

# Agenda – Legislation, Justice and Constitution Committee

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Meeting Venue:	For further information contact:
Video conference via Zoom	<b>Gareth Williams</b>
Meeting date: 13 July 2020	Committee Clerk
Meeting time: 09.30	0300 200 6565
	<a href="mailto:SeneddLJC@senedd.wales">SeneddLJC@senedd.wales</a>

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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](http://www.senedd.TV)

Informal pre-meeting (09:00–09:30)

## 1 Introduction, apologies, substitutions and declarations of interest

09:30

## 2 Making Justice work in Wales: Evidence session 1

09:30–10:30

(Pages 1 – 57)

Sir Wyn Williams, President of Welsh Tribunals

Rhian Davies-Rees, Head of Welsh Tribunals

**CLA(5)–22–20 – Briefing**

**CLA(5)–22–20 – Paper 1** – Letter from the President of Welsh Tribunals, 26

June 2020

**CLA(5)–22–20 – Paper 2** – President of Welsh Tribunals Second Annual

Report, 29 June 2020

**CLA(5)–22–20 – Paper 3** – President of Welsh Tribunals First Annual Report, 9

April 2019



**3 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3**

10:30–10:35

(Page 58)

CLA(5)–22–20 – Paper 4 – Statutory instruments with clear reports

Draft Affirmative Resolution Instruments

**3.1 SL(5)568 – The Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) (Amendment) Regulations 2020**

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

10:35–10:40

Negative Resolution Instruments

**4.1 SL(5)572 – The Local Authorities (Coronavirus) (Meetings) (Amendment) (Wales) Regulations 2020**

(Pages 59 – 76)

CLA(5)–22–20 – Paper 5 – Report

CLA(5)–22–20 – Paper 6 – Regulations

CLA(5)–22–20 – Paper 7 – Explanatory Memorandum

CLA(5)–22–20 – Paper 8 – Written statement

Made Affirmative Resolution Instruments

**4.2 SL(5)570 – The Maintained Schools (Amendment of paragraph 7 of Schedule 17 to the Coronavirus Act 2020) (Wales) Regulations 2020**

(Pages 77 – 93)

CLA(5)–22–20 – Paper 9 – Report

CLA(5)–22–20 – Paper 10 – Regulations

CLA(5)–22–20 – Paper 11 – Explanatory Memorandum

CLA(5)–22–20 – Paper 12 – Letter from the Minister for Education to the Llywydd, 25 June 2020

**4.3 SL(5)573 – The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 7) Regulations 2020**

(Pages 94 – 113)

CLA(5)-22-20 – Paper 13 – Report

CLA(5)-22-20 – Paper 14 – Regulations

CLA(5)-22-20 – Paper 15 – Explanatory Memorandum

CLA(5)-22-20 – Paper 16 – Letter from the First Minister to the Llywydd, 3 July 2020

CLA(5)-22-20 – Paper 17 – Written statement

## **5 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3 but have implications as a result of the UK exiting the EU**

### **Negative Resolution Instruments**

#### **5.1 SL(5)569 – The Cancellation of Student Loans for Living Costs Liability (Wales) Regulations 2020**

(Pages 114 – 124)

CLA(5)-22-20 – Paper 18 – Report

CLA(5)-22-20 – Paper 19 – Regulations

CLA(5)-22-20 – Paper 20 – Explanatory Memorandum

## **6 Written statements under Standing Order 30C**

#### **6.1 WS-30C(5)162 – The Regulation (EU) No 2018/1724 The Single Digital Gateway Regulation (Revocation) (EU Exit) Regulations 2020**

(Pages 125 – 129)

CLA(5)-22-20 – Paper 21 – Written statement

CLA(5)-22-20 – Paper 22 – Commentary

#### **6.2 WS-30C(5)163 – The Professional Qualifications and Services (Miscellaneous Provisions) (EU Exit) 2020**

(Pages 130 – 135)

CLA(5)-22-20 – Paper 23 – Written statement

CLA(5)-22-20 – Paper 24 – Commentary

## **7 Papers to note**

- 7.1 Letter from the Head of the Equality and Human Rights Commission Wales – Scrutiny of Welsh Government regulations and compliance with the Public Sector Equality Duty**

(Pages 136 – 137)

CLA(5)–22–20 – Paper 25 – Letter from the Head of the Equality and Human Rights Commission Wales, 3 July 2020

- 7.2 Letter from the Chair of the Health, Social Care and Sport Committee – correspondence from the Prison and Probation Ombudsman**

(Pages 138 – 139)

CLA(5)–22–20 – Paper 26 – Letter from the Chair of the Health, Social Care and Sport Committee, 3 July 2020

- 7.3 Letter from Alex Chalk MP, Parliamentary Under–Secretary of State for Justice – data on access to justice**

(Pages 140 – 141)

CLA(5)–22–20 – Paper 27 – Letter from the Parliamentary Under–Secretary of State for Justice, 7 July 2020

- 8 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting**

11:00

- 9 Making Justice work in Wales – consideration of evidence**

11.00–11.10

- 10 Legislative Consent Memorandum on the Environment Bill – consideration of draft report**

11.10–11.20

(Pages 142 – 174)

CLA(5)–22–20 – Paper 28 – Draft report

**11 Legislative Consent Memorandum on the Trade Bill –  
consideration of draft report**

11.20–11.30

(Pages 175 – 201)

CLA(5)–22–20 – Paper 29 – Draft report

**12 Supplementary Legislative Consent Memorandum on the  
Agriculture Bill – consideration of draft report**

11.30–11.40

(Pages 202 – 209)

CLA(5)–22–20 – Paper 30 – Draft report

**13 Wales' Changing Constitution – consideration of key issues**

11.40–12.00

(Pages 210 – 245)

CLA(5)–22–20 – Paper 31 – Key issues paper

CLA(5)–22–20 – Paper 32 – Summary of evidence

**14 Brexit update – common frameworks**

12.00–12.10

(Pages 246 – 262)

CLA(5)–22–20 – Paper 33 – Research Service briefing

**Date of the next meeting – to be confirmed**

Document is Restricted



To:

Mick Antoniw MS, Chair of the Legislation, Justice and Constitution Committee

26 June 2020

Dear Mr Antoniw

**SECOND ANNUAL REPORT OF THE PRESIDENT OF WELSH TRIBUNALS**

I am pleased to send you my second annual report as President of Welsh Tribunals. It covers the period 1 April 2019 to 30 April 2020.

This year's report focuses on important issues relating to reform and how the Tribunals have begun to face the very significant challenges posed by the spread of Coronavirus. A detailed assessment of the full impact of the pandemic upon the work of the Tribunals will obviously be an important topic for discussion in next year's report.

I am sorry that the report is being published some weeks later than I would have liked. A number of factors combined to make earlier publication difficult.

If there are any matters upon which you would like clarification or further information please feel free to contact me or Ms Rhian Davies-Rees, the head of the Welsh Tribunals Unit.

Yours Sincerely

Sir Wyn Williams  
PRESIDENT OF WELSH TRIBUNALS



At:

Mick Antoni AS, Cadeirydd y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

26 Mehefin 2020

Annwyl Mr Antoni

### **AIL ADRODDIAD BLYNYDDOL LLYWYDD TRIBIWNLYSOEDD CYMRU**

Mae'n bleser gennyf anfon fy ail adroddiad blynyddol atoch fel Llywydd Tribiwnlysoedd Cymru. Mae'n cwmpasu'r cyfnod rhwng 1 Ebrill 2019 a 30 Ebrill 2020.

Mae adroddiad eleni yn canolbwyntio ar faterion pwysig yn ymwneud â diwygio a'r ffordd y mae'r Tribiwnlysoedd wedi dechrau wynebu'r heriau sylweddol iawn sy'n codi yn sgil lledaeniad y Coronafeirws. Bydd asesiad manwl o effaith lawn y pandemig ar waith y Tribiwnlysoedd yn amlwg yn destun pwysig i'w drafod yn adroddiad y flwyddyn nesaf.

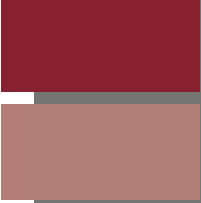
Mae'n ddrwg gennyf fod yr adroddiad yn cael ei gyhoeddi rhai wythnosau yn hwyrach na'r hyn y byddwn wedi ei ddymuno. Daeth nifer o ffactorau ynghyd i'w gwneud yn anodd cyhoeddi'n gynharach.

Os oes unrhyw faterion yr hoffech gael eglurhad neu wybodaeth bellach arnynt, mae croeso i chi gysylltu â mi neu â Ms Rhian Davies-Rees, sef pennaeth Uned Tribiwnlysoedd Cymru.

Yn gywir,

Syr Wyn Williams  
LLYWYDD TRIBIWNLYSOEDD CYMRU





# President of Welsh Tribunals 2019-2020 Second Annual Report

30th April 2020



Tribiwnlysoedd Cymru  
Welsh Tribunals

Llywydd / President

# Contents

1.	Introduction	3
2	Updates upon the First Annual Report	4
3	Commission on Justice in Wales	6
4	The Impact of Coronavirus	10

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.  
This document is also available in Welsh.

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# 1. Introduction

1.1 I write this report at a time when the justice function in the UK has been transformed by the spread of Coronavirus. Ways of workings for most of the Welsh Tribunals which would have seemed impossible 8 weeks ago are now being explored and, when possible, adopted. All this has been achieved by the combined efforts of the tribunal members, the members of staff of the Welsh Tribunals Unit, the lawyers now dedicated to assist the Tribunals, Welsh Government civil servants, Welsh Ministers, legislators and last but not least the users of the Tribunals and their representatives. My heartfelt thanks is due to them all.

1.2 Last Year's annual report provided a good deal of explanatory material about the Wales Act 2017, the office of President of Welsh Tribunals and the processes by which members of the Tribunals are recruited and appointed. It also contained discrete sections about the number of cases handled by the individual tribunals, the use of the Welsh Language in Tribunals and the structure and budget of the Welsh Tribunals Unit (WTU).

1.3 The WTU is responsible for the administration of the tribunals which are specified in section 59 of the Wales Act 2017 and which can be conveniently summarised as:

- Agricultural Land Tribunal Wales (ALTW)
- Mental Health Review Tribunal Wales (MHRTW)
- Residential Property Tribunal Wales (RPTW)
- Special Educational Needs Tribunal Wales (SENTW)
- Adjudication Panel Wales (APW)
- Welsh Language Tribunal (WLT).

1.4 In this report, I do not repeat the explanatory material which is to be found in my first report. This second report will, essentially, fall into three sections. First, I will provide updates about the number of cases handled by the Tribunals, the use of the Welsh Language and the structure and budget of the WTU. Second, I will provide information about and offer views upon the recommendations made by the Commission for Justice in Wales so far as they relate to the President of Welsh Tribunals, the Welsh Tribunals and the WTU and how the work of the Law Commission for England and Wales might throw light upon and develop those recommendations. Third, I will consider the impact of Coronavirus and the consequent change in working practices although, inevitably, a much fuller picture will emerge as time goes by and I would expect to deal with this issue in my third annual report.

## 2. Updates upon the First Annual Report

2.1 The number of applications received by the Welsh Tribunals in the last financial year is set out in the Table below.

**Table 1: Number of applications per tribunals with percentage increase/decrease**

Tribunal	Financial Year 2017-2018	Financial Year 2018-2019	Financial Year 2019-2020	% increase/decrease	Applications processed in Welsh
ALTW	17	29	22	-24	0
MHRTW	2028	2046	1943*	-5	3
RPTW	101	176	112	-36	0
SENTW	131	139	172	+24	6
APW	3	2	2	0	0
WLT	4	3	16	+443	16

\* Historically MHRTW data for annual reports was exported from a number of sources (Manual and electronic). In 2019-20 the data for applications and referrals received have been taken from the MHRTW CRM records management system removing the risk of any human error. This change in reporting methods has created the appearance of a decrease in applications and referrals for MHRTW but the probability is that had the same methodology been adopted in previous years the applications and referrals would have been of a similar order to those for 2019-20.

2.2 Further information about the nature of the work undertaken and the membership of each tribunal is set out in each of their annual reports. All such reports are published on the website of each tribunal.

2.3 Professor Keith Bush QC retired as the President of the WLT on 31 July 2019. He was replaced by Mr Iwan Jenkins who was appointed by the First Minister following an open competition administered by the Judicial Appointments Commission of England and Wales (JAC). Mr Jenkins is a senior employee of the Crown Prosecution Service of England and Wales and he has a wealth of relevant experience relating to the operation of the justice system in Wales.

2.4 During the course of the year one legal member was appointed to the WLT following an open competition administered by the JAC. Competitions administered by JAC have also commenced to recruit two deputy chairs of the ALTW, legal and lay members of MHRTW and education panel members for SENTW. It should be noted that all legal appointments to the Welsh Tribunals are open to legal practitioners who practise in England as well as Wales. Essentially, that is because all legal practitioners in Wales and England are qualified to practice in both countries.

2.5 The process of “cross-ticketing” has continued. 3 legal members of Welsh Tribunals have been identified as being suitable for cross ticketing to MHRTW although only two of those persons have completed the necessary training and been cross-ticketed. Two legal members of Welsh Tribunals have been cross-ticketed to the RPTW and one legal member of the First Tier Property Tribunal in England has been cross-ticketed to RPTW. Two lay members of Welsh Tribunals have been cross-ticketed to the WLT and one lay member has been cross-ticketed to APW.

2.6 During the financial year 2019-20 Practice Directions approved by the First Minister have been issued pursuant to section 61 Wales Act 2017. The President of APW issued a short Practice Direction to provide guidance to those who had been referred to APW for alleged misconduct upon the necessary content of the response form which “an accused person” is required to complete. The President of MHRTW and I jointly issued a Practice Direction dealing with various aspects of the procedure leading to hearings before the MHRTW.

2.7 During June 2019 RPTW and WLT moved from offices at Southgate House in Cardiff to premises at Cleppa Park on the outskirts of Newport which they share with the Children and Family Court Advisory and Support Service (CAFCASS CYMRU). The move has been successful. The accommodation available at Cleppa Park is sufficient to house the staff of the WTU which supports RPTW and WLT. There is also office space for the Presidents of those tribunals and a large room which can be used for tribunal hearings and meetings. Video conference and telephone conferencing facilities are also available.

2.8 WTU staff based at offices in Llandrindod Wells are due to be relocated within the town to refurbished offices within the existing Powys County Council building. The current office space occupied by WTU is used as the headquarters of SENTW, ALTW and APW and has a room of sufficient size so as to enable it to be used as a hearing room. The new accommodation will not have a dedicated hearing room but, in any event, it would not be appropriate to conduct hearings in a building which is owned and, in part, occupied by Powys County Council given that it can sometimes be involved as a party in individual cases. The new accommodation will provide meeting rooms that can be used by tribunal members for meetings and training events and it has appropriate space for the staff of WTU. Once the move is complete, cases brought before SENTW, ALTW and APW which require face to face hearings will be heard in locations which best meets the needs of the parties and tribunal members. Refurbishment of the office space available to WTU within the Powys County Council building is due to commence at the start of June 2020 with a scheduled end date towards the end of 2020. Staff moves are due to occur shortly afterwards in early 2021. It is obviously possible, however, that this timetable will be affected by restrictions imposed as a consequence of Coronavirus.

