Government/devolved administration review, alongside ministerial clearance, before implementation can begin in Phase 4. In the absence of a Northern Ireland Executive, factual and analytical input has been provided by the Northern Ireland Civil Service.
- 1.22 Scrutiny of frameworks will be provided at official level in two stages, firstly a light touch review at the end of Phase 2 and then a further, more in-depth review at the end of Phase 3. The Phase 2 review will begin a phased appraisal of the key cross-cutting themes and issues, including the constitutional implications of proposals and compatibility with the overarching principles underpinning common frameworks. It is not intended to consider policy conclusions specific to each area. The results of this review will be used by policy teams as a steer for further iterative changes that take place across Phase 3.

- 1.23 Review and Assessment at the end of Phase 3 will adopt a peer review approach, involving desk-based assessment, evidence gathering and interviews, and drawing on expertise from both policy-specific and central teams. This process will address in particular the constitutional and cross-cutting impacts of each framework, in order to ensure that there is a consistent approach taken on these across the frameworks programme in line with the principles for common frameworks agreed by JMC(EN).
- 1.24 During this reporting period, several frameworks have made good progress with policy development and with drafting an outline framework, and three frameworks have now reached the stage of Phase 2 review. These are ETS, Food and Feed Safety and Hygiene, and Statistics. This is in addition to the two frameworks that have previously completed the Phase 2 review.
- 1.25 The Hazardous Substances (Planning) framework began its Phase 3 review and assessment during the previous reporting period. During this reporting period, work has been ongoing between UK Government policy officials and their devolved administration counterparts to consider the recommendations made during the review and refinements have been made to the outline framework. This outline framework is now due to undergo a further review to ensure all requirements have been met before Ministers consider whether to confirm it as a Provisional Framework.
- 1.26 The Nutrition Health Claims, Composition and Labelling framework has also reached the point of Phase 3 review and assessment. UK Government and devolved administration officials commenced Phase 3 review and assessment at the end of October 2019 and it is anticipated that this review will be completed during the next reporting period, following which Ministers will consider whether to confirm this as a Provisional Framework.

Stakeholder Engagement

- 1.27 The UK Government and the devolved administrations recognise that engaging legislatures and wider stakeholders on common frameworks is vital. Together, the UK Government and the devolved administrations are embarking on a series of engagements across England, Wales, Scotland and Northern Ireland. This engagement concerns both the broader frameworks programme as well as technical, policy-specific engagement on individual frameworks. The timing, location and format of engagement will be arranged in the way most appropriate to the framework and group of stakeholders.
- 1.28 Progress is being made by the UK, Welsh and Scottish Governments to engage with their respective legislatures, as well as with representative organisations and sector specific stakeholders, to broaden understanding of the progress and

process of the common frameworks programme. For example, the Welsh Government organised an event with the UK Government to provide an overview of frameworks to key stakeholders in the environment sector in late September. The Northern Ireland Civil Service have been engaging on a factual basis with the technical stakeholder engagement work.

- 1.29 As part of the development of common frameworks, each framework will undergo multilateral technical stakeholder engagement with sector specific stakeholders. This aims to test provisional policy conclusions and gather stakeholder feedback in order to inform further policy development. So far, two frameworks have undergone technical stakeholder engagement, these are Hazardous Substances (Planning) and Nutrition Health Claims, Composition and Labelling. Extensive technical engagements are being planned for further frameworks in 2020.
- 1.30 In addition to this multilateral engagement at official level, the Chancellor of the Duchy of Lancaster attended the JMC(EN) on 10 October, alongside the Scottish Government Cabinet Secretary for Government Business and Constitutional Relations and the Welsh Government Counsel General and Brexit Minister, where a constructive discussion on the joint work on common frameworks took place.
- 1.31 The Chancellor of the Duchy of Lancaster also appeared before the Scottish Parliament Finance and Constitution Committee on 21 October and at the National Assembly for Wales External Affairs and Additional Legislation Committee on 24 October 2019 in order to discuss EU Exit and Devolution, including frameworks.

No Deal Interim Arrangements

- 1.32 A No Deal Exit from the EU would have meant no transition period, leading to the possibility of policy divergence across the UK sooner than under a negotiated exit. During this reporting period, UK Government officials worked closely with officials in the devolved administrations to prepare for the possibility of a No Deal Exit.
- 1.33 Alongside this, the UK Government and the devolved administrations have worked together on EU Exit Statutory Instruments to amend deficiencies in retained EU law. The UK Government has also engaged extensively with the devolved administrations on critical EU-exit legislation which engages the legislative consent processes.
- 1.34 Additional interim arrangements have been developed in some areas, laying out ways of working and forums for communication. They are not frameworks, as

they have not gone through the framework development process, including an in depth review and assessment.

- 1.35 All interim arrangements are without prejudice to agreement on the final framework and the accompanying review and assessment process. Interim arrangements do not contradict the agreed frameworks principles.
- 1.36 Wording agreed with the Northern Ireland Office and the Northern Ireland Civil Service is included in interim arrangements.

Northern Ireland

- 1.37 Frameworks need to ensure recognition of the economic and social linkages between Northern Ireland and Ireland, and that Northern Ireland will be the only part of the UK that shares a land frontier with the EU. As set out in the agreed principles, frameworks will also adhere to the Belfast ('Good Friday') Agreement.
- 1.38 Officials from the Northern Ireland Civil Service have engaged in the common frameworks process where the policy area intersects with the devolved competence of the Northern Ireland Assembly. However, in the absence of the Northern Ireland Executive, officials' input has been limited to analytical and factual responses only. Where framework arrangements have been developed, they are without prejudice to the views of future Northern Ireland Executive Ministers.
- 1.39 Due to the continued absence of a Northern Ireland Executive during the reporting period³, there remained significant limits on the ability of the Northern Ireland Civil Service to make decisions.

Summary of Frameworks Publications in 2019

- 1.40 The UK Government has continued to engage with legislatures on the subject of common frameworks over the course of 2019. The UK Government has responded to various committee reports, and has fulfilled its statutory commitment to provide quarterly reports to Parliament on common frameworks.
- 1.41 In this year, the UK Government has published:

³ The NI Assembly and Institutions have been restored subsequent to the period of this report

- a. the second⁴, third⁵, fourth⁶ and fifth⁷ European Union (Withdrawal) Act and Common Frameworks statutory reports;
- b. a revised Frameworks Analysis⁸; and
- c. an update on the progress of delivering Common Frameworks⁹ including an outline framework relating to Hazardous Substances (Planning), an illustration of the delivery process and an update on stakeholder engagement.

1.42 UK Government officials have also provided multiple factual briefings to Northern Ireland political parties.

Common Frameworks Analysis

1.43 The Revised Frameworks Analysis was published on 4 April 2019 and set out the progress made to develop common frameworks in collaboration with the devolved administrations since the first analysis was published in March 2018¹⁰.

1.44 The Revised Frameworks Analysis set out the 160 policy areas where EU law intersects with devolved competence, and the areas where it was anticipated that common frameworks may be required.

1.45 Since the publication of the Revised Frameworks Analysis, an extensive programme of collaborative work has continued between the UK Government and devolved administrations. Joint understanding of the areas where common frameworks may be required continues to evolve and as such, the Frameworks Analysis is in the process of being updated. The next iteration of the Frameworks Analysis will be published in due course.

⁴https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/788764/CCS207_EUWithdrawalActAndCommonFrameworks.pdf

⁵https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/804360/Third_EU_Withdrawal_Act_and_Common_Frameworks_report_.pdf

⁶https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817382/final-edits-Fourth-s.12-report.pdf

⁷https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/841824/The_European_Union_Withdrawal_Web_Accessible.pdf

⁸https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/792738/20190404-FrameworksAnalysis.pdf

⁹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/814326/Frameworks_Products_Update_.pdf

¹⁰https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/686991/20180307_FINAL_Frameworks_analysis_for_publication_on_9_March_2018.pdf

Legislation Relating to Retained EU Law Restrictions

- 2.1 Section 12 of the EU (Withdrawal) Act removes the current requirements in each of the devolution statutes that the devolved legislatures can only legislate in ways that are compatible with EU law. The Act then replaces those requirements with powers for the UK Government to apply, by regulations, a temporary ‘freeze’ on devolved competence in specified areas, subject to the approval of the UK Parliament, via the draft affirmative scrutiny procedure.
- 2.2 The process for making, agreeing and revoking these regulations can be found in the first *European Union (Withdrawal) Act and Common Frameworks Report*¹¹.

