

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Video conference via Zoom	Gareth Williams
Meeting date: 18 May 2020	Committee Clerk
Meeting time: 10.00	0300 200 6565
	SeneddLJC@senedd.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 (09:30–10:00)

1 Introduction, apologies, substitutions and declarations of interest
10:00

**2 Instruments that raise issues to be reported to the Senedd under
Standing Order 21.2 or 21.3**

10:00–10:10

Negative Resolution Instruments

**2.1 SL(5)541 – The Local Government (Coronavirus) (Postponement of Elections)
(Wales) Regulations 2020**

(Pages 1 – 14)

CLA(5)–15–20 – Paper 1 – Report

CLA(5)–15–20 – Paper 2 – Regulations

CLA(5)–15–20 – Paper 3 – Explanatory Memorandum

CLA(5)–15–20 – Paper 4 – Letter from the Minister for Finance and Trefnydd,
29 April 2020

**2.2 SL(5)543 – The Common Agricultural Policy (Payments to Farmers)
(Coronavirus) (Wales) Regulations 2020**

(Pages 15 – 30)



CLA(5)-15-20 – Paper 5 – Report

CLA(5)-15-20 – Paper 6 – Regulations

CLA(5)-15-20 – Paper 7 – Explanatory Memorandum

CLA(5)-15-20 – Paper 8 – Letter from the Minister for Finance and Trefnydd to the Llywydd, 1 May 2020

2.3 SL(5)544 – The Education (Admission Appeals Arrangements) (Wales) (Coronavirus) (Amendment) Regulations 2020

(Pages 31 – 53)

CLA(5)-15-20 – Paper 9 – Report

CLA(5)-15-20 – Paper 10 – Regulations

CLA(5)-15-20 – Paper 11 – Explanatory Memorandum

CLA(5)-15-20 – Paper 12 – Letter from the Minister for Finance and Trefnydd to the Llywydd, 1 May 2020

2.4 SL(5)545 – The Regulated Services (Annual Returns) (Wales) (Amendment) (Coronavirus) Regulations 2020

(Pages 54 – 64)

CLA(5)-15-20 – Paper 13 – Report

CLA(5)-15-20 – Paper 14 – Regulations

CLA(5)-15-20 – Paper 15 – Explanatory Memorandum

Draft Affirmative Resolution Instruments

2.5 SL(5)546 – The Regulated Services (Service Providers and Responsible Individuals) (Wales) (Amendment) (Coronavirus) Regulations 2020

(Pages 65 – 81)

CLA(5)-15-20 – Paper 16 – Report

CLA(5)-15-20 – Paper 17 – Regulations

CLA(5)-15-20 – Paper 18 – Explanatory Memorandum

Made Affirmative Resolution Instruments

2.6 SL(5)548 – The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 3) Regulations 2020

(Pages 82 – 95)

CLA(5)-15-20 – Paper 19 – Report

CLA(5)-15-20 – Paper 20 – Regulations

CLA(5)-15-20 – Paper 21 – Explanatory Memorandum

CLA(5)-15-20 – Paper 22 – Letter from the First Minister to the Llywydd, 11
May 2020

3 Statutory Instruments requiring Senedd consent (Statutory Instrument Consent Memorandums)

10:10–10:15

3.1 SICM(5)28 – The Direct Payments to Farmers (Legislative Continuity) Act 2020 (Consequential Amendments) Regulations 2020

(Pages 96 – 108)

CLA(5)-15-20 – Paper 23 – Statutory Instrument Consent Memorandum

CLA(5)-15-20 – Paper 24 – Regulations

CLA(5)-15-20 – Paper 25 – Explanatory Memorandum

CLA(5)-15-20 – Paper 26 – Letter from the Minister for Environment, Energy
and Rural Affairs, 4 May 2020

CLA(5)-15-20 – Paper 27 – Legal Advice Note

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

10.15

5 Legislative Consent Memorandum on the Fisheries Bill – draft report

10.15–10.40

(Pages 109 – 141)

CLA(5)-15-20 – Paper 28 – Draft report

Date of the next meeting – 1 June

SL(5)541 – The Local Government (Coronavirus) (Postponement of Elections) (Wales) Regulations 2020

Background and Purpose

These Regulations were made by the Welsh Ministers under sections 67 and 68 of the Coronavirus Act 2020, and came into force on 5 May 2020. The Regulations postpone certain by-elections which were due to be held during the period from 16 March 2020 to 31 January 2021.

Regulation 3 postpones by-elections which would be held to fill vacancies in the office of councillor in any county council or county borough council in Wales to a day falling within the period commencing on 1 February 2021 and ending on 16 April 2021.

Regulation 4 postpones by-elections which would be held to fill vacancies in the office of community councillor in any community council in Wales to a day falling within the period commencing on 1 February 2021 and ending on 16 April 2021.

Regulation 5 makes provision to relieve returning officers and others of liability under certain provisions of the Representation of the People Act 1983 in relation to polls which were required to be held but were not held in the period after 24 April 2020.

Procedure

Negative.

Technical Scrutiny

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

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

1. Regulations 3(1) and 4(1) together provide for the postponement of a relevant election (defined in Regulation 2 as an election to fill a casual vacancy in the office of councillor in a county council, county borough council or community council in Wales).

Pursuant to these provisions, relevant elections which “would otherwise be held...on a date during the relevant period” (being the period from 16 March 2020 to 31 January 2021) are instead to be held within the period commencing 1 February 2021 and ending on 16 April 2021.

However, the Regulations do not specify whether a relevant election would be subject to the postponement provisions in Regulations 3(1) and 4(1), and the associated disapplication of criminal liability for breach of official duty for returning officers and others under Regulation 5, in the circumstances where the ordinary statutory time frame for holding such an election were to fall partly within the relevant period and partly after it.

Merits Scrutiny

The following 3 points are 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 Senedd

1. We note the breach of the 21-day rule (i.e. the rule under section 11A(4) of the Statutory Instruments Act 1946 that a negative procedure statutory instrument should be laid before the Senedd at least 21 days before that instrument comes into force), and the explanation for the breach provided by the Minister for Finance and Trefnydd in a letter dated 29 April 2020 to the Llywydd. The letter explains that the breach allows these Regulations to come into force on 5 May 2020. The letter confirms that this is necessary because The Coronavirus Act 2020 only indemnifies returning officers and others against breaching their official duty by dis-applying sections 39 and 63 of the Representation of the People Act 1983 for the period 15 March to 24 April 2020. The letter further notes that a “long gap between the end of that indemnity cover and this order [sic] being put in place would leave Returning Officers vulnerable to prosecution.”

2. It is noted in the Explanatory Memorandum (“EM”) that due to the immediacy of the Regulations, a consultation has not been undertaken by the Welsh Government, nor has a Regulatory Impact Assessment been completed. However the EM notes that views have been sought from stakeholders (such as the Electoral Commission, the Wales Electoral Coordination Board and the Association of Electoral Administrators) and that further views of stakeholders will be sought retrospectively as part of a future consultation on “supplementary provisions which will be required”. The EM does not confirm the nature of those supplementary provisions.

3. We note the following issues in relation to the EM:

- a. A number of erroneous references throughout to the instrument being an Order instead of Regulations;
- b. In section 3.2, incorrect dates when referring to the effect of section 65 of the Coronavirus Act 2020 (the period referred to commences on 16 March 2020 as opposed to 15 March 2020) and to the relevant period for the purpose of section 67 of that Act (which should be 16 March 2020 and 5 May 2021 instead of “16 March and 5th May 2021”);
- c. In section 3.2, a reference to section 65 of the Coronavirus Act being a provision which provides Welsh Ministers with powers (the regulation-making powers for these purposes are in sections 67 and 68 of that Act only);
- d. In section 4.2, a statement that the provisions of the Coronavirus Act 2020 are time limited for two years. There are a number of exceptions to this expiry provision, including, pursuant to section 89(2)(i) of that Act, the enabling powers relied upon for these Regulations;
- e. Section 4.3 refers to the UK Government announcing its intention to postpone all scheduled elections to be held in May 2020 and notes that the “Welsh Government gave its full support to returning officers who made the decision to suspend their polls before the date of Royal Assent which would not be covered by these provisions”. It is not clear what provisions are being referred to in this context, given the reference to the date of Royal Assent; and
- f. Section 4.7 refers to section 63 of the Representation of the People Act 1983 as providing for “an offence of official duty”, which should make reference to breach of official duty.

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

Given the current circumstances regarding coronavirus, a Welsh Government response to the technical reporting point and to the second and third merits reporting points is required as soon as is reasonably practicable.

Legal Advisers

Legislation, Justice and Constitution Committee

11 May 2020



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

Welsh Parliament

Legislation, Justice and Constitution Committee

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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. 461 (W. 105)

**LOCAL GOVERNMENT,
WALES**

**REPRESENTATION OF THE
PEOPLE, WALES**

The Local Government
(Coronavirus) (Postponement of
Elections) (Wales) Regulations
2020

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations postpone certain by-elections which were due to be held during the period from 16 March 2020 to 31 January 2021.

Regulation 3 postpones by-elections which would be held to fill vacancies in the office of councillor in any county council or county borough council in Wales to a day falling within the period commencing on 1 February 2021 and ending on 16 April 2021.

Regulation 4 postpones by-elections which would be held to fill vacancies in the office of community councillor in any community council in Wales to a day falling within the period commencing on 1 February 2021 and ending on 16 April 2021.

Regulation 5 makes provision to relieve returning officers and others of liability under certain provisions of the Representation of the People Act 1983 in relation to polls which were required to be held but were not held in the period after 24 April 2020.

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

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

2020 No. 461 (W. 105)

**LOCAL GOVERNMENT,
WALES**

**REPRESENTATION OF THE
PEOPLE, WALES**

The Local Government
(Coronavirus) (Postponement of
Elections) (Wales) Regulations
2020

Made 27 April 2020

*Laid before the National Assembly for
Wales* 29 April 2020

Coming into force 5 May 2020

The Welsh Ministers make these Regulations in exercise of the powers conferred by sections 67 and 68 of the Coronavirus Act 2020⁽¹⁾.

Title and commencement

1.—(1) The title of these Regulations is the Local Government (Coronavirus) (Postponement of Elections) (Wales) Regulations 2020.

(2) These Regulations come into force on 5 May 2020.

Interpretation

2. In these Regulations—

“the 1972 Act” (“*Deddf 1972*”) means the Local Government Act 1972⁽²⁾;

(1) 2020 c. 7.
(2) 1972 c. 70.

“the 1983 Act” (“*Deddf 1983*”) means the Representation of the People Act 1983⁽¹⁾;

“the 2006 Rules” (“*Rheolau 2006*”) means the Local Elections (Parishes and Communities) (England and Wales) Rules 2006⁽²⁾;

“the antecedent period” (“*y cyfnod blaenorol*”) means the period beginning on 16 March 2020 and ending on the day before the day on which these Regulations came into force;

“the relevant period” (“*y cyfnod perthnasol*”) means the period beginning on 16 March 2020 and ending on 31 January 2021;

“relevant election” (“*etholiad perthnasol*”) means an election to fill a casual vacancy in the office of councillor in a county council, county borough council or community council in Wales.

Postponement of by-elections of councillors of principal areas

3.—(1) The poll for the election of a councillor to fill a casual vacancy in the office of councillor for any principal area in Wales that, pursuant to section 89(1) of the 1972 Act (filling of casual vacancies in case of councillors), would otherwise be held, or have been held, on a day during the relevant period is to be held instead on a day falling within the period commencing on 1 February 2021 and ending on 16 April 2021.

(2) Paragraph (1) does not apply to a poll for the election of a councillor that has been held, pursuant to section 89(1) of the 1972 Act, during the antecedent period.

(3) In this regulation, “principal area” has the same meaning as in section 270 of the 1972 Act (general provisions as to interpretation).

Postponement of by-elections of community councillors

4.—(1) The poll for the election of a councillor to fill a casual vacancy in the office of community councillor that, pursuant to rule 5(3) of the 2006 Rules (filling of casual vacancies), would otherwise be held, or have been held, on a day during the relevant period is to be held instead on a day falling within the period commencing on 1 February 2021 and ending on 16 April 2021.

(2) Paragraph (1) does not apply to a poll for the election of councillor that has been held, pursuant to rule 5(3) of the 2006 Rules, on a day during the antecedent period.

(1) 1983 c. 2.

(2) S.I. 2006/3305.

Disapplication of certain provisions relating to elections

5.—(1) This regulation applies in relation to the poll for a relevant election if the poll—

- (a) is required to be held on a day falling within the period beginning on 25 April 2020 and ending on 31 January 2021, but
- (b) pursuant to these Regulations is not held in that period.

(2) Section 39 of the 1983 Act (local elections void etc.) does not apply, and is treated as never having applied, in relation to the poll.

(3) Section 63 of the 1983 Act (breach of official duty) does not apply, and is treated as never having applied, in relation to any act or omission in connection with the poll.

(4) In determining for the purpose of this regulation whether a poll has been held, postal votes are to be ignored.

Julie James

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

27 April 2020

**Explanatory Memorandum to The Local Government (Coronavirus)
(Postponement of Elections) (Wales) Regulations 2020.**

This Explanatory Memorandum has been prepared by Education and Public Services 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 Local Government (Coronavirus) (Postponement of Elections) (Wales) Regulations 2020.

Julie James
Minister for Housing and Local Government
29 April 2020

PART 1

1. Description

1.1. These Regulations provide that local elections to fill casual vacancies in county councils, county borough councils and community councils in Wales that are scheduled to take place after 15 March 2020 or that would otherwise be required before 31st January 2021 are postponed until a period commencing on 1st February and ending on 16th April 2021. Such casual vacancies occur when an individual is no longer able to fill their elected seat as a result of death, resignation, incapacity or disqualification, and these elections are referred to as “local by-elections”.

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

2.1. 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, the Llywydd has been informed that the Order will come into force less than 21 days from the date of laying.

2.2. This Order has been made and laid as soon as practicable after The Coronavirus Act 2020 received Royal Assent. As a result, they have come into force less than 21 days after they were made.

2.3. Not adhering to the 21-day convention allows the Regulations to come into force on 5 May. This is necessary as The Coronavirus Act 2020 only provides Returning Officers indemnity cover for 30 days. A long gap between the end of that indemnity cover and this order being put in place would leave Returning Officers vulnerable to prosecution if they were to need to postpone an election during this time. In view of the circumstances the reduced period is therefore thought necessary and justifiable in this case.

2.4. These Regulations have retrospective effect as they postpone local elections that were scheduled to take place after 15th March 2020. This power has been conferred expressly in the enabling provision in primary legislation.

2.5. They also provide that if such local elections have taken place between 16 March 2020 and the coming into force of these Regulations then these Regulations do not apply to these local elections. The 2020 Act and these Regulations together relieve returning officers and others of any liability for not having taken actions in relation to polls postponed.

3. Legislative background

3.1. The powers to make this order are in sections 67 and 68 of the Coronavirus Act 2020. The Act enables the Governments of the UK to respond to an emergency situation and manage the effects of a COVID-19 pandemic.

3.2. In relation to elections the Coronavirus Act 2020 provides Welsh Ministers the power to:

- Section 65 of the Act dis-applies certain provisions that otherwise apply to local elections. These are necessary to ensure that any actions or omissions of returning officers and others in relation to a poll that was due to be held between the period commencing on 15 March 2020 and ending on 24 April 2020 cannot result in criminal prosecution for breach of duty.
- Section 67 of the Act provides a power to the Welsh Ministers, by regulations to postpone any election arising from casual vacancies in the office of councillor in a county council, county borough council or community council in Wales (also known as by-elections) where the date of the poll for the election would otherwise fall between the period 16 March and 5th May 2021, by regulation.
- Section 68 of the Act provides Welsh Ministers with the power to make by regulations consequential, supplementary, incidental, transitional or saving provisions in connection with section 66 or section 67 of the Act. The provision which may be made includes provision about electoral activity prior to the postponement of a poll, the conduct of elections, the manner of voting in elections that have been postponed, the terms of office of incumbent officer holders, nominations of candidates, expenses incurred in relation to the election by those other than Local Authorities, and compensation for Local Authorities or candidates as a result of the provisions within the Act.

4. Purpose and intended effect of the legislation

4.1. The Coronavirus Act 2020 enables the Governments of the UK to respond to an emergency situation and manage the effects of a COVID-19 pandemic.

4.2. The Act contains temporary measures designed to either amend existing legislative provisions or introduce new statutory powers which are designed to mitigate these impacts. The provisions are time limited for two years. The Act contains a number of provisions around elections and a regulation making powers for Welsh Ministers.

4.3. Due to the ongoing risk posed by coronavirus the UK Government announced its intention to postpone all scheduled elections to be held in May 2020. The Welsh Government gave its full support to returning officers

who made the decision to suspend their polls before the date of Royal Assent which would not be covered by these provisions.