2.9 In the financial year 2019-20 the budget for WTU was set at £4,148m. The amount actually spent during the year was £4,446m (this figure included £42k which was transferred from the Welsh Language Division to cover actual running costs of the WLT). Towards the end of the year additional funding of £250,000 was made available to the WTU by the Finance Division of Welsh Government. This provision was made before the impact of Coronavirus had become apparent.

2.10 The budget for 2020-2021 has not yet been set. However, discussions have taken place between WTU and the Welsh Treasury about increasing its allocation given the significant overspend in 2019-2020.

2.11 It is too early to determine what the financial impact of Coronavirus will be on the Tribunals' budget for the financial year 2020-21. However, the head of WTU and her senior staff are closely managing the budget expenditure to determine whether additional funding will be required as a consequence of the virus.

2.12 All the Tribunals continue to offer a full Welsh language service to their users in accordance with duties imposed by the compliance notices issued by the Welsh Language Commissioner in relation to Welsh Language standards.

2.13 Whilst APW is not subject to the standards, it operates in line with the other tribunals and treats the Welsh language no less favourably than English. It is likely that APW will be subject to the standards in the near future.

2.14 The uptake of the Welsh language service remains low. I am informed that records kept by WTU demonstrate that during 2019-20 the Welsh language was used in 9 cases across all the Tribunals except WLT.

2.15 On 10 July 2019 I met the First Minister for our annual meeting. The Counsel General was also present as were a number of Welsh Government civil servants and the head of the WTU. The discussion was wide-ranging but it included such topics as a fair fee structure for the legal members of the Welsh Tribunals, the appointment of a lawyer or lawyers with a dedicated role in respect of Welsh Tribunals and the possibilities for the structural reform of the WTU. I am very pleased to report that within weeks of the meeting the First Minister had agreed a revised fee structure for the legal members of the Tribunals and that in February this year two lawyers employed by Welsh Government were given the specific role of providing legal advice and assistance to the President of Welsh Tribunals (and through the President the other judicial leads) and to the WTU. I am satisfied that we now have in place an effective structure whereby legal advice can be sought and obtained when necessary and, already, the WTU and I have received invaluable advice during the very challenging period since the lawyers have been appointed. Despite the constructive discussions which took place about the need for structural reform of the WTU no progress has yet been made in bringing about such reform. I say more about this later in the report.

2.16 Both the First Minister and I had hoped that the Law Commission of England and Wales would have commenced its project into the reform of Welsh Tribunals some months before the end of this financial year. That did not prove to be possible (no doubt for very good reasons beyond the control of the Commission). My understanding is that the Commission has recently started work on its project or is about to begin its work. In one respect, which I discuss below, the delay in the start of this project may have a knock-on effect of some significance.

### **3. Commission on Justice in Wales**

3.1 On 24 October 2019 the Commission published its report. It was extremely wide-ranging. Its core recommendation was that "there should be legislative devolution of justice to the Senedd" and there were a total of 78 recommendations. The reader will probably be aware that I was one of the Commissioners but in this annual report I seek only to draw attention to those aspects of the Commission's report which are directly related to the Welsh Tribunals, the office of President of Welsh Tribunals and the administrative support provided to the Tribunals and President by WTU. There are 3 recommendations of the Commission to which I wish to refer specifically.

3.2 **Recommendation 22** provides that “Courts and tribunals which determine disputes in both civil and administrative law should be under one unified system in Wales”.

3.3 Although the report does not say so expressly, it is implicit in this recommendation that it can be achieved only if there is substantial devolution of the justice function to Wales. As such, substantial legislation by the UK Parliament would be necessary to implement this recommendation.

3.4 **Recommendation 25** provides that “All public bodies, ombudsmen and other tribunals which have been established under Welsh law or by the Welsh Government, which make judicial or quasi-judicial decisions, and are not currently subject to the supervision of the President of Welsh Tribunals should be brought under the supervision of the President.”

3.5 **Recommendation 27** provides that “The Welsh Tribunals Unit should have a structural independence and the Welsh Tribunals should be used for dispute resolution relating to future Welsh legislation.

3.6 These two reforms would also likely involve some legislation by the UK Parliament or, at the very least, amendment to legislation already enacted by the UK Parliament. Any such new legislation and such amendments to existing legislation as would be necessary to implement the recommendations would have as their aim the facilitation of the work of institutions already in existence and which operate exclusively in Wales. That said, I am in no position to judge whether there would be opposition to the necessary legislation within the UK Parliament or from others and it would not be appropriate for me to speculate upon such matters.

3.7 It seems clear to me, however, that aspects of these two recommendations, inevitably, have the potential to increase the work of some of the Welsh Tribunals very substantially. The Senedd has legislative competence in the fields of health, education, housing and agriculture. If all disputes arising from future legislation in these areas of the law are to be determined by the Welsh Tribunals (as recommended by **Recommendation 27**) there is bound to be a sharp increase in the work load of the tribunals. By way of example, the Renting Homes (Wales) Act 2016, which has been enacted but not yet brought into force, contains provisions relating to the letting of dwelling-houses which are different from the existing law of England and Wales. Currently, the Act provides that disputes between landlords and tenants arising under the Act should be resolved in the county court. However, I understand that the Act is being reviewed prior to being brought into force. If the recommendation that disputes arising under the Act should be determined by the RPTW is accepted and incorporated into the Act the volume of work of that Tribunal would increase substantially. Similarly, there would scope for a substantial increase in the work of SENTW and ALTW if disputes arising under future legislation in the fields of education and agriculture were directed to those tribunals.

3.8 I am also of the view that important aspects of the recommendations would transform the role of President of Welsh Tribunals. Currently, the statutory basis for the office of President is to be found in section 60 of the Wales Act 2017. It should be noted that the section provides, expressly, that the President is “not a devolved Welsh authority for the purposes of the Government of Wales Act 2006”. The scope of the office is designed so that it can be undertaken by a serving High Court Judge of England and Wales as part of his/her duties as a serving judge or by a High Court Judge who has retired before the compulsory retirement age of 70. To give some guide as to the demands of the role at the moment, as a retired High Court Judge, I am obliged under the 2017 Act to devote the equivalent of 20 working days per annum to the Presidency as a minimum and, in practice to date, I have found it



necessary to devote about the equivalent of 25 to 30 days per year to the role (although the work to be performed is spread in such a way that I am engaged for some parts of days most weeks). If the President becomes responsible for supervising all the bodies operating exclusively in Wales as identified by the Commission in **Recommendation 25** the role of the President will be enlarged very significantly and this possible increase in the President's workload will be further enhanced if the President is given a role in the matters mentioned in the next paragraph.

3.9 There are no express recommendations within the Commission's report which relate to appointments to Welsh Tribunals, disciplinary processes relating to the members of the tribunals and appeals from the tribunals. Essentially, that is because it was known to the Commissioners that these matters were to be considered by the Law Commission. I have held preliminary discussions with the lawyers in the Law Commission who will take forward the project and it is clear that they will explore these matters in some detail together with the role, if any, which the President of Welsh Tribunals should play in relation to them. As I have said, however, should the Law Commission reach the view that the President of Welsh Tribunals should have a role in some or all of these matters and should such a recommendation become reality the work load of the President will grow substantially.

3.10 Currently, the main tasks performed by the President can be categorised loosely as administrative and pastoral. Although, it is generally accepted that the President is entitled to sit as a judge in the Welsh Tribunals there is no clear statutory basis which supports this conclusion and there has been no reason, in practice, (save on one occasion when it did not come to fruition) for the President to sit in a tribunal. In my view, there is at least the possibility that the absence of a formal and specific judicial role for the President will be off-putting for future potential candidates for the office. Accordingly, I would recommend that careful consideration is given to formulating a specific judicial role for the President. As readers of my first Annual Report will know (see Section 2) I have reservations about the President sitting in the Welsh Tribunals except when the Judicial Lead of a particular Tribunal and the President agree that the circumstances prevailing in a particular case make it inappropriate for the Judicial lead to sit as the chair of the Tribunal. However, if a new appellate structure was considered appropriate for Welsh Tribunals the President could be given a specific role within that structure. Further, and/or alternatively, the President could be authorised to sit in the Administrative Court in Wales. While, in practice, a serving or retired High Court Judge might from time sit in the Administrative Court in Wales that is not guaranteed. In my view, it would enhance the role of the President if he/she was nominated to sit in the Administrative Court in Wales by reason of holding the Presidency.

3.11 Until recently, it had seemed sensible to allow the Law Commission to take the lead in making suggestions and recommendations for further defining the role of President of Welsh Tribunals. Assuming, however, that the Law Commission project lasts approximately 12 months (as is anticipated) its final proposals may not be published until shortly before the expiry of my term of office.

3.12 Accordingly, I have reached the conclusion that the time is fast approaching when a complete re-appraisal of the post of President of Welsh Tribunals is becoming desirable, quite independently of the work of the Law Commission if necessary, so that planning can commence in good time to find my successor. Although my period of office will not come to an end until 13 August 2021 and although there are statutory provisions which could be invoked which would allow the Lord Chief Justice to extend my term of office should he consider that to be in the public interest, it is important, in my view, that decisions about the role which the President of Welsh Tribunals is expected to fulfil in the short to medium



term are made over the coming months. Obviously it is a matter for the Law Commission to determine whether it can or should give this part of its project its immediate attention.

3.13 Under the Wales Act 2017 the Lord Chief Justice is the appointing authority for the office of President. I consider it part of my duty as President to keep him apprised of all developments which may or will impact upon the role of President as they unfold over the coming months. Additionally, of course, I will have the opportunity of dialogue with the First Minister during our annual meeting, Welsh Government officials and the members of the Law Commission.

3.14 The role of the President of Welsh Tribunals must also be examined in light of the recommendation of the Commission on Justice that the Welsh Tribunal Unit should have “structural independence” from Welsh Government. Currently, the courts and tribunals operating in each of the constituent countries of the United Kingdom are administered differently. In Northern Ireland, the Court and Tribunal Service is an agency created by the Ministry of Justice for Northern Ireland. The agency has an executive board in which judges have an important role but the chair of the board is not a judge. The courts and tribunals of England and Wales (excluding Welsh Tribunals as defined in the 2017 Act) are administered by Her Majesty’s Court and Tribunal Service (HMCTS). This is also an agency which has an executive board. Court and tribunal judges have a significant role in the board. The Scottish Courts and Tribunal Service is an independent body corporate and its executive board is chaired by the Lord President (Scotland’s most senior judge). In last year’s annual report I expressed the view that WTU should be given the same status as HMCTS. When I spoke with the First Minister in July the issue of the status to be afforded to WTU was not resolved. What seems clear, however, is that whatever structure emerges in Wales for WTU there may be a significant role for the President of Welsh Tribunals to play if the aim of “structural independence” is to be achieved. In my view, this is yet another reason why the role of the President must be given careful consideration in the near future.

3.15 Even if the decision is taken to await the final recommendations of the Law Commission prior to seeking to define, further, the role of President of Welsh Tribunals I have no doubt that the appropriate Welsh Government officials and the appropriate Welsh Ministers should begin to formulate their own proposals about the Presidency as soon as is reasonably practicable so that the Law Commission is given as much assistance on this issue as is possible.

3.16 Since the publication of the Commission on Justice Report I have met the President and Chief Executive of the Valuation Tribunal for Wales in order to discuss the possibility of the Valuation Tribunal becoming one of the tribunals listed as Welsh Tribunals under the Wales Act 2017 and, thereby, becoming subject to the supervision of the President of Welsh Tribunals. Discussions were at an early stage when they were brought to a halt by the outbreak of Coronavirus. However, the discussions were constructive and no objection in principle was raised on behalf of the Valuation Tribunal to it becoming one of the family of Welsh Tribunals. I have also met the Public Service Ombudsman for Wales to discuss with him his view of **Recommendation 25** so far as it relates to him. He expressed the clear view that no proper basis existed for making the Public Service Ombudsman subject to the supervision of the President of Welsh Tribunals. I found his views persuasive but, no doubt, they will be considered carefully both by the Law Commission and Welsh Ministers and senior civil servants within Welsh Government.

3.17 Finally, in relation to reform, the Legislation, Justice and Constitution Committee of the Senedd has launched an inquiry into “*Making Justice work in Wales*”. I have been invited to give evidence to the Committee, an invitation which I have accepted. While I look forward to the opportunity of providing evidence to the Committee I confess to a degree of trepidation given that I have spent most of my professional life asking rather than answering questions!

## 4. The Impact of Coronavirus

4.1 The Welsh Tribunals are having to come to terms with disruption to normal working practices on an unprecedented scale. The lock down imposed by the Welsh Government has, effectively, ruled out traditional hearings at which the tribunal members and the parties gather together in one room. Since 23 March 2020 no such hearings have taken place; rather such work as the tribunals have been able to undertake has been done either by reference to written evidence and written submissions alone or by “remote” hearings.

4.2 The work of ALTW is severely disrupted with the Tribunal not able to list any cases that require site inspections (and most do) until July 2020 at the earliest, when the situation will be reviewed. Directions hearings and hearings in which approval is sought of consent orders take place by telephone conference.

4.3 The work of RPTW is also disrupted. Site visits have a part to play in some of the decisions made by this Tribunal and in many of the cases in which site visits are necessary it would be extremely difficult if not impossible to observe social distancing regulations. That said, RPTW is exploring the possibility of remote and telephone hearings where that is consistent with the procedural rules governing the work of this Tribunal.

4.4 WLT and APW have small numbers of cases. The disruption in these tribunals can be substantially minimised because (a) some decisions can be made after consideration of written evidence and written submissions and (b) when a hearing is necessary it can be convened remotely without undue difficulty.

4.5 SENTW deals with cases which are primarily focussed upon the educational needs of vulnerable children. As soon as traditional hearings ceased it began exploring the best ways of dealing with cases remotely. As at the date of this report SENTW is about to begin trialling the use of virtual hearing rooms (acquired by WTU with the assistance of HMCTS) with a view to holding virtual hearings of cases during the period of lockdown (and beyond, if necessary).

4.6 MHRTW has, by far, the largest numbers of cases of any Welsh Tribunal. The cases before the tribunal which require a hearing have traditionally taken place at hospital. Since the lockdown was imposed the Tribunal has functioned by using telephone hearings and I understand that it will explore the possibility of other forms of remote hearings.

