

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Video conference via Zoom	Gareth Williams
Meeting date: 1 June 2020	Committee Clerk
Meeting time: 09.30	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 (09:00–09:30)

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

**2 Instruments that raise no reporting issues under Standing Order
21.2 or 21.3**
09:30 – 9:35 (Page 1)
CLA(5)–16–20 – Paper 1 – Statutory instruments with clear reports

Negative Resolution Instruments

**2.1 SL(5)547 – The Community Health Councils (Constitution, Membership and
Procedures) (Wales) (Amendment) Regulations 2020**

**3 Instruments that raise issues to be reported to the Senedd under
Standing Order 21.2 or 21.3**
09:35 – 09:40
Negative Resolution Instruments



3.1 SL(5)549 – The Bathing Water (Amendment) (Wales) (Coronavirus) Regulations 2020

(Pages 2 – 12)

CLA(5)–16–20 – Paper 2 – Report

CLA(5)–16–20 – Paper 3 – Regulations

CLA(5)–16–20 – Paper 4 – Explanatory Memorandum

CLA(5)–16–20 – Paper 5 – Letter from the Minister for Finance and Trefnydd to the Llywydd, 14 May 2020

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

09:40 – 09:45

Negative Resolution Instruments

4.1 SL(5)531 – The Agricultural Wages (Wales) Order 2020

(Pages 13 – 16)

CLA(5)–16–20 – Paper 6 – Report

CLA(5)–16–20 – Paper 7 – Welsh Government response

Made Affirmative Resolution Instruments

4.2 SL(5)540 – The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 2) Regulations 2020

(Pages 17 – 22)

CLA(5)–16–20 – Paper 8 – Report

CLA(5)–16–20 – Paper 9 – Welsh Government response

5 Written statements under Standing Order 30C

09:45 – 09:50

5.1 WS–30C(5)160 – The Regulation (EC) No 1370/2007 (Public Service Obligations In Transport) (Amendment) (EU Exit) Regulations 2020

(Pages 23 – 27)

CLA(5)–16–20 – Paper 10 – Written statement

CLA(5)–16–20 – Paper 11 – Commentary

6 Paper(s) to note

09:50 – 09:55

6.1 Letter from the Counsel General: Joint Ministerial Committee (EU Negotiations)

(Pages 28 – 31)

CLA(5)–16–20 – Paper 12 – Letter from the Counsel General, 21 May 2020

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

09:55

8 Legislative Consent Memorandum on the Environment Bill – consideration of correspondence

09:55 – 10:05

(Pages 32 – 52)

CLA(5)–16–20 – Paper 13 – Letter from the Minister for Environment, Energy and Rural Affairs, 14 May 2020

[Legislative Consent Memorandum](#)

9 Legislative Consent Memorandum on the Fire Safety Bill

10:05–10:15

(Pages 53 – 66)

CLA(5)–16–20 – Paper 14 – Legislative Consent Memorandum

CLA(5)–16–20 – Paper 15 – Legal Advice Note

CLA(5)–16–20 – Paper 16 – Research briefing

10 SICM(5)28 – The Direct Payments to Farmers (Legislative Continuity) Act 2020 (Consequential Amendments) Regulations 2020 – consideration of draft report

10:15–10:20

(Pages 67 – 69)

CLA(5)–16–20 – Paper 17 – Draft report

11 Making Justice work in Wales – briefing from the Committee's expert adviser

10:20–11:05

(Pages 70 – 158)

CLA(5)-16-20 – Paper 18 – Report from the Committee’s expert adviser

12 Making Justice work in Wales – update briefing

11:05-11:10

(Pages 159 – 165)

CLA(5)-16-20 – Paper 19 – Research briefing

Date of the next meeting – 8 June 2020

01 June 2020

SL(5)547 – The Community Health Councils (Constitution, Membership and Procedures) (Wales) (Amendment) Regulations 2020

Procedure: Negative

These Regulations amend the Community Health Councils (Constitution, Membership and Procedures) (Wales) Regulations 2010 (as amended by the Community Health Councils (Constitution, Membership and Procedures)(Wales) Regulations 2015) (“the Community Health Councils Regulations”).

As well as setting out Constitution and Procedural requirements for Community Health Councils, the Community Health Councils Regulations set the maximum terms of service for:

- members of Community Health Councils that are appointed by the Welsh Ministers, voluntary organisations and local authorities;
- co-opted (non-voting) members of Community Health Councils, that are appointed by the Community Health Councils themselves; and
- the maximum period a CHC member may serve as a chair or vice chair of a CHC or as a chair or vice chair of a CHC local committee.

These regulations are being made in response to the suspension of the public appointments process in Wales due to the COVID-19 pandemic. Given the uncertainty about the duration of the COVID-19 pandemic and the forthcoming abolition of Community Health Councils and the Establishment of the Citizen Voice Body, after the Health and Social Care (Quality and Engagement)(Wales) Bill receives Royal Assent, these Regulations make provision to make the membership arrangements fit for purpose during the transitional period.

Parent Act: National Health Service (Wales) Act 2006

Date Made: 06 May 2020

Date Laid: 07 May 2020

Coming into force date: 30 May 2020



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

Legislation, Justice and Constitution Committee

Agenda Item 3.1

SL(5)549 – The Bathing Water (Amendment) (Wales) (Coronavirus) Regulations 2020

Background and Purpose

These Regulations amend regulation 4 of the Bathing Water Regulations 2013 (“the 2013 Regulations”) in order to change the start date of the bathing season in Wales for the year 2020. 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.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

The following 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 the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a negative instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Rebecca Evans MS, Minister for Finance and Trefnydd, in a letter to the Llywydd dated 14 May 2020.

In particular, we note what the letter says regarding Natural Resources Wales (“NRW”) being unable, as a result of the COVID-19 crisis, to carry out their usual pre-season sampling of bathing waters and collate the necessary water quality data to support the start of the bathing season on 15 May. Without these amending Regulations regulations in place, 15 May would be the specified statutory start date of the bathing season in Wales and NRW would be in breach of their statutory obligations. The letter states that:

“Not adhering to the 21 day convention is considered necessary and justifiable in light of the unavoidable circumstances linked to the COVID-19 emergency situation. This would not only provide the necessary legal clarity regarding the 2020 bathing season in Wales but would also minimise any the risk of NRW breaching their statutory sampling obligations.”

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 2013 Regulations, which are being amended by these Regulations, are composite and apply to England and Wales.



The amendment made by these Regulations however will only apply in relation to Wales. The amendment to regulation 4 of the 2013 Regulations means that the dates for the bathing season in Wales will be different to England in the year 2020. The UK Government have decided not to make any changes.

These amending Regulations change the position in Wales to read as follows:

“For the purposes of these Regulations, the bathing season in Wales—

(a) subject to paragraph (b), begins on 15th May and ends at the end of the day on 30th September in each year;

(b) for the year 2020, begins on 22nd June and ends at the end of the day on 30th September.”

However the amending Regulations have not removed the words ‘and Wales’ where the text will now relate to England. This reads:

“For the purposes of these Regulations, the bathing season in England and Wales begins on 15th May and ends at the end of the day on 30th September in each year.”

Whilst the amending Regulations are technically sound the change causes a lack of clarity in the primary 2013 Regulations.

The Committee consider that a change to the text as it applies to England would be within competence as its purpose is to clarify the law as it applies in Wales. It does not change the law in England.

Implications arising from exiting the European Union

These Regulations are made under section 2(2) of the European Communities Act 1972. As such, they will form part of retained EU law after IP completion day (i.e. the end of the implementation period, on 31 December 2020).

Government Response

A Welsh Government response is required to the second merits point.

Legal Advisers

Legislation, Justice and Constitution Committee

22 May 2020



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

Welsh Parliament

Legislation, Justice and Constitution Committee

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

2020 No. 507 (W. 120)

WATER RESOURCES, WALES

**The Bathing Water (Amendment)
(Wales) (Coronavirus) Regulations
2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the Regulations set out below, and in the manner explained, as a result of pressures and work prioritisation related to the virus known as Coronavirus or “Severe acute respiratory syndrome coronavirus 2”, which causes the disease known as “COVID-19”.

These Regulations amend regulation 4 of the Bathing Water Regulations 2013 in order to change the start date of the bathing season in Wales for the year 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. 507 (W. 120)

WATER RESOURCES, WALES

**The Bathing Water (Amendment)
(Wales) (Coronavirus) Regulations
2020**

<i>Made</i>	<i>12 May 2020</i>
<i>Laid before Senedd Cymru</i>	<i>14 May 2020</i>
<i>Coming into force</i>	<i>15 May 2020</i>

The Welsh Ministers are designated for the purposes of section 2(2) of the European Communities Act 1972(1) in relation to measures relating to water resources(2).

The Welsh Ministers make these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972.

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- (1) 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).
- (2) See S.I. 2003/2901 for the designation conferred on the National Assembly for Wales. By virtue of sections 59 and 162 of, and paragraph 28 of Schedule 11 to, the Government of Wales Act 2006 (c. 32), that designation is now conferred on the Welsh Ministers. S.I. 2003/2901 is prospectively revoked by S.I. 2018/1011 from IP completion day.

Title, commencement and application

1.—(1) The title of these Regulations is the Bathing Water (Amendment) (Wales) (Coronavirus) Regulations 2020 and they come into force on 15 May 2020.

(2) These Regulations apply in relation to Wales.

Amendment of the Bathing Water Regulations 2013

2.—(1) The Bathing Water Regulations 2013⁽¹⁾ are amended as follows.

(2) For regulation 4 (length of bathing season) substitute—

“**4.** For the purposes of these Regulations, the bathing season in Wales—

- (a) subject to paragraph (b), begins on 15th May and ends at the end of the day on 30th September in each year;
- (b) for the year 2020, begins on 22nd June and ends at the end of the day on 30th September.”

Lesley Griffiths

Minister for Environment, Energy and Rural Affairs,
one of the Welsh Ministers
12 May 2020

(1) S.I. 2013/1675, amended prospectively on IP completion day by S.I. 2019/558.

Explanatory Memorandum to the Bathing Water (Amendment) (Wales) (Coronavirus) Regulations 2020

This Explanatory Memorandum has been prepared by the Department for Economy, Skills and Natural Resources and is laid before the Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister/Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Bathing Water (Amendment) (Wales) (Coronavirus) Regulations 2020. I am satisfied that the benefits justify the likely costs.

Lesley Griffiths AM

Minister for Environment, Energy and Rural Affairs

14 May 2020

PART 1

1. Description

The Bathing Water (Amendment) (Wales) (Coronavirus) Regulations 2020 amend the start date of the bathing season in Wales for the year 2020 by amending regulation 4 of the Bathing Water Regulations 2013 (“the 2013 Regulations”). As a result of this amendment the start date of the bathing season in Wales for the year 2020 will be 22 June instead of 15 May (as it will remain for each year thereafter), therefore shortening the bathing season in Wales for the year 2020.

The 2013 Regulations implement the Bathing Water Directive 2006/7/EC (“the Directive”). The aim of the Directive is to protect human health by requiring Member States to identify popular bathing waters, monitor their water quality, keep bathers well informed about water quality standards and endeavour over time to achieve good water quality at all identified bathing sites.

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.

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

Part 3 of this Memorandum explains that these Regulations are made in reliance on section 2(2) of the European Communities Act 1972 (“the 1972 Act”). By virtue of section 59(3) of the Government of Wales Act 2006, the Welsh Ministers are to determine whether an instrument made in exercise of the section 2(2) powers is to be subject to the negative or affirmative procedure.

This statutory instrument is subject to annulment of the Senedd Cymru (negative procedure). The Regulations do not amend any provision of an Assembly Act or Measure. They do not impose obligations of special importance. Accordingly, the Welsh Ministers have determined that these Regulations are to be subject to the negative resolution procedure.

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 do not follow the convention that not less than 21 days should elapse between the laying of the Regulations and their coming into force.

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 Regulations will come into force less than 21 days from the date of laying.

3. Legislative background

The instrument applies to Wales only.