Regulations to ‘Freeze’ Devolved Competence

Retained EU law restrictions applied during reporting period

- 2.3 No regulations have been made to apply retained EU law restrictions under these powers during the reporting period.

Progress towards removal of retained EU law restrictions

- 2.4 No retained EU law restrictions made under the powers in sections 30A and 57(4) of the Scotland Act 1998, sections 80(8) and 109A of the Government of Wales Act 2006, or sections 6A and 24(3) of the Northern Ireland Act 1998 had effect at the end the reporting period.

Regulations to Repeal the ‘Freezing’ Powers

- 2.5 In addition to the ‘freezing’ powers inserted into the devolution statutes by the EU (Withdrawal) Act, section 12(9) confers a power on UK Ministers to repeal, by regulations, the new provisions containing those powers.

Powers to apply retained EU law restrictions repealed during reporting period

¹¹<https://www.gov.uk/government/publications/the-european-union-withdrawal-act-and-common-frameworks-report>

- 2.6 No regulations have been made under section 12(9) of the EU (Withdrawal) Act to repeal the powers to apply retained EU law restrictions during the reporting period.

Progress required in order to repeal the powers to apply retained EU law restrictions

- 2.7 The UK Government has not sought to make use of the powers to apply retained EU law restrictions at this juncture. As outlined earlier in this report, significant progress is being made across policy areas to establish common frameworks in collaboration with the devolved administrations.
- 2.8 The freezing' powers provide a mechanism to give certainty across those areas where common rules do need to be maintained, by ensuring that there will not be substantive policy change in different parts of the UK until those future arrangements are in place. In order to remove those powers from the statute book, further progress towards the implementation of common frameworks would be needed. The UK Government will keep this position under review, in line with the statutory duty in section 12(10) of the EU (Withdrawal) Act.

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Agenda Item 6.1



Llywodraeth Cymru
Welsh Government

Mick Antoniw, AM
Chair
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National Assembly for Wales
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CF99 1NA

23 March 2020

Dear Mick,

Local Government and Elections (Wales) Bill

I would like to thank the Legislation, Justice and Constitution Committee for their scrutiny of the Local Government and Elections (Wales) Bill during Stage 1 and for the report which was published on 13 March 2020.

I have set out responses to the Committee's recommendations at Annex A. It has not been possible for me to accept all of the committee's recommendations in full. However, I have carried the principles and underpinning reasoning through as far as possible.

I hope this letter is helpful in setting out responses to the Committee's Report. I will also be writing to the Chairs of the Equality, Local Government and Communities Committee and the Finance Committee with respect to their Stage 1 Reports, and will copy the letters to all three Committee Chairs.

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

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

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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.

**Annex A: Response to Legislation, Justice and Constitution Committee
Stage 1 Report Conclusions and Recommendations**

Recommendation 1. The Minister should table an amendment to the Bill to apply the negative procedure to the making of regulations under paragraphs 9 and 10 of Schedule 1.

I do not accept this recommendation. Schedule 1 sets out, in detail, the process for initial reviews of electoral arrangements by the Local Democracy and Boundary Commission ('the Commission'); the process set out in the Bill provides for comprehensive local consultation and is entirely open and transparent. This is consistent with the process for all electoral arrangements reviews of principal councils by the Commission, which as local regulations are not subject to procedure in the Senedd. The initial reviews are very likely to be undertaken with very tight deadlines to meet scheduled dates of elections.

If the Welsh Ministers were to make regulations under paragraph 9(1)(b) or 10(2) of Schedule 1, paragraph 12 of the Schedule provides that the Commission must undertake a new review of the electoral arrangements, in line with the standard process set out in section 29(1) of the Local Government (Democracy) (Wales) Act 2013, as soon as possible after the first ordinary elections and in any event before the next ordinary elections.

Recommendation 2. The Minister should table an amendment to section 18 of the Bill, such that regulations to provide for a database of electoral registration information are subject to a super-affirmative procedure in the first instance, and the affirmative procedure thereafter.

I do not accept this recommendation. The Welsh Government's *Legislation Handbook on Assembly Bills* outlines that the 'super affirmative' procedure should only be used in 'exceptional cases'. I do not consider this case to be 'exceptional'.

Recommendation 3. The Minister should table an amendment to the Bill to apply the affirmative procedure to the making of an order under section 10(1B) of the Representation of the People Act 2000 (as inserted by section 26(1) of the Bill).

I do not accept this recommendation. Any Order made under this power will be only be applied in circumstances where the Welsh Ministers feel an electoral pilot would be of specific benefit to electors but no principal council is forthcoming. The Order would be time limited and local in nature applying to a small number of principal councils at most. It will be followed by a statutory evaluation undertaken by the Electoral Commission, with any long term changes resulting from such a pilot would be subject to full Senedd scrutiny.

I consider subjecting an Order of this nature to the affirmative procedure to be disproportionate.

Recommendation 4. The Minister should, during the Stage 1 debate on the Bill, explain clearly why regulation-making powers contained in paragraphs 6, 10(3) and 10(4) of Schedule 4 to the Bill cannot be replaced by equivalent provisions on the face of the Bill.

I accept the principle of this recommendation. Following consideration of the evidence provided to ELGC Committee by stakeholders, I have asked officials to explore options for bringing forward an amendment so as to apply the new provisions in respect of electronic notices of meetings, as inserted into the Local Government Act 1972 by Schedule 4, to both fire and rescue authorities and national park authorities.

Recommendation 5. The Minister should table an amendment to the Bill applying the affirmative procedure to regulations made under section 52A of the Local Government Act 2000 (as inserted by section 67(2) of the Bill).

I accept this recommendation and am proposing to bring forward an amendment to bring effect to this recommendation.

Recommendation 6. The Minister should, during the Stage 1 debate on the Bill, explain:

- **how she intends to use regulations under section 82(1)(d);**
- **the implications of removing section 82(1)(d) from the Bill.**

This recommendation is no longer relevant, I intend to bring forward an amendment for the purposes of clarifying the process for amending and revoking corporate joint committee regulations. The revised provisions will not provide for the Welsh Minister to make regulations ‘for any other purpose’.

Recommendation 7. The Minister should table an amendment to the Bill to apply the affirmative procedure to the making of regulations under section 84(1).

No action needed as section 84(1) is subject to the affirmative procedure, due to being ‘parasitic’ on the corporate joint committee regulations which are subject to the affirmative procedure.

Section 84(1) sets out the scope of the joint committee regulations and the amending or supplementary regulations, as each of these regulations are subject to the affirmative procedure the making of regulations under section 84(1) is also subject to this procedure.

It appears that the entry in the table of regulation making powers within the Explanatory Memorandum is incorrect and we will address this when the Explanatory Memorandum is revised at the end of Stage 2.

Recommendation 8. The Minister should table an amendment to the Bill to ensure that statutory guidance issued under section 88(3) must cover the need to include members on the performance assessment panel, established under section 91, who are independent of the local authority

I do not accept this recommendation, as I believe it be disproportionate to specify on the face of the Bill exactly what the guidance should cover about panel membership, but be silent on any other points the guidance could cover.

I intend to issue statutory guidance which will emphasise the need to ensure the independence of panel members and that the mix of members includes, as a minimum:

- An independent chair who is not currently serving in an official or political capacity within local government;
- A peer from the wider public, private or voluntary sectors;
- A serving local government senior officer, likely to be equivalent to chief executive or director; and
- An elected member.

The guidance will clarify that it is not intended that the panel be limited to four members.

We are working with local government officers and other stakeholders to develop this guidance. Should it be considered in time to provide for a more prescriptive approach, Welsh Ministers may make regulations in connection with the appointment of the panels under section 93 of the Bill.

Recommendation 9. The Minister should table an amendment to the Bill applying the affirmative procedure to the making of regulations under section 93(2)(b)

I accept the principle of this recommendation and am proposing to bring forward an amendment to subject all regulations made under section 93 to the affirmative procedure.

Recommendation 10. The Minister should, during the Stage 1 debate on the Bill, set out clearly and in detail how she intends to use the powers contained in section 109(2).

I do not accept this recommendation, section 109(2) will enable Welsh Ministers to confer new powers on one or more principal councils, if they consider those powers to be either necessary or expedient to permit or facilitate compliance with the new performance and governance regime.

The nature of the challenges principal council may face in managing their performance and governance regime or complying with their performance requirements, and the interventions and support which might be required to address those challenges, will be different in each case. For this reason I do not consider it appropriate, or of meaningful value, to attempt to set out in detail the circumstance in which it may be necessary to use this power.

Recommendation 11. The Minister should table an amendment to the Bill to delete the words “or expedient” from section 109(2).