- 4.4. The need for the postponement arises from concerns that running a poll would be, at best, inadvisable and, at worst, impossible if candidates, campaigners, electors, electoral administrators and those providing supply and support to them are affected by either Covid-19 or the measures around it.
- 4.5. These Regulations provide that local by-elections that had been scheduled to take place to fill vacancies in principal councils and casual vacancies on town and community councils in Wales after 15 March 2020 up until 31st January 2021 are postponed and held on a date during the period commencing on 1 February 2021 and ending on 16 April 2021. This will allow Returning Officers to hold postponed elections at time when it is safe to do so and convenient for their local circumstances.
- 4.6. These Regulations also dis-apply certain provisions that would otherwise apply to local elections. These are necessary to ensure that any actions or omissions of returning officers and others in relation to a poll that was due to be held cannot result in criminal prosecution for breach of duty.
- 4.7. The provisions that are dis-applied are sections 39 and 63 of the Representation of the People Act 1983. Section 39 places a duty on returning officers to order an election within a certain time period in the event of a causal vacancy. Section 63 provides for an offence of official duty and applies to returning officers and other election officials.

5. Consultation

- 5.1. Due to the emergency nature of this Order the Welsh Government did not undertake a consultation before the Order came into force. Views have been sought from stakeholders such as the Electoral Commission, the Wales Electoral Coordination Board (WECB) and the Association of Electoral Administrators (AEA).
- 5.2. Further views of stakeholders will be sought retrospectively as part of a future consultation on supplementary provisions which will be required.

6. Regulatory Impact Assessment (RIA)

- 6.1. These Regulations need to be put in place quickly to deal with an emergency situation. As such, no RIA has been completed. This is in line with the Welsh Ministers' regulatory impact assessment code for subordinate legislation.



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

29 April 2020

The Local Government (Coronavirus) (Postponement of Elections) (Wales) Regulations 2020

Dear Elin,

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 Coronavirus Act 2020 was introduced to Parliament on 19 March and contained a number of miscellaneous provisions around elections as well as regulation making powers for Welsh Ministers and the power for the Llywydd to fix a later date for an election to a vacant constituency seat.

These Regulations postpone any by-elections due in the immediate future setting a new date for these by-elections to be held no later than 16 April 2021 and not before 1 February 2021.

These Regulations have been made and laid as soon as practicable after the Coronavirus Act 2020 received Royal Assent. 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 5 May 2020. This is necessary as The Coronavirus Act 2020 only indemnifies returning officers and others against breaching their official duty by dis-applying sections 39 and 63 of the Representation of the People Act 1983 for the period 15 March to 24 April 2020. A long gap between the end of that indemnity cover and this order being put in place would leave Returning Officers vulnerable to prosecution. In view of the circumstances the reduced period is therefore thought necessary and justifiable in this case.

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

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

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

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

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

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)543 - The Common Agricultural Policy (Payments to Farmers) (Coronavirus) (Wales) Regulations 2020

Background and Purpose

These Regulations modify the application of retained EU Direct Payments legislation and domestic legislation to extend the deadlines for submission and amendment of the Common Agriculture Policy Single Application Form ("SAF"), aid applications, payments claims and notification of the transfer of entitlements ("T&L") for claim year 2020.

Farmers who wish to apply for Direct Payments or Rural Development funding have to submit the SAF, aid application or payment claim by a date set out in legislation, currently 15 May. There is then a window within which farmers can make changes to a submitted SAF, aid application or payment claim if there are any errors or issues.

As a result of the COVID-19 pandemic, the EU has published Commission Implementing Regulation (EU) 2020/501 of 6 April 2020 which allows all Member States to choose to extend the SAF, aid application and payment claim deadline by 1 month to 15 June for claim year 2020. The date for amending a submitted SAF, aid application, and payment claim form can then also be amended from 31 May to 30 June.

Unlike other EU law relating to the Common Agriculture Policy ("CAP"), changes to EU Direct Payments legislation do not automatically apply during the Implementation Period. Domestic legislation is therefore required to amend the SAF deadlines in Wales. EU law still governs other elements of CAP, including the Rural Development Programme.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

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

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

These Regulations were made on 29 April 2020 and came into force at the beginning of the day on 30 April 2020. They were also laid before the Senedd on 30 April 2020. This means that, in effect, the Regulations were laid before the Senedd after they had come into force. This also means that the convention of statutory instruments not coming into force sooner than 21 days from the date of laying has not been adhered to.

Sections 4(1) and 11A(4) of the Statutory Instruments Act 1946 require notification to be sent to the Llywydd explaining why it has been considered necessary for the instrument to come into force before



has been laid before the Senedd, and to breach the 21 day convention. The notification was provided by the Minister for Finance and Trefnydd in a letter to the Llywydd, dated 1 May 2020.

The notification explains that it was considered *“necessary to wait for the Direct Payments to Farmers (Legislative Continuity) Act 2020 (Consequential Amendments) Regulations 2020 (“2020 Regulations”) to be made before making this instrument to ensure continuity of approach for interpretation. The 2020 Regulations make consequential amendments required as a result of the Direct Payments to Farmers (Legislative Continuity) Act 2020 on a UK-wide basis.”*

The notification also explains that, due to the urgent timetable, there has been no time to carry out meaningful consultation or a Regulatory Impact Assessment.

The Welsh Government has also provided the following explanation in the Explanatory Memorandum to these Regulations:

“This SI is being made subsequent to the Direct Payments to Farmers (Legislative Continuity) Act 2020 (Consequential Amendments) Regulations 2020 (“2020 Regulations”) to ensure continuity of approach for definitions and interpretation. The 2020 Regulations make consequential amendments required as a result of the Direct Payments to Farmers (Legislative Continuity) Act 2020 on a UK-wide basis. The 2020 Regulations were made on 27 April 2020, laid before the UK Parliament on 28 April 2020 and come into force on 30 April 2020.

This instrument will come into force on 30 April 2020 to ensure there is clarity around submission dates, and as such the 21 day convention will not be adhered to.”

Implications arising from exiting the European Union

Basic Payment Scheme (“BPS”) in Wales is no longer governed by EU law as a result of Article 137 of the Withdrawal Agreement. The Direct Payments to Farmers (Legislative Continuity) Act 2020 incorporated the EU legislation governing the 2020 CAP Direct Payment schemes into domestic law on Exit Day. Unlike other EU law relating to the CAP, changes to EU Direct Payments legislation do not automatically apply during the Implementation Period, and domestic legislation is therefore required to amend the SAF deadlines in Wales. EU law still governs the other elements of CAP including the Rural Development Programme.

Government Response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

11 May 2020



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. 473 (W. 109)

AGRICULTURE, WALES

**The Common Agricultural Policy
(Payments to Farmers)
(Coronavirus) (Wales) Regulations
2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

Regulation 2 modifies the application of Commission Implementing Regulation (EU) No. 809/2014 (“Regulation 809/2014”) laying down rules for the application of Regulation (EU) No. 1306/2013 with regard to the integrated administration and control system, rural development measures and cross compliance for claim year 2020.

Article 13 of Regulation 809/2014 sets out the final date of submission of the single application, aid applications and payment claims. Regulation 2(a) modifies Article 13(1) so that for claim year 2020 the deadline is extended from 15 May 2020 to 15 June 2020.

Regulation 2(b) modifies Article 15(2) to extend the deadline for making amendments to a single application or payment claim from 31 May 2020 to 30 June 2020.

Regulation 2(c) modifies Article 22(1) so that the final date for submitting an application for the allocation or increase in value of payment entitlements aligns with the amended deadlines. This is extended from 15 May 2020 to 15 June 2020.

Regulation 3 modifies the application of Article 8(1) of Commission Implementing Regulation (EU) No. 641/2014 laying down rules for the application of Regulation (EU) No. 1307/2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy. This modification removes the reference to exit day.

Regulation 4 modifies the Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014 (“the 2014 Regulations”) for claim year 2020. Regulation 3(1) of the 2014 Regulations is modified to extend the deadline for submitting a single application, aid application or payment claim to the Welsh Ministers from 15 May 2020 to 15 June 2020.

Regulation 5 modifies the Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015 (“the 2015 Regulations”) for claim year 2020. The 2015 Regulations make provisions in relation to the administration of Regulation (EU) No. 1307/2013.

Regulation 5(a) modifies regulation 10(1) of the 2015 Regulations to align the deadline for applications for allocation of payment entitlements under the basic payment scheme with the revised dates in Regulation 809/2014.

Regulation 5(b) modifies regulation 11(3) of the 2015 Regulations so that the deadline by which the transferor of payment entitlements must notify the Welsh Ministers of the transfer is extended from 30 April 2020 to 15 May 2020.

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

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

2020 No. 473 (W. 109)

AGRICULTURE, WALES

**The Common Agricultural Policy
(Payments to Farmers)
(Coronavirus) (Wales) Regulations
2020**

Made 29 April 2020

Coming into force 30 April 2020

*Laid before the National Assembly for
Wales* 30 April 2020

The Welsh Ministers are designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to the common agricultural policy, and make these Regulations in exercise of the powers conferred by that section and in exercise of the powers conferred on them by Article 78(b) of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the

(1) S.I. 2010/2690.

(2) 1972 c. 68. The European Communities Act 1972 (“the 1972 Act”) was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16) (“the 2018 Act”) with effect from exit day. “Exit day” is defined in section 20 of the 2018 Act as 31 January 2020 at 11pm. Despite that repeal the 1972 Act continues to have effect with modifications until IP completion day, by virtue of section 1A of the 2018 Act. Section 1A was inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (c. 1) (“the 2020 Act”). “IP completion day” is defined in section 1A as 31 December 2020 at 11pm (the meaning given in section 39 of the 2020 Act). Section 2(2) of the 1972 Act was previously amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).

common agricultural policy(1), and Article 34(5) of Regulation (EU) No. 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy(2), make the following Regulations.

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- (1) Regulation (EU) No. 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No. 352/78, (EC) No. 165/94, (EC) No. 2799/98, (EC) No. 814/2000, (EC) No. 1290/2005 and (EC) No. 485/2008 (OJ No L 347, 20.12.2013, p. 549). In so far as relating to the CAP direct payment schemes for claim year 2020, Regulation (EU) No. 1306/2013, has been incorporated into domestic law by virtue of section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (c. 2) (see footnote for Regulation (EU) No. 1307/2013 below for discussion about how the direct payment scheme for claim year 2020 has been incorporated into domestic legislation). Article 78(b) of Regulation (EU) No. 1306/2013 has been amended by regulation 7(16)(b) of the Financing, Management and Monitoring of Direct Payments to Farmers (Amendment) Regulations 2020 (S.I. 2020/90). In particular, the function in Article 78(b) has been amended so that it is exercisable by the Welsh Ministers (see Article 2(1)(k) and (m) of Regulation (EU) No. 1306/2013 for the definitions of “relevant authority” and “appropriate authority”). There are other amendments to Regulation (EU) No. 1306/2013 but they are not relevant to these Regulations.
- (2) Regulation (EU) No. 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No. 637/2008 and Council Regulation (EC) No. 73/2009 (OJ No L 347, 20.12.2013, p. 608). Regulation (EU) No. 1307/2013 has been incorporated into domestic law by section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (c. 2), but only for claim year 2020 (see section 1(2)(a) of that Act and section 1(7) of that Act for the definition of “claim year”). The Direct Payment to Farmers (Legislative Continuity) Act 2020 provides the legal basis to continue paying direct payments to farmers for claim year 2020 (Article 137 of the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union (19 October 2019) provided that Regulation (EU) No. 1307/2013 does not apply to the UK for claim year 2020. Article 34(5) of Regulation (EU) No. 1307/2013 has been amended by regulation 5 of the Rules for Direct Payments to Farmers (Amendment) Regulations 2020 (S.I. 2020/91). The amendments made by the Regulations addressed the failures in Regulation (EU) No. 1307/2013 to operate effectively and other deficiencies arising from the withdrawal of the UK from the European Union. In particular, the Regulations amended Article 34(5) of Regulation (EU) No. 1307/2013 so that the power to lay down the rules governing the notification by farmers of transfers of entitlements is exercisable by the Welsh Ministers (see Article 4(1)(r) and (s) of Regulation (EU) No. 1307/2013 for the definitions of “relevant authority” and “appropriate authority”). There are other amendments to Regulation (EU) No. 1307/2013 but they are not relevant to these Regulations.

Title, commencement, application and interpretation

1.—(1) The title of these Regulations is the Common Agricultural Policy (Payments to Farmers) (Coronavirus) (Wales) Regulations 2020.

(2) These Regulations come into force on 30 April 2020.

(3) These Regulations apply in relation to Wales.

(4) In these Regulations, “claim year 2020” is to be interpreted in accordance with section 1(7) of the Direct Payments to Farmers (Legislative Continuity) Act 2020⁽¹⁾.

Amendment of Commission Implementing Regulation (EU) No. 809/2014

2. For the purposes of claim year 2020, the Commission Implementing Regulation (EU) No. 809/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance⁽²⁾ applies as if—

- (a) in Article 13(1), for “15 May each year” there were substituted “15 June 2020”;
- (b) in Article 15(2), for “31 May of the year concerned” there were substituted “30 June 2020”;
- (c) in Article 22(1), for “15 May of the relevant calendar year” there were substituted “15 June 2020”.

(1) 2020 c. 2.

(2) Commission Implementing Regulation (EU) No. 809/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance (OJ No L 227, 31.7.2014, p. 69). In so far as relating to the direct payment schemes for claim year 2020, Commission Implementing Regulation (EU) No. 809/2014 has been incorporated into domestic law by virtue of section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (see footnote for Regulation (EU) No. 1307/2013 above for discussion about how the direct payment scheme for claim year 2020 has been incorporated into domestic legislation). Commission Implementing Regulation (EU) No. 809/2014 has been amended by regulation 14 of the Financing, Management and Monitoring of Direct Payments to Farmers (Amendment) Regulations 2020 (S.I. 2020/90). There are other amending instruments but none are relevant.

Amendment of Commission Implementing Regulation (EU) No. 641/2014

3. For the purposes of claim year 2020, Article 8(1) of the Commission Implementing Regulation (EU) No. 641/2014 of 16 June 2014 laying down rules for the application of Regulation (EU) No. 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy⁽¹⁾ applies as if the words “prior to exit day” were omitted.

Amendment of the Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014

4. For the purposes of claim year 2020, regulation 3(1) of the Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014⁽²⁾ applies as if for “15th May”, in both places where it occurs, there were substituted “15 June 2020”.

Amendment of the Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015

5. For the purposes of claim year 2020, the Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015⁽³⁾ apply as if—

- (a) in regulation 10(1), for “15 May of the relevant calendar year” there were substituted “15 June 2020”;
- (b) in regulation 11(3), for the words “of the preceding calendar year” to the end, there were substituted “2019 to 15 May 2020”.

(1) Commission Implementing Regulation (EU) No. 641/2014 of 16 June 2014 laying down rules for the application of Regulation (EU) No. 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy (OJ No L 181, 20.6.2014, p. 74). Commission Implementing Regulation (EU) No. 641/2014 has been incorporated into domestic law by section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 but only in relation to claim year 2020 (see footnote for Regulation (EU) No. 1307/2013 above for discussion about how the direct payment scheme for claim year 2020 has been incorporated into domestic legislation). Article 8 of Commission Implementing Regulation (EU) No. 641/2014 has been amended by regulation 21 of the Rules for Direct Payments to Farmers (Amendment) Regulations 2020 (S.I. 2020/91).

(2) S.I. 2014/3223 (W. 328), to which there are amendments not relevant to these Regulations.

(3) S.I. 2015/1252 (W. 84), to which there are amendments not relevant to these Regulations.

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs,
one of the Welsh Ministers
29 April 2020

**The Common Agricultural Policy (Payments to Farmers) (Coronavirus)
(Wales) Regulations 2020**

Explanatory Memorandum

This Explanatory Memorandum has been prepared by Rural Economy and Legislation Division within the Department for Environment, Skills and Natural Resources and is laid before the Senedd 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 Common Agricultural Policy (Payments to Farmers) (Coronavirus) (Wales) Regulations 2020.

Lesley Griffiths

Minister for Environment, Energy and Rural Affairs

30 April 2020

1. Description

The Common Agricultural Policy (Payments to Farmers) (Coronavirus) (Wales) Regulations 2020 (“the instrument”) modifies the application of retained EU Direct Payments legislation and domestic legislation to extend the deadlines for submission and amendment of the Common Agricultural Policy Single Application Form (“SAF”), aid applications, payment claims and notification of the transfer of entitlements (“T&L”) for claim year 2020.

The instrument modifies the application of provisions in the following legislation:

- Commission Implementing Regulation (EU) No 809/2014 laying down rules for the application of Regulation (EU) No 1306/2013 with regard to the integrated administration and control system, rural development measures and cross compliance(1);
- Commission Implementing Regulation (EU) No 641/2014 of 16 June 2014 laying down rules for the application of Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy(2);
- the Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015(3); and
- the Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014(4).

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

Farmers who are applying for the following schemes must complete a SAF:

- Basic Payment Scheme (“BPS”) including Redistributive, Greening and Young Farmer
- Glastir Advanced (GA)

¹ Commission Implementing Regulation (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance (OJ L 227, 31.7.2014, p. 69–124). In so far as relating to the CAP direct payment schemes, Commission Implementing Regulation (EU) No 809/2014 has been incorporated into domestic law by virtue of section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (2020 c.2). Commission Implementing Regulation (EU) No 809/2014 has been amended by regulation 14 of the Financing, Management and Monitoring of Direct Payments to Farmers (Amendment) Regulations 2020 (S.I. 2020/90). There are other amending instruments but none are relevant.