4.7 Although MHRTW is a Welsh Tribunal under the Wales Act 2017 it was created by legislation enacted by the UK Parliament. Over the years the rules applicable in England which govern the equivalent body to MHRTW have diverged from the rules which govern MHRTW. In summary, the rules in England have provided for much greater flexibility in the process of decision making. So, for example, for some years in England it has been possible to constitute a tribunal by one or two members (as opposed to the full complement of three) in order to make decisions in certain types of cases whereas in Wales that has not been possible. Further, the tribunal in England has had the ability to decide cases by reference to written

material alone if certain criteria are met whereas that has not been the case in Wales. Once it became known that the UK Parliament intended to enact the Coronavirus Act 2020 strenuous efforts were made to ensure that the legislation included provisions specific to MHRTW to ensure that it could work as flexibly as its English counterpart. No doubt through a great deal of hard work on the part of many people and, further, through co-operative working between civil servants in Wales and England suitable provisions were drafted specific to MHRTW and incorporated into the Act. Accordingly, MHRTW can now work as flexibly as its English counterpart for as long as the relevant provisions of the Coronavirus Act are in force. It is also worth noting that with the First Minister's approval the President of MHRTW and I were able to issue, jointly, a Practice Direction relating to the work of MHRTW, so as to supplement the rule changes in Wales, within days of the Act receiving Royal Assent.

4.8 Obviously, it is too soon even to offer a prediction about the true impact of the outbreak of Coronavirus upon the work of the Welsh Tribunals. No doubt its impact will be considered in some detail in my Third Annual Report next year. However, I should record my gratitude to the members of Welsh Tribunals and the WTU for being ready able and willing to embrace necessary change to the working practices of the Tribunals where that has been possible and for being prepared to be flexible and innovative in dealing with the challenges which the Tribunals now face and are likely to continue to face for many months yet.



**Sir Wyn Williams**  
**President of Welsh Tribunals**



# President of Welsh Tribunals First Annual Report

31<sup>st</sup> March 2019



Tribiwnlysoedd Cymru  
Welsh Tribunals

Llywydd / President

Pack Page 45

# Contents

1.	Introduction	3
2.	The Office of President of Welsh Tribunals	3
3.	Welsh Tribunals Under the Wales Act 2017	5
4.	Appointment to Welsh Tribunals	6
5.	Recruitment to the Welsh Tribunals	7
6.	Welsh Language Standards and use of Welsh within the Welsh Tribunals	8
7.	The Welsh Tribunals Unit	8
8.	The Welsh Tribunals' Budget	10
9.	The Welsh Tribunals' Estate	10
10.	Access to Justice	11
11.	Fees Paid to Members of the Tribunals	12
12.	Reform of the Welsh Tribunals	12
13.	Conclusion	13

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.  
This document is also available in Welsh.

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# 1. Introduction

The Office of President of Welsh Tribunals was created by section 60 of the Wales Act 2017. I was appointed to that office by the Lord Chief Justice of Wales and England (following consultation with the First Minister and the Lord Chancellor of Wales and England) and my appointment will subsist until 13 August 2021. Prior to my appointment, I assisted the Lord Chief Justice in evaluating the need for a President and for some months prior to my official appointment under the Act I performed the role of President at his invitation and with the agreement of the First Minister on a “non-statutory basis”.

By virtue of Schedule 5 paragraph 14 of the Wales Act 2017 the President of Welsh Tribunals is required to take the oath of allegiance and judicial oath in the presence of the Lord Chief Justice or such other person as may be nominated by the Lord Chief Justice to administer the oath. I took my oaths at a ceremony which took place at the Cardiff Crown Court on 14 December 2017 in the presence of the Lord Chief Justice.

One of my statutory duties is to represent the views of members of the Welsh Tribunals to the Welsh Ministers and to other members of the National Assembly for Wales. At a meeting with the First Minister and Counsel General which took place on 1st February 2018 it was agreed that I would discharge that duty by presenting an Annual Report to the First Minister and the Presiding Officer of the National Assembly. This is my first such report which covers the period from about July 2017 (when I took up the role of President on a non-statutory basis) to date. Henceforth I will provide reports at the conclusion of each financial year.

## 2. The Office of President of Welsh Tribunals

Some of the core duties and powers of the of the President of Welsh Tribunals are to be found in sections 60, 61, 62 and 63 of the Wales Act 2017. The duties include obligations to ensure that Welsh Tribunals are accessible, that their proceedings are fair, that proceedings in each Tribunal are conducted speedily and efficiently and that members of each Tribunal receive appropriate training. An example of the powers conferred upon the President is the power to issue directions as to procedures and practices to be adopted by the Tribunals.

The Wales Act 2017 does not purport to define, exhaustively, the duties and powers of the President. It is commonly understood and accepted that the President is the most senior judge within the devolved tribunal system and, accordingly, that he has a supervisory role over each of the Welsh Tribunals which is complementary to the duties specifically referred to in the Act. I have exercised that role, in relation to the very small number of complaints which have been received about decision-making in individual cases. In each case reported to me, I have taken appropriate steps to ascertain whether such complaints were investigated reasonably and proportionately in accordance with the complaints’ procedure applicable and, in each case, I satisfied myself that the investigation had been carried out in accordance with complaints’ procedure and that the investigation was fair and reasonable.

Although the Act is silent upon the point, it seems clear that, as a senior judge, the President is entitled to sit as the legal chair of each of the Welsh Tribunals. That said, my view is that the President should sit as a legal chair of a Tribunal only if the Judicial Lead of that Tribunal and the President agree that the circumstances prevailing in a given case make it inappropriate for the Judicial Lead to sit.

It should be noted that the President of Welsh Tribunals is not responsible for a number of non-devolved tribunals which function within Wales. Tribunals which adjudicate upon employment cases, asylum and immigration cases and social security and child support cases are operated by Her Majesty's Court and Tribunal Service Wales ("HMCTS Wales"). In the main, tribunal judges who sit in these tribunals are appointed by the Senior President of Tribunals for England and Wales, who is the senior judge having overall responsibility for the judiciary in these non-devolved tribunals.

There are other tribunals operating within Wales which are independent of both the President of Welsh Tribunals and the Senior President of the Tribunals for England and Wales. These include the Valuation Tribunal for Wales which has its own legal and administrative structure and the tribunals which determine contested issues about school admissions and exclusions which are administered by the local education authority responsible for the school in question. So far as I am aware these local authority administered tribunals have no defined legal structure or judicial lead.

One of the important functions of the President is to liaise between the Welsh Tribunals Unit ("WTU") (the civil servants who support the Welsh Tribunals), civil servants within the Justice Policy team of the Welsh Government and the judicial leads of the Tribunals. Quarterly meetings are held, chaired by the President of Welsh Tribunals, which are attended by the judicial leads or, if necessary, their deputies, the head of WTU and other members of WTU and a representative of the Justice Policy team. These meetings are valuable business meetings at which issues of concern to all the Tribunals can be discussed.

The President of Welsh Tribunals is a member of the Tribunal Judiciary Executive Board. This is a UK wide body chaired by the Senior President of Tribunals for England and Wales. The Board has members from all the constituent countries of the UK and it provides an invaluable forum for discussing good practice and sharing ideas for the administration of justice within tribunals throughout the whole of the UK.

The President of Welsh Tribunals is also a member of the Welsh Committee of the Judges' Council ("JCCW"). The Judges' Council comprises judges of all levels of seniority and has the role of advising the Lord Chief Justice on important matters which relate to the judiciary and the administration of justice. Senior civil servants also attend meetings. The Welsh Committee of the Council is also attended by judges of all levels of seniority together with senior members of HMCTS (Wales). The Committee meets quarterly and my main function at meetings is to update the Lord Chief Justice and other Committee members upon the administration and functioning of the Welsh Tribunals.

### 3. Welsh Tribunals under the Wales Act 2017

Section 59 of the Wales Act 2017 defines the phrase ‘Welsh Tribunal’ to mean:

- (a) the Agricultural Land Tribunal for Wales/Tribiwnlys Tir Amaethyddol Cymru (“ALTW”);
- (b) the Mental Health Review Tribunal for Wales (“MHRTW”);
- (c) a rent assessment committee constituted in accordance with Schedule 10 to the Rent Act 1977 (including a leasehold valuation tribunal and a residential property tribunal) (“RPTW”);
- (d) the Special Educational Needs Tribunal for Wales/Tribiwnlys Anghenion Addysgol Arbennig Cymru (“ SENTW”);
- (e) a tribunal constituted in accordance with Schedule 3 to the Education Act 2005 (registration of inspectors in Wales: tribunals hearing appeals under section 27);
- (f) a tribunal drawn from the Adjudication Panel for Wales/Panel Dyfarnu Cymru (“APW”);
- (g) the Welsh Language Tribunal/Tribiwnlys y Gymraeg (“WLT”).

The Act also makes provision for the removal and/or substitution of those tribunals as well as additions to the list.

No tribunal has been constituted, specifically, to hear appeals under section 27 of the Education Act 2005 (the tribunal listed at sub-paragraph (e) above). Certainly, it has no judicial lead appointed by any formal process. However, tribunal members from SENTW are eligible to deal with any cases which arise. During the financial year 2017-2018 there were no appeals to that tribunal and there have been no such appeals since April 2018.

Each of the other tribunals listed above have duly appointed judicial leads. The lead judge of ALTW is Dr Christopher McNall, the lead judge of MHRTW is Ms Carolyn Kirby OBE, the lead judge of RPTW is Mr Richard Payne, the lead judge of SENTW is Ms Rhiannon Walker, the lead judge of APW is Ms Claire Sharp and the lead judge of WLT is Professor Keith Bush QC. I have developed close and effective working relations with each of them.

The most recent information about number of applications received by each tribunal is set out in the table below.

**Table 1: Number of applications per tribunals with percentage increase/decrease**

Tribunal	Financial Year 2016-2017	Financial Year 2017-2018	Financial Year 2018-2019	% increase/decrease
ALTW	17	17	29	+71
MHRTW	2034	2028	2046	+1
RPT	130	101	176	+74
SENTW	132	131	139	+6
APW	3	3	2	-33
WLT	9	4	3	-25



Each of the tribunals identified in the table above produces its own annual report. Further information about the nature of the work undertaken by each tribunal and information about the membership of each tribunal is detailed in these reports and on the website of each Tribunal.

## **4. Appointment to Welsh Tribunals**

All new members of the Welsh Tribunals are appointed following a selection process undertaken on behalf of the appointing authority by the Judicial Appointments Commission for England and Wales (“JAC”).

Under the statutory provisions currently in force, the Lord Chancellor makes all appointments to ALTW and MHRTW (except that legal members of the restricted patient panel are made by the Lord Chief Justice after consultation with the Lord Chancellor). The Lord Chancellor also appoints the legal members of SENTW and the legal members (although not the Judicial Lead) of RPTW.

The Lord Chief Justice has exercised the power of delegation given to him by the Constitutional Reform Act 2005 in that he has delegated to the President of Welsh Tribunals the power to appoint legal members of the restricted patient panel of MHRTW. That power of appointment was delegated to the President on 27 February 2018. The delegation will subsist until varied or revoked by the Lord Chief Justice.

The Welsh Ministers appoint the Judicial Lead of RPTW and the non-legal members of RPTW and SENTW. They are also responsible for appointing all the members of APW and the WLT. They are able to avail themselves of the services of JAC in arranging and administering competitions for these posts by reason of section 83 Government of Wales Act 2006 which permits the Ministers/Welsh Government to enter into formal contractual arrangements with agencies such as JAC.

Many consider it anomalous that there are different appointing authorities as described above and that a large number of appointments to tribunals which function exclusively in Wales are not made by a person or body exclusive to Wales. It is likely that the process of making appointments to the Welsh Tribunals will be the subject of a comprehensive review by the Law Commission of England and Wales when it begins work on a project concerning the Welsh Tribunals – as to which see section 12 below.

During the course of the year I have corresponded and met with Professor Noel Lloyd, the Commissioner within JAC who is responsible for Welsh matters and therefore most involved with appointments to Welsh Tribunals and all other judicial posts in Wales. Professor Lloyd is chair of the Welsh Matters Committee. On 12 July 2018 I attended the Committee so that I could air some concerns which had been expressed to me by judicial leads about the process of appointment to their tribunals. Following the meeting and exchanges of correspondence those concerns were resolved amicably.

Under section 62 of the Wales Act 2017 the President of Welsh Tribunals is empowered to appoint existing members of a particular Welsh Tribunal to serve as a member of other Welsh Tribunals (so-called “cross-ticketing”). ‘It is clear that one of the primary aims of this provision is to create a cohort of Welsh Tribunal judges who are capable of exercising their judicial skills in a variety of case types thereby promoting significant flexibility and efficiency in the system.

Persons appointed by the President of Welsh Tribunals pursuant to this provision do not undergo a selection exercise undertaken by the JAC. Rather, candidates for appointment are asked to express an interest by completing an appropriately worded form whereupon their suitability for appointment is assessed against well understood criteria which closely follow some of the criteria adopted by the JAC. Selection following “expressions of interest” has been used successfully in the court and tribunal system of England and Wales for some years and I am confident that this process of appointment can be used successfully in the Welsh Tribunals. It should be stressed, however, that it is anticipated that for the foreseeable future most appointments to the Welsh Tribunals will continue to be made following a selection process organised by the JAC.

Under section 63 of the Wales Act 2017 members of the tribunals of England and Wales, i.e. the non-devolved tribunals, and other judges serving in England and Wales may be appointed to serve as members of Welsh Tribunals. Such persons may be appointed by the President of Welsh Tribunals provided the prior consent of the Senior President of Tribunals of England and Wales or the Lord Chief Justice (as the case may be) has been obtained. As yet no process for appointments to the Welsh Tribunals under this statutory provision has been devised although some legal members of RPTW have been appointed to the equivalent tribunal in England.

## **5. Recruitment to the Welsh Tribunals**

Following the tragic death of Mr Andrew Morris, the President of RPTW, a recruitment exercise to find a successor was undertaken by JAC. Following the selection process Mr Richard Payne was appointed President. A similar process was undertaken to find a successor to Mr James Buxton upon his retirement as Chair of ALTW. Dr Christopher McNall was the successful candidate.

Since July 2017 the following appointments have also been made:

- ALTW Land Drainage.
- RPTW Professional Members.
- RPTW Vice President.
- MHRTW Medical Members.
- SENTW legal members.
- APW Legal Members.

Each of these appointments were made following a selection exercise organised by the JAC. All the exercises prompted applications from well qualified people. All the vacancies identified by each individual tribunal were filled.

Following consultations with the judicial leads of each tribunal I decided that I would begin the process of “cross ticketing”. Expressions of interest were invited from legal members of the Welsh Tribunals for appointments to ALTW, SENTW, and APW. In each case the number of vacancies advertised was filled. I was extremely heartened by the response to the exercise. All the applications received were meritorious.

## 6. Welsh Language Standards and Use of Welsh within the Welsh Tribunals

The Welsh Language (Wales) Measure 2011 established a legal framework under which duties were imposed upon public organisations to comply with specified standards of conduct relating to the Welsh language.

The Tribunals (excluding APW) have the following classes of standards imposed upon them:

- Service delivery standards.
- Policy making standards.
- Record keeping standards.

In September 2016 the Welsh Language Commissioner issued compliance notices in respect of standards to be adopted by ALTW, RPTW, MHRTW and SENTW. Each Tribunal was required to comply with the standards specified in the notices by March 2017. At that time (September 2016) APW was not subject to the standards although it is likely that it will be made subject to the standards in the near future.