I do not accept this recommendation. Section 109(2) will enable Welsh Ministers to confer new powers on one or more principal councils, if they consider those powers to be either necessary or expedient.

Some new powers for principal councils may not be absolutely “necessary” to enable compliance with Chapter 1 of Part 6, but may still be desirable to facilitate compliance, and this is why the term “or expedient” is needed in this section.

The nature of support provided, and the circumstances in which an inspection or an intervention takes place will be different in each case. In order to respond to the individual and particular issues faced by a principal council, the power has to be sufficiently broad to accommodate each individual circumstance as it may arise.

A power to make regulations to confer new powers on principal councils but only if they are deemed “necessary” would be too narrow.

Recommendation 12. We consider that the Explanatory Notes to the Bill should, for each section that includes a power to issue guidance, provide a broad indication of what that guidance is likely to cover. The Explanatory Notes should be amended accordingly.

I recognise the intention behind the Committee's recommendation and agree, in principle, that further work should be undertaken, the Explanatory Memorandum currently provides a broad indication of the matters that could be covered by guidance in respect of a number of provisions of the Bill.

I consider it appropriate to include this type of detail in the Explanatory Memorandum rather than the Explanatory Notes and we will provide more detail on other relevant sections when the Explanatory Memorandum is revised at the end of Stage 2.

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



Llywodraeth Cymru
Welsh Government

John Griffiths, AM
Chair
Equality, Local Government and Communities Committee
National Assembly for Wales
Ty Hywel
Cardiff Bay
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23 March 2020

Dear John,

Local Government and Elections (Wales) Bill

I would like to thank the Equality, Local Government and Communities Committee for their scrutiny of the Local Government and Elections (Wales) Bill during Stage 1 and for the report which was published on 13 March 2020.

I have set out responses to the Committee's recommendations at Annex A. It has not been possible for me to accept all of the Committee's recommendations in full. However, I have carried the principles and underpinning reasoning through as far as possible.

I hope this letter is helpful in setting out responses to the Committee's Report. I will also be writing to the Chairs of the Finance Committee and the Legislation, Justice and Constitution Committee with respect to their Stage 1 Reports, and will copy the letters to all three Committee Chairs.

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

Julie James AC/AM
Y Gweinidog Tai a Llywodraeth Leol
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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.

Annex A: Response to Equality, Local Government and Communities Committee Stage 1 Report Conclusions and Recommendations**Recommendation 1. We recommend that the general principles of the Local Government and Elections (Wales) Bill are agreed by the Assembly**

I note and welcome this recommendation and the support of the Committee for the general principles of the Bill. I would like to thank each member of the Committee for their considered and thorough scrutiny of the Bill.

Recommendation 2. We recommend that the Bill should be amended to include specific provision to roll out an adequate level of education on politics and democracy in Wales across all schools. In particular, young people from the ages of 14 and 15 should receive this education to prepare them for voting at 16 years old. This programme of political awareness should be accompanied by clear lesson plans to empower teachers to deliver the lessons

I recognise the intention behind the Committee's recommendation, however, I do not accept this recommendation as I do not consider that express provision needs to be made on the face of the Bill as work is already being taken forward.

We are developing educational resources, adopting a two phase approach. This will enable us to inform first time voters in the immediate term and develop ethical, informed citizens of Wales, and the world, in the longer term. We are using the delivery mechanisms available to us through both the existing school curriculum and the new curriculum being developed.

Phase one resources will be designed for delivery within the current curriculum for both learners and practitioners to use (although they will also continue to be relevant and accessible in the longer term) while phase two resources will be integrated into the new curriculum. These resources will help develop a generation of politically engaged and informed young people.

Phase one resources will be published by September 2020 so schools (and colleges, youth groups and others) can plan the use of these resources in the 2020-21 academic year. They will be standalone, to be delivered by schools in assemblies, on extra-curriculum days, as part of their Personal and Social Education as well as outside schools in settings such as youth groups.

There are also opportunities for learners to explore politics within the current curriculum, through the Welsh Baccalaureate. Officials are working to generate a teaching and learning resource pack for KS4 Welsh Baccalaureate students as part of the Global Citizenship Challenge.

We are also working on developing professional learning resources to support teachers to deliver political education and deal with situations that may arise from the extension of the franchise and questions on political issues.

Recommendation 3. We recommend that the duty in section 4 is extended to include a specific duty on electoral registration officers to promote awareness and provide assistance to relevant young people

I do not accept this recommendation. Local authorities have a duty towards a number of children as a corporate parent so imposing a duty to promote awareness and provide assistance to young people in respect of electoral arrangements is an extension of this role.

Young people of 14 to 17 years to whom this duty applies are voting for the first time and I consider there should be a specific duty on authorities to target this cohort of new voters. I also intend to bring forward a stage 2 amendments to extend the definition in section 4 of the Bill to include care leavers within that age bracket.

Ensuring the promotion of democratic participation is something for which the whole local authority should take responsibility, electoral registration officers already have a specific duty to ensure the accuracy and completeness of the electoral register therefore I do not consider that a further duty is required.

Recommendation 4. We recommend that the Welsh Government undertakes an engagement programme with the WLGA, principal councils and communities across Wales around reforming voting arrangements for local government elections. This work should include giving consideration to the impact that STV could have on increasing diversity among candidates and exploring mechanisms for citizens to express their views to principal councils on the voting system used

I do not accept this recommendation. I consider this could undermine the principle expressed in the Bill, namely the introduction of choice meaning the voting system is a matter for local determination.

If a council expresses interest in considering a change to STV we will work with them to ensure all the implications are fully thought through and local people are fully involved. Citizens are able to express their views in respect of the voting system to be used as a council considering a change in voting system, must consult:

- Local government electors in the council's area;
- The community councils in the area; and
- Such other persons as it considers appropriate

Recommendation 5. We recommend that the provision in section 13 is amended to include a duty on the Welsh Ministers to consult with the Electoral Commission before it makes rules about the conduct of local elections in Wales

I recognise the intention behind the Committee's recommendation and agree, in principle that an amendment should be made to this section. Section 13 of the Bill inserts a new section 36A into the Representation of People Act 1983. As currently drafted section 36A does not subject the Welsh Minister to a statutory consultation requirement. I intend to bring forward an amendment which would require the Welsh Ministers to consult 'such persons as they consider appropriate'. This would be consistent with other similar electoral powers in the Bill. Given the

nature of the Electoral Commission's role they would clearly be captured by this requirement. I also consider that this amendment will provide for a wider consultation, capturing, in addition to the Electoral Commission, the wider electoral community, Electoral Registration Officers, principal councils, community councils etc.

Recommendation 6. We recommend that the requirements on the Welsh Ministers to consult before making an Order to change the ordinary day of local elections are extended to include the Electoral Commission as a statutory consultee

I recognise the intention behind the Committee's recommendation, however, I do not accept this recommendation. Prior to making an order to change the ordinary day of local elections the Welsh Ministers are required to consult 'such persons as they consider appropriate'. As stated in the committee's report the Electoral Commission is recognised as an independent body with responsibility for overseeing elections, and I agree it is appropriate it be consulted prior to these regulations being made. As the existing consultation requirement will provide for this I do not consider it necessary to provide for additional prescription on the face of the Bill. If the Welsh Ministers failed to consult with the Commission, they could at risk of being challenged for failing to consult with 'appropriate persons'.

Recommendation 7. We recommend that the provisions relating to registration without application are amended to ensure that individuals registered in this way are placed on the closed electoral register rather than the open register

I recognise the intention behind the Committee's recommendation, however, I do not accept this recommendation. The provisions in respect of registration without application are subject to commencement by Order.

As the provisions are currently drafted an elector would be put on the full register 28 days after their addition through registration without application. The full register is the one used at elections and is not the one available to buy e.g. from credit agents. Under the provisions, the elector can request not to be included on the edited register. The edited register is the one that can be sold etc. Therefore electors will have to a choice of being on the full register or full and edited register. However given the range of electoral reforms currently being undertaken in Wales we have decided not to commence these provisions upon Royal Assent, rather we will commence them by Order. This will allow the current suite of reforms to be embedded before administrators are asked to consider additional changes.

Prior to commencing we will work closely with electoral administrators and Electoral Registration Officers to consider all matters relating to the implementation of registration without application. Should further provision be necessary consideration will be given to the making regulations under the new section 9ZA(4) of the Representation of People Act 1983, as inserted by section 22 of the Bill.