² Commission Implementing Regulation (EU) No 641/2014 of 16 June 2014 laying down rules for the application of Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy (OJ L 181, 20.6.2014, p. 74–8). Commission Implementing Regulation (EU) No 641/2014 has been incorporated into domestic law by section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (2020 c.2). Article 8 of Commission Implementing Regulation (EU) No 641/2014 has been amended by regulation 21 of the Rules for Direct Payments to Farmers (Amendment) Regulations 2020 (S.I. 2020/91).

³ S.I. 2015/1252 (W. 84).

⁴ S.I. 2014/3223 (W. 328).

- Glastir Organic (GO)
- Improved Land Premium (ILP)
- Glastir Woodland Creation Premium (GWCP)
- Glastir Woodland Creation Maintenance (GCM)
- Glastir Woodland Creation Premium (GCP)

In so far as it relates to the BPS (Pillar 1) 2020, Regulation 1306/2013 has been incorporated into domestic law by virtue of section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (c.2).

The amendments to extend the Pillar 1 application and amendment deadlines are being made pursuant to Article 78(b) of Regulation (EU) No. 1306/2013 on the financing, management and monitoring of the common agricultural policy (“Regulation 1306/2013”). Article 78(b) has been amended by regulation 7(16)(b) of the Financing, Management and Monitoring of Direct Payments to Farmers (Amendment) Regulations 2020 (S.I. 2020/90). The function in Article 78(b) of making regulations laying down rules on aid applications, and applications for payment entitlements (including the final date for submission of applications) is conferred on the “appropriate authority” which is the Welsh Ministers in this context by virtue of Article 2(1)(l) and (m) of Regulation 1306/2013

The Rural Development Programme (Pillar 2) remains governed by EU law. This includes the Glastir schemes, and Improved Land Premium. As a result of the COVID 19 pandemic, the EU has published Commission Implementing Regulation (EU) 2020/501 of 6 April 2020 which allows all Member States (which includes the UK in relation to Pillar 2) to choose to extend the SAF, aid application and payment claim deadline by 1 month to 15 June for claim year 2020. The date for amending a submitted SAF, aid application, and payment claim form can then also be amended from 31 May to 30 June.

The amendments to extend the deadlines in relation to Pillar 2 are therefore being made pursuant to section 2(2) of the European Communities Act 1972. The Welsh Ministers are designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to the common agricultural policy by virtue of the European Communities (Designation) (No. 5) Order 2010 (S.I. 2010/2690). This designation allows Welsh Ministers to make regulations for the purpose of implementing any EU obligation of the United Kingdom.

The amendment to extend the T&L notification deadline is being made pursuant to Article 34(5) of Regulation (EU) No. 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common

agricultural policy⁵ (“Regulation 1307/2013”). Regulation 1307/2013 has been incorporated into domestic law by virtue of section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (2020 c.2). Article 34(5) was amended by regulation 5 of the Rules for Direct Payments to Farmers (Amendment) Regulations 2020 (S.I. 2020/91). The function in Article 34(5) of making regulations laying down detailed rules governing the notification by farmers of the transfer of payment entitlements and the deadlines within which such notification is to take place is conferred on the “appropriate authority” which is the Welsh Ministers in this context by virtue of Article 4(1)(r) and (s) of Regulation 1307/2013.

The instrument is subject to negative procedure as the instrument needs to be made, and come into force urgently. The deadline for the T&L notification is currently 30 April (day included). As such the amendments need to be made urgently to ensure clarity around the deadlines. On this basis the negative procedure has been selected in relation to use of the section 2(2) of European Communities Act 1972 powers. Article 115B(1) of Regulation (EU) No. 1306/2013 and Article 71A of Regulation (EU) No. 1307/2013 provide that the negative procedure applies in relation to the use of the powers in Article 78(b) of Regulation (EU) No. 1306/2013 and Article 34(5) of Regulation (EU) No. 1307/2013.

21 Day Convention and Section 4(1) of the Statutory Instruments Act 1946

This SI is being made subsequent to the Direct Payments to Farmers (Legislative Continuity) Act 2020 (Consequential Amendments) Regulations 2020 (“2020 Regulations”) to ensure continuity of approach for definitions and interpretation. The 2020 Regulations make consequential amendments required as a result of the Direct Payments to Farmers (Legislative Continuity) Act 2020 on a UK-wide basis. The 2020 Regulations were made on 27 April 2020, laid before the UK Parliament on 28 April 2020 and come into force on 30 April 2020.

This instrument will come into force on 30 April 2020 to ensure there is clarity around submission dates, and as such the 21 day convention will not be adhered to.

This instrument, made on 29 April 2020 will come into force at the beginning of the day on 30 April 2020 and will be laid before the National Assembly for Wales on 30 April 2020, in effect, after it has come into force.

3. Legislative background

Farmers who wish to apply for Direct Payments or Rural Development funding have to submit the SAF, aid application or payment claim by a date set out in

⁵ Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ No L 347, 20.12.2013, p. 608).

legislation – currently 15 May. There is then a window within which farmers can make changes to a submitted SAF, aid application or payment claim if there are any errors or issues.

As set out above, as a result of the COVID 19 pandemic, the EU has published Commission Implementing Regulation (EU) 2020/501 of 6 April 2020 which allows all Member States to choose to extend the SAF, aid application and payment claim deadline by 1 month to 15 June for claim year 2020. The date for amending a submitted SAF, aid application, and payment claim form can then also be amended from 31 May to 30 June.

The rationale being that this will ease the administrative pressure on farmers, many of whom may be affected by coronavirus, self-isolating or unable to access assistance from the relevant paying agency – in this instance Rural Payment Wales (“RPW”).

BPS in Wales is no longer governed by EU law as a result of Article 137 of the Withdrawal Agreement. The Direct Payments to Farmers (Legislative Continuity) Act 2020 (the “DPLC Act”) incorporated the EU legislation governing the 2020 CAP Direct Payment schemes into domestic law on Exit Day. Unlike other EU law relating to the CAP, changes to EU Direct Payments legislation do not automatically apply during the Implementation Period, and domestic legislation is therefore required to amend the SAF deadlines in Wales. EU law still governs the other elements of CAP including the Rural Development Programme.

4. Purpose and intended effect of the legislation

Commission Implementing Regulation (EU) No 809/2014

Regulation 2 modifies the application of the Commission Implementing Regulation (EU) No 809/2014 (“Regulation 809/2014”) which lays down rules for the application of Regulation 1306/2013 with regards to the integrated administration and control system, rural development measures and cross compliance for claim year 2020.

Regulation 2(a) modifies the application of Article 13(1) so that for claim year 2020 the SAF, aid application and payment claim submission deadline is extended from 15 May to 15 June 2020

Regulation 2(b) modifies the application of Article 15(2) to extend the deadline for making amendments to a SAF, aid application or payment claim from 31 May to 30 June 2020.

Regulation 2(c) modifies the application of Article 22(1) to ensure that the final date for submitting an application for the allocation or increase in value of payment entitlements aligns with the amended deadlines. This is extended from 15 May to 15 June 2020.

Commission Implementing Regulation (EU) No 641/2014

Regulation 3 modifies the application of the Commission Implementing Regulation (EU) No 641/2014 which lays down rules for the application of

Regulation 1307/2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy. The modification removes references to Exit Day from Article 8(1) for clarity.

Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014

Regulation 4 modifies the application of the Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014 (“the 2014 Regulations”) for claim year 2020. The application of regulation 3 of the 2014 Regulations is amended to extend the deadline for submitting a SAF, aid application or payment claim to the Welsh Ministers from 15 May to 15 June 2020

Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015

Regulation 5 modifies the application of the Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015 (“the 2015 Regulations”) for claim year 2020. The 2015 Regulations make provisions in relation to the administration of Regulation (EU) No 1307/2013.

Regulation 5(a) modifies the application of regulation 10(1) of the 2015 Regulations to align the deadline for applications for allocation of payment entitlements under the basic payment scheme with the revised dates in Regulation 809/2014.

Regulation 5(b) modifies the application of regulation 11(3) of the 2015 Regulations so that the final date by which the transferor of payment entitlements must notify the Welsh Ministers of the transfer for claim year 2020 is extended from 30 April to 15 May 2020.

5. Consultation

This instrument has not been subject to formal consultation because we needed to bring the SI forward quickly to try and address difficulties experienced by farmers as a result of the pandemic

6. Regulatory Impact Assessment (RIA)

The Regulations maintain the current position and make no policy changes hence why no Regulatory Impact Assessment has been undertaken, in addition to the fact that we needed to bring the SI forward quickly to try and address difficulties experienced by farmers as a result of the pandemic.

Rebecca Evans AS/MS
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref

Ein cyf/Our ref – MA/LG/1274/20

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

01 May 2020

Dear Elin,

The Common Agricultural Policy (Payments to Farmers) (Coronavirus) (Wales) Regulations 2020

In accordance with sections 4(1) and 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 was laid before the Assembly on 30 April 2020 after it came into force at the beginning of that day and comes into force less than 21 days from the date of laying. The Explanatory Memorandum for the Regulations is attached for your information.

Farmers who wish to apply for Direct Payments, and Glastir Schemes have to submit the Single Application Form (SAF), by a date set out in legislation – currently 15 May each year. The same deadline applies for aid applications and payment claims. There is also a window within which farmers can make changes to a submitted SAF, aid application or payment claim if there are any errors or amendments without penalties.

As a result of the COVID 19 pandemic, the EU has published Commission Implementing Regulation (EU) 2020/501 of 6 April 2020 which allows all Member States (including the UK in relation to Pillar 2 – rural development programmes) to choose to extend the SAF, aid application and payment claim deadlines by 1 month to 15 June for claim year 2020. The date for amending a submitted SAF form, aid application or payment claim can then also be amended from 31 May to 30 June. The rationale being that this will ease the administrative pressure on farmers.

The Common Agricultural Policy (Payments to Farmers) (Coronavirus) (Wales) Regulations

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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.

2020 also extends the transfer and lease (T&L) notification period by 2 weeks. Amending the T&L deadline to 15 May from 30 April moves the transfer deadline as late as possible to align with the 15 May (date land declared must be at a farmers disposal), at the request of stakeholders.

It was necessary to wait for the Direct Payments to Farmers (Legislative Continuity) Act 2020 (Consequential Amendments) Regulations 2020 ("2020 Regulations") to be made before making this instrument to ensure continuity of approach for interpretation. The 2020 Regulations make consequential amendments required as a result of the Direct Payments to Farmers (Legislative Continuity) Act 2020 on a UK-wide basis. The 2020 Regulations were made on 27 April, laid before the UK Parliament on 28 April 2020 and came into force on 30 April 2020.

The Common Agricultural Policy (Payments to Farmers) (Coronavirus) (Wales) Regulations 2020 was made on 29 April 2020, came into force at the beginning of the day on 30 April 2020, to ensure there is clarity around submission dates, and was also laid before the Assembly on 30 April 2020, after it had come into force.

Due to the urgent timetable there has been no time to carry out a meaningful consultation or a Regulatory impact Assessment. However, an Explanatory Memorandum has been prepared and this has been laid, together with the Regulations, in Table Office.

The Regulations provide additional time for farmers and landowners to submit their annual claim forms, as a result of requests made by industry representatives to provide flexibility whilst the UK is observing strict social distancing measures due to COVID-19.

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

Yours sincerely,



Rebecca Evans AC/AM

Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

SL(5)544 – The Education (Admission Appeals Arrangements) (Wales) (Coronavirus) (Amendment) Regulations 2020

Background and Purpose

The Education (Admission Appeals Arrangements) (Wales) (Coronavirus) (Amendment) Regulations 2020 (“the 2020 Regulations”) are made under powers in sections 94(5), (5A), 95(3), (3A) and 138(7) of the School Standards and Framework Act 1998 (“the 1998 Act”) and make amendments to The Education (Admission Appeals Arrangements) (Wales) Regulations 2005 (“the 2005 Regulations”).

The 2020 Regulations amend the 2005 Regulations to change procedural and constitutional requirements in relation to school admission appeals in response to the impact of coronavirus (COVID-19) on school admissions appeal arrangements.

In specified circumstances appeal panels may consider appeals as a panel of two (rather than three), hearings can be held remotely on the basis of written submissions (rather than in person), and greater flexibility is provided in relation to the deadline for the determination of appeals. The panel is required to be supported by a trained clerk. In addition, the 2020 Regulations revise the deadlines relevant to the appeal process so that they refer to calendar days or a fixed date rather than “school days”, which is the term used in the School Admissions Appeals Code (“the Code”) - the Code is made under section 84 of the 1998 Act.

Requirements relating to school admission appeals have been and will continue to be set out in both the 2005 Regulations (as amended by the 2020 Regulations) and the Code.

The amendments have been implemented in this way in preference to any amendment to the Code. This is because the procedure for amending the Code set out in section 85 of the 1998 Act would necessitate a longer delay to the new rules coming into force, which is undesirable due to their urgency. The Code and the 2005 Regulations will continue to be read alongside each other. Where the 2020 Regulations amend procedure that is set out in the Code, the 2020 Regulations will take precedence.

Guidance will be published alongside the 2020 Regulations to clarify which rules apply in the relevant circumstances. The Code will remain intact and un-amended enabling those involved in school admission appeals to easily revert to a clear and known set of rules once the coronavirus (COVID-19) outbreak has passed.

The 2020 Regulations come in to force on 4 May 2020. They will apply to the procedure for appeals lodged between this date, but before 31 January 2021, as well as appeals that are already underway but which have not yet concluded at the time the 2020 Regulations come into force. Save for those specified provisions that will continue to have effect in limited circumstances (see reg. 3(1)), the 2020 Regulations will expire on 31 January 2021. On expiry, the 2005 Regulations will then apply again to appeals lodged from 1 February 2021, and to appeals ongoing on the date of expiry and which have not been decided by an appeal panel.



Procedure

Negative.

Technical Scrutiny

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

Standing Order 21.2(iv) - that it appears to have retrospective effect where the authorising enactment does not give express authority for this

Regulation 1(2)(b) has retrospective effect in that it captures appeals commenced before the 2020 Regulations came into force. The Committee notes that this provision was necessary to enable the 2020 Regulations to come into force immediately on the 4 May 2020 whilst still capturing existing appeals (see further Merits point 1. below).

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 of public policy likely to be of interest to the Senedd

The Committee notes 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 Senedd and the date the subordinate legislation comes into force), and the explanation for the breach provided by Rebecca Evans AM, Minister for Finance and Trefnydd, in a [letter](#) to the Llywydd dated 1 May 2020.

The letter notes that the 2020 Regulations temporarily amend certain procedural and constitutional requirements that are set out in the 2005 Regulations relating to school admission appeals panels until 31 January 2021. It goes on to say:

“This change is being made to allow these appeals to continue to be conducted despite significant practical difficulties caused by measures needed to limit the spread of coronavirus (COVID-19). Those measures include the social distancing guidance introduced by the Welsh Government and Public Health Wales, which restricts the ability for parties to meet in person, and the guidance on self-isolation, which causes difficulties in securing sufficient panel members for appeal hearings.”

It states the 2020 Regulations made a “one-off amendment to the 2005 Regulations” with a view to providing the maximum flexibility for the appeals process to continue, thus addressing the concerns of parents about where their children should attend school, whilst limiting the risk of appeals panels contracting or spreading the virus.

The letter notes also, “Further, as the majority of school admission appeals take place in April-July, compliance with the 21 day convention would make it impossible for these flexibilities to be introduced in time for admission authorities to undertake the bulk of their appeals work.”

The Committee notes the [Explanatory Memorandum](#) (“EM”) sets out additional information to support the breach of the 21-day rule and, in particular, highlights there is already a backlog of secondary appeals and that compliance with the rule in this case would potentially paralyse the appeal system for that that period. We further note the EM references positive stakeholder feedback for the proposals (see



para. 5.1); highlights the extensive safeguards that have been built into the 2020 Regulations to ensure appellants still have adequate time to pursue appeals, and that notice of the changes was provided to the sector and parents via guidance published on 16 April 2020 (including a frequently asked questions section), which was Primary Offer Day.

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

The Committee notes that the EM states, "...it has not been possible to prepare a Business and Regulatory Impact Assessment." Section 76(2)(a) of the Government of Wales Act 2006 defines a regulatory impact assessment as "an assessment as to the likely costs and benefits of complying with relevant Welsh subordinate legislation". Section 76(1) of the Government of Wales Act 2006 requires the Welsh Ministers to make a code of practice setting out their policy on the carry out of regulatory impact assessments in connection with relevant Welsh subordinate legislation. Paragraph 4.2 of the code states that "Welsh Ministers' policy will be to carry out an RIA ... subject to the following exceptions". The Committee notes the sixth bullet of para. 4.2, which appears to apply in the present circumstances and provides that such an assessment is not required, "Where the relevant Welsh subordinate legislation needs to be put in place quickly to deal with an emergency (e.g. foot-and-mouth or avian flu)".

We note however, para. 6.1 of the EM states, "No significant impact on business, charities or voluntary bodies is foreseen and the Appeal Amendment Regulations 2020 have effect for a temporary period up to 31 January 2021." Further, the EM states that engagement has occurred with stakeholders, for example, "The feedback has been positive and the proposed flexibilities around how an appeal is administered, have been welcomed" (para. 5.1).

We note also that both a Children's Rights Impact Assessment (see para. 6.4), and Equality and Human Rights Assessment (see paras. 6.5 and 6), have been carried out noting no adverse effect.