Each Tribunal served with compliance notices challenged a number of the standards specified in the compliance notices on the basis that they were either unreasonable or disproportionate. Following a number of submissions and meetings with the Welsh Language Commissioner, the compliance notices were varied and the final versions with which the Tribunals must comply are published on each Tribunal's website.

All the Tribunals have members (lay and legal) who are capable of conducting proceedings in Welsh. Consequently, if a party to any proceedings in any Tribunal wishes to use Welsh for written communications with the Tribunal or for oral communications during the course of a hearing a suitably qualified panel can be constituted.

However, reports from the judicial leads of each Tribunal (apart from WLT) are to the effect that Welsh is used very infrequently. I am informed that the records kept by WTU demonstrate that during 2018-19 Welsh was used in 5 cases across all the Tribunals apart from WLT.

## 7. The Welsh Tribunals Unit

### a. Its structure and principal function

WTU comprises of a team of 34 staff who are employed by the Welsh Government. The team is split across Wales as follows: Cathay's Park Cardiff (22), Southgate House, Cardiff (3), Llandrindod Wells (8) and Llandudno Junction (1).

The head of WTU is Ms Rhian Davies-Rees.

Many of the persons employed in WTU are dedicated to particular tribunals. MHRTW is the largest tribunal by a very large margin so the majority of the members of staff are deployed to providing support for that Tribunal.

As is clear from Table 1 the work of the tribunals is growing. During the course of the year there have been suggestions from the judicial leads of some of the Tribunals that there are staff pressures/shortages and I have had discussions with the head of WTU about staff issues.

It is acknowledged by the Head of WTU that the reduced staffing levels have been extremely challenging during the last year. However, staff levels within the unit have improved, and I am informed they are now at a sustainable level.

The principal function of WTU is to provide all necessary support systems so as to ensure that the work of Welsh Tribunals is conducted speedily and efficiently and in accordance with the overall objective of disposing of cases justly.

I am pleased to report that Ms Davies-Rees and her team have responded to all my requests for support in effecting necessary changes with enthusiasm and efficiency. By way of examples, during 2017 while I was acting in a “non-statutory” capacity, WTU took all necessary steps to arrange for all legal and lay members of the Welsh Tribunals to have an email account on the secure system known as ejudiciary. This allowed all members of Welsh Tribunals, for the first time, to communicate with each other electronically by secure means. In 2018, WTU provided all the administrative support necessary to ensure that the first cross-ticketing selection exercise was a success. In 2017-18 WTU provided necessary expertise and support to judicial leads of the Tribunals so as to ensure compliance with new Welsh Language Standards and it is currently actively involved in seeking to ensure that the Welsh Tribunals comply with new extensive legal provisions relating to data protection (GDPR).

At the beginning of 2018 a number of priorities were set in conjunction with WTU and the Justice Policy Unit. They were to devise and distribute guidance on data protection, agree comprehensive and uniform procedures, where possible, for complaints made by users of the Tribunals, develop and implement procedures for cross-ticketing recruitment and to establish forums for collaborative working in relation to Tribunals. Very good progress has been made in relation to these priorities.

The issue of data protection is, however, a difficult one and the law is complex. There has been a need to obtain legal advice. To date this advice has been provided by a lawyer employed by Welsh Government but who has no dedicated role in respect of Welsh Tribunals.

In my meeting with the First Minister and Counsel General in February 2018 I raised the possibility with them of there being a lawyer with a dedicated role in respect of Welsh Tribunals and I followed it up in correspondence with the First Minister in April 2018. There was no opposition to my proposal from either the First Minister or Counsel General during the course of the meeting and there was no suggestion in the First Minister’s response to my correspondence that he had any objection in principle to a lawyer being appointed with a dedicated role in relation to Welsh Tribunals. To date, however, no appointment has been made. While I fully understand the budgetary and work pressures which exist, I would hope that an appointment can be made in the near future.

## **b. Its status**

HMCTS Wales is part of a larger organisation (HMCTS) which is an executive agency. As such it does not have its own legal identity separate from the Ministry of Justice but it operates under powers delegated to it by the Minister and Ministry. From my own experience as presiding judge for Wales, I know that HMCTS and HMCTS Wales operate with a degree of independence from the Ministry of Justice although they are both answerable to the Minister and funded, ultimately, by the Treasury.

I raised with the First Minister and Counsel General the need for WTU to have a similar status. This was not ruled out but the response I received was that this issue should be considered as part of a reform programme relating to many aspects of Welsh Tribunals which it was then anticipated would be undertaken by the Law Commission.

I am strongly of the view that WTU should enjoy a similar status to that of HMCTS Wales and that steps should be taken as soon as is reasonably practicable to achieve that goal. In my judgment we should not wait for the work of the Law Commission to be undertaken since the reform is obviously desirable.

As well as providing substantial advantages for the operation of the Welsh Tribunal system in terms of efficiency and direction, the conferring of executive agency status on WTU would provide an element of independence from Welsh Government which can only assist in reinforcing the constant need for the Welsh Tribunal system to be and to be seen to be independent of Welsh Government. Judicial independence is a cornerstone of our democratic system and there is always a need to be vigilant to ensure that it is maintained and seen to be maintained.

## **8. The Welsh Tribunals' Budget**

The budget for WTU is set by Welsh Government. In the financial year 2017-2018 the allocation to WTU was £4,068k. The allocation for the financial year 2018-2019 is £4,068k though an over spend is anticipated.

I understand that this increased spend is due mainly to the increase in caseload identified in Table 1 above.

The budget makes provision for both tribunal and administrative running costs.

In December 2018 a review of the Mental Health Legislation was completed. The potential impact of that review is as yet unknown. However early indications are that there will be a requirement for additional judicial and administrative resource to deal with the additional hearings.

## **9. The Welsh Tribunals' Estate**

There is no dedicated hearing centre for the exclusive use of all Welsh Tribunals.

MHRTW conducts its hearing at hospitals; those legal members who deal with applications on paper and do not need to attend a hospital do not have dedicated office facilities but carry out their work from home or at offices occupied by them by virtue of their profession. The great majority of the administrative staff that support MHRTW are based at Cathays Park.

SENTW, ALTW and APW are based at office premises in Llandrindod Wells which are owned by Welsh Government. Those premises contain a room which is suitable for some types of hearings but it is common for those tribunals to use other spaces, such as rooms within hotels and courtrooms which are part of the court estate administered by HMCTS Wales.

RPTW and WLT are based at premises rented by Welsh Government at Southgate House, Cardiff. Those premises have a room which can be used for hearings but RPTW, in particular, also uses other facilities especially when the dispute before the Tribunal relates to premises which are a significant distance from Cardiff.

During the course of 2018 Welsh Government indicated that it would not renew the lease on Southgate House when it expired in 2019. Alternative suitable premises have been identified on the outskirts of Newport.

The Welsh Government has also indicated that it is considering giving up its premises in Llandrindod Wells. One of the proposals for alternative premises is to utilise space available at the offices of Powys County Council which are also located in Llandrindod Wells. With suitable adaptations, there is no reason in principle why staff of WTU cannot be located at office premises within a building owned and or occupied by Powys County Council. However, it would not be appropriate to hold tribunal hearings in such a building. In my view, it would be extremely difficult to maintain the necessary appearance of impartiality in cases involving local authorities if hearings were to be conducted in a building in which (presumably) payment for hearing facilities is being made from the budget of the Welsh Tribunals to a local authority.

Local authorities are nearly always a party in cases before SENTW; councillors are brought before APW. Accordingly, the re-location to the offices of Powys CC will have the unfortunate consequence that all hearings of ALTW, SENTW and APW will have to take place at hotels, at courts operated by HMCTS Wales, or other facilities outside the control of the WTU. This will have cost implications for Welsh Tribunals and additional funding will need to be secured going forward.

## **10. Access to Justice**

As I have already explained, one of the duties imposed upon me under the Wales Act 2017 is to ensure that Welsh Tribunals are accessible. I take this responsibility very seriously. It is crucial that the Welsh Tribunals are able to operate flexibly and in a manner which permits the Tribunal users to present their cases in their best light. It is also very important that users are able to appear at Tribunals with as low a level of inconvenience and disruption to their everyday lives as possible. All hearings are arranged with that very much in mind.

Legal aid is available extensively in MHRTW and, as I have said, hearings take place, invariably, in the hospitals in which the patient is detained. Legal Aid may (depending upon a number of factors) also be available in SENTW. Invariably, hearings are conducted in locations which are convenient to the parties and, in particular, convenient to the parents of the child/children under consideration in a particular case.

Legal Aid is not available in the other Welsh Tribunals. As with SENTW, every effort is made to ensure that hearings are located conveniently for the parties.

The legal members of all Tribunals have developed the necessary skills to chair hearings in which there are litigants in person. I am assured by the judicial leads of each Tribunal (and I have no reason to doubt) that procedures are adopted at hearings which seek to ensure that a litigant in person is able to present his/her case in its best light.

I recognise that notwithstanding the best endeavours of Tribunal members and the support staff of WTU it is necessary for me to be vigilant in ensuring that access to the Tribunals is maintained and enhanced. To that end Ms Davies-Rees has regular meetings with senior civil servants in HMCTS (Wales) so as to share ideas for good practice and so that WTU is updated upon reform initiatives in HMCTS and, as I have said, I am member of the Tribunal Judiciary Executive Board where discussion of issues relating to access to justice is always high on the agenda.



# 11. Fees Paid to Members of the Tribunals

All legal and lay members of Welsh Tribunals are fee paid with the exception of the President of MHRTW who is paid a salary. Historically, the fees payable to members of each Tribunal were set by the Policy Division of Welsh Government responsible for the particular Tribunal. The result was that significant inconsistencies grew up across the Tribunals. These inconsistencies persist.

During my tenure these inconsistencies have been brought to my attention by judicial leads on their own behalf and on behalf of their members. The plain fact is that these inconsistencies are not justified and, if they continue they are likely to impact adversely upon the morale of those whose fee rate is too low. The implementation of cross ticketing across the tribunals will serve to highlight the inconsistencies. I have no doubt that there is an urgent need to appraise the current fee structure critically with a view to creating a fee structure which is fair and equitable.

As it happens the Senior Salaries Review Body (“SSRB”) has recently published a review into judicial salaries in the UK. As a consequence of that review, the Welsh Ministers authorised an increase in fees by 2%. However, the SSRB review also contains recommendations about the fee levels of legal members in the Welsh Tribunals. In my view that review provides at least a starting point upon which a fee structure which is fair and equitable to all legal members of Welsh Tribunals can be based.

My understanding is that WTU is already involved in work to ensure that a fair and equitable fee structure is put in place. I appreciate that it might be tempting for Welsh Government to await the reactions to the SSRB review of the UK government, the Scottish Government and the Northern Irish Government. In my view, however, that would be a mistake since the inconsistencies which are prevalent in Wales are by no means as acute in other jurisdictions.

The SSRB review does not deal with non-legal members. Nonetheless, it should prove possible to review inconsistencies in the fees paid to lay members and devise an appropriate structure.

# 12. Reform of the Welsh Tribunals

The Welsh Government and the Law Commission have agreed that the Commission will undertake a comprehensive review of the Tribunals and their support systems. The project will inevitably be wide ranging. Originally it was anticipated that work would begin in early 2019. Unfortunately, it is now clear that work on the project will not commence before autumn 2019.

I have no doubt that the work of the Law Commission will prove to be crucial in many respects and that, potentially, it will lay the ground for a devolved tribunal system of which Wales can be proud. However, I do not consider that incremental sensible reforms which does not require legislation to underpin it (such as the streamlining of practice and procedure, the implementation of procedures for cross-deployment between the English and Welsh Tribunals and the transformation of WTU into an executive agency) should be held up to await the outcome of the Commission’s work. If that were to occur it would be some years, in all likelihood, before meaningful reform begins. Indeed, it may very well be that pressing ahead with some reform in early course will assist the Law Commission in its work.

## 13. Conclusion

From the moment I became involved in Welsh Tribunals I have received the wholehearted support of the Judicial Leads of each Tribunal, the head and staff of WTU and various members of the Justice Policy team of Welsh Government with whom I have been in contact. When the need has arisen, I have received legal advice from Welsh Government lawyers upon which I have been happy to rely. I wish to record my thanks to all those persons.

We are at the commencement of a journey towards providing for Wales a tribunal system which is modern, flexible, capable of responding to the reasonable needs of all tribunal users and, most important of all, capable of delivering just decisions speedily and economically. Some of the essential building blocks are in place but, inevitably, there will be challenges ahead, especially if, as seems likely, the work of most of the Tribunals continues to grow.



**Sir Wyn Williams**  
**President of Welsh Tribunals**



# Agenda Item 3

## Statutory Instruments with Clear Reports 13 July 2020

### SL(5)568 – The Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) (Amendment) Regulations 2020

#### Procedure: Provisional Affirmative

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The Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) (Amendment) Regulations 2020 (“the Regulations”) amend the Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015 (“the 2015 Regulations”). The Regulations are made under sections 303 and 333(2A) of the Town and Country Planning Act 1990 (“1990 Act”). These powers enable the Welsh Ministers to make certain provision in connection with fees for planning and related applications. This is subject to section 333(3E)-(3F) of the 1990 Act, which requires a draft of the Regulations to be laid before and approved by resolution of the Senedd.

The aim of application fees is to recover the costs of local planning authorities in providing a development management service. The purpose of the Regulations is to address the existing deficit between the cost of determining applications and the income received for providing this service. The effect of the Regulations will be to retain the current and established fee structure set out in the 2015 Regulations, however, those fees will be increased, excluding fees for pre-application services, which will remain at current levels.

**Parent Act:** Town and Country Planning Act 1990

**Date Made:**

**Date Laid:** 24 June 2020

**Coming into force date:** 24 August 2020



# SL(5)572 – The Local Authorities (Coronavirus) (Meetings) (Wales) (Amendment) Regulations 2020

## Background and Purpose

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The Local Authorities (Coronavirus) (Meetings) (Wales) (Amendment) Regulations 2020 (“the Amendment Regulations”) amend the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020 (“the April 2020 Regulations”) to make further temporary provision in relation to local authority meetings and for public and press access to these meetings during the COVID-19 pandemic.

The April 2020 Regulations modified existing requirements in relation to local authority meetings (including meetings of fire and rescue authorities and National Park authorities) for a specified period to minimise risks to local authorities in the conduct of business and to ensure their members and officers can act in accordance with official health guidance. The April 2020 Regulations also sought to minimise the risk to the public and press by enabling or requiring a number of activities to be undertaken electronically rather than in person or through postal services.

These Amendment Regulations make further provision for these same purposes and make modifications which arise as a result of the April 2020 Regulations. The Amendment Regulations also amend regulation 9 of the April 2020 Regulations which concerns the flexibility for local authorities to hold certain meetings.

## Procedure

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Negative.