These Regulations are made in exercise of the powers conferred by section 2(2) of the 1972 Act. The National Assembly for Wales was designated (for the purpose of section 2(2) of the 1972 Act) in relation to measures relating to water resources by the European Communities (Designation) (No.4) Order 2003/2901. That designation is now a designation of the Welsh Ministers by virtue of sections 59 and 162 of, and paragraph 28 of Schedule 11 to, the Government of Wales Act 2006.

The 1972 Act was repealed by section 1 of the European Union (Withdrawal) Act 2018 (“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 (“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).

4. Purpose and intended effect of the legislation

The purpose of the amendment to the 2013 Regulations is to delay the start date of the bathing season in Wales for the year 2020.

Under Article 3(1) of the Directive, Member States shall annually identify all bathing waters and define the length of the bathing season. Under the Directive “bathing season” means the period during which large numbers of bathers can be expected. “Large numbers” means, in relation to bathers, a number that the competent authority considers to be large having regard, in particular, to past trends or to any infrastructure or facilities provided, or other measures taken, to promote bathing.

This requirement has been transposed under regulation 4 of the 2013 Regulations and the Welsh Ministers (in relation to Wales) have set the bathing season as being between the 15 May and 30 September each year.

Under paragraph 3 of Schedule 4 to the 2013 Regulations National Resources Wales (“NRW”) must:

- (a) take and analyse the first sample for every bathing season shortly before the start of that season; and
- (b) take and analyse samples at intervals not exceeding one month, from every bathing water throughout the bathing water season.

Due to pressures and work prioritisation related to the virus known as “Coronavirus”, NRW are unable to meet their statutory requirement of taking and analysing the first sample prior to the start of the bathing season of 15 May.

This is due to restrictions on public life and availability of NRW laboratory facilities, which has resulted in environmental monitoring and bathing water quality testing being suspended since 23 March 2020.

However, given the importance of the bathing water season in Wales from a public health, economic and social perspective NRW have advised the Welsh Government that they are now able to take steps to prepare appropriate laboratory and staffing levels and undertake the required pre-seasoning sampling if the start date of the bathing season is delayed until 22 June.

It is therefore necessary to amend the 2013 Regulations in order to change the start date of the bathing season in Wales for the year 2020 to 22 June.

The intention of this amendment is twofold. The first intention is to prevent NRW from breaching their statutory sampling duties in relation to bathing waters in Wales under the 2013 Regulations. The second intention is to enable NRW to protect public health by ensuring a sampling programme is in place for the 2020 bathing season (albeit a reduced sampling period) by the earliest operational opportunity.

Additionally, bathing water sampling also has a key role/value in providing the data and subsequent bathing water quality classifications, which enable Local Authorities in Wales to apply for Blue Flag status. This is identified as a key award tool for promoting coastal tourism in Wales and has a positive impact on Wales' economy.

If these amendment Regulations were not to go ahead, the other option would be to cancel the bathing season, which is not recommended because of the potential negative impacts on the Welsh economy and tourism during 2020 and in 2021. Such a cancellation would also have a potential impact on public health due to the absence of bathing water quality information during the whole of the bathing season being made available to members of the public.

5. Consultation

Due to the emergency nature of these Regulations the Welsh Government did not undertake a consultation before the Order came into force.

However, the Welsh Government has been in regular contact with the UK Government and NRW.

6. Regulatory Impact Assessment (RIA)

No Regulatory Impact Assessment (RIA) has been undertaken in relation to these Regulations. This is due to the emergency nature of the Regulations (as outlined in section 4).

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



Elin Jones MS
Llywydd
Senedd Cymru
Cardiff Bay
Cardiff
CF99 1SN

14 May 2020

Dear Elin,

The Bathing Water (Amendment) (Wales) (Coronavirus) Regulations 2020

In accordance with section 11A(4) of the Statutory Instruments Act 1946, as inserted by Sch.10 para 3 of the Government of Wales Act 2006, I am notifying you that this Statutory Instrument (SI) will come into force less than 21 days from the date of laying. The Explanatory Memorandum for the Regulations is attached for your information.

Background

In accordance with the Bathing Water Regulations 2013 (“the 2013 Regulations”), which transpose the requirements of the Bathing Water Directive, the bathing season normally runs from 15 May until 30 September in Wales. Under the requirements of the Directive and the domestic regulations, coastal and inland bathing waters are regularly tested before and during the bathing season to ensure their safety and high water quality standards. Natural Resources Wales (“NRW”) is responsible for sampling and monitoring water quality of the designated bathing waters.

The COVID-19 crisis and the associated public health measures had a direct impact on NRW’s bathing water monitoring regime. In responding to the first phase of lockdown restrictions NRW took the decision to suspend all non-essential sampling and laboratory analysis due to resource, health, safety and wellbeing concerns. As a result, NRW has been unable to carry out their usual pre-season sampling of bathing waters and collate the necessary water quality data to support the start of the bathing season on 15 May.

Given the importance of the bathing season in Wales and the statutory obligation to ensure our waters are safe, bathing water monitoring and classification is regarded as a priority. Without a bathing water sampling programme, NRW, local authorities and bathers will not have access to current information on water quality. This could present a risk to public health especially when restrictions are lifted. In addition, results for Bathing Water are used

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.

for classification, identifying any potential pollution sources as well as providing benefits to tourism economy and blue flag status for beaches in Wales.

Whilst monitoring the COVID-19 situation and considering risks and potential solutions, NRW has maintained a focus on preparations for the bathing water season in line with government advice and social distancing recommendations. NRW is now in a position to commence pre-season sampling in early June, allowing the bathing water season to commence on 22 June, a later date than the statutory deadline.

An amendment to the Bathing Water Regulations 2013 is required to provide the statutory basis for shortening the bathing season 2020 under the COVID-19 emergency. The amending SI will provide the necessary legal basis and clarity for changing the start of the bathing season in Wales, ensuring NRW's compliance with its statutory duties.

The 2013 Regulations are composite and apply to England and Wales, although the amendment will only apply in relation to Wales.

It is necessary for the Bathing Water (Amendment) (Wales) (Coronavirus) Regulations 2020 to come into force by 15 May, which is the specified statutory start date of the bathing season in Wales. Without the amending legislation in place, NRW would be in breach of their statutory obligations. Non-compliance with the Bathing Water Directive requirements also increases the risk of infraction proceeding being initiated by the European Commission.

Not adhering to the 21 day convention is considered necessary and justifiable in light of the unavoidable circumstances linked to the COVID-19 emergency situation. This would not only provide the necessary legal clarity regarding the 2020 bathing season in Wales but would also minimise any the risk of NRW breaching their statutory sampling obligations.

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 NRW.

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

A copy of this letter has gone to Mick Antoniw MS, 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,



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

SL(5)531 – The Agricultural Wages (Wales) Order 2020

Background and Purpose

The Agricultural Wages (Wales) Order 2020 (“the Order”) makes provision about the minimum rates of remuneration and other terms and conditions of employment for agricultural workers. The Order revokes and replaces the Agricultural Wages (Wales) Order 2019 with changes which include increases to the 2019 minimum hourly rates for agricultural workers.

This Order is made under sections 3, 4(1) and 17 of the Agricultural Sector (Wales) Act 2014.

Procedure

Negative.

Technical Scrutiny

Three technical points are 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. Article 2 of the Order sets out the definitions of terms used throughout the Order. It is stated in article 2 that “the national minimum wage has the meaning given by section 10”. There is no other reference to the national minimum wage in the Order. Further, there is no reference to the legislation in which “section 10” can be found. Clarification is sought from the Welsh Government to confirm why this definition is included in the Order; and where “section 10” can be found and how this will be properly reflected in the Order.

2. Further explanation is required in relation to why Article 15 of the Order sets significantly different wage deductions which are permitted to be made in respect of agricultural workers who receive the benefit of accommodation.

Article 15(1) of the Order states that where in any week an employer provides an agricultural worker with a house for the whole of that week, the employer may deduct the sum of £1.50 from the agricultural worker’s wage payable for that week. Article 2 defines “a house” as “a whole dwelling house or self-contained accommodation that by virtue of the agricultural worker’s contract of service the agricultural worker is required to live in for the proper or better performance of their duties and includes any garden within the curtilage of such a dwelling house or self-contained accommodation”.

Article 15(2) of the Order states that where in any week an employer provides an agricultural worker with other accommodation, the employer may deduct the sum of £4.82 from the agricultural worker’s wage payable for each day in the week that the other accommodation is provided to the worker. “Other accommodation” is also defined in article 2 of the Order, and covers any living accommodation which is not a house but which is fit for human habitation; is safe and secure; provides a bed for the sole use of each individual agricultural worker; and provides clean drinking water, suitable and sufficient sanitary conveniences and washing facilities for agricultural workers. Presumably this could include a dormitory, hostel or similar.



It is surprising that an agricultural worker who is provided with a private self-contained house may only sustain a deduction of £1.50 per week for the benefit of living in that house. However, an agricultural worker who may only be provided with the lesser benefit of a bed in shared accommodation may sustain a deduction of £24.10 per week (based upon a five-day working week). A government response is required to explain the reasons for this discrepancy in deductions. We note that this point was also raised in our report on the Agricultural Wages (Wales) Order 2018 but the Government response on that occasion did not provide a full explanation for the discrepancy.

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

3. The wording of the headings used for the tables in schedules 1 and 2 of the Order is different in the English and Welsh text. Further, within the Welsh text there is inconsistency in the headings used for the tables in schedules 1 and 2, and the remaining schedules.

Merits Scrutiny

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

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

1. We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date subordinate legislation is laid before the Assembly and the date the subordinate legislation comes into force), and the explanation for the breach provided by Rebecca Evans AM, Minister for Finance and Trefnydd, in a [letter](#) to the Llywydd dated 30 March 2020.

In particular, we note what the letter says in relation to the progress of this Order, in that the Agricultural Advisory Panel for Wales (“the Panel”) “agreed to increase the agricultural minimum wage rates and consulted on the proposals in the autumn of 2019. The Panel’s intention was to have the new Order in force on 1 April, the same date the UK National Living Wage (NLW) and National Minimum Wage (NMW) increases take effect. However, there was a two month delay in announcing the NMW/NLW as a result of the UK general election. The Panel reconvened to consider the proposed agricultural minimum wage rates in light of the announcement and subsequently submitted a revised Order”.

The Minister states in her letter that contravention of the 21 day-rule is “necessary and justifiable in light of the unavoidable circumstances that have delayed the process” and that “reducing any further delay in bringing uplifted agricultural wage rates into force is justified on the basis it will minimise the length of time agricultural workers covered by the AMW are disadvantaged in relation to their pay awards and make compliance easier for agricultural employers.” The [Explanatory Memorandum](#) for the Order asserts that “any delay would penalise those agricultural workers who are currently being paid lower rates of pay than they would have anticipated receiving from 1 April 2020.”

Implications arising from exiting the European Union

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

Government Response

Given the current circumstances regarding coronavirus, a Welsh Government response is required as soon as is reasonably practicable in relation to each of the technical reporting points.



Committee Consideration

The Committee considered the instrument at its meeting on 4 May 2020 and reports to the Assembly in line with the reporting points above.



Government Response: The Agricultural Wages (Wales) Order 2020

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

The reporting point is accepted.

The provision will be considered afresh in any future agriculture orders made.

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

The reporting point is not accepted.

Where an agricultural worker is required to live in a dwelling house or other self-contained accommodation by virtue of their contract of service for the proper or better performance of their duties, there is a mutual benefit to both parties. The agricultural worker is provided with the benefit of a house or other self-contained accommodation and the employer has the benefit of the agricultural worker living on site. Article 15(1) makes provision for a nominal deduction of £1.50 in recognition of this mutual benefit.

The provision in article 15(2) recognises that other accommodation is provided at an inconvenience and at additional cost to the employer while also ensuring the agricultural worker is not subjected to excessive daily accommodation charges. The agricultural worker is free to take up the option of other accommodation in accordance with article 15(2) and subject to the provision in article 15(3) and (4), or to find their own accommodation.

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

The reporting point is accepted.

The English and Welsh texts are not equivalent. A correction slip will be requested to correct the Welsh version of the Order.