3. 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 Senedd

Regulation 2(2) provides the 2020 Regulations will cease to have effect on 31 January 2021 subject to certain saving provision (set out in reg. 3). The Committee notes the justification in the EM, particularly at para. 4.6, for the duration of the 2020 Regulations, "This is considered a suitable expiry date because it should allow sufficient time to deal with the annual peak in appeals relevant to children starting new schools at the beginning of the academic year 2020/21. It will also support handling of appeals that are delayed into the autumn, which is also a busy period for appeals from in-year applications, often for year groups other than reception or year 7. The Appeal Amendment Regulations 2020 are subject to review for the time that they are in force."

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





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. 479 (W. 110)

EDUCATION, WALES

**The Education (Admission Appeals
Arrangements) (Wales)
(Coronavirus) (Amendment)
Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Education (Admission Appeals Arrangements) (Wales) Regulations 2005 (“the 2005 Regulations”) for appeals brought under sections 94 and 95 of the School Standards and Framework Act 1998 and lodged—

- (a) on or after 4 May 2020 but on or before 31 January 2021, or
- (b) before 4 May 2020 but where the appeal has not been fully determined on or before that date.

Regulation 3(1) provides that regulations 5 to 12 will continue to have effect following the expiry of these Regulations in prescribed, limited circumstances. Otherwise, as provided for by regulation 2(2), these Regulations will expire on 31 January 2021. Regulation 4 sets out that, on expiry, the 2005 Regulations will then apply again to appeals lodged from 1 February 2021 and to appeals ongoing on the date of expiry and which have not been decided by an appeal panel.

Regulation 6 introduces a new definition into regulation 2(1) of the 2005 Regulations: the “coronavirus exception”. That operates in two main ways under these Regulations—

- (a) where it is not reasonably practicable for a governing body or a local authority to comply with the appeal arrangements in paragraph 1 of Schedule 1 for a reason related to the incidence or transmission of coronavirus, paragraph 1 of new Schedule 3 (inserted by regulation 12) applies instead to allow panels

of two members to decide appeals (see regulation 7);

- (b) where it is not reasonably practicable for an admission appeal panel to comply with the procedural requirements in paragraph 1(6) of Schedule 2 or the requirements of the School Admission Appeals Code on appeals in person for a reason related to the incidence or transmission of coronavirus, paragraph 2 of new Schedule 3 applies to enable appeal panels to hold hearings by remote access or decide appeals on the basis of the written information provided (see regulation 8).

Paragraphs 3 to 5 of new Schedule 3 make provision for various timelines to apply in respect of appeals to ensure that the admission authorities and governing bodies can set reasonable timelines during the period of operation of these 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 costs and benefits of complying with these Regulations.

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

2020 No. 479 (W. 110)

EDUCATION, WALES

**The Education (Admission Appeals
Arrangements) (Wales)
(Coronavirus) (Amendment)
Regulations 2020**

Made 30 April 2020

Laid before the National Assembly for Wales
1 May 2020

Coming into force 4 May 2020

The Welsh Ministers in exercise of the powers conferred on the Secretary of State by sections 94(5) and (5A), 95(3) and (3A) and 138(7) of the Schools Standards and Framework Act 1998(1) and now vested in them(2) make the following Regulations:

Title, commencement, application and interpretation

1.—(1) The title of these Regulations is the Education (Admission Appeals Arrangements) (Wales) (Coronavirus) (Amendment) Regulations 2020 and they come into force on 4 May 2020.

(2) These Regulations apply to appeals to which the 2005 Regulations(3) apply which are lodged—

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- (1) 1998 c. 31; *see* section 142(1) for the definitions of “the Assembly”, “prescribed” and “Regulations”. Subsection (5A) was inserted into section 94 by section 50 of the Education Act 2002 (c. 32). Subsection (3A) was inserted into section 95 by paragraph 9 of Schedule 4 to the Education Act 2002.
- (2) The functions of the Secretary of State under these sections were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and then to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).
- (3) S.I. 2005/1398 (W. 112), amended by S.I. 2009/823 (W. 73), S.I. 2010/1142 (W.101) and S.I. 2013/2535 (W. 250).

- (a) on or after 4 May 2020 but on or before 31 January 2021;
- (b) before 4 May 2020 but where the appeal has not been fully determined on or before 4 May 2020.

(3) In these Regulations, “the 2005 Regulations” means the Education (Admission Appeals Arrangements) (Wales) Regulations 2005.

Review and expiry of regulations 5 to 12

2.—(1) The Welsh Ministers must review the effectiveness of regulations 5 to 12 during the period for which they have effect.

(2) Subject to regulation 3, regulations 5 to 12 cease to have effect on 31 January 2021.

Saving provisions

3.—(1) Regulations 5 to 12 continue to have effect for appeals to which these Regulations apply which have not been decided before these Regulations cease to have effect in the following ways—

- (a) where an appeal panel is constituted to consider the appeal as a panel of two members in accordance with paragraph 1(1) of Schedule 3 to the 2005 Regulations it may continue to decide the appeal as so constituted;
- (b) where an appeal panel has started to decide an appeal on the written information submitted in accordance with paragraph 2(2) of Schedule 3 to the 2005 Regulations it may continue to decide the appeal on that basis;
- (c) any time limits prescribed in or determined under paragraphs 3 to 5 of Schedule 3 to the 2005 Regulations continue to apply.

(2) The expiry of these Regulations under regulation 2(2) does not affect the validity of anything done in accordance with these Regulations before the expiry date.

4. Subject to regulation 3, once regulations 5 to 12 cease to have effect in accordance with regulation 2(2), the 2005 Regulations continue to apply as though these amendments had not been made to appeals lodged—

- (a) on or after 1 February 2021;
- (b) on or before 31 January 2021 and which have not been decided.

Amendment of the 2005 Regulations

5. The 2005 Regulations are amended as follows.

6. In regulation 2(1) (interpretation) at the appropriate places insert—

““the admission authority” (*“yr awdurdod derbyn”*) has the same meaning as in section 88(1)(a) and (b);”;

““admission decision” (*“penderfyniad derbyn”*) means a decision referred to in section 94(1) to (2A) refusing a child admission to a school or entrance to a sixth form or as to the school at which education is to be provided for a child;”;

““coronavirus” (*“coronafeirws”*) means severe acute respiratory syndrome coronavirus 2 (SARS-Cov-2);”;

““coronavirus exception” (*“eithriad y coronafeirws”*) is a condition which applies where, for a reason related to the incidence or transmission of coronavirus—

(a) it is not reasonably practicable for a local authority or a governing body of a foundation or voluntary aided school to comply with the requirements of paragraph 1(1) and (2) or 2(1) and (2) of Schedule 1 (as the case may be), (“the constitution reason”), or

(b) it is not reasonably practicable for an appeal panel to comply with the requirement in paragraph 1(6) of Schedule 2, or paragraphs 4.13, 4.14 or 7.5 of the School Admissions Appeals Code for appellants or representatives of local authorities or governing bodies to be allowed to appear in person (“the appeal in person reason”);”;

““remote access” (*“mynediad o bell”*) means access to an appeal hearing to enable those who are not all present together at the same place to attend or participate simultaneously in the hearing by electronic means, including by live audio link and live video link;”;

““the School Admission Appeals Code” (*“y Cod Apelau Derbyn i Ysgolion”*) means the School Admission Appeals Code which is the code issued under section 84 relating to admission appeals;”.

7. In regulation 3 (constitution of appeal panels), for “Schedule 1” substitute “Schedule 1 or, where the constitution reason of the coronavirus exception applies, the relevant paragraphs of Schedule 1, subject to paragraph 1 of Schedule 3”.

8. In regulation 5 (procedure for appeals), for “Schedule 2” substitute “Schedule 2 or, where the

appeal in person reason of the coronavirus exception applies, the relevant paragraphs of Schedule 2, subject to paragraph 2 of Schedule 3”.

9. After regulation 8 (indemnity) insert—

“Time limits

9.—(1) Paragraphs 3 and 4 of Schedule 3 have effect for the purposes of determining the timetable in respect of an appeal pursuant to arrangements made by a local authority or governing body of a foundation or voluntary aided school under section 94.

(2) Paragraph 5 of Schedule 3 has effect for the purposes of determining the timetable in relation to an appeal pursuant to arrangements made by a local authority under section 95.”

10. In Schedule 1 (constitution of appeal panels), before paragraph 1, insert—

“(A1) Paragraphs 1(1) and (2) and 2(1) and (2) apply subject to paragraph 1 of Schedule 3.”

11. In Schedule 2 (procedure on appeal), before paragraph 1, insert—

“(A1) Paragraphs 1 applies subject to paragraphs 2 to 4 of Schedule 3 and paragraph 2 applies subject to paragraphs 2 and 5 of Schedule 3.”

12. After Schedule 2 insert—

“SCHEDULE 3 Regulations 3, 5 and 9
Temporary amendments of
Constitution of Appeal Panels and
Procedure on Appeal

Arrangements made by a local authority or governing body: when coronavirus exception applies

1.—(1) Where one or more members of an appeal panel has to withdraw from membership of the panel, the appeal panel may continue to consider and determine the appeal provided there remains a panel of at least two members, regardless of whether those members meet the requirements of paragraph 1(2) or 2(2) (as the case may be) of Schedule 1.

(2) Where sub-paragraph (1) applies, and the member withdrawing is the panel chair, the admission authority must appoint (or arrange for the clerk to the appeal panel to appoint) one of

the remaining members of the panel as the chair.

Appeal hearings

2.—(1) An appeal panel may decide to hold an appeal hearing using remote access provided—

- (a) the parties are able to present fully their case,
- (b) each participant has access to the electronic means to allow them to hear and be heard and (where using a live video link) see and be seen, throughout the appeal hearing, and
- (c) the panel considers that the appeal is capable of being heard fairly and transparently.

(2) Where any of the conditions prescribed in sub-paragraph (1)(a) to (c) are not met, an appeal panel may make their decision on the appeal based on the written information submitted.

(3) Where sub-paragraph (2) applies, the appeal panel must ensure that the parties are able to present fully their case, in order for the panel to make a decision on the appeal which is fair and transparent.

Time limits

3.—(1) Where the admission authority or local authority sends an admission decision the deadline for an appeal specified in that admission decision must be—

- (a) at least 28 days from the date of the notification of the admission decision, and
- (b) expressed by reference to a fixed date or a number of calendar days.

(2) In respect of an admission decision sent after 28 February 2020 which contains a deadline for an appeal that is not in accordance with the requirements of sub-paragraph (1)(a) or (b), the admission authority must review the existing deadline for the appeal and, where the condition in sub-paragraph (3) is satisfied, set a new deadline for the appeal which must be—

- (a) at least 28 days from the date of the notification of the new deadline, and
- (b) expressed by reference to a fixed date or a number of calendar days.

(3) The condition is that—

- (a) no appeal has already been lodged in response to the admission decision,
- (b) the existing deadline refers to school days, or the admission authority otherwise considers that the existing deadline is unclear in all the circumstances, and
- (c) the existing deadline has not already expired.

(4) Where a new deadline has been set in accordance with sub-paragraph (2), notification of the new deadline must be sent to the recipient of the original admission decision within 28 days of 4 May 2020 or 7 days from the date of an admission decision which does not comply with the requirements of sub-paragraph (1) whichever is later.

(5) The notification of the new deadline must be sent by—

- (a) the admission authority where that admission authority sent the relevant admission decision, or
- (b) the local authority where that authority sent the relevant admission decision on behalf of another admission authority.

(6) The requirement in sub-paragraph (5)(b) only applies once the local authority has been informed of the new deadline by the relevant admission authority.

4.—(1) The admission authority must provide appellants with at least 14 days' written notice of an appeal hearing.

(2) The admission authority may set new or revised reasonable deadlines for—

- (a) an appellant to submit additional evidence,
- (b) the admission authority to submit its evidence, and
- (c) the clerk to send relevant appeal papers to the appeal panel and the parties.

(3) An appeal panel must send decision letters on appeals to the parties within 7 days of the hearing, or finalisation of the determination of the appeal, wherever possible.

(4) All appeals which have been lodged, whether in time or not, must be heard and determined by an appeal panel as soon as reasonably practicable.

5.—(1) Where the governing body of a school receives a written decision to admit to the school a child to whom, at the time when the

decision is made section 87(2) applies, any appeal must be made within 21 days from—

- (a) the date of notification of the decision where that date is on or after 4 May 2020, or
- (b) 4 May 2020 where—
 - (i) the decision was notified before 4 May 2020,
 - (ii) no appeal has been lodged in response to the decision before 4 May 2020, and
 - (iii) an existing appeal deadline relevant to the decision has not already expired before 4 May 2020.

(2) All appeal hearings to which subparagraph (1) applies must be held, and appeals determined, as soon as reasonably practicable.”

Kirsty Williams

Minister for Education, one of the Welsh Ministers

30 April 2020

Explanatory Memorandum to The Education (Admission Appeals Arrangements) (Wales) (Coronavirus) (Amendment) Regulations 2020

This Explanatory Memorandum has been prepared by the Education and Public Services 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 Education (Admission Appeals Arrangements) (Wales) (Coronavirus) (Amendment) Regulations 2020.

Kirsty Williams
Minister for Education
01 May 2020

1. Description

- 1.1 The Education (Admission Appeals Arrangements) (Wales) (Coronavirus) (Amendment) Regulations 2020 (“the Appeal Amendment Regulations 2020”) amend certain procedural and constitutional requirements that are set out in the Education (Admission Appeals Arrangements) (Wales) 2005 relating to school admission appeals panels until 31 January 2021.
- 1.2 This change is being made to allow these appeals to continue to be conducted despite significant practical difficulties caused by measures needed to limit the spread of coronavirus (COVID-19). Those measures include the social distancing guidance introduced by the Welsh Government and Public Health Wales, which restrict the ability for parties to meet in person, and the guidance on self-isolation, which cause difficulties in securing sufficient panel members for appeal hearings.

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

- 2.1 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.
- 2.2 This is necessary due to the urgent need to amend constitutional and procedural requirements for admissions appeal panels in response to the significant practical impacts of coronavirus (COVID-19). The months of April to June represent the busiest months for appeal panels as significant numbers of appeals arising from school offers being made to children due to start a new school in September 2020 are lodged during these months. Offer letters for secondary school applications were required to be made on 1 March (or next working day) and there is already a backlog of secondary appeals. Primary Offer Day on 16 April has added to the number of appeals that need to be carried out before September (or as soon as possible at the start of the academic year). This is why it is of particular importance to re-align the deadlines and amend requirements without delay to help appeal panels conduct this peak volume of business. The impact of coronavirus (COVID-19) and the associated social distancing requirements are significantly compromising the immediate availability of appeal panel members and other people involved in administering appeals and have rendered in-person appeal hearings prohibited.
- 2.3 Primary Offer Day on 16 April has added to the number of appeals that need to be carried out before September (or as soon as possible at the start of the academic year). This is why it is of particular importance to re-align the deadlines and amend requirements without delay to help appeal

panels conduct this peak volume of business. The impact of coronavirus (COVID-19) and the associated social distancing requirements are significantly compromising the immediate availability of appeal panel members and other people involved in administering appeals and have rendered in-person appeal hearings prohibited.

- 2.4 If the Appeal Amendment Regulations 2020 were to comply with the 21-day rule it is likely that the appeal system would be paralysed for that period as a number of the current requirements cannot be complied with as a result of coronavirus (COVID-19), which will result in undesirable additional delays for appellants who are likely to be seeking to resolve appeals in time for children starting a new school in September 2020 (or with minimal delays).
- 2.5 It was not possible to make these regulations sooner. On 18 March, the Welsh Government announced that schools should remain open for vulnerable children and the children of critical workers only at the end of the school day on Friday 20 March. The Welsh Government announced social distancing guidance on 16 March, then introduced 'stay at home' rules on 23 March. Officials were not in a position to assess the extent and impact of the lockdown on admissions appeals immediately and needed to consult with the sector to understand the impact and practical difficulties Admission Authorities would have in administering their appeals.
- 2.6 We know from stakeholder feedback that having these amended rules come in to force quickly will be welcomed by those working to provide these appeals. The new arrangements will also be welcomed by parents who will continue to have the right of appeal should they not be happy with the school they have been offered. Safeguards have been built into the Appeal Amendment Regulations 2020 to ensure that appellants still have adequate time and notice to lodge appeals, and that their appeals will continue to be heard fairly, as quickly as possible in the circumstances, and in line with the requirements of natural justice.
- 2.7 To ensure both the sector and parents had notice of these changes, the Welsh Government published guidance on 16 April on Primary Offer Day, which explained what changes the Welsh Government was planning to address and advised these regulations would be laid and come in to force as soon as possible. The Welsh Government also continues to provide coronavirus (COVID-19) updates to the sector.

3. Legislative background

- 3.1 These Regulations are made under powers in sections 94(5), (5A), 95(3), (3A) and 138(7) of the School Standards and Framework Act 1998 ("the 1998 Act") and make amendments to The Education (Admission Appeals Arrangements) (Wales) Regulations 2005 (S.I. 2005/1398 (W. 112)) ("the 2005 Regulations"). They are subject to negative resolution procedure.