## Technical Scrutiny

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

## Merits Scrutiny

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

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

The Explanatory Memorandum explains that, given the serious threat arising from coronavirus, there has been no public consultation in relation to the Amendment Regulations. The Welsh Government has, though, had advisory consultations with representatives from local government, bodies representing local government in Wales and other bodies.

The Explanatory Memorandum also explains that a regulatory impact assessment has not been prepared further to the Welsh Ministers’ regulatory impact assessment code and the urgency required to make the Amendment Regulations.

## Implications arising from exiting the European Union

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None.



## Government Response

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A Welsh Government response is not required.

### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**6 July 2020**



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

Welsh Parliament

**Pack Page 60**

**Legislation, Justice and Constitution Committee**

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

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**2020 No. 653 (W. 150)**

**LOCAL GOVERNMENT,  
WALES**

**The Local Authorities  
(Coronavirus) (Meetings) (Wales)  
(Amendment) Regulations 2020**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make provision amending the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020 (S.I. 2020/442 (W. 100)) (“the April 2020 Regulations”).

Regulation 2 amends regulation 9 of the April 2020 Regulations, disapplying that regulation in relation to meetings of a kind described in new paragraph (3) of that regulation. This means that local authorities must hold those meetings within the time limit imposed by the enactment or instrument under which the meeting must be held.

Regulations 3 to 5 insert new provisions into Part 4 of the April 2020 Regulations. Regulation 3 provides for the modification of section 228 of the Local Government Act 1972 (c. 70). Under the modification, community councils are not required to make minutes of proceedings open to inspection, but instead are required to provide copies of minutes on request.

Regulation 4 provides for the modification of section 26(3) of the Public Audit (Wales) Act 2004 (c. 23), in relation to giving notice of certain meetings under that Act.

Regulation 5 adds a Schedule to the April 2020 Regulations, and makes other related amendments. The Schedule sets out modifications of various enactments which are related to the modifications made by Part 4 of those Regulations.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a

regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

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

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**2020 No. 653 (W. 150)**

**LOCAL GOVERNMENT,  
WALES**

**The Local Authorities  
(Coronavirus) (Meetings) (Wales)  
(Amendment) Regulations 2020**

<i>Made</i>	<i>26 June 2020</i>
<i>Laid before Senedd Cymru</i>	<i>30 June 2020</i>
<i>Coming into force</i>	<i>21 July 2020</i>

The Welsh Ministers make the following Regulations in exercise of the powers conferred upon them by section 78 of the Coronavirus Act 2020<sup>(1)</sup>.

**Title, commencement and interpretation**

1.—(1) The title of these Regulations is the Local Authorities (Coronavirus) (Meetings) (Wales) (Amendment) Regulations 2020.

(2) These Regulations come into force on 21 July 2020.

(3) In these Regulations, “the April 2020 Regulations” means the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020<sup>(2)</sup>.

**Disapplication of regulation 9 of the April 2020 Regulations in relation to certain meetings**

2. In the April 2020 Regulations, in regulation 9, after paragraph (2) insert—

“(3) Paragraph (1) does not apply in relation to—

(a) the requirement—

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(1) 2020 c. 7; *see* section 78(5)(b) for the definition of the “relevant national authority” in relation to local authorities in Wales.

(2) S.I. 2020/442 (W. 100).

- (i) under section 115 of the Local Government Finance Act 1988<sup>(1)</sup> to consider at a meeting a report under section 114 of that Act;
  - (ii) under section 115B of the Local Government Finance Act 1988 to consider at a meeting a report under section 114A of that Act;
  - (iii) under section 4 of the Local Government and Housing Act 1989<sup>(2)</sup> to consider at a meeting a report under that section by a head of paid service;
  - (iv) under section 5 of the Local Government and Housing Act 1989 to consider at a meeting a report under that section by a monitoring officer or a monitoring officer's deputy;
  - (v) under section 5A of the Local Government and Housing Act 1989 to consider at a meeting a report under that section by a monitoring officer or a monitoring officer's deputy;
  - (vi) under section 25 of the Public Audit (Wales) Act 2004<sup>(3)</sup> to consider at a meeting a report under section 22 of that Act, or a recommendation within section 25(2) of that Act;
- (b) any requirement to hold a meeting as soon as practicable (however that requirement is expressed)."

### **Minutes of community council meetings**

**3.** In the April 2020 Regulations, after regulation 23 insert—

“**24.** Section 228 of the 1972 Act<sup>(4)</sup> (inspection of documents) is to be read in relation to a meeting of a local authority to which that section applies (by virtue of any enactment), held before the end of 30 April 2021, as if—

- (a) before subsection (1) there were inserted—

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(1) 1988 c. 41.

(2) 1989 c. 42.

(3) 2004 c. 23.

(4) 1972 c. 70. Subsection (1) was amended by section 3 of, and Schedule 2 to, the Local Government (Access to Information) Act 1985 (c. 43).

“(A1) A copy of the minutes of proceedings of a community council must, so far as reasonably practicable, be supplied on request to a local government elector for the area of the council; and a reasonable fee may be charged for providing a copy of the minutes.”;

- (b) in subsection (1), “or community” were omitted;
- (c) in subsection (6), before “this section” there were inserted “any of subsections (1) to (5) of”.

#### **Notice of certain meetings under the Public Audit (Wales) Act 2004**

4. In the April 2020 Regulations, after regulation 24 (as inserted by regulation 3 of these Regulations) insert—

“**25.** Section 26 of the Public Audit (Wales) Act 2004 (publicity for certain meetings) is to be read in relation to a meeting of a local authority held, before the end of 30 April 2021, in accordance with section 25(4) of that Act as if in subsection (3)(a) for “and place of the meeting” there were substituted “of the meeting and, if the meeting is to be open to the public, how to access the meeting”.

#### **Modifications of various enactments related to Part 4 of the April 2020 Regulations**

5.—(1) In the April 2020 Regulations—

- (a) in regulation 19, for “regulation 22” substitute “regulations 22 and 26, and paragraphs 1 and 2(c) of the Schedule.”;
- (b) after regulation 25 (as inserted by regulation 4 of these Regulations) insert—

“**26.** The Schedule contains modifications of various enactments, which relate to this Part.”

(2) At the end of the April 2020 Regulations insert—

#### **“SCHEDULE** Regulation 26

#### **Further modifications related to Part 4**

**1.** In the Local Government (Miscellaneous Provisions) Act 1976(1), section 41 is to be read in relation to a local authority to which that

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(1) 1976 c. 57.



section applies (by virtue of any enactment) as if, in subsection (1)(b)—

- (a) for “signed in accordance” there were substituted “signed or authenticated in accordance”;
- (b) after “when the minutes were signed” there were inserted “or authenticated”.

**2.** The Standards Committees (Wales) Regulations 2001<sup>(1)</sup> are to be read in relation to a meeting of a standards committee (within the meaning of those Regulations), held before the end of 30 April 2021, as if—

- (a) in regulation 26—
  - (i) in paragraph (1), sub-paragraph (d) were omitted;
  - (ii) in paragraph (2A), in sub-paragraph (a), for “to 100D” there were substituted “and 100C”<sup>(2)</sup>;
  - (iii) paragraph (4) were omitted;

- (b) in regulation 27, for paragraphs (1) to (3) there were substituted—

“(1A) Where—

- (a) a local authority is required by virtue of the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020 to publish on its website a notice or other document relating to a meeting of its standards committee, and

- (b) one or more of the community councils situated in the local authority’s area have a website,

the local authority may, if it thinks fit, provide for the notice or other document to be published on the websites of those community councils (as well as on its own website).”;

- (c) in regulation 28, after paragraph (1) there were inserted—

“(1A) But minutes of the proceedings of a standards committee occurring after 21 July 2020 (which is the date on which the Local Authorities (Coronavirus) (Meetings) (Wales) (Amendment) Regulations 2020 came into force) and

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(1) S.I. 2001/2283 (W. 172).

(2) Paragraph (2A) was inserted by regulation 2(16) of the Local Government (Standards Committees, Investigations, Dispensations and Referral) (Wales) (Amendment) Regulations 2016 (S.I. 2016/85) (W. 39).

before 1 May 2021 may instead be drawn up in a document, and that document must be authenticated by the chairperson of the committee.”

3. The Public Audit (Wales) Act 2004 is to be read in relation to a meeting of a local authority held, before the end of 30 April 2021, in accordance with section 24 or (as the case may be) 25 of that Act as if—

(a) in section 24—

(i) in subsection (5), in paragraph (a), for “supplied under that section (supply of agenda etc. to newspapers)” there were substituted “published under that provision”;

(ii) in subsection (5), in paragraph (b)(i), for “open to inspection” there were substituted “published”;

(iii) in subsection (5), sub-paragraph (ii) of paragraph (b), and the “or” which precedes it, were omitted;

(iv) in subsection (7), for “100C(1)(d) of that Act (public access to copies of reports for 6 years after meeting)” there were substituted “100C(2)(d) and (6)(d) of that Act”;

(b) in section 26—

(i) for subsection (6) there were substituted—

“(6) But if section 100C of the Local Government Act 1972 applies in relation to the meeting, the approved summary must indicate the documents in relation to the meeting which have been published electronically under that section.”;

(ii) after subsection (6) there were inserted—

“(6A) Subsection (6B) applies in relation to a meeting which is not open to the public other than by virtue of—

(a) section 1(2) of the Public Bodies (Admission to Meetings) Act 1960<sup>(1)</sup>, or

(b) section 100A(2) or (4) of the Local Government Act 1972.

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(1) 1960 c. 67.

(6B) The reference in subsection (5) to a decision made at a meeting while the public were excluded includes a reference to a decision made while, in the proper officer's opinion, it is likely the meeting would not have been open to the public by virtue of—

- (a) section 1(2) of the Public Bodies (Admission to Meetings) Act 1960, had section 1(1) of that Act applied;
- (b) section 100A(2) or (4) of the Local Government Act 1972, had section 100A(1) of that Act applied.””

*Julie James*  
Minister for Housing and Local Government, one of  
the Welsh Ministers  
26 June 2020

## **Explanatory Memorandum to the Local Authorities (Coronavirus) (Meetings) (Wales) (Amendment) Regulations 2020**

This Explanatory Memorandum has been prepared by the Department for Local Government and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Minister's Declaration**

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

Julie James MS

Minister for Housing and Local Government

30 June 2020

## **PART 1**

### **1. Description**

The Local Authorities (Coronavirus) (Meetings) (Wales) (Amendment) Regulations 2020 (“the Amendment Regulations”) amend the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020 (S.I. 2020/442 (W. 100)) (“the April 2020 Regulations”) to make further temporary provision in relation to local authority meetings and for public and press access to these meetings during the COVID-19 pandemic. The Amendment Regulations also make modifications which arise as a result of the April Regulations.

The April 2020 Regulations provide flexibility to enable local authorities (including local authority executives) to operate safely, effectively and lawfully, while retaining the principles of openness and accountability to the public by, for example, enabling meetings to be conducted on the basis of full or partial remote attendance and by making provision about the electronic publishing of certain documents.

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

None.

### **3. Legislative background**

The Amendment Regulations are made under section 78 of the Coronavirus Act 2020 (“the 2020 Act”) and make certain amendments to the April 2020 Regulations which were made by the Welsh Ministers on 21 April 2020 and came into force on 22 April 2020.

Section 78(1) of the 2020 Act enables the relevant national authority to make provision by regulations relating to local authority meetings. Pursuant to section 78(5)(b), “relevant national authority” means the Welsh Ministers in relation to local authorities in Wales. Section 78(4) enables the Welsh Ministers to disapply or modify any enactment or subordinate legislation and to make consequential and supplementary provision.

Section 78(13) of the 2020 Act provides that regulations made under section 78 of the 2020 Act are subject to the negative resolution procedure.

#### **4. Purpose and intended effect of the legislation**

The April 2020 Regulations modify existing requirements in relation to local authority meetings (including meetings of fire and rescue authorities and National Park authorities) for a specified period, to minimise risks to local authorities in the conduct of business and to ensure their members and officers can act in accordance with official health guidance. The April 2020 Regulations also sought to minimise the risk to the public and press by enabling or requiring a number of activities to be undertaken electronically rather than in person or through postal services.

The Amendment Regulations make further provision for these same purposes and make modifications which arise as a result of the April 2020 Regulations. The Amendment Regulations also amend regulation 9 which concerns the flexibility for local authorities to hold certain meetings.

The Amendment Regulations insert new provision in the April Regulations. Accordingly, the terms defined in regulation 2 of the April 2020 Regulations apply to the Amendment Regulations.

##### Regulation 2 of the Amendment Regulations

Regulation 2 of the Amendment Regulations amends regulation 9 of the April 2020 Regulations to insert a new paragraph (3) in that regulation. Regulation 9 of the April 2020 Regulations made provision to provide flexibility for local authorities to hold meetings which, (by virtue of an enactment or other instrument) are required to be held before 1 May 2021 (other than the annual meetings listed in paragraph (2) of that regulation) on such day and time before 1 May 2021 as they may determine.

The Welsh Ministers have concluded that such flexibility should not apply to meetings of local authorities (including where appropriate local authority executives) which are required to be held within a specified period after copies of reports are sent to authorities (or to members, as the case may be). The

Welsh Ministers consider that the subject matter of such meetings is so grave that if reports are sent, local authorities should not be able to defer the required action until such time before 1 May 2021 as they might determine.

Accordingly, regulation 2 of the Amendment Regulations dis-applies regulation 9(1) of the April 2020 Regulations for meetings required to take place under the provisions listed in the new paragraph (3)(a).

The new paragraph (3)(b) dis-applies regulation 9 in respect of any statutory requirement to hold a meeting by a local authority “as soon as practicable (however that requirement is expressed)”. This covers requirements to meet “as soon as practicable”, “as soon as reasonably practicable”, “as soon as possible” and other phrases to that effect.

### Regulations 3 to 5 of the Amendment Regulations

Regulations 3 to 5 insert new provisions into Part 4 of the April Regulations. Regulation 5 also adds a new Schedule to the April Regulations.

Regulation 3 provides for the modification of section 228 of the Local Government Act 1972 in relation to meetings held before the end of 30 April 2021, by inserting new regulation 24 in the April Regulations. Under the modification, community councils are not required to make minutes of proceedings open to inspection, but instead are required to provide copies of minutes on request. A community council may charge a reasonable fee for providing such copies. Community councils are already required to publish electronically the minutes of the proceedings of council meetings and (in so far as is reasonably practicable) any documents which are referred to in the minutes by section 55(1)(c) of the Local Government (Democracy) (Wales) Act 2013.

Regulation 4 provides for the modification of section 26(3)(a) of the Public Audit (Wales) Act 2004 by inserting a new regulation 25 in the April Regulations, so the notice a local authority is required to give for a meeting to be held to consider the Auditor General for Wales’s report or recommendation, under section 25(4) of the Public Audit (Wales) Act 2004, accords with the fact that during the pandemic such a meeting may be taking place remotely, with no single venue.

Regulation 5 adds a Schedule to the April 2020 Regulations, and makes other related technical amendments.