Recommendation 8. We recommend that, in light of the significant policy change to allow employees of principal councils, bar those in politically restricted posts, to stand for election to the council which employs them, the Welsh Government should work with the WLGA and trade unions to develop guidance to staff and managers on dealing with the implications, particularly where unsuccessful staff continue their employment

I accept the principle behind this recommendation. The intention of the provisions is to allow those with the best knowledge of their communities to stand for elections without having to resign before being elected. These provisions bring us in line with Scotland and will support increasing diversity of candidacy at local government level.

We will work with key stakeholders to develop non-statutory guidance around dealing with the implications of these provisions.

Recommendation 9. We recommend that the Welsh Government commissions an independent evaluation of the impact of the provisions relating to expenditure by Returning Officers following the first electoral-cycle where they are remunerated via their salaries

I do not accept this recommendation. The provisions in the Bill simply clarify the law, that is to say Returning Officers are not permitted to claim a personal fee for running local elections.

It is current practice that Returning Officers claim an amount for their services in the conduct of council elections, there is no provision in legislation for this. Given this, I do not consider that the payment of a fee is means by which the independence of a Returning Officer is guaranteed. The independence of the role is guaranteed by its enacting legislation and the performance standards set by the Electoral Commission.

I therefore do not believe there is any need to conduct an independent evaluation of this policy as there is sufficient scrutiny of Returning Officers and the role they perform.

Recommendation 10. We recommend that the Welsh Government takes this opportunity to ensure consistency in the bilingual delivery of elections across Wales, in line with the principles established by the Welsh Language (Wales) Measure 2011

I recognise the intention behind the Committee's recommendation, however, I do not accept this recommendation. As employees of local authorities, Electoral Registration Officers are required to observe the standards set out in the Welsh Language (Wales) Measure 2011.

Whilst the role of Returning officers is independent of the local authority, the Electoral Commission and the Wales Electoral Co-Ordination Board state clearly that Returning Officers should have regard to the Welsh Language (Wales) Measure 2011 and provide bilingual services.

In addition, all electoral forms and official documentation must already be produced bilingually by law.

Recommendation 11. We recommend that the Welsh Government reviews the use of the general power of competence by principal councils and eligible community councils, by the end of the next local government electoral cycle, to understand its effectiveness

I accept the principle of this recommendation. When the Explanatory Memorandum is revised at the end of Stage 2, we will reference a review of the use of the general power as part the post implementation review strategy. The nature, timing and consideration of such a review will be a matter for a future Assembly.

Recommendation 12. We recommend that the duty in section 46(2) be amended to include a requirement on principal councils to collaborate with connected authorities to encourage participation in the making of decisions. Consequently, section 47 should also be amended so that participation strategies reflect this collaboration

Recommendation 13. We recommend that section 46(3) is amended so that fire and rescue authorities are named as a connected authority with a principal council

I recognise the intention behind the Committee's recommendations, however, I do not accept these recommendations. Having considered the evidence of stakeholder provided to the Committee I have re-considered these provisions and agree that the duty on principal council to encourage participation in decision making should not extend to 'connected bodies', as these are independent and should remain responsible for their own matters.

I intend to bring forward an amendment removing the references to connected authorities. I have carefully considered whether to subject the other authorities, including fire and rescue authorities, to this duty individually however I consider this would be disproportionate.

Recommendation 14. We recommend that the Welsh Government amends the Local Authorities (Model Code of Conduct) (Wales) Order so that councillors are not required to publish their home address in full within the register of interests

I accept this recommendation and I will look to bring forward the necessary subordinate legislation to amend this Order at an appropriate time.

Recommendation 15. We recommend that the Welsh Government clarifies the position regarding the publication of community councillors' home addresses and amends the Bill to extend the provision to them in section 50 if necessary

I accept the principle behind this recommendation, however I do not consider it necessary to bring forward an amendment.

Community councils must, under section 55(1) of the Local Government (Democracy) (Wales) Act 2013, make available electronically information about each of its members including how those members may be contacted, there is no requirement for it to be a personal address.

The 2013 Act also requires a community council to make available electronically information on how to contact it and, if different, its clerk including a telephone number, postal address and email address. Again there is no requirement for the postal address to be a home address.

The Welsh Minister may issue guidance in respect of section 55(1) of the 2013 to which community councils must have regard. We will be issuing guidance to the sector in respect of a range of provisions in the Bill and will give consideration to clarifying in guidance that the publication of members' home addresses is not required or desirable.

Recommendation 16. We recommend that the Welsh Government provides updated guidance on the use of private recording equipment at council meetings in light of the provisions in this Bill relating to the electronic broadcasting of council meetings

I accept the principle behind this recommendation. Officials are currently co-working with representatives of local authorities and the WLGA to co-produce guidance which will underpin a range of provisions within the Bill. To help inform this guidance officials are currently undertaking a series of visits to local authorities to discuss the opportunities and issues connected with both broadcasting and remote attendance.

Recommendation 17. We recommend that the Welsh Government extends the provisions in section 56 to include fire and rescue authorities

I accept this recommendation and will explore options for bringing forward an amendment to extend the provisions in section 56 to both fire and rescue authorities and National Park Authorities.

Recommendation 18. We recommend that the Welsh Government clarifies in guidance that town and community councils are able to produce composite reports covering all of their reporting obligations

I accept this recommendation. I intend to issue guidance to the town and community council sector in respect of a range of relevant provisions within the Bill, in this guidance I will confirm that these councils can prepare composite reports if they so wish.

Recommendation 19. We recommend that the Welsh Government consults ALACE and SOLACE on changes relating to the performance management of chief executives prior to amendments to section 60 being tabled during the amending stages

I accept this recommendation and will bring forward the necessary amendment.

Recommendation 20. We recommend that the Welsh Government bring forward amendments to the Bill that would enable job-sharing for a wider range of specific roles

I accept this recommendation and intend to bring forward an amendment which would enable the Welsh Ministers to, through regulations, make provision facilitating or enabling job sharing in respect of a range of specified roles.

Recommendation 21. We recommend that the Welsh Government undertakes further work to explore the feasibility of enabling two individuals to jointly put themselves forward for election on a job-share basis

I recognise the intention behind the Committee's recommendation and agree to undertake further work. In my response to the Committee's report *Diversity in Local Government* I committed to considering this issue as part of the next phase of our Diversity in Democracy programme, which is currently being developed.

Recommendation 22. We recommend that the Welsh Government actively promotes the provisions relating to assistants to executives and job-sharing as a means of increasing diversity among council executives

I accept the principle behind this recommendation. We are committed to promoting and increasing diversity in local government which is why I've included provisions in respect of job sharing and assistants to executives in the Bill.

In addition, the Bill also includes provision amending section 38 of the Local Government Act 2000 so as to require principal councils to have regard to guidance as regards equality and diversity in respect of executive arrangements.

Whilst we continue to support and promote opportunities to increase diversity, this is not simply a matter for Welsh Government, it is for all partners to embrace current and future opportunities to maximise the potential offered by these and other provisions.

Recommendation 23. We recommend that the Welsh Government explores how a duty, similar to the duty on political group leaders to maintain standards of conduct, could be placed on independent members currently not sitting within any political group

I reject this recommendation. The Local Government Act 2000 ("2000 Act") established the ethical standards framework to promote the observance of consistent standards of conduct by local government members.

The ethical framework incorporates a set of ten general principles of conduct, a statutory model code of conduct and local standards committees to promote and maintain high standards of conduct by members.

The model code of conduct incorporates the above general principles and guides members on the declaration and registration of interests. Every relevant authority must adopt a code of conduct based upon the model with members required to give a written undertaking to observe the code before they can take up office.

The duty on political group leaders complements the ethical framework, with leaders of political groups required to take reasonable steps to promote and maintain high standards of conduct within their group. The Bill also subjects standards committee to new functions including ensuring group leaders have access to advice and training to support their new duties and to monitor their compliance with their new duties.

This recommendation would subject independent members to a duty to maintain standards in respect of their own conduct which I consider replicates the requirements of the ethical framework.

I consider the ethical framework to be serving local government well. I am considering the potential value of commissioning a review of the framework to ensure the general principles and model code of conduct remain appropriate and robust.

Independent members may come together to form a political group, as defined in the Local Government (Committees and Political Groups) Regulations 1990, if this were to occur the leader of that group will be subject to the duty in respect of the members of that group.

Recommendation 24. We recommend that the Bill be amended to enable the duty on leaders of political groups in relation to standards of conduct be extended to include leaders of groups within town and community councils, fire and rescue authorities and national park authorities

I recognise the intention behind the Committee's recommendations, however, I do not accept these recommendations. All members of a fire and rescue authority are also members of a principal council. The duty on a political group leader within a principal council in relation to the conduct of the group's members will extend to taking steps to maintain conduct of those members sitting on fire and rescue authorities.