- 3.2 The Appeal Amendment Regulations 2020 amend the 2005 Regulations to change procedural and constitutional requirements in relation to school admission appeals in response to the impact of coronavirus (COVID-19) on school admissions appeal arrangements.
- 3.3 Requirements relating to school admissions appeals have been and will continue to be set out in both the 2005 Regulations (as amended by the Appeal Amendment Regulations 2020) and the School Admissions Appeals Code. The School Admissions Appeals Code is made under section 84 of the School Standards and Framework Act 1998.
- 3.4 The amendments to the procedural and constitutional rules relating to school admissions appeal panels have been implemented by virtue of the Appeal Amendment Regulations 2020 under sections 94(5) and (5A), 95(3) and (3A) and 138(7) of the School Standards and Framework Act 1998 in preference to any amendment to the School Admissions Appeals Code. This is because the procedure for amending the School Admissions Appeals Code set out in section 85 of the School Standards and Framework Act 1998 would necessitate a longer delay to the new procedural and constitutional rules coming into force, which is undesirable due to their urgency. The School Admission Appeals Code and the 2005 Regulations will continue to be read alongside each other. Where the Appeal Amendment Regulations 2020 amend procedure that is set out in the School Admissions Appeals Code, the Appeal Amendment Regulations 2020 will take precedence.
- 3.5 Guidance will be published alongside the Appeal Amendment Regulations 2020 to ensure that those involved in school admission appeals will be able to clearly understand which rules apply in the relevant circumstances. Given the temporary nature of the amended procedural and constitutional rules, it is also considered suitable that the School Admission Appeals Code remains intact and un-amended enabling those involved in school admissions appeals to easily revert to a clear and known set of rules once the coronavirus (COVID-19) outbreak has passed.
- 3.6 The Appeal Amendment Regulations 2020 come in to force on 4 May 2020. They will apply to the procedure for appeals lodged between this date, but before 31 January 2021, as well as appeals that are already underway but which have not yet concluded at the time the regulations come into force.
- 3.7 An Equality Impact Assessment and Children's Rights Impact Assessment have been carried out in the making of the Appeal Amendment Regulations 2020. The Impact Assessments and the Regulations will be kept under review during the period they are in force.

4. Purpose & intended effect of the legislation

- 4.1 Local authorities are the admissions authority for community schools and the governing body is the admission authority for voluntary aided and

foundation schools. Admission authorities are responsible for setting and applying a school's admission arrangements. They are concerned that the coronavirus (COVID-19) outbreak will make it impossible to meet the procedural and constitutional admission appeal requirements set out in the School Admissions Appeals Code and the Education (Admission Appeals Arrangements) (Wales) Regulations 2005.

- 4.2 Although there appears to be nothing to preclude admission appeals to take place virtually, the School Admission Appeals Code is drafted on the expectation that appeals will be held in person, with all the parties and panel members physically present. Welsh Government and Public Health Wales restrictions relating to social distancing and self-isolation will limit panel members' physical availability. Each panel currently requires three appeal panel members and the appeal cannot continue without a panel of three. A number of local authorities run several panels concurrently over the summer months to manage the high numbers of appeals. The fact that some schools may have closed temporarily (or may close in the future) has also impacted on effectiveness of deadlines set out in the School Admissions Appeals Code.
- 4.3 It is important that those parents who are unhappy with the school they have been offered for their child are given the right of appeal when they need it. Anecdotal evidence from LAs suggests that the majority of all appeals are held between April and mid-July. To delay all appeals into the autumn or even later would not be fair on parents or children who may have to start at one school and then move to another if their appeal is upheld.
- 4.4 The Appeal Amendment Regulations 2020 introduce some constitutional and procedural flexibility allowing, in some circumstances, appeal panels to consider appeals as a panel of two (rather than three), hearings to be held remotely on the basis of written submissions (rather than in person), and giving more flexibility in relation to the deadline for the determination of appeals. This will support both the rights of parents, admission authorities and appeal panels while maintaining certain requirements to safeguard procedural fairness and natural justice (including retaining the requirement for the panel to be supported by a trained clerk). This will allow admission authorities to effectively and fairly continue to deal with school admission appeals where it is not reasonably practicable for them to comply with existing requirements due to the coronavirus (COVID-19) outbreak.
- 4.5 In addition, the Appeal Amendments Regulations 2020 revise the deadlines relevant to the appeal process so that they refer to calendar days or a fixed date rather than "school days" (which is the term used in the School Admissions Appeals Code). This has been necessary due to the fact that schools may be subject to different and unpredictable levels of closure as a result of coronavirus (COVID-19). Schools may not be able to give clear predictions about when they will be in session and when they will not. It may be difficult in practice for parents and admission authorities to get a clear picture of this, which could create uncertainty about when appeal deadlines will actually fall. Moreover, if a school has

closed, the appeals process may be undesirably paused for the duration of the school closure. These impacts are exceptional and were unforeseeable.

- 4.6 These regulations are time limited and expire on 31 January 2021. This is considered a suitable expiry date because it should allow sufficient time to deal with the annual peak in appeals relevant to children starting new schools at the beginning of the academic year 2020/21. It will also support handling of appeals that are delayed into the autumn, which is also a busy period for appeals from in-year applications, often for year groups other than reception or year 7. The Appeal Amendment Regulations 2020 are subject to review for the time that they are in force.

5. Consultation

- 5.1 There is no statutory requirement for us to consult on the Appeal Amendment Regulations 2020. However, over the three week period leading up to the laying of the Appeal Amendment Regulations 2020, we have engaged with a number of stakeholders, including the Association of Directors of Education, Wales (ADEW) school admissions authority group which has representation from all local authorities in Wales and diocesan authorities along with a number of individual local authority officers responsible for appeals. The feedback has been positive and the proposed flexibilities around how an appeal is administered, have been welcomed.
- 5.2 A statement was issued to interested parties and published on the Welsh Government website on 16 April 2020, on Primary Offer Day. This set out the headline proposals and provided a frequently asked questions section. This announcement assisted local authorities and admission authorities to advise parents about their proposed admission appeal process.

6. Regulatory Impact Assessment

- 6.1 The emergency nature of the instrument means it has not been possible to prepare a Business and Regulatory Impact Assessment. No significant impact on business, charities or voluntary bodies is foreseen and the Appeal Amendment Regulations 2020 have effect for a temporary period up to 31 January 2021.
- 6.2 There is no, or no significant, impact on business, charities or voluntary bodies. The impact on the public sector is on the state-funded schools sector including local authorities and school governing bodies to the extent that these bodies are responsible for appeal panels. As a result of these amending regulations, the bodies involved in school admission appeals will have more flexibility as to how they can respond and deploy their resources in relation to school admissions appeals during the coronavirus (COVID-19) outbreak. This flexibility is welcomed by the sector, including parents who will not face delays around uncertainty of where their child will attend school. The needs of Welsh admission authorities have closely informed the preparation of these Regulations.

Welsh Language

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

Children's Rights

- 6.4 We have undertaken a Children's Rights Impact Assessment. No conflict with UNCRC has been identified and there are no negative impacts on children and young people. The purpose of the Appeals Code is to ensure the independence of admission appeal panels and to ensure that all admission appeals for maintained schools are conducted in a fair and transparent way.

Equality and Human Rights

- 6.5 We have undertaken an equality and Human Rights Assessment. Whilst the new Regulations will relax current requirements the vast majority of the requirements of the School Admission Appeals Code remain appropriate and must still be complied with. We will not be removing any of the clerking duties for admission appeals. Clerks carry out a key role in relation to appeal hearings in providing advice on admissions law as well as keeping an accurate record of proceedings and ensuring that the appeal hearing is fair. Paragraph 3.3 of the Appeals Code stipulates that clerks must have a good understanding of the law on admissions and must have received appropriate training that includes equality law. This applies equally to appeal hearings held remotely, or determined on the basis of written submissions only.
- 6.6 Where an appeal cannot take place in person, the appeal panel must take steps to ensure that the parties are able to fully present their cases virtually or in writing, and be satisfied that the appeal is capable of being determined fairly and transparently. Panels will still be required to comply with all relevant legislation, including the Equality Act 2010. This includes when considering an appellant's attendance and representation at the hearing where this involves remote access and the duty to consider any reasonable adjustments that may be needed. The clerk will be responsible for ensuring that any decisions taken in relation to requests for reasonable adjustments are recorded as part of the appeal record and confirmed with the appellant in writing prior to the appeal hearing. The guidance accompanying the regulations will make specific reference to the Equality Act 2010. We will keep the regulations and their effect on protected groups under ongoing review maintaining continuing discussion with admission authorities and monitoring any correspondence or complaints

Privacy

- 6.7 There are no impact implications on privacy matters. Paragraph 5.2 of the Appeals Code continues to apply in relation to remote-access appeals.

The chair should ensure the remote access appeal is held in private, all the parties can hear everything that is said and have an equal chance to participate. If this proves impossible or impractical for some parties, the hearing can be based on the written submissions supplied only.

Justice Impact Assessment (JIA)

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



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

1 May 2020

Dear Elin,

The Education (Admission Appeals Arrangements) (Wales) (Coronavirus) (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 that accompanies the Regulations is attached for your information.

The Regulations temporarily amend certain procedural and constitutional requirements that are set out in the Education (Admission Appeals Arrangements) (Wales) Regulations 2005 relating to school admission appeals panels until 31 January 2021.

This change is being made to allow these appeals to continue to be conducted despite significant practical difficulties caused by measures needed to limit the spread of coronavirus (COVID-19). Those measures include the social distancing guidance introduced by the Welsh Government and Public Health Wales, which restricts the ability for parties to meet in person, and the guidance on self-isolation, which causes difficulties in securing sufficient panel members for appeal hearings.

The 2020 Regulations make a one-off amendment to the 2005 Regulations giving admission authorities as much flexibility as possible to manage appeals in a way that best suits local circumstances, while also ensuring parents appealing an admission decision this year are supported and are not disadvantaged by the measures in place to protect public health.

The 2020 Regulations were made and laid as soon as practicable on public health grounds, in order to minimise the risk to appeals panels of spreading or contracting COVID-19 during the course of hearing appeals, while allowing parents their right to appeal decisions about where their children should attend school. As a result, they have come into force less than 21 days after they were made.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
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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.

Not adhering to the 21 day convention allows the Regulations to come into force on 4 May 2020 and in view of the circumstances surrounding this disease, the reduced period is therefore thought necessary and justifiable in this case.

Further, as the majority of school admission appeals take place in April-July, compliance with the 21 day convention would make it impossible for these flexibilities to be introduced in time for admission authorities to undertake the bulk of their appeals work.

Due to the immediacy of the Regulations, it has not been subject to consultation, however, the Welsh Government has been in regular contact with the UK Government and with the sector including stakeholders responsible for undertaking school admission appeals.

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

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 large initial 'R' and a period at the end.

Rebecca Evans AS/MS
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

Agenda Item 2.4

SL(5)545 – The Regulated Services (Annual Returns) (Wales) (Amendment) (Coronavirus) Regulations 2020

Background and Purpose

These Regulations are made under powers given to the Welsh Ministers by the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”).

They amend a particular requirement placed on registered providers of social care and are made in response to the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

Part 1 of the Act places requirements on providers of the social care services that are regulated by the Act. They include a requirement in section 10 to submit an annual return to the Welsh Ministers. The Regulated Services (Annual Returns) (Wales) Regulations 2017 (“the Annual Returns Regulations”) provide further details about the annual returns. They include provision made under section 10(4) about the dates by which the returns must be submitted.

These Regulations amend regulations 9A and 10 of the Annual Returns Regulations. Those regulations relate to the date by which annual returns have to be submitted. The effect of the amendments is that providers of all types of regulated services must now submit annual returns relating to financial years 2018-19, 2019-20 and 2020-21 no later than 26 May 2021.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

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

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

We note that the Welsh Government has not formally consulted on these Regulations, but that there has been a short consultation with key stakeholders (listed in paragraph 5 of the Explanatory Memorandum).

We also note that, according to paragraph 5 of the Explanatory Memorandum, “Those stakeholders who chose to comment were favourable towards the intention to defer the deadline for annual returns”.

Implications arising from exiting the European Union

None.

Government Response

A Welsh Government response is not required.

Legal Advisers





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. 486 (W. 111)

SOCIAL CARE, WALES

The Regulated Services (Annual Returns) (Wales) (Amendment) (Coronavirus) Regulations 2020

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under powers given to the Welsh Ministers by the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2) (“the Act”). They amend a particular requirement placed on registered providers of social care and are made in response to the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

Part 1 of the Act places requirements on providers of the social care services that are regulated by the Act. They include a requirement in section 10 to submit an annual return to the Welsh Ministers. The Regulated Services (Annual Returns) (Wales) Regulations 2017 (S.I. 2017/1097 (W. 277)) (“the Annual Returns Regulations”) provide further details about the annual returns. They include provision made under section 10(4) about the dates by which the returns must be submitted.

These Regulations are made under section 10(4) of the Act and amend regulations 9A and 10 of the Annual Returns Regulations. Those regulations relate to the date by which annual returns have to be submitted. The effect of the amendments is that providers of all types of regulated services must submit annual returns relating to financial years 2018-19, 2019-20 and 2020-21 no later than 26 May 2021. Previously, service providers who are registered to provide a care home service, a secure accommodation service, a residential family centre service or a domiciliary support service were required to submit their first set of annual returns no later than 31 December 2020.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result,

it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

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

2020 No. 486 (W. 111)

SOCIAL CARE, WALES

The Regulated Services (Annual Returns) (Wales) (Amendment) (Coronavirus) Regulations 2020

Made 4 May 2020

Laid before the National Assembly for Wales
5 May 2020

Coming into force 26 May 2020

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 10(4) and 187(1) of the Regulation and Inspection of Social Care (Wales) Act 2016⁽¹⁾.

Title and commencement

1.—(1) The title of these Regulations is the Regulated Services (Annual Returns) (Wales) (Amendment) (Coronavirus) Regulations 2020.

(2) These Regulations come into force on 26 May 2020.

Amendments to the Regulated Services (Annual Returns) (Wales) Regulations 2017

2. The Regulated Services (Annual Returns) (Wales) Regulations 2017⁽²⁾ are amended in accordance with regulations 3 and 4.

3. Omit regulation 9A (time for submission of first annual returns).

4. For regulation 10 (time limit for submission of annual returns) substitute—

(1) 2016 anaw 2; see the definition of “prescribed” in section 189.

(2) S.I. 2017/1097 (W. 277), amended by S.I. 2019/233 (W. 52).

“Time limit for submission of annual returns

10.—(1) An annual return relating to any of the financial years 2018-19, 2019-20 or 2020-21 must be submitted to the Welsh Ministers no later than 26 May 2021.

(2) An annual return relating to a subsequent financial year must be submitted to the Welsh Ministers within 56 days of the end of the financial year to which it relates.”

Julie Morgan

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

4 May 2020

Explanatory Memorandum to:

The Regulated Services (Annual Returns) (Wales) (Amendment) (Coronavirus) Regulations 2020

This Explanatory Memorandum has been prepared by the Health and Social Services Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Regulated Services (Annual Returns) (Wales) (Amendment) (Coronavirus) Regulations 2020.

I am satisfied that the benefits justify the likely costs.

Julie Morgan
Deputy Minister for Health and Social Services
5 May 2020

Part 1 – OVERVIEW

1. Description

The purpose of the Regulated Services (Annual Returns) (Wales) (Amendment) (Coronavirus) Regulations 2020 (“the Amendment Regulations”) is to amend the date by which annual returns must be submitted by registered providers of social care. This amendment is part of the Welsh Government’s response to the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales. The Amendment Regulations amend the Regulated Services (Annual Returns) (Wales) Regulations 2017 (“the Annual Returns Regulations”) made under the Regulation and Inspection of Social Care (Wales) Act 2016¹ (“the 2016 Act”), as amended by the Regulated Services (Annual Returns and Registration) (Amendment) (Wales) Regulations 2019 (“the 2019 Regulations”).

This Explanatory Memorandum relates to the Regulated Services (Annual Returns) (Wales) (Amendment) (Coronavirus) Regulations 2020, which will come into force on 26 May 2020.

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

Due to the urgency with which the Amendment Regulations need to be made, the legislative proposal has not been formally consulted upon. However, key stakeholders were notified of the proposal in a related consultation. Details concerning this are at section 5 below.

3. Legislative background

The powers enabling the Amendment Regulations to be made are contained in section 10(4) of the 2016 Act. This allows provision to be made about the dates by which annual returns must be submitted. Section 187(1) allows Welsh Ministers to exercise the power to make regulations under the 2016 Act by statutory instrument, and to make regulations under the 2016 Act which make different provision for different purposes, for different cases and for different areas. Section 48 makes failure to submit an annual return to the Welsh Ministers within the time limit prescribed by section 10(4) an offence.

These draft Regulations are being laid under the negative procedure.

4. Purpose & intended effect of the legislation

The purpose of amending the Annual Returns Regulations, under section 10(4) of the 2016 Act, is to amend the date by which providers of regulated services are required to submit an annual return to the Welsh Ministers (in practice, Care

¹ <http://www.legislation.gov.uk/anaw/2016/2/contents>

Inspectorate Wales, “CIW”) following the end of each financial year during which the provider is registered.

Part 1 of the 2016 Act places requirements on providers of the social care services that are regulated by the Act. They include a requirement in section 10(1) to submit an annual return to the Welsh Ministers. The Annual Returns Regulations provide further details about the annual returns. They also include provision made under section 10(4) about the dates by which the returns must be submitted.