SL(5)540 – The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 2) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (Wales) Regulations (“the principal regulations”) and came into force at 12.01 a.m. on 25 April 2020.

The principal Regulations have previously been amended by the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020 which came into force at 12.01 a.m. on 7 April 2020.

Specifically, these Regulations amend regulation 3 (termination directions), regulations 4 – 6A (physical distancing requirement), regulation 8 (restrictions on being outside the place people live), regulation 10 (enforcement) and make further minor and consequential amendments to the principal Regulations.

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

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

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

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

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

Procedure

Made affirmative: the Regulations have already been made, but require Senedd approval for them to stay in 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 Senedd.

The Explanatory Memorandum that accompanies these Regulations sets out the Welsh Government's assessment of the interference with certain individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights.

Whilst no specific articles are referred to in this Explanatory Memorandum, the Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020, addressed that the following articles were engaged in respect of those 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.

It appears that the articles noted above in relation to previous amending regulations, are engaged in respect of these Regulations. It also appears that article 9 of the European Convention on Human Rights – freedom of thought, conscience and religion, is engaged in respect of regulation 4 of these Regulations (which amends regulation 8 of the principal Regulations). This right is a qualified right, which permits the Welsh Ministers to interfere with the exercise of the rights in the same manner as with articles 8 and 11 of the European Convention. 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 Government response is required to explain which specific articles the Welsh Government considers are engaged in respect of these Regulations, and to provide additional reasons to explain why the Welsh Government believes engaging these individual rights are justified for the purposes of these Regulations.

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

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

The omission of section 45C(4)(d) of the 1984 Act from the list of enabling powers relied on by the Welsh Ministers was raised as a technical point that required further explanation. A Welsh Government response to the point was received after the Committee considered the previous amending regulations. At the same time, the Welsh Government issued a response to the point raised in relation to the principal Regulations, which were the subject to a report to Members considered by Plenary.

The Welsh Government response to the principal Regulations in relation to enabling powers stated that their view:



“referring to section 45C(4) of the 1984 Act in relation to these Regulations would be unhelpful and inaccurate. The examples given in that subsection are specific and do not reflect the wide-ranging nature of the substantive provisions of the Regulations; provisions which we consider to be necessary and proportionate in light of the nature of the current health emergency and in line with the kind of provision envisaged by the UK Parliament when it enacted Part 2A of the 1984 Act.”

The Welsh Government's response is very clear and helpful, noting that the way sections 45C(1) and (3)(c) of the 1984 Act are drafted as broad enabling powers and that there is no need to specify section 45C(4)(d) of the 1984 Act.

In light of that helpful response, the only issue that remains is that the approach taken in relying on enabling powers for these Regulations, and the principal Regulations and previous amending regulations, is different to that taken in respect of the Business Closure Regulations and the Leisure Businesses Closure Regulations. That does not affect the validity of these Regulations in any way, but it does give rise to inconsistency between the approach in these Regulations and the approach in the (now revoked) Business Closure Regulations and the Leisure Businesses Closure Regulations.

A Government response is required in respect of the inconsistency between enabling powers relied upon in Welsh Government regulations.

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 required.

Committee Consideration

The Committee considered the instrument at its meeting on 11 May 2020 and reports to the Senedd in line with the reporting points above.



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

Merits Scrutiny

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

- 1.1. Senedd legal advisers have asked the Welsh Government to explain which specific articles the Welsh Government considers are engaged in respect of these Regulations, and to provide additional reasons to explain why the Welsh Government believes engaging these individual rights are justified for the purposes of these Regulations.
- 1.2. The Government considers that the Regulations engage or, depending on circumstances may engage, the following convention rights as set out in Schedule 1 to the Human Rights Act: Article 5 (right to liberty); Article 8 (right to respect for private and family life); Article 9 (Freedom of religion); Article 11 (Freedom of Assembly); Article 14 (Prohibition against discrimination) and Article 1 of the First Protocol (Protection of Property).
- 1.3. The provisions requiring persons responsible for businesses which open for any purpose as requested by the Welsh Ministers or local authorities, cafés and other businesses listed in paragraph 2 of Part 1 to Schedule 1 and ‘click and collect’ businesses to take all reasonable measures to ensure 2m distance is maintained between persons on premises, whilst being an imposition on those persons and an interference with their right to quiet enjoyment of their possessions under A1P1, the Government considers that they are necessary to help control the spread of coronavirus and are therefore in pursuit of a legitimate aim being the protection of health. These requirements, which already apply to other businesses which are open, strike a balance between the ability of businesses to remain operational (a proportionate response under A1P1) during the pandemic with the need to protect people from being in close contact with one another, risking their health and life, by transmission of the coronavirus, as well as protecting the ability of the NHS to provide health services.
- 1.4. The amendment to regulation 8(1) to add the words “remain away from” is in the Government’s view a neutral matter, clarifying the existing legal position, namely the prohibition on leaving, or having left, home without a reasonable excuse. However, regulation 8(1) remains an interference with people’s rights under articles 5, 8, 9, 11 and 14. Its justification remains the protection of public health as previously reported by the Government. The restriction imposed by regulation 8(1) remains under review, and provisions in the regulations, particularly the amendment to the reasonable excuse of exercise and the new excuse of being able to visit graveyards, cemeteries and

gardens of remembrance to pay respects demonstrate a proportionate response balancing people's rights with the need to protect the health of the population. In particular, the latter excuse, inserted by regulation 8(3)(c) will enable people to exercise further rights as provided by articles 5, 8 and potentially 9.

- 1.5. The removal of the once a day restriction in relation to exercise where more frequent exercise is needed because of a health condition or disability sees a proportionate response to the needs of people with disabilities, in particular, enabling the exercise of rights under articles 5, 8, and 14. This is a proportionate response balancing the needs of people with disabilities and other health conditions against the need to control the opportunity for the transmission of coronavirus, which is necessary in the interests of health protection.
- 1.6. Other provisions within the Regulations are largely clarification or restructuring of existing provisions in the principal Regulations and are, as such, neutral in ECHR terms. The justification for the principal Regulations is as previously stated that they are necessary and proportionate, balancing the rights of individuals with the legitimate aim of controlling the spread of coronavirus for the protection of health, both reducing the incidence of death amongst the population and enabling the NHS to continue to provide a health response both to those infected with the coronavirus, as well as on an ongoing basis to the rest of the population. They balance the interference with individuals' rights as referred to above, with the Government's positive obligations to prevent loss of life (Article 2) and protect health (Article 8).

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 Assembly.

- 2.1. Senedd legal advisers noted the reasons given by the Welsh Government for not citing section 45C(4)(d) of the Public Health (Control of Disease) Act 1984 as one of the enabling powers in relation to—
 - the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 (the “principal Regulations”),
 - the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020, and
 - the current Amendment (No. 2) Regulations.
- 2.2. They have therefore queried why that section was cited as an enabling power in relation to the Health Protection (Coronavirus, Business Closure) (Wales) Regulations 2020 and the Health Protection (Coronavirus: Closure of Leisure Businesses, Footpaths and Access Land) (Wales) Regulations 2020 (both revoked on 26 March 2020 by the principal Regulations).
- 2.3. The revoked Regulations were made in extreme haste and it was considered at the time to be prudent to follow the citation of powers in the Health

Protection (Coronavirus, Business Closure) (England) Regulations 2020 which were being produced in a similarly hasty manner to the same timetable as the equivalent Welsh regulations. In the subsequent days the Welsh Government was able to consider the enabling powers in the 1984 Act in more detail. We agree that the citation of section 45C(4)(c) did not affect the validity of the Regulations in question however we considered that in the subsequent Regulations it was preferable to cite only the relevant powers.

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **The Regulation (EC) No 1370/2007 (Public Service Obligations In Transport) (Amendment) (EU Exit) Regulations 2020**

DATE **12 May 2020**

BY **Rebecca Evans AS, Minister for Finance and Trefnydd**

The Regulation (EC) No 1370/2007 (Public Service Obligations In Transport) (Amendment) (EU Exit) Regulations 2020

The Law which is being amended:

Regulation (EC) No 1370/2007 of the European Parliament and of the Council on public passenger transport services by rail and by road.

Any impact the SI may have on the Welsh Parliament's legislative competence and/or the Welsh Ministers' executive competence

Regulation 1370/2007 is a directly applicable EU Regulation that sets out the conditions under which "competent authorities" may award Public Service Obligation (PSO) contracts to bus operators and to train operating companies (TOCs) outside the general procurement and state aid rules applicable under EU and domestic law.

Bus services and financial assistance made in connection with Regulation 1370/2007 in respect of road transport are not reserved matters under Schedule 7A to GoWA 2006 and therefore the Welsh Parliament has legislative competence in respect of these areas.

The purpose of the amendments

Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road (“Regulation 1370/2007”) contains a number of provisions which would be deficient when the Regulation becomes retained EU law.

The purpose of these amendments is to correct these deficiencies.

The SI and accompanying Explanatory Memorandum, setting out the effect of the SI, are available here:

<https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-regulation-ec-no-1370-2007-public-service-obligations-in-transport-amendment-eu-exit-regulations-2020>

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

This instrument is an amended version of a draft instrument, with the same title, previously considered by the CLAC and the Assembly, and for which a written statement was laid on 14 March 2019 (WS-30C(5)125)

<http://www.senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=24724&EVT=113>

That draft instrument was approved to be made as a negative instrument by the Sifting Committees on 28 January 2019 but was not finally ‘made’ into law as it contained cross-references to another instrument dealing with state aid that was not subsequently taken forward, making those cross-references deficient.

This instrument differs from the version laid for sifting on 28 January 2019 in two respects.

1. It no longer deals with the references to state aid which appear in Regulation 1370/2007. Any deficiencies in these cross-references will now be dealt with separately.
2. It no longer includes a specific saving provision for Article 5. This saving provision was required at the time of sifting because Article 5, unlike the rest of the Regulation, did not technically apply until 3rd December 2019, after the then anticipated date of Brexit. The saving provision was included to ensure that this provision, which is integral to the Regulation as a whole, and important for the smooth operation of rail franchising in the UK, became retained EU law as the UK left the European Union alongside the rest of the Regulation.

We recognise the need to ensure that the statute book is operable on exit day, and acknowledge that the corrections to legislation underpinning the rail franchising regime established by this SI are vital to the continuation of rail services across the UK, and the provide the certainty and clarity to passengers and the rail industry as an absolute priority.

However, we consider it of similar importance to offer the same certainty and clarity to the public in respect of the state aid regime going forward. Whilst we are content with the approach taken forward by this SI as it no longer contains provisions relevant to state aid, it is nevertheless important for Welsh Ministers and the Welsh Parliament to be able to consider the State Aid provisions which have been removed when the time is right to rectify these deficiencies in the statute book. We have written to the UK Government to make this position clear.

Why consent was given

As the revised SI no longer contains provisions relating to state aid, there is no policy divergence between the Welsh Government and the UK Government on the policy for the amendments and the substance of the amendments are not considered politically sensitive.

Substantial concerns remain with the approach being adopted by the UK Government in respect of the **State Aid (EU Exit) Regulations 2019**, as well as connected statutory instruments.

However, we continue to recognise the need to ensure that the statute book is operable on exit day.

UK MINISTERS ACTING IN DEVOLVED AREAS

160 - The Regulation (EC) No 1370/2007 (Public Service Obligations In Transport) (Amendment) (EU Exit) Regulations 2020

Laid in the UK Parliament: 16 March 2020

Sifting

Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	24 March 2020
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	21 April 2020
Date sifting period ends in UK Parliament	6 May 2020
Written statement under SO 30C:	Paper 10
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	Not recommended for upgrade
Procedure	Made Negative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations were made by the UK Government on 11 May 2020 under section 8 of the European Union (Withdrawal) Act 2018.

Regulation 1370/2007 is a directly applicable EU Regulation that sets out the conditions under which “competent authorities” may award Public Service Obligation (PSO) contracts to bus operators and to train operating companies (TOCs) outside the general procurement and state aid rules applicable under EU and domestic law.

Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road (**the EU Regulation**) contains a number of provisions which would be deficient when the EU Regulation becomes retained EU law.

The purpose of these amendments is to correct these deficiencies. For example:

- reference to the EU Regulation operating “in accordance with the rules of Community law” is removed,
- “competent authority” will be defined by reference to a “public authority” rather than a “public authority of a Member State”,
- reference to amounts in Euros will change to reference to amounts in GB pounds.

Legal Advisers agree with the statement laid by the Welsh Government dated 12 May 2020 regarding the effect of these Regulations.

We note, in particular, that these Regulations do not deal with references to state aid in the EU Regulation, and that those references will be addressed separately.

We also note that a draft of these Regulations was laid before the UK Parliament for sifting on 16 March 2020, but the Welsh Government did not lay the written statement before the Senedd until 12 May 2020. Under Standing Order 30C, relevant written statements should be laid before the Senedd normally within three working days of the draft Regulations being laid before UK Parliament.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Agenda Item 6/15

**Cwnsler Cyffredinol a'r Gweinidog Pontio
Ewropeaidd Counsel General and Minister for
European Transition**



**Llywodraeth Cymru
Welsh Government**

Mick Antoniw MS
Chair, Legislation, Justice and Constitution Committee
Senedd Cymru
Cardiff Bay
CF99 1NA

20 May 2020

Dear Mick,

I am writing to inform you, as per the inter-institutional relations agreement that on Thursday 21 May, the next Joint Ministerial Committee (EU Negotiations) will take place virtually, with UK Government Chairing. The meeting will discuss EU negotiations and update on the transition period, covering operational readiness, legislation, the Northern Ireland Protocol, together with a discussion on the Intergovernmental Relations Review (IGRR).

I recently wrote to the Chancellor of the Duchy of Lancaster regarding the upcoming JMC(EN), which is attached at Annex A. In that letter I emphasised that I will continue to press for structured, collective and detailed discussions involving all three Devolved Governments and the UK Government on the negotiations, and in particular on changes to the UK Government's negotiating position at JMC(EN).

I will also call for the IGR Review to be continued, picking up the important work done at official level last year on dispute avoidance and resolution, as well as the lessons being learned during the Covid-19 pandemic. I have also issued a written statement, attached at Annex B.

I am copying this letter to the Chair of the External Affairs and Additional Legislation Committee (EAAL).

Jeremy Miles AS/MS

**Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd Counsel General and Minister for
European Transition**

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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.

Jeremy Miles AS/MS

Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition



Llywodraeth Cymru
Welsh Government

The Rt Hon Michael Gove MP
Chancellor of the Duchy of Lancaster
Cabinet Office
70 Whitehall
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12 May 2020

Dear Michael,

Thank you for your letter of 30 April regarding the proposal for a meeting of the Joint Ministerial Committee (EU negotiations), which I look forward to attending via videoconference. The recent bilateral discussions with the Paymaster General – while appreciated – are no substitute for the collective discussion necessary with all four governments within the UK on the UK's future relationship with the EU. I ask therefore for you to agree that there will be regular four government discussions prior to and immediately after each negotiation round to provide sufficient focused attention on the negotiations, complementing meetings of the JMC(EN).

Overall the nature of engagement from UK Government continues to fall significantly short of what is necessary and what successive UK Ministers have promised. While we have received updates from each negotiating round, the Government has not shared with us draft text which has been tabled in the negotiations and we have had no meaningful involvement in the strategic choices prior to each negotiating round. Before we meet next week we need sight of the key issues and understanding of the options the UK Government will be advancing in the subsequent negotiating round and a credible plan for how it proposes to reach an agreement with the EU. The UK Government needs to set out these issues in a paper for the meeting which is shared with us in advance so we are in a position to consider and then have a meaningful discussion in the meeting. It is worth emphasising that the terms of reference for the JMC(EN) include seeking to reach agreement on UK positions.

I also ask, in the spirit of seeking to make the JMC(EN) meeting as productive and constructive as possible, that in advance of the meeting the UK Government fulfils its commitments to share in full and involve us in its work on preparedness for the end of the transition period. I raised this in discussions with the Paymaster General in the first half of March and again more recently, and my officials have repeatedly pressed this with UK Government counterparts. The situation is deeply concerning and much less satisfactory than was the case with work on no deal preparedness last year, when the UK Government

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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.

recognised that the UK as a whole could not be prepared adequately prepared without it working and sharing information with the devolved governments.

In addition, as we have also requested, I hope you will be able to share the details of a credible timetable and work plan for the legislation needed before the end of the transition period recognising the need for the UK Government to work with the devolved governments on this, and the importance of respecting the devolution settlement and, in Wales, the role of the Senedd.

Overall, I have seen no proof that the UK /EU negotiations have advanced to a stage where there is any certainty that an agreement can be reached before the end of December. This means an extension to the transition period is essential. The governments within the UK are rightly prioritising the response to the Covid-19 pandemic. All the evidence I have seen demonstrates that the UK is not prepared for a major change in our relationship with the EU on top of the significant disruption caused by Covid-19. The impact of this on the UK and the option to extend the transition period is something that we will need to discuss in particular at the JMC(EN).

Finally, I would like us to include a specific item within the JMC(EN) agenda on the Inter-Governmental Relations Review. There was valuable work done on this at official level last year and we must now ensure we progress this and complete the review, which is critical to a number of important areas (e.g. common frameworks) connected to the UK's exit from the EU.

I hope before the meeting next week you will be able to show clear action on the points raised in this letter so that we can make the best use of the meeting itself.

I am copying this letter to the Cabinet Secretary for the Constitution, Europe and External Affairs, the First Minister and deputy First Minister of Northern Ireland and the Secretary of State for Wales.

Yours sincerely,



Jeremy Miles AS/MS

Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition



Llywodraeth Cymru
Welsh Government

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **Joint Ministerial Committee (EU Negotiations)**

DATE **20 May 2020**

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

The next JMC (EU Negotiations) will take place this week on Thursday 21 May with parties participating remotely. The UK Government will Chair. This is the first JMC(EN) meeting since January.

I have spoken bilaterally weekly with the UK Government's Paymaster General, Penny Mordaunt MP. These discussions have been welcome but not accompanied by written papers so are necessarily limited in their effectiveness. Therefore, I will continue to press for structured, collective and detailed discussions involving all three Devolved Governments and the UK Government on the negotiations, and in particular on changes to the UK Government's negotiating position at JMC(EN).

There will also be an update on the transition period, where I will continue to call for an extension, in light of the pressures on all governments in responding to COVID-19. Other matters covered in this item will be operational readiness, legislation and the Northern Ireland Protocol.

Finally, I will call for the IGR Review to continue, picking up the important work done at official level last year on dispute avoidance and resolution, as well as lessons being learned during the Covid-19 pandemic. I will update Members following the meeting.

Agenda Item 8

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

14 May 2020

Dear Mick,

Thank you for your letter of 9 April, regarding the Legislative Consent Memorandum for the Environment Bill. As you will be aware scrutiny of the Bill is currently paused and subsequently a revised reporting date has been agreed for the Committee's report. I am grateful for the Committee's understanding of the impact of the unprecedented circumstances we find ourselves in and for allowing me to submit my responses by correspondence.

I have provided additional information as requested in the attached document.

Regards,

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.

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.

Responses to Legislation, Justice and Constitution Committee questions on the Legislative Consent Memorandum for the UK Environment Bill

General

1. Do you consider that the Bill, and all of the provisions contained within it, are necessary? If so, could you explain why.

I am unable to comment on the wider Bill as this is a matter for the UK Government. However, in respect of provisions included in the Bill for Welsh Ministers, I can confirm I consider these to be necessary.

The Environment Bill supports the UK's collective obligation to transpose the EU's Circular Economy Package (CEP). In addition to meeting the needs of the CEP provisions, the Bill will also support Wales's ambition to move to a more Circular Economy. It provides the legislative tools to support how we tackle waste crime, littering, improve recycling rates, incentivise resource efficiency and ensure producers pay for the end of life costs of the products and materials placed on the market.

In addition, the existing legislative provisions are within a single piece of legislation and to provide continuity and accessibility for users the Bill provides a single source to amend the existing legislation therefore reducing the number of amendments within the source legislation.

In relation to air quality Clause 70 and Part 2 of Schedule 12, amends Part III of the Clean Air Act 1993, in relation to Wales. The effect of the proposed amendment to the Clean Air Act 1993 is to create a duty on Welsh Ministers to publish lists for recording authorised fuels and exempted classes of fireplace which can be lawfully used in Wales' Smoke Control Areas and to switch away from the making of subordinate legislation for achieving this goal. The rationale for using the UK Environment Bill is to bring about benefits for both manufacturers and consumers as soon as possible. Businesses and manufacturers will benefit as the delay between obtaining a recommendation from the technical experts who recommend products for use and placing products on the market will be reduced. The adoption of published lists will minimise the margin of error when recording and updating the lists of products which can be lawfully used; and a streamlined, more effective process will increase consumer choice as more products enter the market sooner. There will also be an environmental benefit as improvement to the operation of the smoke control regime in Wales will make it easier to identify products which can be lawfully used in smoke control areas.

The powers for Welsh Ministers in relation to water align with the commitments in the Welsh Government Water Strategy for Wales, including working with water companies, regulators and local authorities to introduce planning for waste water and sewerage management. Our aim is for sewerage and drainage systems to be resilient and well maintained both for present and for future generations, with sufficient capacity to manage the demand placed on them without causing pollution or sewer flooding of people's homes. This will enable us to move towards a preventative approach, another key principle of sustainable management of natural resources.

Land drainage powers are necessary to allow for the revision and update of the methodology of calculating the split of income between special levies and drainage rates. The Bill also makes provision to provide an alternative methodology for calculation of the value of chargeable land (agricultural land and buildings) to avoid the potential distortion of the apportionment calculation.

The powers in respect of REACH are necessary to deliver a functioning chemicals regime. Certain changes which would help UK REACH function more effectively were outside of the scope of the powers within the Withdrawal Act. We are going from a system designed for 28 member states to a single state with four nations. Therefore, some aspects of REACH are impracticable or overly burdensome on businesses. This is likely to require changes to the existing REACH regulations to ensure they are suitable for use on a UK-only scale. In addition, when we lose section 2(2) powers of the European Communities Act 1972, we will be unable to make any changes to REACH enforcement regulations.

Without these powers UK REACH would have to operate in the context of the EU Exit SIs. In this scenario we could quickly face a number of risks and issues, particularly in relation to the deadlines for registration and repeat animal testing. The powers may also be needed to mirror changes to the EU regime which we wish to maintain. REACH covers reserved matters such as workplace health and safety and product standards, as well as devolved areas like public health and the environment. In this respect, measures to restrict a chemical inflicting harm to human health as well as incurring environmental damage would require the same legislative instrument. Therefore, legislating for such powers in the Assembly would be difficult.

2. Does the Bill equate to a Common Legislative Framework? Which provisions are necessary to achieve the Common Legislative Framework?

The Bill does not equate to a common legislative framework and does not establish any common legislative frameworks.

The UK Bill includes provisions for chemicals and extended producer responsibility, which are two areas with identified common frameworks. Whilst the Bill itself does not provide any provision for frameworks where administrations are jointly developing policies or legislation, which may apply across more than one administration, then an agreed common framework may provide an appropriate structure to discuss the policy and legislative development and address any differences of opinion.

3. What discussions have you had with the UK Government about the Bill? How often have those discussions been happening and what have the outcomes of the discussions been?

The regular Inter-Ministerial Group Meetings on Environment, Food and Rural Affairs include an agenda item on legislation and I have used these meetings to raise issues about the UK Environment Bill.

As a result of these discussions we have secured amendments to the Bill regarding the application of environmental principles to reflect the devolved nature of the environment. As such, Ministers of the Crown making policies in relation to Wales will not be required to have regard to the approach in the UK Bill but to the approach we will introduce in future Welsh legislation.

We have also secured the Secretary of State's agreement to amend the Bill, if required, to include a carve-out of paragraph 11 of Schedule 7B to the Government of Wales Act 2006 in relation to concurrent plus functions. We anticipate that a section 109 Order will be brought forward shortly and that it will address the concurrent functions issue in this Bill. This would mean amendment of the Bill would not be required.