The above principle also applies to the two-thirds of national park authorities who are members of a principal councils.

The current legislative basis for political groups is the Local Government (Committees and Political Groups) Regulations 1990 (made pursuant to section 9(10) and Schedule 1 of Local Government and Housing Act 1989). These regulations do not extend to town and community councils, as such there is currently no legal basis for the creation of political groups in town and community councils.

If I were to bring forward an amendment so as to extend the new section 52A of the Local Government Act 2000 to community councils, it would be possible to use the Welsh Minister's regulation making power at section 52A(3) to define a political group, thereby establishing a legal basis for political groups within town and community councils. This would however, immediately subject the leaders of those groups to new duties. I would be reluctant to do so without ensuring sufficient time to fully consider any potential unintended consequences of such new provisions and undertaking appropriate consultation.

Recommendation 25. We recommend that the Welsh Government, in developing guidance on community council training plans, addresses and supports the recommendations by the Independent Review Panel on mandatory training topics

I accept the principle of this recommendation. The guidance on preparation of training plans will make it clear that there are core areas in which all community councillors should be trained in to enable them to discharge their roles effectively. These areas will reflect those identified in the Independent Review Panel's recommendations. I intend to develop a core package of training for all community councillors to support this. I do not however intend to mandate specific training.

Officials will work with representatives from the sector to co-design the package of training.

Recommendation 26. We recommend that the Welsh Government amends the provisions relating to the duty on a principal council to report on its performance to include a deadline for the completion of the self-assessments every year.

I accept this recommendation and will bring forward the necessary amendment.

Recommendation 27. We recommend that the Welsh Government uses the opportunity, in the making of regulations, to specify minimum levels of skills, experience and representation from different professional sectors and communities required among members of panel performance assessments.

I recognise the intention behind the Committee's recommendation, however, I do not accept this recommendation at this time. We are working with WLGA and local authorities to co-design guidance in respect of the new performance and governance regime, to which principal council will be required to have regard. I intend this guidance to cover a number of matters including those detailed in this recommendation.

Should it become apparent that there is a need for a more prescriptive approach, regulations can be prepared and full consideration given to the matters which should be covered by the regulations based on the evidence gained during the implementation of the new performance and governance framework.

Recommendation 28. We recommend that the Welsh Government engages with the Auditor General for Wales to provide clarification on the arrangements for coordination between regulators in sections 118 and 119.

I accept this recommendation and we will continue to engage with the AGW and WAO.

The requirement for coordination between regulators replicates existing requirements contained within the Local Government (Wales) Measure 2009 and the requirement to produce a timetable is not intended to limit or restrict the regulators in undertaking short notice inspections.

The intention in the Bill, as under the 2009 Measure, is to ensure that where possible, (and where inspection dates are known), regulators are able to co-ordinate their activity to minimise the overall audit burden on authorities.

Recommendation 29. We recommend that guidance issued by the Welsh Government clarifies that a special inspection report by the Auditor General for Wales can only be considered as evidence for making restructuring regulations under Chapter 2 of Part 7 if there is a wider range of evidence available

I reject this recommendation. Prior to making restructuring regulations the Welsh Ministers must be satisfied that each of the conditions set out in section 128 of the Bill have been met.

The Welsh Ministers will need to consider all options and draw on evidence of the circumstances of the authority in question. This will include reports and reviews by the various regulators in the normal course of business and such procedures and interventions in the council already sanctioned under the new performance and governance regime, including, if no abolition request has been submitted, a special inspection by the Auditor General for Wales.

Recommendation 30. We recommend that the Welsh Government works with the WLGA to consider alternative measures for recouping debt accrued through non-payment of council tax, in light of the removal of imprisonment as a sanction.

I recognise the intention behind the Committee's recommendation, however, I do not accept this recommendation. The sanction of imprisonment was removed through regulations made last year, the provisions in the Bill only act to ensure that this sanction cannot be reintroduced without primary legislation.

Our efforts are focused on prevention as there is considerable evidence that early engagement with households to prevent debt occurring and escalating is more effective than action to enforce the payment of arrears. We have continued our national awareness campaign aimed at improving take-up of the range of support available to help households in meeting their council tax liability. This support is vital in helping to prevent households getting into arrears.

We have been working closely with the WLGA, experienced practitioners in local authorities and advice services to improve all aspects of council tax collection and the management of arrears and we remain committed to doing so. This work is enabling us to identify and share good practice to ensure that any action taken on council tax arrears is proportionate, fair and consistent. The Council Tax Protocol for Wales was developed as part of this work. It has been endorsed by the Welsh Government and the WLGA and is being implemented in every local authority.

Recommendation 31. We recommend that the Welsh Government engages in urgent discussions with the three fire and rescue authorities in Wales on their concerns around the provisions in section 162. Such discussions should begin immediately to enable any necessary amendments to be tabled to the Bill during its amending stages

I accept the principle behind this recommendation. We arranged discussions with representatives of the fire and rescue authorities however, given the current COVID 19 situation it was necessary to prioritise other matters at these meetings. We will look to re-arrange meetings on this matter at the appropriate time.

Recommendation 32. We recommend that the Welsh Government explores options, within legislation, to place a statutory duty on local authorities to have a due regard to the right to adequate housing.

I accept the principle behind this recommendation and agree further work should be undertaken to explore all options. I recognise the potential benefits of placing a statutory duty on local authorities to have a due regard to the right for adequate housing. However, there would be little benefit in creating such a duty without a thorough understanding of what it would entail and knowing the resources are in place to meet the duty. Work is already under way to investigate the scope for legislating in respect of equality and other human rights, in which Dr Hoffman is actively engaged. If adopted, any recommendations to legislate resulting from that work would need to be taken forward in the next Assembly.

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



Llywodraeth Cymru
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Llyr Gruffydd, AM
Chair
Finance Committee
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23 March 2020

Dear Llyr,

Local Government and Elections (Wales) Bill

I would like to thank the Finance Committee for their scrutiny of the Local Government and Elections (Wales) Bill during Stage 1 and for the report which was published on 13 March 2020.

A number of the Committee's recommendations relate to the preparation of Regulatory Impact Assessments (RIA) in relation to subordinate legislation. In line with standard practice, any subordinate legislation made as a consequence of this Bill would, where relevant, be accompanied by a RIA which would provide a comprehensive analysis of the costs. As such I accept in principle recommendations 1, 5, 15 and 17.

I have set out responses to the Committee's remaining recommendations at Annex A. It has not been possible for me to accept all of the Committee's recommendations in full. However, I have carried the principles and underpinning reasoning through as far as possible.

I hope this letter is helpful in setting out responses to the Committee's Report. I will also be writing to the Chairs of the Equality, Local Government and Communities Committee and the Legislation, Justice and Constitution Committee with respect to their Stage 1 Reports, and will copy the letters to all three Committee Chairs.

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

Julie James AC/AM
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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.

Annex A: Response to Finance Committee Stage 1 Report Conclusions and Recommendations

Recommendation 2. The Committee recommends that the Welsh Government undertakes further work to identify the distribution of the electorate across Wales and clarifies the approach it intends to take to any funding allocated to support the provisions in the Bill relating to elections and voting.

I accept this recommendation. We are currently working with local authorities and other stakeholders, including the Electoral Commission, to consider how best we can manage the potentially differential impacts on individual local authorities.

Recommendation 3. The Committee recommends that the Welsh Government explores with stakeholders the costs involved in a local authority deciding to implement a Single Transferable Voting system and includes any relevant information in an updated Regulatory Impact Assessment

I accept the principle of this recommendation. We are currently working with local authorities and other stakeholders, including the Electoral Commission, to consider how best we can manage the potentially differential impacts on individual local authorities.

Recommendation 4. The Committee recommends that the Welsh Government undertakes further work to identify the costs associated with establishing an all-Wales database of electoral registration information and provides as much information as possible in a revised Regulatory Impact Assessment

I recognise the intention behind the Committee's recommendation, however, I do not accept this recommendation. The provisions in the Bill allow for an all Wales electoral database to be established through regulations. In line with standard practice, a regulatory impact assessment, setting out a comprehensive analysis of the costs, would be prepared to accompany these regulations.

Recommendation 6. The Committee recommends that the Welsh Government provides further information on the types of pilot schemes it may wish to trial and the potential resources required for such activity

I recognise the intention behind the Committee's recommendation, however, I do not accept this recommendation. Given the extent of electoral reforms at the moment, we do not intend to trial any electoral pilots ahead, or at, the 2022 local elections.