The intended effect of the Amendment Regulations is to amend regulations 9A and 10 of the Annual Returns Regulations in order to require that providers of all types of regulated services must submit annual returns relating to financial years 2018-19, 2019-20 and 2020-21 no later than 26 May 2021. Previously, the policy intention was that service providers who are registered to provide a care home service, a secure accommodation service, a residential family centre service or a domiciliary support service should submit their 2019-20 annual returns no later than 56 days after the end of the 2019-20 financial year, namely 26 May 2020. The provisions by which the 2019 Regulations sought to put this intention into effect are being amended by the Amendment Regulations to achieve the intended effect described above.

The intention of this amendment is twofold. The first intention is to relieve the duty on providers to submit an annual return during this pandemic period by deferring the requirement until 56 days after the end of the 2020-21 financial year. The second intention is to prevent providers from committing an offence under section 48 of the 2016 Act if they do not make returns in respect of 2019-20 by 26 May 2020.

Additionally, the Amendment Regulations provide for the future operation of the annual returns arrangements by stipulating that annual returns relating to financial years subsequent to 2020-21 must be submitted to the Welsh Ministers within 56 days of the end of the financial year to which the return relates.

5. Consultation

This proposal was referenced in a short consultation with key stakeholders on related legislative proposals which was undertaken between 3 and 17 April 2020. Those asked to share their views included:

- Members of the CV-19 Social Care Planning & Response Group, including representatives of:
 - local government (the Welsh Local Government Association and the Association of Directors of Social Services Cymru)
 - social care providers (Care Forum Wales)
 - the voluntary sector (Wales Council for Voluntary Action, British Red Cross)
 - housing providers (Community Housing Cymru and Cymorth Cymru)
 - Social Care Wales; and
 - Care Inspectorate Wales
- The Older People’s Commissioner

- The Deputy Chief Executive, Healthcare Inspectorate Wales
- Directors of Social Services in Wales
- Chief Executives of Local Health Boards

Those stakeholders who chose to comment were favourable towards the intention to defer the deadline for annual returns.

6. Regulatory Impact Assessment

Given the pressing need for these changes, it has not been possible to prepare a Business and Regulatory Impact Assessment within the time available. The needs of, and pressures on, businesses in the social care sector at this time have, however, been the driving concern in the preparation of these Regulations and the nature of the change brought forward is such that it is cost-neutral on providers and will reduce pressure on them during this pandemic period.

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)

These Regulations have been brought forward in order to prevent a provider inadvertently committing the offence of not completing an annual return within the specified timescale.

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 firms?	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 categorised 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

The filter test shows that it is not likely that the regulation will have any detrimental effect on competition; therefore a detailed assessment has not been conducted.

SL(5)546 – The Regulated Services (Service Providers and Responsible Individuals) (Wales) (Amendment) (Coronavirus) Regulations

Background and Purpose

These Regulations are made under powers given to the Welsh Ministers by the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”). They amend particular requirements placed on registered providers of social care under the Act, and are made in response to the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

Part 1 of the Act sets out the social care services to which the Act applies, and defines them as “regulated services”. Section 2(3) gives the Welsh Ministers power to provide in regulations that particular services are not “regulated services”.

Section 27 of the Act gives the Welsh Ministers power to impose, in regulations, requirements on service providers in relation to the services they provide. The Welsh Ministers have exercised this power to make the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 (“the Regulated Services Regulations”).

Regulations 2 to 7 amend the Regulated Services Regulations.

Regulation 4 is made under section 2(3) of the Act and amends regulation 2 (care home services) of the Regulated Services Regulations. The effect of the amendment is that the provision of accommodation together with nursing or care, where the accommodation and nursing or care are provided to adults and are needed as a result of the spread of coronavirus, is not a “care home service” and is not, therefore, a “regulated service” under the Act. This exception only applies where the service is provided by a local authority or a Local Health Board, or is commissioned by a local authority or a Local Health Board and is provided either by a service provider already registered under the Act and who provides a care home service wholly or mainly to adults, or by providers of care homes in England who are already registered with the Care Quality Commission. In all cases, the Welsh Ministers must be notified in advance of the arrangements.

Regulation 5 is also made under section 2(3) of the Act. It makes a similar amendment to regulation 4, but in relation to the provision of care and support for adults.

Regulation 6 is made under section 27(1) of the Act and amends regulation 35 of the Regulated Services Regulations (fitness of staff). Regulation 35(2)(d) of those Regulations requires a person who works for the provider of a regulated service to give the provider full and satisfactory information in respect of particular matters. The effect of the amendment is that in some circumstances, the regulation 35(2)(d) requirement is treated as being met even if a person who works for a provider of a care home service wholly or mainly for adults or a domiciliary support service to adults does not provide full and satisfactory information about some of those matters. If the person cannot reasonably provide full and satisfactory information as a result of the spread of coronavirus, the requirement will be treated as being met if the person provides as full and satisfactory information as is reasonably practicable and the information is available for inspection by the service regulator.



Regulation 7 is also made under section 27(1) of the Act. It amends regulation 45 of the Regulated Services Regulations (single occupancy and shared rooms – adults). Regulation 45 provides that, subject to limited exceptions, the provider of a care home service must ensure that all adults are accommodated in single rooms. The amendment broadens the exceptions to allow, in limited circumstances, adults to be accommodated in shared rooms where the accommodation needs to be provided as a result of the spread of coronavirus.

Procedure

Draft Affirmative.

Technical Scrutiny

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

Merits Scrutiny

Two points are identified for reporting under Standing Order 21.3 in respect of this instrument.

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

We note that the Welsh Government has not formally consulted on these Regulations, but that there has been a short consultation with key stakeholders (listed in section 5 of the Explanatory Memorandum).

We also note that, in accordance with section 27(5) of the Act, the Welsh Ministers have laid before the Senedd a [statement about the consultation](#).

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

We note the changes that these Regulations make to social care in Wales, and that the Explanatory Memorandum says that these changes “will be revoked as soon as they are no longer required”.

Implications arising from exiting the European Union

None.

Government Response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

11 May 2020



Draft Regulations laid before Senedd Cymru under section 187(2)(b) and (f) of the Regulation and Inspection of Social Care (Wales) Act 2016, for approval by resolution of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2020 No. (W.)

SOCIAL CARE, WALES

**The Regulated Services (Service
Providers and Responsible
Individuals) (Wales) (Amendment)
(Coronavirus) Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under powers given to the Welsh Ministers by the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2) (“the Act”). They amend particular requirements placed on registered providers of social care under the Act, and are made in response to the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

Part 1 of the Act sets out the social care services to which the Act applies, and defines them as “regulated services”. Section 2(3) gives the Welsh Ministers power to provide in regulations that particular services are not “regulated services”.

Section 27 of the Act gives the Welsh Ministers power to impose, in regulations, requirements on service providers in relation to the services they provide. The Welsh Ministers have exercised this power to make the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 (S.I. 2017/1264 (W. 295)) (“the Regulated Services Regulations”).

Regulations 2 to 7 amend the Regulated Services Regulations. **Regulation 4** is made under section 2(3) of the Act and amends regulation 2 (care home services) of the Regulated Services Regulations. The effect of the amendment is that the provision of accommodation together with nursing or care, where

the accommodation and nursing or care are provided to adults and are needed as a result of the spread of coronavirus, is not a “care home service” and is not, therefore, a “regulated service” under the Act. This exception only applies where the service is provided by a local authority or a Local Health Board, or is commissioned by a local authority or a Local Health Board and is provided either by a service provider already registered under the Act and who provides a care home service wholly or mainly to adults, or by providers of care homes in England who are already registered with the Care Quality Commission. In all cases, the Welsh Ministers must be notified in advance of the arrangements.

Regulation 5 is also made under section 2(3) of the Act. It makes a similar amendment to regulation 4, but in relation to the provision of care and support for adults.

Regulation 6 is made under section 27(1) of the Act and amends regulation 35 of the Regulated Services Regulations (fitness of staff). Regulation 35(2)(d) of those Regulations requires a person who works for the provider of a regulated service to give the provider full and satisfactory information in respect of particular matters. The effect of the amendment is that in some circumstances, the regulation 35(2)(d) requirement is treated as being met even if a person who works for a provider of a care home service wholly or mainly for adults or a domiciliary support service to adults does not provide full and satisfactory information about some of those matters. If the person cannot reasonably provide full and satisfactory information as a result of the spread of coronavirus, the requirement will be treated as being met if the person provides as full and satisfactory information as is reasonably practicable and the information is available for inspection by the service regulator.

Regulation 7 is also made under section 27(1) of the Act. It amends regulation 45 of the Regulated Services Regulations (single occupancy and shared rooms – adults). Regulation 45 provides that, subject to limited exceptions, the provider of a care home service must ensure that all adults are accommodated in single rooms. The amendment broadens the exceptions to allow, in limited circumstances, adults to be accommodated in shared rooms where the accommodation needs to be provided as a result of the spread of coronavirus.

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

Draft Regulations laid before Senedd Cymru under section 187(2)(b) and (f) of the Regulation and Inspection of Social Care (Wales) Act 2016, for approval by resolution of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2020 No. (W.)

SOCIAL CARE, WALES

**The Regulated Services (Service
Providers and Responsible
Individuals) (Wales) (Amendment)
(Coronavirus) Regulations 2020**

Made

Coming into force

05 June 2020

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 2(3), 27(1) and 187(1)(b) of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”)(1).

The Welsh Ministers have consulted such persons as they think appropriate, as required by sections 2(4) and 27(4)(a) of the Act, and published a statement about the consultation as required by section 27(4)(b) of the Act. The Welsh Ministers have laid a copy of the statement before Senedd Cymru as required by section 27(5) of the Act.

A draft of these Regulations was laid before Senedd Cymru under section 187(2)(b) and (f) of the Act and has been approved by a resolution of Senedd Cymru(2).

(1) 2016 anaw 2; *see* the definition of “prescribed” in section 189.

(2) The references in sections 27(5) and 187(2) to the National Assembly for Wales now have effect as references to Senedd Cymru, by virtue of section 150A(2) of the Government of Wales Act 2006 (c. 32).

Title and commencement

1.—(1) The title of these Regulations is the Regulated Services (Service Providers and Responsible Individuals) (Wales) (Amendment) (Coronavirus) Regulations 2020.

(2) These Regulations come into force on 5 June 2020.

Amendments to the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017

2. The Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017(1) are amended in accordance with regulations 3 to 7.

Interpretation

3. In regulation 1(3) (title, commencement, application and interpretation), at the appropriate places insert—

““Care Quality Commission” (“*y Comisiwn Ansawdd Gofal*”) means the body established under section 1 of the Health and Social Care Act 2008(2);”;

““coronavirus” (“*coronafeirws*”) means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);”.

Exception from scope of care home services

4. In regulation 2(1) (care home services)—

(a) at the end of sub-paragraph (j), for the full stop substitute “;”;

(b) after sub-paragraph (j) insert—

“(k) the provision of accommodation, together with nursing or care, where the accommodation and nursing or care are provided to adults and are needed as a result of the spread of coronavirus,

But this exception does not apply unless—

(i) the accommodation and nursing or care are—

(aa) provided by a local authority,

(bb) provided by a Local Health Board, or

(1) S.I. 2017/1264 (W. 295), amended by S.I. 2019/757 (W. 142) and S.I. 2020/389 (W. 87).

(2) 2008 c. 14.

- (cc) commissioned by a local authority or Local Health Board and provided either by a service provider who is registered to provide a care home service and provides that service wholly or mainly for adults, or by a person who is registered with the Care Quality Commission under Chapter 2 of Part 1 of the Health and Social Care Act 2008 in respect of a care home in England within the meaning of Part 1 of the Care Standards Act 2000⁽¹⁾, and
- (ii) the person providing the accommodation and nursing or care has first notified the Welsh Ministers using a form provided by the Welsh Ministers.”

Exception from the scope of domiciliary support services

5. In regulation 3(1) (domiciliary support services)—

- (a) at the end of sub-paragraph (i), for the full stop substitute “;”;
- (b) after sub-paragraph (i) insert—
 - “(j) the provision of care and support for adults where the care and support is needed as a result of the spread of coronavirus,

But this exception does not apply unless—

- (i) the care and support is—
 - (aa) provided by a local authority,
 - (bb) provided by a Local Health Board, or
 - (cc) commissioned by a local authority or Local Health Board and provided either by a service provider registered to provide a domiciliary support service, or by a person registered with the Care Quality Commission under Chapter 2 of Part 1 of the Health and Social Care Act 2008 in

(1) 2000 c. 14.

respect of a domiciliary care agency within the meaning of Part 1 of the Care Standards Act 2000, and

- (ii) the person providing the care and support has first notified the Welsh Ministers using a form provided by the Welsh Ministers.”

Fitness of staff

6. In regulation 35 (fitness of staff)—

- (a) in paragraph (2)(d), before the opening words, insert “subject to paragraph (9A) of this regulation,”;

- (b) after paragraph (9) insert—

“(9A) Where the service provider provides a care home service wholly or mainly for adults or a domiciliary support service to adults, the requirement in paragraph (2)(d) is to be treated as being met despite the person mentioned in that paragraph failing to provide full and satisfactory information or documentation in respect of any of the matters specified in paragraphs 4, 6, 8 and 9 of Part 1 of Schedule 1 if—

- (a) the person cannot reasonably provide full and satisfactory information or documentation in respect of those matters as a result of the spread of coronavirus,
- (b) the person provides as full and satisfactory information or documentation in respect of those matters as is reasonably practicable, and
- (c) the information or documentation provided is available at the service for inspection by the service regulator.”

Shared rooms

7. In regulation 45 (single occupancy and shared rooms – adults)—

- (a) after paragraph (2) insert—

“(2A) The condition in paragraph (2)(d) will continue to be met despite the number of adults accommodated in shared rooms on or after 5 June 2020 exceeding 15% of the total number of adults accommodated by the service where the limit is exceeded only as a consequence of accommodation which is needed as a result of the spread of coronavirus being provided in

rooms which were unoccupied immediately before 5 June 2020.”;

- (b) in paragraph (3)(c), for “were sharing a room with another adult at the relevant time.” substitute—

“—

- (i) were sharing a room with another adult at the relevant time, or
- (ii) were provided with the accommodation on or after 5 June 2020 in rooms that were unoccupied immediately before 5 June 2020 and the accommodation is needed as a result of the spread of coronavirus.”

Name

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

Date

Explanatory Memorandum to:

The Regulated Services (Service Providers and Responsible Individuals) (Wales) (Amendment) (Coronavirus) Regulations 2020

This Explanatory Memorandum has been prepared by the Health and Social Services Department and is laid before Senedd Cymru 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 Regulated Services (Service Providers and Responsible Individuals) (Wales) (Amendment) (Coronavirus) Regulations 2020.

I am satisfied that the benefits justify the likely costs.

Julie Morgan
Deputy Minister for Health and Social Services
6 May 2020

Part 1 – OVERVIEW

1. Description

The purpose of the Regulated Services (Service Providers and Responsible Individuals) (Wales) (Amendment) (Coronavirus) Regulations 2020 (“the Amendment Regulations”) is to enable the Welsh Government to manage the effects on the social care sector of the current Covid-19 pandemic. The Amendment Regulations contain measures to amend the Regulated Services (Service Providers and Responsible Individuals) Wales) Regulations 2017 (“the Regulated Services Regulations”) made under the Regulation and Inspection of Social Care (Wales) Act 2016¹ (“the 2016 Act”). The amending provisions will be revoked as soon as they are no longer required.

This Explanatory Memorandum relates to the Regulated Services (Service Providers and Responsible Individuals) (Wales) (Amendment) (Coronavirus) Regulations 2020 which will come into force on 5 June 2020.

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

Due to the urgency with which the Amendment Regulations need to be made – and their largely temporary nature – the legislative proposals were consulted on with key stakeholders for a period of 2 weeks. Details concerning this period of engagement are at section 5 below.

3. Legislative background

The powers enabling these draft Regulations to be made are contained in sections 2(3), 27(1) and 187 (1)(b) of the 2016 Act. Further details are set out below:

Section 2(3) enables the Welsh Ministers to prescribe, in regulations, things which are not to be treated as a regulated service for the purposes of the 2016 Act.

Section 27 (1) enables Welsh Ministers to impose, in regulations, requirements on a service provider in relation to a regulated service they provide. The Regulated Services Regulations set out the requirements on providers in further detail. Section 187(1)(b) allows Welsh Ministers to make regulations under the 2016 Act, which make different provision for different purposes, for different cases and for different areas.

These draft Regulations are being laid under the affirmative procedure.

¹ <http://www.legislation.gov.uk/anaw/2016/2/contents>

4. Purpose & intended effect of the legislation

Section 2(3) - Exceptions

This relates to regulations 4 and 5 within the Amendment Regulations

The purpose of amending Part 2 of the Regulated Services Regulations, under section 2(3) of the 2016 Act, is to provide that particular services are not to be treated as regulated services for the purpose of responding to the Covid-19 pandemic.

Care home service exception

The provision of accommodation together with nursing or care, where the accommodation and nursing or care are provided to adults and are needed as a result of the spread of coronavirus, is not to be treated as a care home service.