Discussions are continuing about the impact of clause 19 (non regression of environmental protection standards) on devolved competence and the duty on the Office of Environmental Protection (OEP) to consult devolved environmental governance bodies (clause 24(4)).

Clause 24(4) places a duty on the OEP to consult a devolved environmental governance body if it considers a particular exercise of its functions may be relevant to the exercise of a devolved environmental governance function.

It has long been the Welsh Government's view the respective environmental governance bodies in England and Wales will need to work closely together to identify and act on complaints which may be cross border in nature or touch on both reserved and devolved matters.

Citizens in both countries also need to have ease of access to a complaints process with the onus being on the environmental governance bodies to facilitate rather than citizens having to navigate the reserved/devolved landscape.

The proposed duty to consult falls short of providing for this cooperative approach, as it does not allow for early identification of where the bodies may need to work together and for the Welsh body to inform the determination of whether an investigation is of relevance to it. Moreover, it does not allow for joint investigations to be undertaken and for the sharing of best practice and expertise between the bodies. Accordingly, we are seeking an amendment to the Bill to enable cooperative arrangements.

4. Did you provide the UK Government with specific instructions as to what provision the Welsh Ministers would need for Wales in this Bill? Were you and Welsh Government legislative counsel involved in the drafting of the provisions? If not, how did you proceed?

Policy officials and legal services considered and, where appropriate, contributed to policy instructions produced by UK policy officials. Again in most cases, Welsh Legislative Counsel were not involved in the drafting of Welsh provisions in the Bill.

Clause 70 and Part 3 of Schedule 12 to the Bill is concerned with smoke control areas, which amends the Clean Air Act 1993. This provision is the exception as it is a Wales-only clause. This clause was subject to separate instructions prepared by legal services and drafted by Welsh Legislative Counsel.

5. Are you aware of any amendments which the UK Government is seeking to make to the Bill? If so, have you had an opportunity to consider the drafting of those amendments, to ensure that they meet the needs of Wales? If additional amendments are made to the Bill, which require the Assembly's consent, will you lay a further Supplementary LCM in respect of the Bill?

Prior to the pausing of the UK Environment Bill on 19 March, the UK Government had informed us of all of the amendments it proposed to the Bill. This enabled us to consider any potential impacts on Wales. The amendments up to the 19 March, were all technical in nature for example a number of amendments were tabled to amend the name of the National Assembly of Wales to Senedd Cymru. Once the Bill continues its scrutiny through Parliament, we expect the same level of involvement.

I can confirm I will lay a further Supplementary LCM in respect of the Bill if additional amendments are made which require the Senedd's consent.

6. The UK Government says that policy in the Bill has been informed by nine consultations with stakeholders. What consultations have you undertaken to inform policy in the Bill?

In 2019, the Welsh Government and UK Government jointly consulted on proposals for extended producer responsibility. The Welsh Government is currently consulting on its circular economy strategy, which includes producer responsibility proposals. The consultation states the Welsh Government will “work with other governments in the UK in developing legislation for an Extended Producer Responsibility (EPR) scheme...”

The 2019 consultation on a Circular Economy¹, *Beyond Recycling*, sets out the Welsh Government’s intention for a mandatory electronic tracking system to be introduced to provide annual information on industrial and commercial waste produced in Wales.

Work continues on a joint basis with England and Northern Ireland to develop a Deposit Return Scheme. This work is currently on going with preparations being made for a second consultation on the detailed design and preferred workings of the scheme.

In 2016 the Welsh Government and Defra held a Call for Evidence on waste crime (<https://gov.wales/proposals-amend-existing-powers-tackle-waste-crime-and-poor-performing-sites-waste-management>). Following the call for evidence, the WG committed to developing measures to tackle waste crime, to help improve competence in the waste sector, review regulatory regimes which were susceptible to abuse such as the waste permitting exemptions and to create a level playing field for industry.

Since 2016 a number of Statutory Instruments have been introduced to tackle the issues identified and a subsequent consultation took place in January 2018 (<https://gov.wales/reducing-crime-sites-handling-waste-and-introducing-fixed-penalties-waste-duty-care>). These consultations and discussion with the Waste Regulator generated a number of new ideas and proposals to tackle illegal waste activity, some of which are being worked on, for example improvements to operator competence and a requirement to have financial provision for non-landfill sites. However, in some areas of waste crime it has been identified strengthened powers would help maximise the potential benefits and these are now proposed in the UK Bill. Some of these proposals have also been consulted on separately for example in our 2019 consultation on a Circular Economy, *Beyond Recycling*, we set out the intention to consider a mandatory electronic tracking system, and in the 2017 the Environment, Animal Health and Welfare Bill consultation we included proposals to amend the Powers of Entry in section 108 of the Environment act 1995, both of which are now proposed in the UK Bill.

The provisions in the Bill for single use plastics were shaped by wider concerns about the impacts of plastic in the environment. This was driven by consultations and evidence collected at EU level. Our consultation, *Beyond Recycling: A strategy to make the circular economy in Wales a reality* will help to shape the way the Welsh Government will tackle these challenges.

On the UK wide plastic packaging tax, the latest consultation round comes to a close in August and we are encouraging views and evidence from key Welsh plastics industry stakeholders. With regards to proposals on litter and single use plastics, consultation will be undertaken prior to the introduction of regulations.

Clause 70 and Part 3 of Schedule 12 to the Bill are concerned with smoke control areas and amend the Clean Air Act 1993. We intend to move from the use of subordinate legislation to the creation of a duty on Welsh Ministers to publish lists for recording authorised fuels and exempted classes of fireplace. This will enable an easier, more effective way of identifying which fuels and classes of fireplace may be lawfully used in Wales' Smoke Control Areas. We are also ensuring manufacturers can sell their products without hindrance. We did not consult stakeholders or the wider public on this provision as it does not change policy (rather it improves the operation of the existing smoke control regime in Wales). The move away from subordinate legislation to published lists will bring Wales in line with the position in England and Scotland. In the Clean Air Plan, where we outlined and sought views on the work we propose to undertake in relation to domestic burning (such as the regulatory and non-regulatory actions listed in the consultation), we referred to existing work which was being undertaken through the UK Environment Bill to exemplify actions taken to date.

Part 5 introduces a range of measures to strengthen the resilience of water and wastewater services by enhancing the water industry's long-term planning regime and to modernise the regulation of water and sewerage companies to make it more flexible and transparent.

The 21st Century Drainage Programme was set up by Water UK (a national body consisting of water and sewage undertakers across the UK and Ireland), to consider how to ensure water company planning, investment, delivery and regulatory policy relating to the design of the UK's sewerage infrastructure can be improved and updated to meet the needs of current and future generations.

It undertook research and developed tools to better understand the current and long term issues facing the drainage sector. The aim of the Programme was to understand the current and long term requirements of our drainage networks and to develop an evidence based, transparent and collaborative planning framework to ensure the provision of resilient and affordable drainage services. It adopted a partnership-based approach, working with water companies, regulators, local authorities, and NGOs. Welsh Government and Natural Resources Wales are members of the Programme Steering Group.

The programme recommended putting planning for drainage and wastewater services on a statutory footing, following a similar approach already in place for water resources planning. The approach taken by the project, and the proposals strongly aligned with commitments in the Welsh Government Water Strategy for Wales, including the following;

- We will work with water companies, regulators and local authorities to introduce planning for waste water and sewerage management. Long term collaborative planning for wastewater and sewerage management is critical to address urban flood risk and deliver Water Framework Directive and Urban Waste Water Treatment Directive outcomes.
- Our aim is for sewerage and drainage systems to be resilient and well maintained, with sufficient capacity to manage the demand placed on them without causing pollution or sewer flooding of people's homes. This will enable us to move towards a preventative approach, another key principle of sustainable management of natural resources.
- The water company planning and regulatory framework for water and sewerage should include:
 - Embedding and aligning Water Company planning with our National natural resource policy and relevant area-based natural resource planning processes to

- ensure planning for water services both informs and takes account of our priorities for natural resources management.
- Collaborative catchment management plans and investment.
 - Resilience measures, such as climate change projections, population growth and new development.
 - A presumption in favour of sustainable solutions, and evidence of their use in preference to expanding or renewing existing infrastructure capacity.
 - A strategy for engaging with stakeholders.
 - Evidence sustainable waste water and treatment solutions have been considered, strong justification where they are not used.
 - Robust, up to date and credible evidence to demonstrate compliance with our mandatory domestic and European obligations.

The Water Strategy was extensively consulted on and laid before the National Assembly. Putting Drainage and Waste water Management Plans (DWMPs) on a statutory basis can ensure other planning processes have regard to the DWMP, and require the relevant stakeholders to engage with and share information with the undertakers for the purposes of preparing DWMPs and Ofwat taking them into account as part of the price review process and the development of the regulatory framework of the industry. It can ensure undertakers keep to their commitment to prepare and consult on DWMPs, enable the Welsh Government to ensure they align with Welsh Government policies and priorities, and provide a clear and transparent process and timetable for the plans. It can also give Natural Resources Wales a clear role to participate in the engagement of the development of the plans, to provide technical guidance to the undertakers and advise the Welsh Government on the quality and robustness of the plans. Without putting them on a statutory footing there is a risk NRW may not allocate or be provided with the resources to give the DWMP's a similar level of engagement as they do Water Resource Management Plans.

The Bill gives the Welsh Ministers powers to make regulations in respect of the content and procedures to be followed on the preparation and publication of the DWMP's. Before using the powers the Welsh Ministers would consult with stakeholders on proposed regulations.

In respect of land drainage, Clause 87 introduces a consultation provision which places a duty on Welsh Ministers to consult appropriate parties to ensure the mechanism for valuation is correct when appraising levies and drainage rates.

7. How does the Bill affect existing international obligations?

I am unable to comment on the wider Bill as this is a matter for the UK Government. However, in respect of the provisions included in the Bill for Welsh Ministers, a number of will contribute to our general international obligations in relation to, for example, the Paris Agreement on climate change through the impact moving to a more circular economy has on decarbonisation. It will also contribute to the UN Sustainable Development Goals, particularly goal 12 Responsible Consumption and Production.

Improved resource efficiency helps us deliver our international commitments to the Sustainable Development Goals and sustainably use of our natural resources as under the Convention on Biological Diversity

Charges for single use plastics will contribute to the Welsh Government's international obligations relating to reducing marine litter, of which plastic is the largest material. It is the high levels of plastic in the marine environment, and the potential environmental impacts this is having, which is driving action on plastic at an international level. The UK Marine Strategy is an overarching framework covering several marine components including marine

litter. It is the UK and devolved administrations obligation to place measures and set targets in order to achieve 'Good Environmental Status'. The programme of measures is due to be reviewed in 2021 and will allow the opportunity for UK Government and devolved administrations to put in place necessary measures and reduce the amount of marine litter in our seas.

The Assembly's Legislative Competence

8. The UK Government's Explanatory Notes do not consider that clauses 19 and 43 of the Bill will require the Assembly's consent. In contrast, you state in your LCM that clause 19 and clause 43 (in so far as it relates to clause 19) do require the Assembly's consent. Could you please expand on the reasoning in the LCM as to why you consider that these clauses require the Assembly's consent? In particular, how can the National Assembly legislate to place a requirement on a Minister of the Crown to make certain statements during UK Parliament proceedings?

My determination of the requirement for consent in relation to clause 19 (and by association clause 43) is based on our assessment of the purpose of this clause. In my view, the purpose of this clause is environmental protection, a devolved subject matter. Parliamentary process is the means of delivering protection against non regression, not the purpose in itself.

It is doubtful the Senedd could replicate such a provision requiring the Minister of the Crown to carry out certain Parliamentary actions. However, an argument could be made for the Senedd to legislate for Wales to provide 'substantially the same effect' as clause 19. For example, requiring a Minister of the Crown to lay a similar statement before the Senedd when proposing to legislate in relation to Wales.