## Schedule to the April 2020 Regulations

The Amendment Regulations insert a new Schedule to the April 2020 Regulations. The Schedule sets out modifications of various enactments which arise as a result of the modifications made by Part 4 of the April 2020 Regulations.

Paragraph 1 of the new Schedule modifies section 41(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976. Section 41 concerns the use, as evidence, of “signed” minutes of the proceedings at local authority meetings. The modification provides that the wording of section 41 is consistent with the fact that the April 2020 Regulations provide for the minutes of local authority meetings to be “signed *or authenticated*”.

Paragraph 2 of the new Schedule makes certain modifications to regulations 26, 27 and 28 of the Standards Committees (Wales) Regulations 2001.

The modification to regulation 26 is technical, taking account of the modifications made in the April 2020 Regulations to the provisions referred to in regulation 26.

The modifications to regulation 27 concern the publication of notices and other documents related to a meeting of a principal council’s standards committee on the website of the community councils in the principal council’s area. The current provision (paragraphs (1) to (3) of regulation 27) provides that the principal council may provide for such notices and documents to be posted and made available for inspection at the offices of the community councils in question, circumstances which are not practicable in the current pandemic.

The modifications to regulation 28 bring the requirements in relation to the drawing up and authentication of minutes of standards committee meetings occurring after 21 July 2020 and before 1 May 2021 into line with those for other local authority meetings as provided for in the April 2020 Regulations.

Paragraph 3 of the new Schedule makes certain modifications to sections 24 and 26 of the Public Audit (Wales) Act 2004 so that the arrangements a local authority must make for publicising, holding and reporting a meeting which must be held to consider a report under section 22 of the Act (a Public Interest Report) are consistent with the arrangements provided for in the April 2020 Regulations.



## **5. Consultation**

The Amendment Regulations mainly make modifications which arise as a result of the April 2020 Regulations, and is consistent with, that made in the April 2020 Regulations. Given the serious threat arising from coronavirus there has been no public consultation in relation to these Regulations.

The Welsh Government has had advisory consultations with representatives from local authorities, bodies representing local government in Wales and other bodies.

## **6. Regulatory Impact Assessment (RIA)**

An RIA has not been prepared further to the Welsh Ministers' regulatory impact assessment code for subordinate legislation and the urgency required to make these Regulations.



Llywodraeth Cymru  
Welsh Government

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## **WRITTEN STATEMENT BY THE WELSH GOVERNMENT**

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**TITLE**            **The Local Authorities (Coronavirus) (Meetings) (Wales) (Amendment) Regulations 2020**

**DATE**            **30 June 2020**

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

I have today laid in the Senedd, the Local Authorities (Coronavirus) (Meetings) (Amendment) (Wales) Regulations 2020 (“the Amendment Regulations”) which amend the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020, which came into force on 22 April 2020 (“the April 2020 Regulations”).

Link below:

<https://senedd.wales/laid%20documents/sub-ld13268/sub-ld13268%20-e.pdf>

The April 2020 Regulations make temporary provision to provide flexibility for local authorities (including local authority executives) to meet safely, effectively and lawfully during the Covid-19 pandemic. The April 2020 Regulations enable local authority meetings to be conducted on the basis of full or partial remote attendance for participants, while retaining the principles of openness and accountability by requiring the electronic publication of documents related to a meeting.

For the most part, the amending provisions address minor and technical matters which relate to the April 2020 Regulations. They include provision, for example, to ensure that the notice to be given ahead of meetings to consider certain reports under the Public Audit (Wales) Act 2004 and provisions relating to the minutes of meetings of standards committees are consistent with the arrangements introduced by the April 2020 Regulations.

The April 2020 Regulations provide flexibility for local authorities to hold meetings which (by virtue of an enactment or other instrument) are required to be held before 1 May 2021 (other than certain annual meetings) on such day and time before 1 May 2021 as the authorities may determine. However, there are a small number of meetings which are required by statute to be held within a specified period after certain reports are sent to authorities (or to members, as the case may be). On reflection, I have concluded that because the subject matter of such meetings is so grave, it is not in the public interest for the flexibility provided by the April 2020 Regulations to apply to the meetings required to be held under the

provisions listed in regulation 2 of the Amendment Regulations.

It is vitally important that the institutions of local democracy continue to function during this period and elected members and local people have the opportunity to scrutinise and challenge decisions taken by local authorities. Allowing time for members and officers to become acquainted with new equipment and new procedures, I am pleased to see that many local authorities all over Wales have started meeting again.

The response to the April 2020 Regulations was positive and I and my officials have had requests from various quarters to make many of the changes permanent. I will consider such changes very carefully before making final decisions, both in terms of the effect on the conduct of local authority business and the impacts on accessibility.

In the meantime, I urge those local authorities which have been more cautious to take advantage of the new flexibilities and get back to business as soon as possible. I will continue to monitor progress and developments.

# SL(5)570 – Maintained Schools (Amendment of Paragraph 7 of Schedule 17 to the Coronavirus Act 2020) (Wales) Regulations 2020

## Background and Purpose

These Regulations amend paragraph 7(5) of Schedule 17 to the Coronavirus Act 2020 (“the 2020 Act”) so as to add Regulations 3 and 4 of the Changing of School Session Times (Wales) Regulations 2009 to the list of enactments that can be disapplied by the Welsh Ministers for a specified period by notice.

Regulations 3 and 4 of the Changing of School Session Times (Wales) Regulations 2009 set out the procedure that must be followed by a local authority or a governing body of a community, voluntary controlled or community special school or a maintained nursery school to change its school session times.

These Regulations also amend the table in paragraph 7(6) of Schedule 17 to the 2020 Act so as to add the ability to modify certain sections of the School Organisation Code.

The related notices - the *Modification of School Organisation Code (Wales) Notice 2020* and the *Disapplication of Changing School Session Times Requirements (Wales) Notice 2020* were issued on 25 June 2020 and published on the Welsh Government’s website.

## Procedure

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

## Technical Scrutiny

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

### **Standing Order 21.2 (vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements**

1. The procedural headnote refers to section 94(4)(b) of, and paragraph 8 of Schedule 17 to, the 2020 Act being the provisions which prescribe the procedure which these Regulations must follow. However, the Explanatory Memorandum provides:

*“These Regulations are made in accordance with the procedure set out in paragraph 8 of Schedule 17 to the 2020 Act.*

*As set out in paragraph 8 of Schedule 17, the Regulations are made without a draft having been laid and approved by the Senedd.”*

As these Regulations are made under paragraph 8 of Schedule 17 to the 2020 Act, paragraph 8(4) prescribes the relevant procedure to be followed. Section 94(4)(b) does not appear to be relevant.

2. The preamble to these Regulations cites the enabling powers as section 92 of, and paragraph 8 of Schedule 17 to, the 2020 Act.



Paragraph 8 of Schedule 17 to the 2020 Act gives the Welsh Ministers the power to make regulations which amend the list in paragraph 7(5) or the table in paragraph 7(6) of the 2020 Act so as to add an enactment relating (directly or indirectly) to children, education or training, or to vary or remove an entry.

Section 92 does not appear to be a relevant enabling power for the purposes of these Regulations.

3. The School Organisation Code (“the Code”) is made by the Welsh Ministers under sections 38 and 39 of the School Standards and Organisation (Wales) Act 2013. These Regulations contain references which cite the Code as being made under “sections 38” [*emphasis added*] rather than under “sections 38 and 39”. The incomplete references occur at the following places:

- (a) Regulation 2(3), page 4, line 19
- (b) Regulation 2(3), page 4, line 36
- (c) Regulation 2(3), page 5, line 5
- (d) Regulation 4(1), page 6, line 4

4. In Regulation 3(3) the word “before” has been omitted after the words “without a break,”.

5. In regulation 4(2) a “relevant notice” for the purpose of that regulation is defined as a notice under paragraph 7 of Schedule 17 to the 2020 Act. The Committee questions whether the definition should refer specifically to paragraph 7(6), as paragraph 7(6) permits modifications to be made to paragraphs 3.4, 3.5 or 4.1 of the Code by way of a notice.

Making reference to paragraph 7(6) rather than a general reference to paragraph 7 would be consistent with the approach taken in regulations 3(5) and 3(6), where the definitions refer to notices made under paragraph 7(5)(n) (rather than paragraph 7) of Schedule 17 to the 2020 Act.

## Merits Scrutiny

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

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

1. We note that no formal consultation has taken place in relation to these Regulations. The Explanatory Memorandum states that this is in light of the unprecedented situation created by the Coronavirus pandemic and the challenging timescales within which they need to be made.

It is noted that regular engagement has taken place with key representative bodies such as ADEW and local authority representatives, to help inform the policy proposals around legislative requirements that are going to be modified or disapplied. These discussions have helped to inform the provisions that are included within these regulations.

The Explanatory Memorandum also notes that there has been no regulatory impact assessment completed in relation to these Regulations as there are no associated costs or benefits. These Regulations only add areas to the list of enactments in paragraphs 7(5) and 7(6) of Schedule 17 to the 2020 Act in respect of which the Welsh Ministers can make notices to disapply statutory requirements.



In respect of notices that are made, the Explanatory Memorandum provides that the impact of these will be detailed in an integrated impact assessment.

## Implications arising from exiting the European Union

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

## Government Response

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A Welsh Government response is required in relation to the technical reporting points raised.

### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**6 July 2020**



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

Welsh Parliament

**Legislation, Justice and Constitution Committee**

Pack Page 79

*Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 94(4)(b) of, and paragraph 8 of Schedule 17 to, the Coronavirus Act 2020 (c.7), for approval by resolution of Senedd Cymru within 40 days beginning with the day on which the instrument is made.*

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

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**2020 No. 640 (W. 147)**

**EDUCATION, WALES**

**The Maintained Schools  
(Amendment of paragraph 7 of  
Schedule 17 to the Coronavirus Act  
2020) (Wales) Regulations 2020**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

Paragraph 7(5) of Schedule 17 to the Coronavirus Act 2020 (“the 2020 Act”) sets out the enactments that the Welsh Ministers may, by notice under paragraph 7(1)(a) of that Schedule, disapply for a period specified in the notice.

Regulation 2(2) amends the list in paragraph 7(5) to add regulations 3 and 4 of the Changing of School Session Times (Wales) Regulations 2009 (S.I. 2009/572 (W. 54)). These provisions set out procedures that must be followed by local authorities and governing bodies of maintained schools in order to change school session times.

Regulation 3 makes transitional provision so that any change to school sessions times implemented during the period when a notice has effect is reversed after the notice ceases to have effect.

The table in paragraph 7(6) of Schedule 17 to the 2020 Act sets out the enactments that the Welsh Ministers may, by notice under paragraph 7(1)(b) of that Schedule, modify for a period specified in the notice and sets out the manner in which they may be modified.

Regulation 2(3) amends the table to add new entries for provisions of the School Organisation Code made by the Welsh Ministers under sections 38 and 39 of the

School Standards and Organisation (Wales) Act 2013 (“the Code”) relating to consultation on school organisation proposals, setting out the modifications that may be made to those provisions by notice under paragraph 7(1)(b) of Schedule 17 to the 2020 Act.

Regulation 4 makes transitional provision for a modification made by a notice relating to the Code to continue to have effect after the notice expires in respect of a consultation under the Code that is open at any time during the period specified in the notice.



*Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 94(4)(b) of, and paragraph 8 of Schedule 17 to, the Coronavirus Act 2020 (c.7), for approval by resolution of Senedd Cymru within 40 days beginning with the day on which the instrument is made.*

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

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**2020 No. 640 (W. 147)**

**EDUCATION, WALES**

**The Maintained Schools  
(Amendment of paragraph 7 of  
Schedule 17 to the Coronavirus Act  
2020) (Wales) Regulations 2020**

*Made at 10.53 a.m. on 25 June 2020*

*Coming into force  
at 12.00 p.m. on 25 June  
2020*

*Laid before Senedd  
Cymru at 2.00 p.m on 25 June 2020*

The Welsh Ministers make the following Regulations in exercise of their powers under section 92 of, and paragraph 8 of Schedule 17 to, the Coronavirus Act 2020(1).

**Title and coming into force**

**1.**—(1) The title of these Regulations is the Maintained Schools (Amendment of paragraph 7 of Schedule 17 to the Coronavirus Act 2020) (Wales) Regulations 2020.

(2) These Regulations come into force at 12.00 p.m. on 25 June 2020.

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(1) 2020 c. 7.

**Amendment of Schedule 17 to the Coronavirus Act 2020**

2.—(1) Schedule 17 to the Coronavirus Act 2020 is amended as follows.

(2) In paragraph 7(5), after paragraph (m), insert—

“(n) regulations 3 and 4 of the Changing of School Session Times (Wales) Regulations 2009 (S.I. 2009/572 (W. 54))”.

(3) In paragraph 7(6), in the table, after the entry for the Child Minding and Day Care (Wales) Regulations 2010(1), insert—

“School Organisation Code made by the Welsh Ministers under sections 38 of the School Standards and Organisation (Wales) Act 2013 (Statutory Code Document Number 011/18)	Paragraph 3.4 (consultation document)	Paragraph 3.4 has effect as if the references to “school day” include a day on which there would have been a school session but for any restriction on the attendance of pupils at the school in connection with the prevalence of coronavirus.
School Organisation Code made by the Welsh Ministers under sections 38 of the School Standards and Organisation (Wales) Act 2013 (Statutory Code Document Number 011/18)	Paragraph 3.5 (consultation with children and young people)	Any duty imposed on a person by paragraph 3.5 is to be treated as discharged if the person has used reasonable endeavours to discharge the duty.
School Organisation	Paragraph 4.1 (manner of	Paragraph 4.1 has effect as

(1) S.I. 2010/2574 (W. 214).

<p>Code made by the Welsh Ministers under sections 38 of the School Standards and Organisation (Wales) Act 2013 (Statutory Code Document Number 011/18)</p>	<p>publication)</p>	<p>if the references to “school day” include a day on which there would have been a school session but for any restriction on the attendance of pupils at the school in connection with the prevalence of coronavirus.”</p>
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**Transitional provision: Changing school session times**

3.—(1) This regulation applies where a relevant notice has expired.

(2) Any change to the session times of a school implemented during the period when the relevant notice or a preceding notice has effect ceases to have effect.

(3) The governing body of the school must ensure that the session times of the school revert to the session times that were required to be implemented immediately before the notice was given or, where the notice is the last of a series of such notices that have effect consecutively without a break, the only or first preceding notice was given (as the case may be).

(4) Paragraph (3) does not affect the powers of the governing body of a school or a local authority to change school session times in accordance with the Changing of School Session Times (Wales) Regulations 2009(1) (“the 2009 Regulations”).

(5) In this regulation, “relevant notice” means a notice made under paragraph 7(5)(n) of Schedule 17 to the Coronavirus Act 2020 (disapplication of the 2009 Regulations) or, in the case of series of such notices that have effect consecutively without a break, the last notice in the series.

(6) In this regulation, “preceding notice” means a notice made under paragraph 7(5)(n) of Schedule 17 to the Coronavirus Act 2020 that forms part of a series of such notices including the relevant notice that have effect consecutively without a break.