This exception only applies where:

- the service is provided by a local authority or a Local Health Board, or
- the service is commissioned by a local authority or a Local Health Board and is provided either:
 - by a service provider already registered under the 2016 Act and who provides a care home service wholly or mainly to adults, or
 - by providers of care homes in England who are already registered with the Care Quality Commission.

Domiciliary support service exception

The provision of care and support to adults where the care and support are needed as a result of the spread of the coronavirus, is not to be treated as a domiciliary support service.

This exception only applies where:

- the service is provided by a local authority or a Local Health Board, or
- the service is commissioned by a local authority or a Local Health Board and is provided either:
 - by a service provider already registered under the 2016 Act and who provides a domiciliary support service for adults, or
 - by providers of domiciliary care agencies in England who are already registered with the Care Quality Commission.

In all cases, the Welsh Ministers must be notified in advance of the arrangements.

The broad rationale here is that these providers will already be subject to regulation and inspection in some guise which gives some overall assurance about their governance, systems and understanding of the nature of the care and support services being provided.

Excepting these services from regulation will streamline the processes usually associated with establishing care and support provision so that these services can be established quickly and be available when they are most needed to reduce the

anticipated pressure on hospitals, care homes and domiciliary support services. The exception will also allow for a wider range of premises to be used for emergency residential services, some of which are unlikely to meet the standards required to register with CIW under the 2016 Act.

Section 27 (1) – Requirements on service providers

This relates to regulations 6 and 7 within the Amendment Regulations

Fitness of staff

The purpose of amending regulation 35 of the Regulated Services Regulations is to relax requirements on service providers to undertake pre-employment checks on workers in care home services provided wholly or mainly to adults or domiciliary support services provided for adults. These amendments aim to support measures being taken to address the anticipated need for additional workers during the Covid-19 outbreak.

Part 1 of Schedule 1 to the Regulated Services Regulations sets out the information and documentation that service providers must obtain and hold for each of their employees. These requirements include two written references, documentary evidence of qualifications and evidence of full employment history (including explanation of any gaps in employment). The Amendment Regulations relax the requirement to provide full and satisfactory information or documentation in respect of paragraphs 4, 6, 8 and 9 of Part 1, Schedule 1. If a person cannot reasonably provide full and satisfactory information or documentation (in respect of paragraphs 4, 6, 8 and 9) as a result of the spread of coronavirus and instead provides as full and satisfactory information or documentation as is reasonably practicable, then the requirement is to be treated as if met. This information or documentation provided should also be available at the service for inspection by the service regulator.

These amendments aim to accelerate the process of recruiting temporary staff during the Covid-19 outbreak, recognising that it may not be reasonably practicable for service providers to obtain all of the information required in Part 1 of Schedule 1, in the specified form, at this time.

Shared rooms

The purpose of amending regulation 45 of the Regulated Services Regulations is to relax conditions which limit the number of adults which may be accommodated in shared rooms in care homes for adults. This would enable service providers with unoccupied rooms, or rooms which are not currently in use as bedrooms to increase the maximum capacity within their home where this is needed only as a consequence of the spread of coronavirus. If they wish to do this, the current requirements to apply to CIW for a variation to their maximum numbers will continue to apply. Decisions would be made on a case-by-case basis with the best interests of residents in mind. Turning rooms currently in single occupancy into shared rooms will not be permitted.

5. Consultation

Due to the need to implement the Amendment Regulations urgently, a short consultation with key stakeholders was undertaken between 3 and 17 April 2020. Those asked to share their views included:

- Members of the CV-19 Social Care Planning & Response Group, including representatives of:
 - local government (the Welsh Local Government Association and the Association of Directors of Social Services Cymru)
 - social care providers (Care Forum Wales)
 - the voluntary sector (Wales Council for Voluntary Action, British Red Cross)
 - housing providers (Community Housing Cymru and Cymorth Cymru)
 - Social Care Wales; and
 - Care Inspectorate Wales
 - The Older People's Commissioner
 - The Deputy Chief Executive, Healthcare Inspectorate Wales
 - Directors of Social Services in Wales
 - Chief Executives of Local Health Boards

A statement about the consultation and a list of respondents has been prepared. As the Amendment Regulations include requirements made under section 27(1) of the 2016 Act, the statement has been laid before Senedd Cymru, in accordance with section 27(5) of the 2016 Act. It can be found on the 'documents laid' page².

6. Regulatory Impact Assessment

Given the pressing need for these changes, it has not been possible to prepare a Business and Regulatory Impact Assessment within the time available. The needs of businesses in the social care sector at this time have, however, closely informed the preparation of these Regulations and the nature of the changes brought forward is such that they will reduce or eliminate costs and burdens on many providers.

Specific impact tests

Welsh Language

There are no positive or adverse impact implications on the Welsh Language, as the requirement for evidence of satisfactory linguistic ability still stands, albeit modified to recognise that some evidence may be difficult to source during the outbreak.

Children's Rights

No conflict with UNCRC has been identified and there are no negative impacts on children and young people; the majority of provisions impact wholly or mainly on services for adults.

² <https://www.assembly.wales/en/bus-home/Pages/Plenary.aspx?assembly=5&category=Laid%20Document>

Privacy

There are no impact implications on privacy matters.

Justice Impact Assessment (JIA)

Infractions of the requirement to register (for example if a provider persisted in seeking to provide a service which did not fall within the exception) would be dealt with by CIW in the normal way, including consideration of prosecution.

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 firms?	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 categorised 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

The filter test shows that it is not likely that the regulation will have any detrimental effect on competition; therefore a detailed assessment has not been conducted.

Agenda Item 2.6

SL(5)548 – The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 3) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (Wales) Regulations (“the principal regulations”) and came into force at 4.00 p.m. on 11 May 2020.

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”) 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.

Specifically, these Regulations:

- add the proportionality of requirements and restrictions as a consideration when the Welsh Ministers review the principal Regulations;
- remove provisions relating to the termination of requirements or restrictions by ministerial direction (which means they must be terminated by amending the principal Regulations);
- permit libraries, garden centres and plant nurseries to open subject to requirements to take all reasonable measures to ensure a distance of 2 metres is maintained by persons on the premises and persons waiting to enter the premises;
- specify that leaving the place where you live to collect goods ordered from a shop operating on an “order and collect” basis constitutes a reasonable excuse for the purposes of regulation 8(1) of the principal Regulations; and
- remove the limitation on exercising no more than once a day.

Procedure

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

Technical Scrutiny

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



Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument.

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

The Explanatory Memorandum that accompanies these Regulations provides that the inclusion of a requirement for the Welsh Ministers to consider the proportionality of the requirements and restrictions

"more accurately reflects the nature of the review and the Welsh Ministers ongoing duty to keep under the review the proportionality of the requirements and restrictions from a Human Rights perspective"

Proportionality is a key consideration when assessing the justification of interference with certain individual rights under the Human Rights Act 1998. As such, Legal Services welcome this amendment as it recognises not only the Welsh Ministers' overarching duty of proportionality contained in section 45D of the 1984 Act but also their overarching duty to ensure compliance with the Human Rights Act.

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

13 May 2020



Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru 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. 497 (W. 118)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (Wales) (Amendment)
(No. 3) 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.

Regulation 2 of these Regulations amends the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 (the “principal Regulations”).

These consist of—

- (a) amending regulation 3 of the principal Regulations to add the proportionality of requirements and restrictions as a consideration when the Welsh Ministers review the principal regulations, and to remove provisions relating to the termination of requirements or restrictions by ministerial direction (which means they must be terminated by amending the principal Regulations);

- (b) amending regulation 4 of, and Schedule 1 to, the principal Regulations to permit libraries to open subject to requirements to take all reasonable measures to ensure a distance of 2 metres is maintained by persons on the premises and persons waiting to enter the premises;
- (c) amending regulation 8 of the principal Regulations—
 - (i) to specify that leaving the place where you live to collect goods ordered from a shop operating on an “order and collect” basis constitutes a reasonable excuse for the purposes of regulation 8(1);
 - (ii) to remove the limitation in paragraph (2)(b) on exercising no more than once a day (as it relates to exercise being a reasonable excuse for the purposes of regulation 8(1));
 - (iii) to specify that making use of a recycling or waste disposal facility, or visiting a library, constitutes a reasonable excuse for the purposes of regulation 8(1) (note however that this change does not require these facilities to open as that is a matter for local authorities);
- (d) adding garden centres and plant nurseries to Part 4 of Schedule 1, which means that they may open subject to requirements to take all reasonable measures to ensure a distance of 2 metres is maintained by persons on the premises and persons waiting to enter the premises.

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 Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru 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. 497 (W. 118)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (Wales) (Amendment)
(No. 3) Regulations 2020**

Made at 2.00 p.m. on 11 May 2020

Laid before Senedd
Cymru at 3.00 p.m. on 11 May 2020

Coming into force
at 4.00 p.m. on 11 May 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 the amendments made 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, it is necessary to make this instrument without a draft

(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.

having been laid before, and approved by a resolution of, Senedd Cymru.

Title and coming into force

1. The title of these Regulations is the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 3) Regulations 2020 and they come into force at 4.00 p.m. on 11 May 2020.

Amendment of the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020

2.—(1) The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020⁽¹⁾ are amended as follows.

(2) In regulation 3—

- (a) in paragraph (2), after “Regulations” insert “, and whether those restrictions and requirements are proportionate to what the Welsh Ministers seek to achieve by them,”;
- (b) omit paragraphs (3), (4), (4A) and (5).

(3) In regulation 4, in paragraph (5)(c), for “, gallery or library” substitute “or gallery”.

(4) In regulation 8, in paragraph (2)—

- (a) after sub-paragraph (aa) insert—
 - “(ab) to collect goods which have been purchased from a person providing a service in response to orders or enquiries by virtue of the exception to the requirement to cease carrying on a business in regulation 6(2)(a);”
- (b) in sub-paragraph (b), for “no more than once a day (or more frequently if this is needed because of a particular health condition or disability)” substitute “within an area local to the place where the person is living”;

(c) after sub-paragraph (i)—

- “(ia) to access recycling or waste disposal services;
- (ib) to visit a library;”.

(5) In Schedule 1—

- (a) in paragraph 10, omit “, libraries”;
- (b) after paragraph 33 insert—
 - “**33A.**Garden centres and plant nurseries.”;
- (c) after paragraph 47 insert—

⁽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 the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/452 (W. 102)).

“48. Libraries.”

**Consequential amendment to the Health Protection
(Coronavirus Restrictions) (Wales) (Amendment)
(No. 2) Regulations 2020**

3. Omit regulation 2 of the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 2) Regulations 2020⁽¹⁾.

**Saving for offences and penalties in relation to
prior acts**

4. Regulations 12 and 13 of the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 continue to have effect in relation to any offence committed, or reasonably believed to have been committed, before these Regulations came into force as if the amendments set out in regulation 2 had not been made.

Mark Drakeford

First Minister, one of the Welsh Ministers

At 2.00 p.m. on 11 May 2020

(1) S.I. 2020/452 (W. 102)

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 3) Regulations 2020

This Explanatory Memorandum has been prepared by the Welsh Government and is laid before Senedd Cymru 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) (No. 3) Regulations 2020.

Vaughan Gething
Minister for Health and Social Services

11 May 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 Senedd. 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 Senedd.

European Convention on Human Rights

Whilst the Regulations engage individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights, the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health and are proportionate. A number of provisions see a widening of the list of specified reasonable excuses, which people may rely upon to leave, or remain away from, the place where they are living, as further referred to in section 4 below. This includes the lifting of the once a day restriction on exercise, enabling people to exercise at any time, locally to where they live, as well as enabling them to leave to access waste disposal and recycling services and to visit a library.

These articles are engaged by the Regulations: 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. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health and are proportionate. The easing of restrictions within these Regulations, is a proportionate response balancing the need to maintain an appropriate response to the threat posed by the coronavirus against the rights of individuals and businesses, allowing people more reasons to leave their homes, in a manner which remains proportionate to the need to avoid an increase to the rate of transmission of the coronavirus. In addition to the widening of the reasonable excuses enabling people to leave their homes, the Regulations also relax a number of restrictions imposed by the principal Regulations requiring categories of business to close, in particular allowing garden centres and plant nurseries to open, provided those responsible for them take all reasonable measures to ensure 2 metre distance is maintained by people on, or waiting to enter, the premises.

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”.

The amendments achieved through these Regulations include:

1. Removing the Welsh Ministers' power to terminate requirements or restrictions by direction, which has the effect of requiring any future changes to the principal Regulations to be made by amendment or revocation.

In addition, the duty on the Welsh Ministers to review the principal Regulations is amended to require the Welsh Ministers to consider the proportionality of the requirements and restrictions.

The requirement to terminate requirements and restrictions by ministerial direction was included in the principal Regulations to ensure that they were not imposed for longer than is necessary, particularly at a time when the Senedd was not sitting and it was unclear when there would be an opportunity for the legislature to scrutinise the regulations. The Welsh Government now considers it unnecessary to retain provisions about termination by direction and is committed to making any alterations to, or revocations of, the principal Regulations by making amending Regulations. This will ensure democratic oversight of any changes by the Senedd.

In addition it avoids the potentially confusing position whereby a requirement or restriction is terminated by direction but remains on the statute book (a termination direction would not amend the text of the principal Regulations themselves).

The amendment to the Welsh Ministers' duty to review the principal Regulations every three weeks ensures that the proportionality of the requirements and restrictions as well as their necessity must be considered. This more accurately reflects the nature of the review and the Welsh Ministers ongoing duty to keep under the review the proportionality of the requirements and restrictions from a Human Rights perspective. If the Welsh Ministers do consider a requirement or restriction to no longer be necessary or proportionate that overarching duty requires the Welsh Ministers to remove or amend the requirement or restriction. As a result of these amendments, any such removal or amendment must be made by Regulations and brought before the Senedd.

2. Permitting the operators of libraries to open them should they choose to. If a library is open, the operator (most commonly a local authority) must take all reasonable measures to ensure the distancing requirements within the Regulations are followed. In conjunction with that change, visiting a library is expressly added to the list in regulation 8(2) of reasonable excuses for the purposes of regulation 8(1) of the principal Regulations.
3. The non-exhaustive list in regulation 8(2) of reasonable excuses for the purposes of regulation 8(1) has also been changed so that a person may now make use of a recycling or waste disposal facility (if it is open) or collect goods ordered from a shop on an "click and collect" basis if they need to.

4. The reasonable excuse of the need to exercise in regulation 8(2)(b) of the principal Regulations is amended to remove the limit on exercising no more than once a day. In addition, provision is made to require that exercise must be taken “*within an area local to the place where a person is living*”. The Welsh Government’s guidance on taking exercise has been revised to account for this change (in particular to provide guidance on the matters to consider in determining what may constitute local exercise).
5. Garden centres and plant nurseries are added to the list of businesses that may open, but this is subject to the physical distancing requirements of ensuring that people waiting to enter or on the premises, maintain a distance of 2 metres from one another.

In addition, regulation 4 makes it clear that any action which was in contravention of the principal Regulations before these amendments were made can still be enforced as such.

The principal Regulations (and these amendments) expire at the end of the period of six months beginning with the day on which they come into force – they came into force on 26 March 2020 and will therefore expire on 26 September 2020.

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 30 January 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 continue to assess the risks to public health stemming from coronavirus to be high.

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 MS
Llywydd
Senedd Cymru
Cardiff Bay
CF99 1SN

11 May 2020

Dear Elin

The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 3) Regulations 2020

I have today made the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 3) Regulations 2020 under sections 45C(1), (3)(c), (4)(d), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984. These Regulations will come into force at 16:00 on 11 May 2020. 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 Senedd by 14 June 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. However as The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 2) Regulations 2020 Regs are being debated on 20 May, the Government intends to schedule the debate on these Regulations on the same date. Whilst I appreciate this reduces the time available for reporting, the interlinked nature of these Regulations means that debating them together would be the most coherent approach. It is not possible to reschedule the debate on the earlier Regulations, as they must be approved by 21 May.

I am copying this letter to the Minister for Finance and Trefnydd, Mick Antoniw MS as 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

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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.

Agenda Item 3.1

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Direct Payments to Farmers (Legislative Continuity) Act 2020 (Consequential Amendments) Regulations 2020

1. This Statutory Instrument Consent Memorandum is laid under Standing Order 30A.2. Standing Order 30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the National Assembly for Wales (“Assembly”) if a UK statutory instrument makes provision, in relation to Wales, amending primary legislation which is within the legislative competence of the Assembly.
2. The Direct Payments to Farmers (Legislative Continuity) Act 2020 (Consequential Amendments) Regulations 2020 were laid before Parliament on 28 April 2020. The Regulations can be found at:

<http://www.legislation.gov.uk/uksi/2020/463/made>

Summary of the Regulations and their objective

3. These Regulations makes consequential amendments required as a result of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (“2020 Act”).
4. The 2020 Act incorporated the EU Direct Payments legislation into domestic law on exit day – and not at the end of the Implementation Period. These Regulations will ensure that the retained EU Direct Payments legislation is treated in the same way as legislation under the European Union (Withdrawal) Act 2018 (the “2018 Act”).
5. Farmers across the UK have planned on the basis that the 2020 Direct Payment scheme will continue to operate without interruption and that they will receive payment. It is important that there is no disruption for farmers as this could have a severe impact on their financial viability.
6. The Regulations to which this Memorandum relates vary in territorial extent and application. The amendments relating to the Interpretation Act 1978, the Statutory Instruments Act 1946 extend and apply to England and Wales only. In terms of the amendment relating to the Legislation (Wales) Act 2019, Regulation 4 extends and applies to Wales only.
7. The SI to which this Statutory Instrument Consent Memorandum relates has been laid in the UK Parliament under the negative procedure, which will automatically become law unless there is an objection from a member of either House of Parliament. If there is no such objection, the provisions that amend the primary legislation referenced in this Memorandum will come into force on 30 April 2020.