Any programme of pilots will be preceded by a prospectus to local authorities setting out the aims of the pilots and an application process to be followed by local authorities estimating the cost of the activity. There will likely be a cost implication to pilots, accommodating temporary changes required to electoral management software, staffing, training etc. It is difficult to estimate these costs until the thematic areas to be piloted are agreed.

Recommendation 7. The Committee recommends that the Welsh Government undertakes further analysis of the likely savings of provisions associated with Returning Officers expenses and include any relevant detail in an updated Regulatory Impact Assessment.

I do not accept this recommendation. These provisions are intended to clarify the law that returning officers cannot be paid a personal fee for administering local elections, therefore the principle underpinning the provisions is clarification of the law not cost savings.

Recommendation 8. The Committee recommends that the Welsh Government explore further the likely savings of abolishing community polls and whether it is reasonable to offset any costs of a new petitions system against these. Relevant information should be included in a revised Regulatory Impact Assessment.

I recognise the intention behind the Committee's recommendation. I will consider the feasibility, and potential benefit, of including additional information in the revised Regulatory Impact Assessment, offsetting the likely cost savings from abolishing community polls against the cost of petitions.

Recommendation 9. The Committee recommends that the Welsh Government prepare a sensitivity analysis of the impact the number of petitions may have on staff time and the cost of monitoring and reviewing the petitions received. This information should be included in a revised Regulatory Impact Assessment.

I recognise the intention behind the Committee's recommendation and will look to include an appropriate sensitivity analysis in the Regulatory Impact Assessment when it is revised following stage 2.

Recommendation 10. The Committee recommends that the Welsh Government undertakes further work with stakeholders to consider whether an all-Wales broadcasting contract is feasible and whether this would be the most cost effective solution, including the potential costs of local authorities procuring individual broadcasting contracts.

I accept this recommendation. Officials are currently working with representatives of local authorities and the WLGA to co-produce the guidance that will underpin a range of provisions contained within the Bill, this includes broadcasting.

As part of this work officials are in the process of visiting a number of councils to hear directly from them about their current arrangements, the opportunities to do more and their concerns.

This work will explore the benefits and disadvantages of an all-Wales broadcasting contract to inform future work in this area.

Recommendation 11. The Committee recommends that the Welsh Government publish its guidance (or even draft guidance) on broadcasting of meetings, including where it might not be appropriate to broadcast, as soon as possible.

I accept the principle of this recommendation. We are currently co-producing guidance with local authorities and the WLGA. Once drafted it is intended to consult

widely to ensure as many individuals and organisations as possible are able to fully contribute to the final guidance.

Given the complexities involved it is likely to be some months before we are in a position for this consultation to be undertaken.

Recommendation 12. The Committee recommends that the Welsh Government provides details of the cost implications of any regulations that require qualifying authorities to prepare a business case prior to using the general power of competence.

I recognise the intention behind the Committee's recommendation, however, I do not accept this recommendation. The RIA at introduction detailed the costs to Welsh Government of drafting these regulations as it was, and remains, my intention to make these regulations prior to commencing the general power of competence for qualifying authorities.

The costs to local government will, in line with standard practice, be included within the regulatory impact assessment, which accompanies the regulations.

Recommendation 13. The Committee recommends that the Welsh Government reassesses the costs associated with Community and Town Council training plans, including the additional training that may be undertaken as a result of those plans, and ensures that the financial implications are detailed in a revised Regulatory Impact Assessment.

I do not accept this recommendation. These provisions are intended to ensure community councils are considering and managing their training needs in a more effective manner rather than necessarily increase the amount of training being undertaken. Community councils will continue to bear the cost of councillor training, as they currently do. The existence of a training plan does not in itself create a new training demand.

I have asked my officials to bring together members of the National Training Advisory Group, which includes the sector's representative bodies and the WLGA, to consider creative, practical and sustainable proposals to support the training and development of community councillors.

Recommendation 14. The Committee recommends that the Welsh Government work closely with the Welsh Local Government Association to understand how significant the change in performance arrangements will be for individual principal authorities.

I accept this recommendation. We are already working closely with local government and the WLGA co-producing the guidance which will support the implementation of the self-assessment provisions, to ensure the impact of the new performance and governance regime and ensure it works alongside existing approaches.

The provisions on self-assessment were broadly welcomed by local government representatives, with the WLGA noting that it supports and welcomes these provisions. The WLGA added that all authorities are used to a process of self-assessment and that these provisions will give authorities more scope to self-assess for their own benefit.

WLGA also commented that as councils are committed to improving services and delivering better outcomes for their communities, it is confident that councils' self-assessments will be rounded, robust and used to drive improvements in governance and service provision.

I also intended to fund through the WLGA a sector led improvement and support function to support the implementation of the new performance and governance regime and the Bill as a whole. The improvement and support function will also support local authorities, members and officers in their ambitions to improve and innovate across the services they deliver.

Recommendation 16. The Committee recommends that the Welsh Government share its analysis of the costs and benefits of establishing corporate joint committees once its review concludes. If relevant, the Welsh Government should consider how this information could be accounted for in a revised Regulatory Impact Assessment.

I accept this recommendation and will consider whether it is more appropriate and relevant to account for this information in the RIA that accompanies the Bill or the RIA accompanying regulations.

Recommendation 18. The Committee recommends that the Welsh Government provides an update on the review of non-domestic rates revenue that is lost each year, once the new provisions aimed at reducing opportunities for avoidance behaviour are in force.

I agree the principle behind this recommendation. Prior to implementation of the new provisions, the Welsh Government will work with local government and other relevant stakeholders to identify how best to monitor the success of the measures to reduce non domestic rates avoidance. We will give further consideration to when and how best to provide an update on this matter, alongside other post implementation review activities.

Recommendation 19. The Committee recommends that the Welsh Government analyses its post implementation review strategy, with consideration given to the resourcing of the activities it intends to undertake and includes this information in a revised Regulatory Impact Assessment

I recognise the intention behind the Committee's recommendation and will look to include details of the opportunity costs of conducting the post implementation review activities when the Regulatory Impact Assessment is revised following stage 2.

Conclusion 1. The Committee believes that the provisions to extend the franchise to prisoners and young people in custody could have been more advanced prior to introduction of the Bill. The practice of introducing Bills with the intention of making substantial changes at a later stage by amending a Bill by-passes scrutiny, this is unsatisfactory and should not continue.

As I stated to the Committee, I did not wish to progress work in this area until I had seen the final report of the ELGC Committee's inquiry into prisoner voting. The Committee reported in June and as this is a highly complex area of legislation it was not possible to include these provisions in the Bill on introduction. I have always been clear that it was

my intention to introduce these provisions as amendments and have shared these in advance with all of the Committees

Mick Antoniw AM
Chair, Legislation, Justice and Constitution Committee

09 April 2020

Dear Mick,

The functions of the Legislation, Justice and Constitution Committee.

Thank you for your letter of 2 April 2020, which was discussed at Business Committee on 3 April.

In response to the rapidly-developing Coronavirus Covid-19 public health emergency, the Business Committee has agreed a temporary process for considering subordinate legislation, which involves the disapplication of Standing Orders 21.2 and 21.3. This [process](#) is enclosed and will apply until further notice.

The Business Committee will return to the matter at the next meeting. This will happen in the context of a broader discussion on committee activity generally over the coming period.

I take this opportunity to thank LJC Committee officials for assisting the Business Committee in developing its emergency procedures during the current situation.

Kind regards



Elin Jones AM
Y Llywydd and Chair of the Business Committee



Elin Jones AM
Llywydd and Chair of the Business Committee

2 April 2020

Annwyl Lywydd

I am writing to you in connection with the recent decisions of the Business Committee (on 24 and 27 March 2020) regarding the functions and meetings of the Legislation, Justice and Constitution (LJC) Committee.

While we can no doubt all agree that, in these difficult circumstances, modifications must be made to the way we work in the Assembly, I believe there is a strong case for enabling the LJC Committee to continue to undertake its scrutiny function, specifically as it relates to subordinate legislation made by the Welsh Government (and indeed subordinate legislation made by the UK Government in devolved areas, with the consent of the Welsh Government).

The Welsh Government has been provided with extensive executive powers, unparalleled outside of times of conflict, to address the serious nature of the Coronavirus pandemic. It must also not be forgotten that the Welsh and UK governments are in the midst of preparing Wales and the UK for exiting the European Union. This task is largely being actioned through an extensive programme of subordinate legislation. It is important that, even in these most challenging times, the parliaments of the UK are providing the necessary level of scrutiny and that the actions of the executives remain subject to a thorough and robust system of checks and balances - this is a long-standing and fundamental constitutional principle.