Unlike the rest of the Bill, 'environmental law' for the purposes of this clause includes devolved legislative provision. The effect of this is the above requirements apply equally to UK Bills involving 'environmental law' applying in Wales, in the same way as England.

9. Can you provide an update on the discussions taking place with UK Government around clauses 19 and 43? What is the Welsh Government's position if agreement cannot be reached on these clauses?

Discussions have continued on these clauses, but have slowed during the pausing of the Bill. We have continued to press the UK Government to recognise the need for Welsh Ministers to be consulted before such a statement is made.

I believe we can reach some form of agreement in relation to these provisions. If agreement cannot be reached we will need to take this into consideration, amongst other factors, when we consider if a future UK Bill is an appropriate vehicle for delivering Welsh policy.

10. What discussions have you had with UK Government around clause 24(4) of the Bill? Can you update us on the progress of those discussions? Will the UK Government be seeking to amend clause 24(4) to strengthen the co-operation duties of the Office of Environmental Protection with a future Wales governance body?

Clause 24(4) places a duty on the OEP to consult a devolved environmental governance body if it considers a particular exercise of its functions may be relevant to the exercise of a devolved environmental governance function.

It has long been the Welsh Government's view the respective environmental governance bodies in England and Wales will need to work closely together to identify and act on complaints which may be cross border in nature or touch on both reserved and devolved matters.

Citizens in both countries also need to have ease of access to a complaints process with the onus being on the environmental governance bodies to facilitate rather than citizens having to navigate the reserved/devolved landscape.

The proposed duty to consult falls short of providing for this cooperative approach, as it does not allow for early identification of where the bodies may need to work together and for the Welsh body to inform the determination of whether an investigation is of relevance to it. Moreover, it does not allow for joint investigations to be undertaken and for the sharing of best practice and expertise between the bodies. Accordingly, we are seeking an amendment to the Bill to enable cooperative arrangements.

Discussions have continued with Defra on how the bodies can cooperate to consider complaints together, share information and, where appropriate, undertake joint investigations.

11. The UK Government's Explanatory Notes do not consider that the general provisions in Part 8 of the Bill will require the Assembly's consent. In contrast, in your LCM, you note that the general provisions of the Bill will require the Assembly's consent. Could you please specify which general provisions you consider require the Assembly's consent? Could you provide an update as to any discussions you have had with the UK Government on this issue and whether the UK Government now agrees that these clauses will require the Assembly's consent? What is the Welsh Government's position if agreement cannot be reached?

We consider the general provisions of the Bill will require consent in so far as they pertain to the provisions of the Bill which require consent as follows:

Clause 21 in relation to Schedule 1 — The Office for Environmental Protection
Clause 45 in relation to Schedule 2 — Improving the natural environment: Northern Ireland
Clause 46 in relation to Schedule 3 — The Office for Environmental Protection: Northern Ireland
Clause 47 in relation to Schedule 4 — Producer responsibility obligations
Clause 48 in relation to Schedule 5 — Producer responsibility for disposal costs
Clause 49 in relation to Schedule 6 — Resource efficiency information in relation
Clause 50 in relation to Schedule 7 — Resource efficiency requirements
Clause 51 in relation to Schedule 8 — Deposit schemes
Clause 52 in relation to Schedule 9 — Charges for single use plastic items
Clause 63 in relation to Schedule 10 — Enforcement powers in relation
Clause 69 in relation to Schedule 11 — Local air quality management framework
Clause 70 in relation to Schedule 12 — Smoke control in England and Wales
Clause 78 in relation to Schedule 13 — Modifying water and sewerage undertakers' appointments: procedure for appeals
Clause 90 in relation to Schedule 14 — Biodiversity gain as condition of planning permission
Clause 100 in relation to Schedule 15 — Controlling the felling of trees in England
Clause 115 in relation to Schedule 16 — Discharge or modification of obligations under conservation
Clause 122 in relation to Schedule 17 — Application of Part 7 to Crown land
Clause 124 in relation to Schedule 18 — Consequential amendments relating to Part 7
Clause 125 in relation to Schedule 19 — Amendment of REACH legislation

These clauses are only relevant provisions (and thus requiring an LCM) insofar as the Schedules which they relate to make relevant provisions, those general provisions could be made by the Senedd.

Delegated powers

12. The Bill provides a number of delegated powers to the Welsh Ministers. Can you outline why all of these powers are necessary? Did the Welsh Government request these powers?

The powers are required primarily to ensure policies will continue to function in the long term, by providing some flexibility to accommodate future changes in evidence, approaches, policymaking, industries or technologies which are not necessarily predictable at this time.

In the case clause 66, to amend existing penalties for the FPNs relating to fly-tipping and householder duty of care and clause 125 for REACH, the powers are required to replace those lost under of s2(2) of the European Communities Act, which enables us to update secondary legislation.

I can confirm in all cases Welsh Government requested these powers.

Clause 47 Schedule 4 Producer responsibility obligations - Provides the flexibility to state, in regulations, which producer or business to impose producer responsibility obligations on and on what products or materials and what steps are required in order to achieve those obligations.

Clause 48 Schedule 6 Producer responsibility for disposal costs - Facilitates the making of separate provision about enforcement for Wales. It will also provide flexibility to make different provision in relation to particular types of products, for example by specifying different bodies as enforcement authorities in different cases.

Clause 49 and 50 Schedules 6 and 7 - Resource efficiency information - Allows the Welsh Government to develop policy proposals for, and make separate regulations for each type of product regulated.

It will also provide flexibility to make different provision in relation to particular types of products, for example by specifying different bodies as enforcement authorities in different cases.

Product-specific information requirements may be detailed and technical and thus more suitable for inclusion in regulations than in primary legislation.

Clause 51 Schedule 8 Deposit schemes - Allows Welsh Government to develop policy proposals for, and make, separate regulations for each product group regulated.

Clause 52 Schedule 9 Charges for single use plastic items - Although we work in conjunction with other administrations, Waste and recycling is a devolved matter. Having this devolved power allows Welsh Ministers to define items subject to any charge, the amount charged and the requirements and the appointment of any administrator to oversee the charge which reflect Welsh priorities.

Clause 55 Electronic waste tracking - Aligns waste tracking legislation with legislation for waste management, which is currently controlled through secondary legislation.

The waste tracking regulations will provide essential data to help develop a circular economy and future waste policy. Gathering data on wastes and those who are managing it will make it easier to determine who is (or was) responsible for the waste at any given time. This will support regulation of wastes and help identify those responsible for any illegal waste.

Clause 57 Hazardous waste: England and Wales - Aligns with the current regulatory system for hazardous waste, which is currently controlled through secondary legislation. See also the answer to Q13 below.

Schedule 10 (Linked to clause 63 enforcement powers) - There is a gap in the Welsh Ministers current powers in relation to waste enforcement. There are circumstances where rogue operators dump waste illegally with potentially severe consequences for local communities and the environment. There may also be situations where a waste collection contract fails, or a company or authority enters into receivership and it cannot carry out or pay for waste collection and removal liabilities which it is contracted to deliver which can also impose environmental costs and negatively affect communities.

Welsh Ministers can currently direct any person keeping waste on land to take the waste to a specified place and to direct waste operators to take and treat the waste. However, they cannot direct a waste carrier to collect waste from a specified place and take it to a specified waste site. This means in circumstances where waste has been dumped illegally and the landowner and/or criminal cannot be traced or the landowner cannot fund the removal, and in the case of major incidents, or where a waste collection contract fails, Welsh Ministers do not have the power to direct a waste carrier to remove the waste.

This provision would allow Welsh Ministers to give direction to authorised waste carriers to collect waste from a specified place and take it to a specified waste management site in circumstances where public health, communities or the environment are at risk. As with the current powers of direction, Welsh Ministers would also have the power to direct the keeper of the waste to pay the waste carrier's reasonable costs. If this is not possible, Welsh Ministers will also have the power to reimburse the waste carrier directly.

Clause 65 Littering enforcement - Welsh Ministers will need the flexibility to be able to change or update the prescribed conditions an authorised officer of a litter authority must meet to reflect changing needs and developments within the sector, meaning primary legislation would not be an appropriate vehicle for this power.

Whilst the existing regulations to deal with littering operate on an England & Wales basis and our guidance is broadly the same, there are some differences in how we implement our policies which warrants Welsh Ministers having delegated powers. For example, the Welsh Government works very closely with Local Authorities and the Third Sector to help develop and implement the educational and behavioural change aspects of tackling littering. We may, therefore, wish to have the flexibility to incorporate this type of approach into any new enforcement guidance we develop.

The power to issue statutory guidance is necessary to ensure the various litter authorities undertake littering enforcement functions in a consistent and proportionate way.

Clause 66 Fixed Penalty Notices - Taking a power to amend penalties in secondary legislation, allows for them to be kept under review, see if they are working effectively and amend them if needed.

See also the answer to Q13 below.

Clause 67 Regulation of polluting activities - Allows for the detailed conditions for any exemption (from the prohibition on carrying out an activity without a permit) to be set and amended by the regulator.

See also the answer to Q13 below.

Clause 75 Water resources management plans, drought plans and joint proposals - Allows flexibility to consider which undertakers should be directed to prepare joint proposals and when.

Clause 76 Drainage and sewerage management plans - Allows Welsh Ministers to intervene to ensure drainage and sewerage management plans address emerging challenges which may arise and therefore remain efficacious

Clause 82 Power to amend legislation to make technical updates in the field of water quality - Required to ensure substances and standards in relation to those substances or in relation to the chemical status of surface water or groundwater do not remain fixed after the UK withdraws from the EU. The power would enable action to be taken legislatively to tackle those new priority substances most accurately representing harm to the water environment.

Clause 87 Valuation of other land in drainage district: Wales - It is necessary to revise and update the methodology of calculating the split of income between special levies and drainage rates. The provisions within the Bill would allow the value of other land to be calculated via an alternative methodology (as IDBs will be able to make use of alternative data for these calculations), which will be set out in secondary legislation subject to the affirmative procedure.

Setting out the valuation calculation in regulations is appropriate and proportionate, because these provisions deal with details of a subsidiary and technical matter.

Clause 88 Valuation of agricultural land in drainage district: England and Wales - The Bill makes provision to allow the secondary legislation to provide an alternative methodology for calculation of the value of chargeable land (agricultural land and buildings) to avoid the potential distortion of the apportionment calculation.

Setting out the valuation calculation in regulations is appropriate and proportionate, because these provisions deal with details of a subsidiary and technical matter

Clause 89 Disclosure of Revenue and Customs information - The power to add to the list of qualifying persons set out under new section 37A(3)(h) is needed in order to ensure other persons requiring access to HMRC information for a qualifying purpose, who are identified at a later date, may be added to the list in secondary legislation, in circumstances where the framework of regulatory bodies operating in this area changes.

Clause 125 Amendment of REACH legislation - Section 1 of the European Union (Withdrawal) Act 2018 repeals the European Communities Act 1972. This means after exit day the only way to amend the REACH Enforcement Regulations 2008 and REACH EU Exit Regulations would be through primary legislation.

This power is needed to ensure the REACH Enforcement Regulations 2008 and REACH EU Exit Regulations can be kept up to date.

13. Could you outline the policy you will seek to make in regulations, using the powers contained in the Bill? When do you envisage that such regulations would be laid?

We would require secondary legislation in the form of regulations to implement both DRS and EPR for packaging. These are key work areas which are progressing as a joint programme of work. The exact timetabling for when these regulations will be laid has not been finalised as the current focus of work has been the progressing a second round of consultation on both schemes. In due course we will consider other waste streams for new legislation on EPR, and we consulted on this in our recent consultation on a new Circular Economy Strategy for Wales. In due course we will discuss new legislation for environmental product labelling and standards with the other UK administrations.

Clause 55 – Electronic tracking of waste: This provision comes into force two months after the Act comes into force. The timetabling for when the Regulations will be laid has not been finalised, as Welsh Government and Natural Resources officials are working with their counterparts in the other UK nations on how we can digitise waste tracking processes. In particular, how we record what happens to waste as it moves from production to recovery or disposal.