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

8. Regulations 2, 3 and 4 make consequential amendments to the Interpretation Act 1978 (c. 30), the Statutory Instruments Act 1946 (c.36), and the Legislation (Wales) Act 2019 (anaw 4) to ensure that the Direct Payments to Farmers (Legislative Continuity) Act 2020 and EU legislation incorporated into domestic law under that Act is treated in the same way as EU legislation incorporated into domestic law under the European Union (Withdrawal) Act 2018.
9. It is the view of the Welsh Government that the provisions described in paragraph 8 relate to subject matter that is within the legislative competence of the Senedd. Agriculture, and the Common Agricultural Policy are devolved matters and are not reserved in Schedule 7A to Government of Wales Act 2006. A Legislative Consent Motion was previously laid in relation to the Direct Payments to Farmers (Legislative Continuity) Act 2020 in its entirety.

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

10. As set out under paragraph 3, there is a need to make a number of consequential amendments required as a result of the Direct Payments to Farmers (Legislative Continuity) Act 2020, a UK-wide Act to ensure the statute book remains accessible and functional.
11. It is the view of the Welsh Government that it is appropriate and proportionate to deal with the amendments in these Regulations due to the territorial extent of the enactments being amended. Furthermore, making the necessary consequential amendments in one instrument helps to promote the accessibility of the law during this period of change.

Financial implications

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

Lesley Griffiths AM
Minister for Environment, Energy and Rural Affairs

April 2020

2020 No. 463

AGRICULTURE

**The Direct Payments to Farmers (Legislative Continuity) Act
2020 (Consequential Amendments) Regulations 2020**

<i>Made</i> - - - -	<i>27th April 2020</i>
<i>Laid before Parliament</i>	<i>28th April 2020</i>
<i>Coming into force</i> - -	<i>30th April 2020</i>

The Secretary of State, in exercise of the powers conferred by section 6(1) of the Direct Payments to Farmers (Legislative Continuity) Act 2020(a), makes the following Regulations.

In accordance with section 6(5) of the Direct Payments to Farmers (Legislative Continuity) Act 2020, the Secretary of State has obtained consent from the Scottish Ministers, Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Direct Payments to Farmers (Legislative Continuity) Act 2020 (Consequential Amendments) Regulations 2020 and come into force on 30th April 2020.

(2) Any provision of these Regulations which amends an enactment has the same extent as the enactment amended.

Amendment of the Interpretation Act 1978

2.—(1) The Interpretation Act 1978(b) is amended as follows.

(2) In section 21(1), after “any Act” (but before the words to be inserted at the same place by paragraph 19 of Schedule 8 to the European Union (Withdrawal) Act 2018)(c) insert “or made or to be made on or after exit day under retained direct EU CAP legislation as defined in section 2 of the Direct Payments to Farmers (Legislative Continuity) Act 2020”.

(3) In section 23ZA(4)(a)—

- (a) in sub-paragraph (i), omit “or”;
- (b) after that sub-paragraph insert—

(a) 2020 c. 2.
(b) 1978 c. 30. Section 21(1) is amended by paragraph 19 of Schedule 8 to the European Union (Withdrawal) Act 2018 and paragraph 10 of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020 (c. 1). Section 23ZA was inserted by paragraph 20 of Schedule 8 to the European Union (Withdrawal) Act 2018 and amended by paragraph 11 of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020.
(c) 2018 c. 16.

“(ia)any instrument made on or after exit day under retained direct EU CAP legislation as defined in section 2 of the Direct Payments to Farmers (Legislative Continuity) Act 2020, or”;

(c) in sub-paragraph (ii), after “instrument” insert “, not falling within sub-paragraph (ia),”

Amendment of the Statutory Instruments Act 1946

3. In the Statutory Instruments Act 1946(a), in section 11B(2), after “2018” insert “or the Direct Payments to Farmers (Legislative Continuity) Act 2020”.

Amendment of the Legislation (Wales) Act 2019

4. In section 24(1)(b) of the Legislation (Wales) Act 2019 (anaw 4)—

(a) in the English language text, after “(c. 16)” insert “or section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (c. 2)”;

(b) in the Welsh language text, after “(p. 16)” insert “neu adran 1 o Ddeddf Taliadau Uniongyrchol i Ffermwyr (Parhad Deddfwriaethol) 2020 (p. 2)”.

Amendment of the Interpretation and Legislative Reform (Scotland) Act 2010

5.—(1) The Interpretation and Legislative Reform (Scotland) Act 2010(b) is amended as follows.

(2) In section 1(1)—

(a) in paragraph (ba), omit the “and” following that paragraph;

(b) after paragraph (ba), insert—

“(bb) Scottish instruments made on or after exit day, in the case of Scottish instruments made as mentioned in paragraph (e) or (f) of the definition of “Scottish instrument” in subsection (4), and”.

(3) In section 1(4)—

(a) omit the “or” following paragraph (c);

(b) after paragraph (d), insert—

“(e) an Act of the Scottish Parliament (whenever passed) and any retained direct EU CAP legislation (within the meaning of section 2(10) of the Direct Payments to Farmers (Legislative Continuity) Act 2020) (whenever made), or

(f) an Act of the Scottish Parliament and an Act of Parliament (in each case, whenever passed) and any retained direct EU CAP legislation (within the meaning of section 2(10) of the Direct Payments to Farmers (Legislative Continuity) Act 2020) (whenever made).”.

(4) In section 55(2B)(d), in the entry for “retained EU law”, “retained direct minor EU legislation”, “retained direct principal EU legislation” and “retained direct EU legislation”, at the end insert “and each of those definitions is to be read as including the legislation treated by paragraph 7 of Schedule 1 to the Direct Payments to Farmers (Legislative Continuity) Act 2020 as falling within the corresponding definition in Schedule 1 to the Interpretation and Legislative Reform (Scotland) Act 2010 (see paragraphs (a), (d), (c) and (b) respectively of that paragraph 7).”.

(a) 1946 c. 36. Section 11B was inserted by S.I. 2018/1242.

(b) 2010 asp 10. Section 1 is amended by paragraph 32 of schedule 8 to the European Union (Withdrawal) Act 2018 and paragraph 33 of schedule 5 to the European Union (Withdrawal Agreement) Act 2020. Section 55 is amended by S.I. 2019/628.

Amendment of the Interpretation Act (Northern Ireland) 1954

6.—(1) The Interpretation Act (Northern Ireland) 1954(a) is amended as follows.

(2) In section 1, in paragraph (f)—

- (a) the words from “a statute or instrument” to the end become sub-paragraph (i) of that paragraph;
- (b) at the end of that sub-paragraph insert “; or”;
- (c) after that sub-paragraph, insert—

“(ii) any legislation which forms part of domestic law by virtue of section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 for the time being in force in Northern Ireland”.

Amendment of the Statutory Rules (Northern Ireland) Order 1979

7. In the Statutory Rules (Northern Ireland) Order 1979(b), in article 4(a), after sub-paragraph (vi) insert—

- “(vii) any legislation referred to in paragraph 7(b) of Schedule 1 to the Direct Payments to Farmers (Legislative Continuity) Act 2020, if the power is expressed to be exercisable by statutory rule for the purposes of this Order;
- (viii) any regulations made under the Direct Payments to Farmers (Legislative Continuity) Act 2020, if the power is expressed to be exercisable by statutory rule for the purposes of this Order;”.

Amendment of the European Union (Withdrawal) Act 2018

8. In Schedule 8 to the European Union (Withdrawal) Act 2018, in paragraph 19, after “EU legislation” insert “other than retained direct EU CAP legislation as so defined”.

Amendment of the European Union (Withdrawal Agreement) Act 2020

9. In Schedule 5 to the European Union (Withdrawal Agreement) Act 2020(c), in paragraph 10, after “day”, in each place it occurs, insert “under any retained direct EU legislation”.

Amendment of the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019

10.—(1) The European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019(d) are amended as follows.

(2) In regulation 2(2)—

- (a) in paragraph (c), after “section 3 of the Act” insert “or forms part of domestic law by virtue of section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020”;
- (b) at the end insert “or section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020, as the case may be”.

(3) In regulation 2(6)(a), after “section 3 of the Act”, insert “or forms part of domestic law by virtue of section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020.”.

(4) In regulation 3(2), in subsection (3) of the inserted text, at the end insert “or section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020”.

(a) 1954 (c. 33) N.I.

(b) S.I. 1979/1573 (N.I. 12), amended by S.I. 2018/1242.

(c) 2020 c. 1.

(d) S.I. 2019/628.

(5) In regulation 4(3), in subsection (3) of the inserted text, at the end insert “or section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020”.

(6) In regulation 5(1)—

(a) omit paragraph (a);

(b) in paragraph (b) for “that sub-paragraph” substitute “sub-paragraph (ii)”;

(c) for paragraph (c) substitute—

“(c) after sub-paragraph (ii) insert—

“(iii) any retained direct EU legislation not falling within sub-paragraph (ii) for the time being in force in Northern Ireland;”.

(7) In regulation 8(1), after “legislation” insert “, or legislation referred to in paragraph 7(b) of Schedule 1 to the Direct Payments to Farmers (Legislative Continuity) Act 2020,”.

Victoria Prentis

Parliamentary Under Secretary of State

Department for Environment, Food and Rural Affairs

27th April 2020

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make consequential amendments to the Interpretation Act 1978 (c. 30), the Statutory Instruments Act 1946 (c. 36), the Legislation (Wales) Act 2019 (anaw 4), the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10), the Interpretation Act (Northern Ireland) 1954 (c.33) N.I., the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)), the European Union (Withdrawal) Act 2018 (c. 16), the European Union (Withdrawal Agreement) Act 2020 (c. 1) and the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019 (S.I. 2019/628) to ensure that the Direct Payments to Farmers (Legislative Continuity) Act 2020 and EU legislation incorporated into domestic law under that Act is treated in the same way as EU legislation incorporated into domestic law under the European Union (Withdrawal) Act 2018.

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EXPLANATORY MEMORANDUM TO

THE DIRECT PAYMENTS TO FARMERS (LEGISLATIVE CONTINUITY) ACT (CONSEQUENTIAL AMENDMENTS) REGULATIONS 2020

2020 No. 463

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Environment, Food and Rural Affairs (“Defra”) and is laid before Parliament by Command of Her Majesty.
- 1.2 This Explanatory Memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The need for this instrument arises from the fact that the EU law governing the 2020 Direct Payment schemes for farmers established under the Common Agricultural Policy (“CAP”) was incorporated into UK law on exit day, rather than at the end of the Implementation Period (“IP”) established under the EU Withdrawal Agreement. It ensures that the retained Direct Payments legislation is treated in the same way as legislation retained under the European Union (Withdrawal) Act 2018 (the “2018 Act”). This is necessary to ensure the UK statute book works coherently and effectively. For example, it provides clarity on how cross-references to EU regulations governing the 2020 Direct Payment schemes should be read.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument will come into force less than 21 days after it is laid before Parliament. It needs to come into force before Defra can exercise powers under the retained Direct Payments legislation. This is because it ensures that regulations made under powers in the retained Direct Payments legislation are treated in the same way as regulations under powers in retained EU law under the 2018 Act. For example, it ensures that regulations made under retained Direct Payments legislation fall within the definition of subordinate legislation.
- 3.2 Defra now needs to exercise emergency powers in the retained Direct Payments legislation to lift crop diversification requirements in light of the prolonged and extreme wet weather across the country. These crop diversification rules specify the minimum number of crops farmers must grow when claiming Direct Payments. The extreme weather conditions are, in many cases, preventing farmers from establishing the required number of crops. Farmers would normally be required to have these crops in place from 1 May and Defra therefore needs to lift the requirements by then to ensure that farmers are not in breach.
- 3.3 Given the dependency and timings for the crop diversification regulations, we need to bring this instrument into force by 30 April.

- 3.4 We have laid this instrument as soon as we have been able to, taking account of the timescales required for obtaining consent from the Devolved Administrations, which have been reduced as far as possible.

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

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

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the UK, although different provisions have different extent depending on the extent of the legislation being amended.
- 4.2 The territorial application of this instrument is the UK, although different provisions have different application depending on the application of the legislation being amended.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State for Agriculture, Fisheries and Food, Victoria Prentis MP, has made the following statement regarding Human Rights:

“In my view the provisions of The Direct Payments to Farmers (Legislative Continuity) Act (Consequential Amendments) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The Direct Payments to Farmers (Legislative Continuity) Act 2020 (the “DPLC Act”) incorporated the EU legislation governing the 2020 CAP Direct Payment schemes into domestic law on exit day.
- 6.2 Certain provisions would not currently apply to the EU Regulations incorporated by the DPLC Act or to regulations made under those retained EU Regulations. This is because the DPLC Act incorporated the Direct Payments legislation into UK law separately from the 2018 Act and because the incorporation takes effect on exit day, rather than at the end of the IP. For example, some of the provisions in the European Union (Withdrawal) Act 2018 (Consequential Amendments) Regulations 2018 (S.I. 2018/1242) and The European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019 (S.I. 2019/628) refer to regulations made on or after IP completion day. Other provisions amended by these Regulations refer to retained direct EU legislation and define it in a way which would not include the retained Direct Payments legislation.
- 6.3 This instrument amends the following pieces of legislation: the Interpretation Act 1978, the Statutory Instruments Act 1946, the Legislation (Wales) Act 2019, the Interpretation and Legislative Reform (Scotland) Act 2010, the Interpretation Act (Northern Ireland) 1954, the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573), the European Union (Withdrawal) Act 2018, the European Union (Withdrawal Agreement) Act 2020 and the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019 (S.I. 2019/628).

7. Policy background

What is being done and why?

- 7.1 Direct Payments are the main income-support schemes for farmers under the CAP. EU legislation governing the 2020 CAP Direct Payment schemes was incorporated into UK law on 31 January 2020 rather than waiting until the end of the IP. This was because Article 137 of the Withdrawal Agreement disapplied the Direct Payments Regulation for the UK for claim year 2020 from exit day. Therefore, unlike other EU law relating to the CAP, EU Direct Payments legislation does not automatically apply during the IP.
- 7.2 This instrument makes amendments needed as a result of that separate, earlier incorporation of the Direct Payments legislation into UK law. The amendments ensure that EU legislation incorporated under the DPLC Act and regulations made under that legislation will be treated in the same way as retained EU legislation incorporated under the 2018 Act and regulations made under that retained EU legislation.

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

- 8.1 This instrument is not being made under the 2018 Act. However, the amendments in the instrument are being made to deal with deficiencies in the law arising from the withdrawal of the UK from the EU. The need for this legislation arises from Article 137 of the Withdrawal Agreement. Section 6 of this Explanatory Memorandum provides the legislative context.

9. Consolidation

- 9.1 Defra does not intend to consolidate the relevant legislation at this time.

10. Consultation outcome

- 10.1 This instrument has not been subject to formal consultation because it aims to retain the *status quo* for the 2020 claim year, makes no substantive policy changes and is technical in nature. The instrument provides continuity and stability for Direct Payment recipients.
- 10.2 This instrument has been developed in collaboration with officials in the Scottish and Welsh Governments and the Department of Agriculture, Environment and Rural Affairs (“DAERA”) in Northern Ireland.

11. Guidance

- 11.1 Defra is not producing any specific guidance on this instrument as it does not introduce policy change.

12. Impact

- 12.1 There is expected to be no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is expected to be no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen. These are technical amendments which do not implement policy changes.

13. Regulating small business

- 13.1 The instrument applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 The basis for the final decision to take no action to assist small businesses is that no disproportionate impacts are expected to affect small and micro businesses.

14. Monitoring & review

- 14.1 Defra and its agencies will monitor and review the impact of this instrument as part of its standard policy-making procedures, and will ensure that the provisions are adhered to.

15. Contact

- 15.1 Claire Williams at Defra: 0208 0262927 or email: claire.williams@defra.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Andrew Robinson, Deputy Director for CAP, Direct Payments and Sector Interventions at Defra, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Victoria Prentis MP, the Parliamentary Under Secretary of State for Agriculture, Fisheries and Food at Defra, can confirm that this Explanatory Memorandum meets the required standard.

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



Llywodraeth Cymru
Welsh Government

Mick Antoniw AM
Chair,
Legislation, Justice and Constitution Committee
Mick.Antoniw@assembly.wales

4 May 2020

Dear Mick,

This letter is to inform you that today, I have laid a Statutory Instrument Consent Memorandum before the Senedd in respect of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (Consequential Amendments) Regulations 2020, as required by Standing Order (SO) 30A.

The SI ensures that the retained EU Direct Payments legislation is treated in the same way as legislation under the European Union (Withdrawal) Act 2018, there is no divergence in policy between the Welsh Government and the UK Government in this case.

Yours sincerely,

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

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

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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.

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

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

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