Following Plenary's decision on 24 March 2020 to create new Standing Order 34, which will allow (following the necessary decision of the Assembly Commission) committee meetings to be held without broadcasting access, I see no reason why the LJC Committee could not continue to meet 'virtually' to perform its duties. I consider this to be particularly important as there appears to be a growing sense that the measures requiring us to limit our social interactions will be in place for longer than was originally expected.



You will be aware that the LJC Committee undertakes other work which relates to its function of scrutinising important constitutional matters. I am mindful that, in these



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exceptional circumstances, it would be prudent for the Committee to pause its work related to its inquiries into Wales' Changing Constitution and Making Justice work in Wales, and to focus on the scrutiny of legislation. However, the demand for the LJC Committee to continue these important work strands will need to be reviewed as time progresses.

I am copying this letter to members of the LJC Committee.

Before closing, may I take this opportunity to wish you well.

Yours sincerely,

A handwritten signature in black ink, reading "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

Mick Antoniw
Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.



David Rees AM
Chair of External Affairs and Additional Legislation
Committee National Assembly for Wales
Cardiff Bay
CF99 1NA

Mr Mick Antoniw AM
Chair of Legislation, Justice & Constitution Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

21 April 2020

Dear Chairs,

I am writing under the inter-institutional relations agreement to inform you that a meeting of the Ministerial Forum for Trade will take place on 22 April.

I anticipate that the meeting will cover trade policy and the economic response to the Covid 19 pandemic.

I will write you again following the meeting.



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

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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.



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

24 April 2020

Dear Elin,

The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 2) Regulations 2020

I have today made the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 2) Regulations 2020 under sections 45C(1), (3)(c), (4)(d), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984. I attach a copy of the statutory instrument and I intend to lay this statutory instrument and an accompanying Explanatory Memorandum once the statutory instrument has been registered.

In accordance with the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984, this instrument must be approved by the National Assembly for Wales by 21 May 2020 in order for it to remain in effect. In these circumstances I understand Standing Order 21.4A is relevant and the Business Committee may establish and publish a timetable for the responsible committee or committees to report.

I am copying this letter to Rebecca Evans AM, Minister for Finance and Trefnydd, Mick Antoniw AM, Chair of the Legislation, Justice and Constitution Committee, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely,

MARK DRAKEFORD

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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.

Regulations made by the Welsh Ministers, laid before the National Assembly for Wales under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of the National Assembly for Wales within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.

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

2020 No. 452 (W. 102)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (Wales) (Amendment)
(No. 2) Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 2A of the Public Health (Control of Disease) Act 1984 enables the Welsh Ministers, by regulations, to make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Wales.

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

These Regulations amend the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 (the “principal Regulations”).

Regulation 2 replaces paragraph (4) of regulation 3 of the principal Regulations with a more flexible provision that enables a requirement or restriction imposed by the principal Regulations to be terminated in relation to specific businesses or services (or descriptions of businesses or services), specific categories of persons or particular areas of Wales. A new paragraph (4A) is also inserted into regulation 3 of the principal Regulations to make clear that the termination of a requirement or restriction does not

affect things which happen before the termination takes effect.

Regulation 3 amends regulations 4, 5, 6 and 6A of the principal Regulations so as to require persons responsible for businesses or services carried on in premises of the types listed below to take all reasonable measures to ensure that a distance of 2 metres is maintained between persons on the premises (unless the persons are members of the same household or are a carer and the person being cared for), to ensure the number of persons allowed to enter is limited so as to enable those measures to have effect, and to ensure that a distance of 2 metres is maintained between persons waiting to enter . The premises are—

- (a) premises used as cafés or canteens at a hospital, care home, school, prison or military establishment or used to provide food and drink to homeless persons;
- (b) premises that, although generally required to be closed under regulation 4(4) of the principal Regulations, are open for the purposes of broadcasting, or on the request of the Welsh Ministers or a local authority, or to provide services online, by telephone or by post;
- (c) holiday accommodation that is permitted to remain open to provide accommodation to certain persons, or for a purpose requested by the Welsh Ministers or a local authority, or to provide services online, by telephone or by post;
- (d) any part of a shop that would otherwise be required to close under regulation 6(2) of the principal Regulations but is permitted to remain open to respond to orders and enquiries received online, by telephone or by post (for example to provide facilities for the uplift of orders placed online, generally known as a “click and collect” service).

Regulation 4 makes a number of amendments to regulation 8 of the principal Regulations concerning the requirement that a person not leave the place where they are living without a reasonable excuse, including—

- (a) amending paragraph (1) to clarify that the restriction on leaving the place where a person is living without reasonable excuse also includes remaining away from that place without reasonable excuse;
- (b) clarifying the drafting of paragraph (2)(a) to resolve the tautology of having a “need to obtain basic necessities” and making it clear that persons can visit banks and similar

establishments to both withdraw and deposit money;

- (c) making clear that it is a reasonable excuse to exercise more than once a day if needed because of a particular health condition or disability;
- (d) to specify that visiting a burial ground or garden of remembrance to pay respects is a reasonable excuse.

Regulation 5 makes amendments to regulation 10 of the principal Regulations to clarify the application of enforcement provisions.

Regulation 6 contains further minor and consequential amendments to the principal Regulations.

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 not been prepared as to the likely cost and benefit of complying with these Regulations.

Regulations made by the Welsh Ministers, laid before the National Assembly for Wales under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of the National Assembly for Wales within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.

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

2020 No. 452 (W. 102)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (Wales) (Amendment)
(No. 2) Regulations 2020**

Made at 11:45 a.m. on 24 April 2020

*Laid before the National Assembly for
Wales at 2:45 p.m. on 24 April 2020*

*Coming into force at 12.01 a.m. on 25 April
2020*

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 45C(1) and (3)(c), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984⁽¹⁾.

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

The Welsh Ministers consider that restrictions and requirements imposed by these Regulations are proportionate to what they seek to achieve, which is a public health response to that threat.

In accordance with section 45R of that Act the Welsh Ministers are of the opinion that, by reason of urgency,

⁽¹⁾ 1984 c. 22. Sections 45C, 45F and 45P were inserted by section 129 of the Health and Social Care Act 2008 (c. 14). The functions under these sections are conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister, as respects Wales, is the Welsh Ministers.

it is necessary to make this instrument without a draft having been laid before, and approved by a resolution of, the National Assembly for Wales.

Title, coming into force and application

1.—(1) The title of these Regulations is the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 2) Regulations 2020 and they come into force at 12.01 a.m. on 25 April 2020.

(2) In these Regulations, “the principal Regulations” means the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020⁽¹⁾.

Termination directions

2. In regulation 3 of the principal Regulations, for paragraph (4) substitute—

“(4) The Welsh Ministers may, if they consider it appropriate to do so having regard to the need to prevent, protect against, control or provide a public health response to the incidence or spread of infection in Wales with the coronavirus, publish a direction terminating a requirement or restriction in relation to—

- (a) a specified business or service or a specified description of business or service;
- (b) a specified description of persons;
- (c) a specified part of Wales.

(4A) The termination of a restriction or requirement by a direction does not affect—

- (a) any punishment incurred in respect of any offence committed under these Regulations before the restriction or requirement is terminated,
- (b) any fixed penalty notice issued under regulation 13 in relation to conduct occurring before the restriction or requirement is terminated, or
- (c) any investigation, legal proceeding or remedy in respect of—
 - (i) any such offence or conduct, or
 - (ii) any alleged offence under these Regulations that is alleged to have been committed before the restriction or requirement is terminated,

⁽¹⁾ S.I. 2020/353 (W. 80) as amended by the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020 (S.I. 2020/399 (W. 88)).

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such punishment or penalty may be imposed, as if the termination had not occurred.”

Physical distancing requirement in relation to certain premises

3.—(1) Regulations 4, 5, 6 and 6A of the principal Regulations are amended as follows.

(2) After regulation 4(5) insert—

“(5A) Paragraph (5B) applies—

- (a) to premises used to carry on a business or provide a service mentioned in subparagraph (1)(a), (b) or (c) of paragraph 2 of Schedule 1, or
- (b) where premises used to carry on a business or provide a service listed in Part 2 or 3 of Schedule 1 are used for a purpose mentioned in paragraph (5).