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(1) S.I. 2009/572 (W. 54).

**Transitional provision: School Organisation Code**

4.—(1) Where a consultation or an objection period under the School Organisation Code made by the Welsh Ministers under section 38 of the School Standards and Organisation (Wales) Act 2013<sup>(1)</sup> (“the Code”) is open at any time during the period specified in a relevant notice, the modification of the Code made by the notice continues to have effect in relation to the consultation and the objection period after the notice has expired.

(2) In this regulation, “a relevant notice” means a notice under paragraph 7 of Schedule 17 to the Coronavirus Act 2020 modifying paragraph 3.4, 3.5 or 4.1 of the Code in the manner described in paragraph 7(6) of Schedule 17 to the Coronavirus Act 2020.

*Kirsty Williams*

Minister for Education, one of the Welsh Ministers

At 10.53 a.m. on 25 June 2020

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(1) Statutory Code Document Number 011/18

## **Explanatory Memorandum to the Maintained Schools (Amendment of Paragraph 7 of Schedule 17 to the Coronavirus Act 2020) (Wales) Regulations 2020**

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

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Maintained Schools (Amendment of Paragraph 7 of Schedule 17 to the Coronavirus Act 2020) (Wales) Regulations 2020.

Kirsty Williams  
Minister for Education, one of the Welsh Ministers  
25 June 2020

## **PART 1**

### **1. Description**

These regulations amend paragraph 7(5) of Schedule 17 to the Coronavirus Act 2020 (“the 2020 Act”) so as to add Regulations 3 and 4 of The Changing of School Session Times (Wales) Regulations 2009 to the list of enactments that can be disapplied by the Welsh Ministers for a specified period by notice.

Regulations 3 and 4 of the Changing of School Session Times (Wales) Regulations 2009 set out the procedure to be taken by a local authority or a governing body of a community, voluntary controlled or community special school or a maintained nursery school to change its school session times.

These regulations also amend the table in paragraph 7(6) of Schedule 17 to the 2020 Act so as to add the ability to modify certain sections of the School Organisation Code.<sup>1</sup>

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

These Regulations are made in accordance with the procedure set out in paragraph 8 of Schedule 17 to the 2020 Act.

As set out in paragraph 8 of Schedule 17, the Regulations are made without a draft having been laid and approved by the Senedd. It is the opinion of the Welsh Ministers that, by reason of urgency, it is necessary to make the Regulations without a draft being so laid and approved.

These Regulations are being made under the made affirmative procedure.

The Regulations will be laid before the Senedd as soon as reasonably practicable after being made. The Regulations cease to have effect at the end of the period of 40 days (excluding recess) beginning with the day on which the instrument is made unless, during that period, the Regulations are approved by the Senedd.

### **3. Legislative background**

Paragraph 8 of Schedule 17 to the 2020 Act gives the Welsh Ministers the power to make regulations to add provisions relating to children, education or training to the list of enactments in paragraph 7(5) and the table in paragraph 7(6) of the 2020 Act that can be disapplied or modified by the Welsh Ministers for a specified period by notice.

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<sup>1</sup> The School Standards and Organisation (Wales) Act 2013 requires that the Welsh Ministers issue a School Organisation Code

## The Changing of School Session Times (Wales) Regulations 2009 ('the 2009 Regulations')

Section 32C of the Education Act 2002 sets out that the governing body is responsible for determining the times of school sessions. However where a local authority considers that a change in any maintained school's session times is necessary or expedient to promote the use of sustainable modes of travel or to improve the efficiency or effectiveness of its travel arrangements, it can determine the time the school's first session begins and its second session ends (or if there is only one session, its start and end).

The 2009 Regulations made under Section 32C(5) of the Education Act 2002 set out the procedure that a local authority or governing body of a community, voluntary controlled, community special school or maintained nursery school must take if they wish to change school session times.

Regulation 3 of the 2009 Regulations sets out the procedures to be taken by the local authority when it proposes to change the session times of a community school, voluntary controlled school, community special school, maintained nursery school, foundation school, voluntary aided school or foundation special school. These procedures include consulting with the governing body, head teacher and other staff at the school, and holding a meeting with the parents of pupils at the school. The authority must give at least three months' notice of the change, and that change can only take effect at the beginning of the school year. A local authority can only give a notice if they think it is necessary or expedient in order to—

- (a) promote the use of sustainable modes of travel within the meaning of section 11 of the [Learner Travel \(Wales\) Measure 2008 \(nawm 2\)](#), or
- (b) improve the effectiveness or efficiency of travel arrangements made, or to be made, by the authority under that Measure.

Regulation 4 of the 2009 Regulations sets out the procedures to be taken by the governing body when it proposes to change the session times of a community, voluntary controlled, community special school or maintained nursery school. This regulation does not apply to foundation, voluntary aided and foundation special schools. These procedures include consulting with the local authority and school staff and holding a meeting with the parents of pupils at the school before making a change. If the change is to the time that a school session begins in the morning or ends in the afternoon, the governing body must give at least three months' notice of the change and the change must only take effect at the beginning of a school year. Otherwise it must give at least six weeks' notice, and the change can only take effect at the beginning of a school term.

## The School Organisation Code

The School Organisation Code is made under sections 38 and 39 of the School Standards and Organisation (Wales) Act 2013. It imposes requirements in accordance with which relevant bodies (the Welsh Ministers, local authorities, governing bodies and other promoters) must act.

Section 48 of the 2013 Act requires that before proposals are published they must be subject to consultation. Paragraph 3.4 of the Code stipulates that the consultation document must be published on a school day of the school or schools subject to the proposal and consultees must be given at least 42 days to respond to the document, with at least 20 of these being school days. A school day<sup>2</sup> is any day on which there is a school session at the school. A school session can be a morning or afternoon session, so a school day is any day when the school meets for all or part of the day.

Paragraph 3.5 of the Code states that proposers must make suitable arrangements to consult with pupils of any affected school. As a minimum, this must include consultation with the school councils of the affected schools. Governing bodies must help facilitate this aspect of the consultation. Given the current restrictions on gatherings of more than 2 people and social distancing measures, school councils may be unable to meet.

If having considered the consultation report the proposer decides to proceed with the proposal, they must publish a statutory notice and provide a 28 day period in which anyone can object. Paragraph 4.1 of the Code states that the statutory notice must be published on a school day and that the objection period must include 15 school days (in addition to the day on which it is published).

#### **4. Purpose and intended effect of the legislation**

On 3 June, the Minister for Education announced that schools would increase operations from the 29 June, so all learners have the opportunity to 'check in, catch up and prepare for summer and September'.

##### The changing of school session times

Many schools are likely to be implementing staggered start times and end times and lunch breaks to ensure social distancing.

The disapplication of the procedure in regulations 3 and 4 of the 2009 Regulations will allow schools to respond quickly so as to structure their day to best meet the needs of their pupils and assist with social distancing. The removal of the requirement for changes to take place at the start of a school term or a school year will enable schools and local authorities to act swiftly to put these temporary changes in place in time for the new phase for schools on 29 June.

The regulations also include transitional provisions relating to the changing of school session times. These ensure that any change to the session times implemented whilst a notice has effect will end once the notice ceases to have effect. The transitional provisions also require the governing body to revert to the times that were required to be implemented before the notice has effect. This is to ensure that any changes to session times made without complying with the procedure in regulations 3 and 4 of the 2009 Regulations are not permanent.

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<sup>2</sup> Section 579 of the Education Act 1996



## The School Organisation Code

The regulations add additional enactments to the modification table in Schedule 17 so that a notice issued can temporarily amend paragraphs 3.4 of the Code (consultation document) and 4.1 (objection period) as if the references to “school day” include a day on which there would have been a school session but for any restriction on the attendance of pupils at the school in connection with the prevalence of coronavirus.

The regulations also provide for a modification such that a notice can temporarily amend paragraph 3.5 (consultation with children and young people). Any duty imposed on a person by paragraph 3.5 is to be treated as discharged if the person has used reasonable endeavours to discharge the duty.

The remaining requirements in the Code continue to apply. For example those bringing forward proposals will still be required to publish a consultation document in hard copy and electronically on their website and make hard copies available on request. They would still be required to advise the ‘statutory consultees’ by letter or email of the availability of the consultation document and that recipients can, if they wish, obtain a hard copy of the consultation document on request.

The notice is for a maximum of a month, although it can be renewed, however the consultation period and objection period are open for longer than a month and therefore the Regulations make transitional provision to deal with a situation where a notice might end during a consultation or objection period.

### **5. Consultation**

No formal consultation has taken place in relation to these Regulations, in light of the unprecedented situation created by the Coronavirus pandemic and the challenging timescales within which they need to be made.

However, regular engagement has taken place with key representative bodies such as ADEW and local authority representatives, to help inform the policy proposals around legislative requirements that are going to be modified or disapplied. These discussions have helped to inform the provisions that are included within these regulations.

### **6. Regulatory Impact Assessment (RIA)**

There has been no regulatory impact assessment completed in relation to these Regulations as there are no associated costs or benefits. These regulations only add areas to the list of enactments in paragraph 7(5) and paragraph 7(6) in respect of which the Welsh Ministers can make notices to disapply or modify statutory requirements.

In respect of any notices that are made, the impact of these will be detailed in an integrated impact assessment. However there will be no costs or benefits to private or voluntary sectors or charity sectors. In respect of schools there is likely to be no net costs or benefits.

Kirsty Williams AS/MS  
Y Gweinidog Addysg  
Minister for Education



Llywodraeth Cymru  
Welsh Government

Elin Jones MS  
Llywydd  
Senedd Cymru  
Cardiff Bay  
CF99 1SN

25 June 2020

Dear Elin,

**Maintained Schools (Amendment of Paragraph 7 of Schedule 17 to the Coronavirus Act 2020) (Wales) Regulations 2020**

I have today made Maintained Schools (Amendment of Paragraph 7 of Schedule 17 to the Coronavirus Act 2020) (Wales) Regulations 2020 under paragraph 8 of Schedule 17 to the Coronavirus Act 2020 which comes into force on 25 June. I attach a copy of the statutory instrument and the accompanying Explanatory Memorandum, which I intend to lay once the statutory instrument has been registered.

This instrument will come into force before it will be laid before the Senedd. This is necessary to enable a notice to be issued to modify requirements in the School Organisation Code and disapply requirements in the Changing of School Session Times (Wales) Regulations 2009. This is needed to allow school organisation proposals to continue where schools are currently closed or may close in the future due to coronavirus, and to allow for schools planning their start and finish time to welcome more learners from 29 June.

In accordance with the procedure set out in paragraph 8 of Schedule 17 to the Coronavirus Act 2020, this instrument must be approved by the Senedd by 25 September 2020 in order for it to remain in effect. In these circumstances I understand Standing Order 21.4A is relevant and the Business Committee may establish and publish a timetable for the responsible committee or committees to

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

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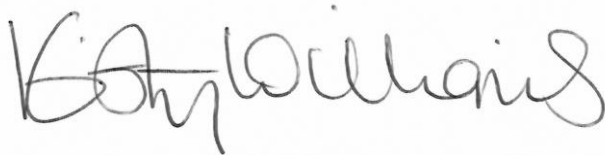
Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

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.

report. It may be helpful to know that I intend to hold the plenary debate for this item of subordinate legislation on 15 July.

I am copying this letter to the Minister for Finance and Trefnydd, 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,



**Kirsty Williams AS/MS**  
Y Gweinidog Addysg  
Minister for Education

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

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

# Agenda Item 4.3 SL(5)573 – The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 7) Regulations 2020

## Background and Purpose

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These Regulations are the latest amendments made by the Welsh Ministers to the coronavirus restrictions that apply in Wales.

The amendments:

- enable members of a household to agree with one other household to form an extended household,
- revoke the requirement not to leave the area local to the place where a person is living without a reasonable excuse,
- clarify that indoor visitor attractions are required to be closed,
- clarify that it is a reasonable excuse to gather with others to participate in activities organised at outdoor visitor attractions, but only in accordance with the physical distancing requirements.

## Procedure

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Made affirmative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd must approve the Regulations within 28 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were made for them to continue to have effect.

## Technical Scrutiny

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

## Merits Scrutiny

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The following four 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**

Human rights

Despite the continued easing of coronavirus restrictions, there are still restrictions in place that impact upon the daily lives of people in Wales. Where those restrictions interfere with human rights, the interference still needs to be justified.

Regarding justification, we note the approach taken by the courts regarding judicial review of coronavirus regulations in England. Although the England coronavirus regulations are different from the Wales coronavirus regulations, the underlying principles are largely the same.



In *Dolan v Secretary of State [2020] EWHC 1786 (Admin)*, the High Court decided that restrictions in England did **not breach** the following articles of the European Convention on Human Rights (the Convention): Article 5 (right to liberty and security), Article 8 (right to respect for private and family life), Article 11 (freedom of assembly and association), Article 1 of Protocol 1 (protection of property).

In reaching its decision, the court:

- referred to the coronavirus pandemic as presenting “truly exceptional circumstances”,
- said that the restrictions had a clear legitimate aim, “namely the reduction of the incidence and spread of coronavirus”,
- emphasised the importance that the restrictions: (i) were time-limited to 6 months, (ii) must be reviewed regularly, and (iii) must end as soon as they are no longer necessary to meet the public health threat,
- decided that any interference with human rights was proportionate.

As noted above, these underlying principles are also broadly applicable to the Wales restrictions. Nevertheless, we raise the following questions:

- (1) Regarding Article 5, it appears to us that the court did not consider that there was any deprivation of liberty and therefore there was no need to consider the exceptions to Article 5.

The Explanatory Memorandum to the Regulations says that Article 5 is engaged. Can the Welsh Government set out which restrictions engage Article 5?

- (2) The court dealt individually with each human right that was in play, using separate headings for discussion about each human right and, where relevant, setting out the various competing considerations that arose. See, for example, paragraphs 76 to 78 of the judgment, which discuss Article 8.

Does the Welsh Government believe there would be advantage in adopting a similar approach in Explanatory Memorandums, particularly for legislation that has a significant impact on human rights, such as the coronavirus restrictions?

- (3) The court did not come to a conclusion as to whether the England restrictions breached Article 9 of the Convention (freedom of thought, conscience and religion). The court adjourned its consideration of Article 9, but nevertheless noted the potential for the England restrictions to engage Article 9.

The Explanatory Memorandum to the Regulations lists various human rights that are engaged by the Wales restrictions, but it does not include Article 9. Given that restrictions still apply to, for example, prayer that forms part of communal worship in Wales, does the Welsh Government believe that Article 9 is engaged?



## **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**

Equality

In a [webinar](#) organised by Swansea University School of Law on 18 June 2020, Jeremy Miles MS, Counsel General, said that: "Covid is exacerbating pre-existing inequalities in our society"<sup>1</sup> and, with regard to the measures the Welsh Government could potentially take in response to the pandemic, the Welsh Government will always "evaluate the potential steps against an equality lens".<sup>2</sup>

The Wales restrictions have now been made / amended seven times, but we can find no reference to equality in any of the seven Explanatory Memorandums laid before the Senedd.