Clause 57 – Hazardous waste: The Welsh Minister have discretion to decide when the provision comes into force. Much of the law on hazardous waste is derived from EU law. The amendments being made by the Bill would enable the Welsh Ministers to continue to be able to amend or replace regulations which govern how hazardous waste is managed, after the UK has left the EU.

Clause 61 – Charging powers: The exact timetabling of bringing these powers into force has not yet been finalised. The powers:

- add new charging powers for NRW in relation to new or amended duties conferred on them in the future. The new powers will allow NRW to recover their reasonable costs of appropriate investigation, intervention and enforcement of current producer responsibility schemes and, as they are established, new EPR schemes;
- allow NRW to apply existing environmental permitting scheme charges to exempt waste operations, including registration and subsistence charges where appropriate, to fund compliance monitoring of these operations; and
- for NRW to create charging schemes for its functions related to the illegal disposal of waste and permitted waste sites. This would allow NRW to recover its reasonable costs of appropriate investigation, intervention and enforcement of illegal waste sites from those illegal waste sites. Currently, NRW is able to charge for the operation and compliance checking of the environmental permitting regime. However, they are unable to charge for the enforcement of those uncompliant with permitting requirements or operating illegally outside of the permitting regime.

Clause 66 - Fixed Penalty Notices: We will not be making regulations at this time. The Welsh Ministers have discretion to decide when the provision comes into force. Repeal of the ECA removes the current power to alter the levels of these penalties through secondary legislation, and so a new power is required to enable the level of these penalties through secondary legislation, to enable the level of the fines to be amended either up or down.

Clause 67 - Exemptions: This provision comes into force two months after the Act comes into force. The power allows the Welsh Ministers to set out in regulations which conditions relating to exempt activities (i.e. those not requiring an Environmental Permit) NRW can

determine, instead of those conditions having to be set out in regulations. Setting conditions currently requires Welsh Ministers to make new regulations each time a condition is changed. Allowing NRW to set the conditions will help ensure appropriate controls are in place as the waste market shifts. The timetabling for making regulations under this Clause have not been finalised.

Clause 52 - Single Use Plastics These powers will help support the Welsh Government's commitment to reduce the use of unnecessary single-use plastic items and to help meet our long-term goal of zero waste by 2050. The Welsh Government is already seeking to ban or restrict the sale of several commonly littered single-use plastic items including plastic cotton buds, straws and plates.

However, there are other single-use plastic items not included in the above measure and have ongoing negative externalities arising from their production, use and inappropriate disposal, for example disposable coffee cups and food containers. Since many of these plastic items are provided to the consumer seemingly "free of charge" and complementary to the purchase of other products, consumers are currently not incentivised or actively encouraged to limit their consumption to sustainable levels. We believe without further intervention, consumption levels could remain the same or even increase over time. This contributes to waste ending up in landfill and incineration following their use, or as litter causing pollution and harm to the natural environment.

We believe such items could, potentially, be dealt with through the provision of a charging regime similar to the one in place for single use carrier bags. We have seen applying a charge to single-use plastic items has led to positive change in consumer behaviour. Without the powers to require levies on other single-use plastic items where it will effectively reduce consumption, the negative externalities outlined above cannot be mitigated using legislation. However, secondary legislation will only be implemented for such items where the evidence shows charging is the most effective policy mechanism to reduce consumption in favour of readily available and more sustainable alternatives.

Clause 65 - Litter enforcement: We intend to create a specific power for Welsh Ministers to issue statutory guidance on the use of the enforcement powers in Part IV of the EPA 1990, to which those exercising the powers must have regard. This is intended to address the perception enforcement action may be used by Local Authorities or private companies, to raise revenue at the expense of 'unwary' citizens or enforcement action is otherwise illegitimate, unfair or disproportionate, by providing clear guidance to Local Authorities on the appropriate use of their enforcement powers, to which they must have regard. This is intended to promote greater consistency and improve public confidence in the legitimacy of enforcement action.

We also intend to extend Welsh Ministers' power to prescribe conditions to be satisfied before a person may be authorised to issue fixed penalties for littering. This is intended to act as a further safeguard against inappropriate enforcement activity by ensuring authorised persons must have met certain conditions relating to the skills, quality and professionalism of their activities before they can issue fixed penalties.

We will consult further with the industry, training providers, Local Authorities and other key stakeholders before exercising this extended regulation-making power. This could potentially result in prescribing conditions such as the attainment of a specific qualification, accreditation or charter-mark.

Clause 87/88 - provides a regulation making power for the Welsh Ministers to make provision for the value of other land in a Welsh internal drainage district to be determined.

As the law stands IDBs calculate the value of drainage rates for non-agricultural land using a methodology based on valuation lists which are outdated and incomplete. The regulations would be subject to the affirmative procedure. There is currently no timescale for new regulations to be in place

Clause 125 - The powers in respect of REACH are necessary to deliver a functioning chemicals regime. Certain changes which would help UK REACH function more effectively were outside of the scope of the powers within the Withdrawal Act. We are going from a system designed for 28 member states to a single state with four nations. Therefore, some aspects of REACH are impracticable or overly burdensome on businesses. This is likely to require changes to the existing REACH regulations to ensure they are suitable for use on a UK-only scale. In addition, when we lose section 2(2) powers of the European Communities Act 1972, we will be unable to make any changes to REACH enforcement regulations.

Without these powers UK REACH would have to operate in the context of the EU Exit SIs. In this scenario we could quickly face a number of risks and issues, particularly in relation to the deadlines for registration and repeat animal testing. The powers may also be needed to mirror changes to the EU regime which we wish to maintain. REACH covers reserved matters such as workplace health and safety and product standards, as well as devolved areas like public health and the environment. In this respect, measures to restrict a chemical inflicting harm to human health as well as incurring environmental damage would require the same legislative instrument. Therefore, legislating for such powers in the Assembly would be difficult.

14. Some of the delegated powers are powers to amend primary legislation. Two of these powers (clauses 66 and 76) are subject to the negative procedure. Do you think the negative procedure is appropriate in these cases? Why have you not asked for regulations made under these powers to follow the affirmative procedure?

Clause 66 Powers to Vary Fixed Penalty Notices - Negative procedure is considered appropriate as the fixed penalty notice scheme is already in place and this power allows only amendment to the amount of penalty to be charged. Welsh Ministers are required to act in accordance with public law principles and, accordingly, any increase in the penalty amount will need to be reasonable and fair. The approach is consistent with similar powers in section 34A(10), 46B(5), 47ZB(6) and section 97A(3) [EPA 1990](#), which are subject to the same procedure.

Clause 76 Drainage and sewerage management plans - Negative procedure is appropriate as the regulations would be making minor and technical changes to the way in which plans are published and this may need to be done frequently. The Regulations would not make amendments to the content of the plans themselves.

The primary legislation puts the plans on a statutory footing and sets in place a regulatory framework. The regulatory powers relate to detailed procedural aspects of the preparation, consultation, timing and publication of the plan.

15. Clause 75 amends the Water Industry Act 1991 to omit certain procedural requirements regarding the preparation and review of Water Resources Management Plans from the primary legislation. Instead, the Welsh Ministers will have a power to set the requirements out in regulations. Why is it appropriate to move this requirement from primary to secondary legislation?

The primary legislation puts the plans on a statutory footing and sets in place a regulatory framework. These sections regulatory powers relate to detailed procedural aspects of the

preparation, consultation, timing and publication of the plan. This will align the water resource planning procedures more closely with the procedure for preparing drainage and wastewater plans. The primary legislation puts the plans on a statutory footing and sets in place a regulatory framework. These sections relate regulatory powers relate to detailed procedural aspects of the preparation, consultation, timing and publication of the plan which are more appropriate to be prescribed by primary legislation,

16. Clause 75(3) omits sections 37B and 37C from the Water Industry Act 1991. Can you explain why these provisions are being removed? Will the Welsh Ministers be replacing these provisions through secondary legislation?

The primary legislation puts the plans on a statutory footing and sets in place a regulatory framework. These sections relate regulatory powers relate to detailed procedural aspects of the preparation, consultation, timing and publication of the plan which are more appropriate to be prescribed by primary legislation,

17. Clause 76 inserts sections 94B and 94D into the Water Industry Act 1991. Sections 94B and 94D provide that where the Assembly resolves that an instrument containing regulations made by the Welsh Ministers is annulled, “Her Majesty may by Order in Council revoke the instrument”. Why is this different to the approach for regulations made by the Welsh Ministers set out in the Statutory Instruments Act 1946?

Section 11A(5)(b) of the Statutory Instruments Act 1946 provides in a case of a statutory instrument made by Welsh Ministers alone, the power of Her Majesty to revoke, by Order in Council a statutory instrument laid before the National Assembly for Wales, is a power of the Welsh Ministers to revoke it by order.

The newly inserted sections 94B and 94D to the Water Industry Act 1991 contain powers to make Regulations (new s.94D) and Orders (s.94B) made by both the Welsh Ministers in relation to Wales and the Secretary of State in relation to England, due to the cross border nature of those instruments.

Therefore, s1A(5)(b) will not apply to these instruments. The 1946 Act does not make express provision for a scenario where an instrument is made by both Welsh Ministers and Secretary of State. Therefore it was felt most practical for Her Majesty to provide for the revocation of both instruments.

18. Clause 76 also inserts section 94C into the Water Industry Act 1991 which provides a power for the Welsh Ministers to make provision, by regulations, about the procedure for preparing and publishing a drainage and sewerage management plan. Those regulations can confer a power on the Welsh Ministers to make provisions by directions. Do you think the negative procedure is appropriate for regulations made under section 94C?

The primary legislation puts the plans on a statutory footing and sets in place a regulatory framework. The regulatory powers relate to detailed procedural aspects of the preparation, consultation, timing and publication of the plan. The negative procedure is appropriate for regulations made under this section.

19. In relation to the Secretary of State’s powers in clause 81 (Water quality) can you explain why the Secretary of State’s powers are more limited in Scotland than in Wales? What discussions have you had with the UK Government about this matter?

There have been no discussions with the UK Government on this matter,

Concurrent plus powers

20. The Bill includes a number of ‘concurrent plus’ powers (including in clauses 47 to 51, 81, and 125, and Schedules 4 to 8) which reduce the Assembly’s legislative competence in the respective areas. Can you explain why you consider the concurrent plus powers are appropriate? What is the Ministerial commitment that is referred to in your LCM?

The policy intention of Clauses 47-51 is to develop a joint UK wide regulatory approach to Extended Producer Responsibility which allows for a consistent scheme to operate across the UK for packaging, and potentially other products. The ability to have the option to develop a consistent scheme is important for market reasons. This includes the porous nature of the extensive border with England and the way many retailers operate their distribution systems. Operating different EPR systems between Wales and England might incentivise fraud, and would be confusing for both retailers and the public.

To enable this consistency, we are seeking a concurrent plus approach, the effect of which would be, Welsh Ministers, unless consent is provided, would carry out functions in Wales. Where it was considered appropriate, the Welsh Ministers could give consent to the Secretary of State (SoS) to exercise the powers in relation to Wales. Obtaining the powers for Welsh Ministers enables them to have flexibility in the future, and would also allow them to bring in EPR recovery for other products in Wales (for example disposable nappies). The inclusion of these powers in the Bill is in line with the First Minister’s criteria on the use of UK Bills as the interconnected nature of the relevant Welsh and English administrative systems mean it is most effective and appropriate for provision for both to be taken forward at the same time in the same legislative instrument.

Concurrent powers are also sought in respect of clause 81, which is concerned with technical updates in the field of water quality. It allows for the Secretary of State to make regulations or modify legislation for the purposes of:

- making provision about the substances to be taken into account in assessing the chemical status of surface water or groundwater;
- specifying standards in relation to those substances or in relation to the chemical status of surface water or ground water

The application of such powers will be in relation to river basin districts. Whilst we have one river basin district wholly in Wales, two of our river basin districts are cross border (the Dee and the Severn). The Ministerial powers in respect of those districts are currently exercised jointly by the Welsh Ministers and SoS. Given the existing legislative framework is exercised in such a way it is desirable be closely aligned with Defra on these matters so as to ensure a common approach in relation to the cross-border river basin districts.