(5B) Where this paragraph applies, the person responsible for carrying on the business or providing the service must, during the emergency period, take all reasonable measures to ensure —

- (a) that a distance of 2 metres is maintained between any persons on the premises (except between two members of the same household, or a carer and the person assisted by the carer),
- (b) that persons are only admitted to the premises in sufficiently small numbers to make it possible to maintain that distance, and
- (c) that a distance of 2 metres is maintained between persons waiting to enter the premises (except between two members of the same household, or a carer and the person assisted by the carer).”

(3) After regulation 5(3A) insert—

“(3B) Paragraph (3C) applies where premises used for a business listed in Part 3 of Schedule 1 are used—

- (a) to provide accommodation in accordance with paragraph (3), or
- (b) to carry on the business in accordance with paragraph (3A).

(3C) Where this paragraph applies, the person responsible for carrying on the business must,

during the emergency period, take all reasonable measures to ensure—

- (a) that a distance of 2 metres is maintained between any persons on the premises (except between two members of the same household, or a carer and the person assisted by the carer),
- (b) that persons are only admitted to the premises in sufficiently small numbers to make it possible to maintain that distance, and
- (c) that a distance of 2 metres is maintained between persons waiting to enter the premises (except between two members of the same household, or a carer and the person assisted by the carer).”

(4) In regulation 6, after paragraph (2) insert—

“(2A) Where premises are not closed because they are premises required in order to carry on a business as permitted by paragraph (2)(a), the person responsible for carrying on the business must, during the emergency period, take all reasonable measures to ensure—

- (a) that a distance of 2 metres is maintained between any persons on the premises (except between two members of the same household, or a carer and the person assisted by the carer),
- (b) that persons are only admitted to the premises in sufficiently small numbers to make it possible to maintain that distance, and
- (c) that a distance of 2 metres is maintained between persons waiting to enter the premises (except between two members of the same household, or a carer and the person assisted by the carer).”

(5) In regulation 6A, for paragraph (2) substitute—

“(2) Paragraph (1) does not apply to premises—

- (a) used in the carrying on of a business, or provision of a service, listed in Schedule 1, or
- (b) to which regulation 6(2A) applies.”

Restriction on persons leaving or being outside of the place where they live

4.—(1) Regulation 8 of the principal Regulations is amended as follows.

(2) In paragraph (1), after “living” insert “or remain away from that place”.

(3) In paragraph (2)—

(a) for sub-paragraph (a) substitute—

“(a) to obtain supplies from any business or service listed in Part 4 of Schedule 1 including—

(i) food and medical supplies for those in the same household (including animals in the household) or for vulnerable persons;

(ii) supplies for the essential upkeep, maintenance and functioning of the household, or the household of a vulnerable person;

(aa) to obtain money from or deposit money with any business or service listed in paragraphs 38 or 39 of Schedule 1;”

(b) for sub-paragraph (b) substitute—

“(b) to take exercise, no more than once a day (or more frequently if this is needed because of a particular health condition or disability), either—

(i) alone,

(ii) with other members of the person’s household, or

(iii) with the person’s carer;”

(c) after sub-paragraph (g) insert—

“(ga) to visit a cemetery, burial ground or garden of remembrance to pay respects to a deceased person;”

(d) in sub-paragraph (i)—

(i) in paragraph (i), for “the person’s child” substitute “a child in relation to whom the person is the parent, or has parental responsibility for, or has care of”;

(ii) in paragraph (iii), in the English language text, for “Department of Work” substitute “Department for Work”;

(e) in sub-paragraph (l), for “necessary” substitute “the move cannot be postponed”.

Enforcement

5.—(1) Regulation 10 of the principal Regulations is amended as follows.

(2) In paragraph (1)—

- (a) omit “reasonably believes that”;
- (b) in sub-paragraph (a)—
 - (i) at the beginning insert “has reasonable grounds for suspecting that”;
 - (ii) after “4,” insert “5(3C),”;
- (c) in sub-paragraph (b), at the beginning insert “considers”.

(3) In paragraph (2), for “considers” substitute “has reasonable grounds for suspecting”.

(4) For paragraph (3) substitute—

“(3) A relevant person may—

- (a) when exercising the power in paragraph (2)(a) or (b), direct P to follow such instructions as the relevant person considers necessary;
- (b) use reasonable force in the exercise of the power in paragraph (2)(b).”

(5) In paragraph (5), for “purpose of paragraph (4)” substitute “purposes of this regulation”.

(6) In paragraph (7), for “considers” substitute “has reasonable grounds for suspecting”.

(7) For paragraph (8) substitute—

“(8) A relevant person exercising the power in paragraph (7)—

- (a) to direct a gathering to disperse, or
- (b) to remove a person to the place where they are living,

may use reasonable force, if necessary, in exercise of the power.

(8A) Where a relevant person has reasonable grounds to suspect that a person (“P”) is in a gathering in contravention of regulation 8(5) and is a child accompanied by an individual (“I”) who has responsibility for P—

- (a) the relevant person may direct I to take P to the place where P is living, and
- (b) I must, so far as reasonably practicable, ensure that P complies with any direction or instruction given by the relevant person to P.

(8B) A relevant person may only exercise a power in paragraph (7) or (8A) if the relevant person considers that it is necessary and proportionate to do so.”

(8) In paragraph (9)—

- (a) for “A” substitute “If a relevant person considers it necessary and proportionate for the purposes of preventing, or terminating, a contravention of regulation 9(4), the”;

(b) after “force” insert “, if necessary,”.

(9) In paragraph (12), after “4,” insert “5(3C),”.

Minor and consequential amendments

6.—(1) The principal Regulations are amended as follows.

(2) In regulation 1(3)(e), after paragraph (iii) insert—

“(iv) any child;

(v) any person who is a vulnerable adult within the meaning given by section 60(1) of the Safeguarding Vulnerable Groups Act 2006⁽¹⁾.”

(3) In regulation 4(5)—

(a) in sub-paragraph (a), after “Part 2” insert “of Schedule 1”;

(b) for sub-paragraph (b) substitute—

“(b) premises used for the businesses or services listed in Part 2 or 3 of Schedule 1 for any purpose as may be requested by the Welsh Ministers or a local authority;”

(c) in sub-paragraph (c)(ii), omit “orders”.

(4) In regulation 5(3A), omit sub-paragraph (a).

(5) In regulation 6(2)(a)(ii), after “orders” insert “or enquiries”.

(6) In regulation 7—

(a) in the Welsh language text, for “cam”, in each place it occurs, substitute “mesur”;

(b) in the Welsh language text, for “cymrir”, in each place it occurs, substitute “cymerir”;

(c) in the Welsh language text of paragraph (4), omit “wedi ei gymryd”;

(d) after paragraph (4) insert—

“(4ZA) Paragraph (3) does not apply to the grounds surrounding a crematorium, including any burial ground or garden of remembrance.”;

(e) in the Welsh language text of paragraph (5)(b), omit “wedi ei gymryd”.

(7) In regulation 7A(1)—

(a) after sub-paragraph (a) insert—

“(aa) regulation 4(5B),

(ab) regulation 5(3C),”;

(1) 2006 c. 47. The definition of “vulnerable adult” in section 60(1) was amended by s. 65(2)(b) of the Protection of Freedoms Act 2012 (c. 9).

- (b) in sub-paragraph (b), after “6(1)” insert “or (2A)”;
 - (c) in the Welsh language text, in the words after sub-paragraph (d), for “camau” substitute “mesurau”.
- (8) In regulation 8—
- (a) in paragraph (2)(d)—
 - (i) in the Welsh language text, for “cymorth” substitute “cynhorthwy”;
 - (ii) after “emergency assistance” insert “to any person”;
 - (b) in paragraph (2)(m), in the Welsh language text, for “newid” substitute “niwed”;
 - (c) in paragraph (5)(d)(iii), after “emergency assistance” insert “to any person”.
- (9) In regulation 12(1)(a), after “4,” insert “5(3C),”.
- (10) In Schedule 1—
- (a) in the Welsh language text of paragraph 2(2)(b), for “pan y cymrir pob cam” substitute “pan gymerir pob mesur”;
 - (b) in paragraph 22, after “except for” insert “livestock markets and”;
 - (c) in paragraph 24, at the end insert “(except for livestock auctions)”;
 - (d) in paragraph 38, for “and cash points” substitute “, savings clubs, cash points and undertakings which by way of business operate currency exchange offices, transmit money (or any representation of money) by any means or cash cheques which are made payable to customers.”

Mark Drakeford

First Minister, one of the Welsh Ministers

At 11:45 a.m. on 24 April 2020

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Agenda Item 9

By virtue of paragraph(s) vi of Standing Order 17.42

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