Clause 125 and its associated schedules provides for the amendment of the REACH regulations and the REACH enforcement regulations. This provision is connected to the EU Exit SIs and provides an enabling power to make future amendments to retained EU law. The powers can only be exercised by the Secretary of State with consent of Welsh Ministers where they concern matters within devolved competence. This matches the approach taken with UK-wide powers in the EU Exit correcting SIs for REACH, which are required to enable a UK-wide regime.

Concurrent plus powers are also required in relation to the REACH enforcement regulations. Welsh Ministers currently have the power to amend REACH enforcement regulations in Wales under the European Communities (Designation) (No.2) Order 2007 (<http://www.legislation.gov.uk/ukxi/2007/1349/made>), as does the Secretary of State. The concurrent plus power has been requested to maintain the status quo and retain powers currently exercisable by both Welsh Ministers and the Secretary of State under EU law.

We have secured the Secretary of State's agreement to amend the Bill, should this be required. This will enable us to include a carve-out of paragraph 11, Schedule 7B of GoWA, which restricts the Assembly's legislative competence to remove or modify Minister of the Crown functions without consent from the relevant UKG Minister. The function is applied where there is a qualified devolved function which includes a function which is to any extent exercisable concurrently.

21. Will a section 109 Order be brought forward to deal with the carve-out in respect of paragraph 11 of Schedule 7B of GOWA? We are aware that a section 109 Order is being drafted and should be brought forward in the near future; will the issues raised by this Bill be dealt with in this forthcoming section 109 Order? If not, why not and when will these matters be dealt with?

We anticipate that a section 109 Order will be brought forward shortly and that it will address the concurrent functions issue in this Bill. This would mean amendment of the Bill would not be required.

22. Are there any areas in which the Welsh Government intends to give consent for the UK Government to make secondary legislation on the Welsh Government's behalf? Will the Welsh Ministers formally notify the Assembly when consent has been given, as per the Standing Order 30C process?

A concurrent plus approach, has the effect of Welsh Ministers, unless consent is provided, carrying out functions in Wales. Where it was considered appropriate, the Welsh Ministers could give consent to the Secretary of State (SoS) to exercise the powers in relation to Wales.

Welsh Ministers will formally notify the Assembly when consent has been given, as per the Standing Order 30C process

Reasons for making provisions for Wales in the Environment Bill

23. Are the powers in the Bill intended to be temporary in nature (i.e. will they be replaced by powers in a future Welsh Environment Bill)? If not, why not? If so, why has a sunset clause not been included in the Bill?

The enabling powers in the Bill will assist us in delivering current and future Welsh policy. We have used the UK Environment Bill as at present there are no immediate plans for a Welsh Environment Bill.

24. You say, as one of the reasons for making these provisions for Wales in the Environment Bill, that there is currently "no time within the Assembly's timetable to bring forward an Environment Bill that could be used to take forward these provisions." The Government's legislative programme is a matter for it alone to decide upon. Why couldn't the Welsh Government include an Environment Bill in its legislative programme?

The Welsh Government has finite resources for developing its legislative programme, particularly in respect of those specialists who draft and translate legislation. It makes decisions on the content of the programme based on the available resources and capacity to deliver, which in my portfolio has been significantly affected by the work required to respond to EU exit. Developing legislation takes time to ensure it is fit for purpose. In addition a Bill has to be introduced by a certain point in a Senedd term to ensure the Senedd has sufficient time for its scrutiny and approval before the next Senedd elections, otherwise the Bill falls. These challenges, combined with the necessary and ongoing work on legislation to respond to EU exit and transition, have meant a Welsh Environment Bill has not been possible. The UK Bill has provided us with an alternative opportunity to put legislation in place in some key areas.

25. Whilst the environmental governance provisions in the Bill seem to directly relate to the UK's departure from the EU, not all provisions in the Bill seem to be 'Brexit' related. How many of the other provisions in the Bill need to be in place before the implementation period completion day? Are any provisions in the Bill "time critical", and if so why?

I am unable to comment on the wider Bill as it is for the UK Government to determine how to deliver its policy objectives.

With the loss of section 2(2) of the European Communities Act, which enables us to update secondary legislation where appropriate we have taken enabling powers to update the legislation in some areas such as hazardous waste, water quality powers (priority substances) and REACH.

Under the transition agreement, the UK is obligated to transpose Article 8A amendments to the EU Waste Framework Directive as part of the EU's Circular Economy Package. The Extended Producer Responsibility provisions in the Bill are there to allow us, along with the other nations within the UK, to meet the general minimum requirements in relation to producer responsibility in the Circular Economy Package.

Powers in relation to REACH will need to be implemented shortly after the transition period. When we lose powers under section 2(2), we will be unable to make any changes to REACH enforcement regulations to enable us to keep pace with technical changes. By taking powers in this bill, Government will be able to respond promptly to any implementation issues arising and make workable what is a large and complex piece of EU-derived legislation.

The reason this is time sensitive is due to the fact that there are deadlines and activities/decisions to be made under REACH which are triggered by the end of the implementation period. The loss of the section 2(2) powers is less time critical compared to the need to potentially amend deadlines or to streamline the REACH process when it becomes operational. The section 2(2) powers relate to amending the REACH enforcement regulations. The rest of the REACH regulations were amended by EU law and applied to the UK without the need for domestic legislation. Without the powers included in the Bill, primary legislation would be necessary to address any teething issues with REACH (such as businesses being unhappy with the two year registration deadline).

More generally we would like to introduce all changes as soon as possible, given the benefits described in answer to question 1.

26. How and when will you review the effectiveness of the Bill for making environmental policy in Wales?

The review of the effectiveness of the Bill with respect to environmental policy will form part of the on-going policy and evidence review that takes place within Government. This is informed over time from a variety of evidence sources and feedback mechanisms such as the State of Natural Resources Report prepared by Natural Resources Wales and other environmental metrics and targets that are in place, for example recycling rates, reported fly tipping.

The published lists for authorised fuels and exempted classes of fireplace will be updated, monitored and reviewed annually.

The effectiveness of the land drainage rates & levies provisions will be assessed by the introduction of a more consistent mechanism for review.

Accessibility

27. How will you ensure that the provisions in the Bill, and the subordinate legislation made under it, are accessible to stakeholders and to the wider public?

As regulations are developed to enact the powers in the Bill our usual call for evidence, engagement and consultation processes will be followed.

28. Are you concerned that having these provisions in UK legislation will have a negative impact on the accessibility of the law, at a time when the Welsh Government is seeking to make Welsh law more accessible?

We have considered accessibility of law to be a key consideration in taking powers in this Bill. As much of the legislation being amended operates on, at a minimum, an England and Wales basis using the UK Bill to make these amendments ensure there are not multiple similar amendments to a single provision, making it more accessible for the user.

In light of the Counsel General's programme for codification, we of course will consider at some point in the future how we can make environmental law in Wales more coherent and accessible.

LEGISLATIVE CONSENT MEMORANDUM

FIRE SAFETY BILL

1. This legislative consent memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the National Assembly.
2. The Fire Safety Bill (“the Bill”) was introduced in the House of Commons on 19 March 2020. The Bill can be found at https://publications.parliament.uk/pa/bills/cbill/58-01/0121/cbill_2019-20210121_en_1.htm.

Policy Objectives

3. The UK Government’s stated policy objectives are to provide that the Regulatory Reform (Fire Safety) Order 2005 (“the FSO”) is clear in that it applies to external walls (and anything attached to them which includes cladding and balconies) and flat entrance doors of multi-occupied residential buildings.
4. This reflects lessons from the fire at Grenfell Tower in west London in June 2017, and the findings of the first phase of the Public Inquiry into its causes. The Inquiry found that the fire’s rapid propagation (and consequent severe loss of life) was due to defects in the design, installation and maintenance of the Tower’s external cladding and windows, and to the failure of internal doors and other structures to resist the spread of fire.
5. The FSO is the main statute regulating fire safety in occupied buildings in Wales and England. It does not currently cover external walls of blocks of flats, and is unclear in its application to flat entrance doors and internal walls. That means there is no obligation on landlords or others responsible for a building to maintain these features so as to mitigate the risk of fire.

Summary of the Bill

6. The Bill is sponsored by the Home Office.
7. The Bill makes provision for:
 - extending the scope of the FSO to cover the structure of the building, including the external walls and any doors, windows and balconies attached to them;

- likewise extending the scope to cover doors between flats and common areas; and
- regulations to be made to change or clarify the types of premises to which the FSO applies.

Provisions in the Bill for which consent is required

8. The following provisions of the Bill are within legislative competence of the National Assembly for Wales:

- Clause 1 (Premises to which the Fire Safety Order applies), which makes amendments to the FSO to clarify that it applies when the premise is a building containing two or more sets of domestic premises, to:
 - the building's structure and external walls (which includes doors and windows and anything attached to the exterior walls, such as cladding, insulation, fixings and balconies) and any common parts;
 - doors between domestic premises and common parts.

The amendments also affirm that Fire and Rescue Authorities can take enforcement action against responsible persons if they have failed to comply with their duties under the FSO in relation to these parts of such premises.

- Clause 2 (Power to change premises to which the Fire Safety Order applies), which gives power to the "relevant authority" to make regulations to amend the FSO for the purpose of changing or clarifying the premises to which it applies. The use of the power is to be subject to the affirmative resolution procedure. The relevant authority is defined as the Secretary of State in relation to premises in England and the Welsh Ministers in respect of premises in Wales (clause 2(2)(a) and 2(7) apply to England only and are therefore not within legislative competence).
- Clause 3 (Extent, commencement and short title), except clause 3(2)(a), which confers commencement powers as regards England on the Secretary of State.

Clause 3(2)(b) allows the Welsh Ministers to make regulations commencing clause 1 of the Bill (which makes the operative amendments to extend the scope of the FSO as above) in relation to Wales. This enables the provisions to be brought into effect as is considered appropriate for premises in Wales. No procedure applies to such regulations.

9. The purpose of all of the provisions identified above concerns fire safety relating to buildings in Wales. On this basis, the purpose of the provisions do not relate to any reserved matters under the Government of Wales Act 2006. We therefore consider these provisions, including to the extent that they confer functions on the Welsh Ministers, to be within the legislative

competence of the Senedd. As such, it is considered that the Senedd's consent is required in respect of all of the above provisions

Reasons for making these provisions for Wales in the Fire Safety Bill

10. The immediate causes of the Grenfell Tower fire as identified by the Public Inquiry could equally arise in blocks of flats in Wales. The FSO – which applies equally to Wales and England – does not adequately protect against them at present. It imposes no duties on landlords or other responsible persons as regards external walls and internal structures and doors; and confers no inspection and enforcement powers on Fire and Rescue Authorities as regards such features. The Bill would correct that, and create an important means of ensuring fire safety in blocks of flats.
11. The FSO was originally made under the Regulatory Reform Act 2001. That Act was repealed in 2007, with savings for Orders then in force but not for powers to amend them. This means the only way of amending the FSO is through primary legislation.
12. There is no space in the Welsh Government's current legislative programme for a Bill making provision for Wales on these matters, nor is there any Bill in the programme to which such provisions could be added. The Fire Safety Bill has been developed following full discussion between Welsh Government and Home Office officials and lawyers, and will achieve the above policy objectives far sooner than would otherwise be the case.

Financial implications

13. Costs could arise in Wales as a result of:
 - Landlords and other responsible persons having to undertake a more wide-ranging fire risk assessment under the FSO, including the features of each building stipulated in the Bill.
 - Landlords and other responsible persons taking corrective action in light of such assessments, eg to remove combustible cladding (although some such measures may already be necessary to comply with building regulations).
 - Fire and Rescue Authorities undertaking more wide-ranging inspections of blocks of flats, including the features of each building stipulated in the Bill.
14. The Home Office is preparing a regulatory impact assessment for the Bill, in consultation with Welsh Government officials.

Conclusion

15. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill as will make sensible and important

changes to fire safety law far sooner than could be achieved by separate legislation for Wales.

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

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