Public bodies, including the Welsh Ministers, have a duty under regulation 8 of the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 to assess and monitor the impact of its policies on equality. In particular, the Welsh Ministers must make such arrangements as they consider appropriate to publish reports of the equality impact assessments they have carried out.

With regard to the making and amending of the Wales restrictions, can the Welsh Government outline what steps it has taken to comply with the duties in regulation 8 of the 2011 Regulations, in particular the duty to publish reports under regulation 8(1)(d)?

We raise this point at a time when equality matters more than ever – from global Black Lives Matter issues to local issues raised by the Older People's Commissioner for Wales in her report "[A snapshot of life in care homes in Wales during Covid-19](#)".

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

Cross-border issues

The Welsh Government "[Guidance on extended households: coronavirus](#)" states:

"Extended households can be cross-border – for example, a household in Wales can join with a household in England – but the arrangements will need to comply with the rules in both countries."

As set out in the Public Health (Control of Disease) Act 1984, the Wales restrictions apply "as respects Wales", and the England restrictions apply "as respects England".

The Wales restrictions do not make express reference to cross-border issues. Can the Welsh Government clarify how the Wales restrictions relating to extended households can capture households in England? In effect, this is a call for clarity on the meaning of "as respects Wales".

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<sup>1</sup> At 1:20:45

<sup>2</sup> At 1:21:25



#### **4. 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**

Welsh Government Guidance

On 8 June 2020, Vaughan Gething MS, Minister for Health and Social Care, gave evidence to us on the Wales restrictions. He said: "We actually want to have something that helps the public to understand how they can follow the rules, and that's why the guidance is really important as well".

However, we note that (at the time of writing, 9 July 2020) the Welsh Government guidance "**Coronavirus: what does the law in Wales say?**" refers to law that is no longer in force. For example, the guidance says that people are still required to stay at home. But this has not been a legal requirement since 1 June 2020.

#### Implications arising from exiting the European Union

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None.

#### Government Response

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A Welsh Government response is required to the four merits points raised in this report.

#### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**9 July 2020**



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

Welsh Parliament

**Legislation, Justice and Constitution Committee**

Pack Page 97

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

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

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**2020 No. 686 (W. 153)**

**PUBLIC HEALTH, WALES**

**The Health Protection (Coronavirus  
Restrictions) (Wales) (Amendment)  
(No. 7) Regulations 2020**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

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

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

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

The amendments consist of provision—

- (a) enabling members of a household to agree with one other household to form an extended household, and where an extended household has been formed references in the principal Regulations to a “household” mean the extended household;
- (b) revoking the requirement in the principal Regulations not to leave the area local to the place where a person is living unless you have a reasonable excuse;



- (c) rationalising the different restrictions on gatherings indoors and outdoors currently in regulations 8 and 8B of the principal Regulations;
- (d) clarifying that indoor visitor attractions are required to be closed;
- (e) clarifying that it is a reasonable excuse to gather together with others to participate in activities organised at outdoor visitor attractions, but only in accordance with the physical distancing requirements in regulation 6 of the principal Regulations.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has not been prepared as to the likely cost and benefit of complying with these Regulations.

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

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

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**2020 No. 686 (W. 153)**

**PUBLIC HEALTH, WALES**

**The Health Protection (Coronavirus  
Restrictions) (Wales) (Amendment)  
(No. 7) Regulations 2020**

*Made* at 12.30 p.m. on 3 July 2020

*Laid before Senedd  
Cymru* at 3.30 p.m. on 3 July 2020

*Coming into force* 6 July 2020

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

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

The Welsh Ministers consider that the amendments made by these Regulations are proportionate to what they seek to achieve, which is a public health response to that threat.

In accordance with section 45R of that Act the Welsh Ministers are of the opinion that, by reason of urgency, it is necessary to make this instrument without a draft

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

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

### **Title and coming into force**

1. The title of these Regulations is the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 7) Regulations 2020 and they come into force on 6 July 2020.

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

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

(2) In regulation 1, after paragraph (5) insert—

“(6) If two households agree to be treated as a single (extended) household for the purposes of these Regulations, any reference in these Regulations (other than in paragraphs (7) and (8)) to a “household” is to be read as including both households.

(7) To agree to be treated as a single household all of the adults of the two households must agree.

(8) But—

- (a) a household may only agree to be treated as a single household with one other household, and
- (b) if two households cease to agree to be treated as a single household, neither household may agree to be treated as a single household under paragraph (6) with any other household.”

(3) For regulation 8 substitute—

“8.—(1) During the emergency period no person may, without a reasonable excuse—

- (a) gather outdoors with any other person apart from—

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(1) S.I. 2020/353 (W. 80) as amended by the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020 (S.I. 2020/399 (W. 88)), the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/452 (W. 102)), the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 3) Regulations 2020 (S.I. 2020/497 (W. 118)), the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 4) Regulations 2020 (S.I. 2020/529 (W. 124)), the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 5) Regulations 2020 (S.I. 2020/557 (W. 129)) and the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 6) Regulations 2020 (S.I. 2020/619 (W. 141)).

- (i) members of their household or of no more than one other household,
    - (ii) their carer, or
    - (iii) a person they are providing care to;
  - (b) gather in premises indoors with any other person apart from—
    - (i) the members of their household,
    - (ii) their carer, or
    - (iii) a person they are providing care to.
- (2) A reasonable excuse includes the need to do the following—
- (a) obtain medical assistance, including accessing any of the services referred to in paragraph 42 of Schedule 1 or accessing veterinary services;
  - (b) provide or receive care or assistance, including relevant personal care, within the meaning of paragraph 7(3B) of Schedule 4 to the Safeguarding of Vulnerable Groups Act 2006, where the person receiving the care is a vulnerable person;
  - (c) provide or receive emergency assistance;
  - (d) donate blood;
  - (e) work or provide voluntary or charitable services;
  - (f) where the person is an elite athlete, train or compete;
  - (g) attend a solemnization of a marriage or formation of a civil partnership—
    - (i) as a party to the marriage or civil partnership,
    - (ii) if invited to attend, or
    - (iii) as the carer of a person attending.
  - (h) attend a funeral—
    - (i) as a person responsible for arranging the funeral,
    - (ii) if invited by a person responsible for arranging the funeral, or
    - (iii) as the carer of a person attending;
  - (i) meet a legal obligation, including attending court or satisfying bail conditions, or to participate in legal proceedings;
  - (j) access or receive critical public services, including—

- (i) childcare or educational services;
- (ii) social services;
- (iii) services provided by the Department for Work and Pensions;
- (iv) services provided to victims (such as victims of crime or domestic violence);
- (k) in relation to children who do not live in the same household as their parents, or one of their parents, continue existing arrangements for access to, and contact between, parents and children, and for the purposes of this paragraph, “parent” includes a person who is not a parent of the child, but who has parental responsibility for, or who has care of, the child;
- (l) move home;
- (m) prepare a residential property for persons to move in;
- (n) undertake the following activities in connection with the purchase, sale, letting or rental of unoccupied residential property—
  - (i) visiting estate or letting agents, developer sales offices or show homes;
  - (ii) viewing such a property;
- (o) participate in activities organised by outdoor visitor attractions;
- (p) avoid injury or illness or escape a risk of harm.

(3) Paragraph (1) does not apply to a person who is homeless.

(4) For the purposes of paragraph (2)(q), a property is unoccupied if no person occupies the property as a residence.”

(4) Omit regulation 8B.

(5) In regulation 10—

- (a) omit paragraphs (2), (3) and (4);
- (b) in paragraph (5), for “I has responsibility for a child if I” substitute “an individual has responsibility for a child if the individual”;
- (c) omit paragraph (6);
- (d) in paragraph (7)—
  - (i) omit “together”;
  - (ii) for “8B” substitute “8(1)”;
- (e) in paragraph (8A), for “8B” substitute “8(1)”;

(f) in paragraph (10), after “regulation 11” insert  
“(including requiring a person to provide  
information as to whether two households  
have entered into an agreement in accordance  
with regulation 1(6))”.

(6) In regulation 12(1)(a), omit “8B”.

(7) In Schedule 1—

(a) in Part 2 insert—

“**24A.** Indoor visitor attractions.”

(b) in Part 4 insert—

“**55.** Outdoor visitor attractions.”

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

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

*Mark Drakeford*

The First Minister, one of the Welsh Ministers

At 12.30 p.m. on 3 July 2020

## **Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 7) Regulations 2020**

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

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 7) Regulations 2020.

**Vaughan Gething**  
**Minister for Health and Social Services**

3 July 2020

## **1. Description**

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

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

These Regulations are made under the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984 (c. 22) (“the 1984 Act”). The Regulations are made without a draft having been laid and approved by the Senedd. It is the opinion of the Welsh Ministers that, by reason of urgency, it is necessary to make the Regulations without a draft being so laid and approved so that public health measures can be taken in order to quickly respond to the threat to human health from coronavirus. In particular, the Welsh Ministers consider it important to relax the restrictions contained in the principal Regulations as soon as it is considered no longer necessary or proportionate to retain them in their existing form. The Welsh Ministers are of the opinion that the restrictions as amended by these Regulations are necessary and proportionate as a public health response to the current threat posed by coronavirus.

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

### European Convention on Human Rights

The amendments contained in these Regulations do not change the engagement under the principal Regulations of individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights, the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health and are proportionate.

Article 5 (right to liberty), 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) are engaged by the principal Regulations.

Each of these are qualified rights, which permit the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health and are proportionate. The continued easing of the restrictions made by these amending Regulations, is a proportionate response balancing the need to maintain an appropriate response to the threat posed by the coronavirus against the rights of individuals



and businesses, in a manner which remains proportionate to the need to avoid an increase to the rate of transmission of the coronavirus, taking into account the scientific evidence.

The provisions insofar as removing the requirement to stay local to the place where a person is living, will enable freer exercise of the rights under Articles 5 and 8 in particular, although they could see further enjoyment of other rights. The provisions allowing for households to join up to form extended households will, in particular, enable greater enjoyment of rights under Article 8.

### **3. Legislative background**

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

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

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

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

### **4. Purpose and intended effect of the legislation**

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

The principal Regulations are now being amended in two key respects:

- The requirements on individuals not to leave or remain away from the area local to their home has been removed; this will mean that individuals may now travel anywhere.
- Enabling the formation of an extended household, consisting of two households joining together exclusively. People in an extended household will be treated as a single household for the purposes of the principal Regulations.

In consequence of these changes, it is also necessary to amend the principal Regulations to:

- Clarify that indoor tourist attractions are to be closed and provide that those responsible for outdoor attractions, which are able to open under the principal Regulations, are subject to the requirement to take all reasonable measures to ensure 2m distance is maintained, both in respect of people on premises and those waiting to enter.
- Rationalise the different restrictions on gatherings indoors and outdoors previously set out in regulations 8 and 8B of the principal Regulations. The new provisions also removes from the list of excuses things that are no longer relevant either because they were needed only because of the stay local requirement or because they don't amount to a "gathering" (as it is now defined).

The amending Regulations also make necessary consequential and savings provisions in light of the changes set out above.

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

It is critical to take all reasonable steps to limit onward transmission of coronavirus. Coronavirus was declared a Public Health Emergency of International Concern on 30 January 2020 by the World Health Organisation, and steps are being taken worldwide to limit its transmission. The Chief Medical Officer for Wales together with the other Chief Medical Officers across the UK continue to assess the risks to public health stemming from coronavirus to be high.

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

## **5. Consultation**

Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, there has been no public consultation in relation to these amending Regulations. Individuals and businesses have been informed about the restrictions in the principal Regulations through wide scale and ongoing public information broadcasts across the UK, including by the Chief Medical Officer for Wales, the First Minister of Wales and the Prime Minister. The First Minister announced the intention to bring about these changes if circumstances allowed for it during his Press Conference on 19 June which was subsequently widely reported. He confirmed that the changes would

be made, with effect from Monday 6 July 2020, in his press conference of 3 July.

## **6. Regulatory Impact Assessment (RIA)**

A regulatory impact assessment has not been prepared in relation to these Regulations due to the need to put them in place urgently to deal with a serious and imminent threat to public health.



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

3 July 2020

Dear Elin

**The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 7) Regulations 2020**

I have today made the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 7) Regulations 2020 under sections 45C(1), (3)(c), (4)(d), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984. These Regulations will come into force at the beginning of 6 July 2020. I attach a copy of the statutory instrument and I intend to lay this and an accompanying Explanatory Memorandum once the statutory instrument has been registered.

In accordance with the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984, this instrument must be approved by the Senedd by 24 September 2020 in order for it to remain in effect. In these circumstances I understand Standing Order 21.4A is relevant and the Business Committee may establish and publish a timetable for the responsible committee or committees to report.

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

Yours sincerely

**MARK DRAKEFORD**

Bae Caerdydd • Cardiff Bay  
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## **WRITTEN STATEMENT BY THE WELSH GOVERNMENT**

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**TITLE**            **Review of Lockdown Measures and The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020**

**DATE**            **3 July 2020**

**BY**                **Mark Drakeford MS, First Minister**

The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 ('the Regulations') place a series of restrictions on gatherings, the movement of people, and the operation of businesses, including closures. They also impose requirements on businesses that are open to take reasonable measures to ensure physical distancing between people. They are designed to help protect people from the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

Under regulation 3(2), Welsh Ministers are required to review the need for the requirements and restrictions in the regulations, and their proportionality, every 21 days. The fourth review was completed on 18 June and the next formal review will be carried out by 9 July.

On 19 June, I committed to review the requirement to stay local with the intention of removing this restriction on 6 July if conditions allowed.

The number of confirmed new cases of COVID-19 have continued to decrease since the peak in April. Over the week to 22 June, there were on average 16 new confirmed cases per million people in Wales each day. In addition, testing capacity and the average number of daily tests continues to increase.

We have, however, seen a recent increase over the last week in cases in Wales as a result of clusters of infection in North Wales and in Merthyr Tydfil. This emphasises that the risk has not gone away. These new cases have been identified quickly and we believe them to have been contained. Outside these clusters we continue to see numbers of cases decline across Wales. We will continue to monitor these situations closely as we come to the next formal review on 9 July.

I am grateful to local communities, local authorities, outdoor visitor attractions, the RNLI and others who have used the two weeks since 18 June to prepare public spaces for the removal of the 'stay local' restriction in keeping with the Welsh Government's Safer Public Places Guidance published on 17 June. This will help ensure those places are ready to receive visitors more safely than if we had lifted the restrictions without notice.

I am acutely aware of the impact that not being able to travel to see family and friends if they live outside of the local area will have had on people's well-being. I am very grateful to the people of Wales for their continued observance of this restriction and their understanding of our deliberate, careful and evidence-based approach to the easing of lockdown. Our primary objective continues to be to Keep Wales Safe.

I am very pleased to report that the overall conditions now allow me to confirm the lifting of the 'stay local' restrictions from Monday 6 July.

This will allow outdoor attractions to open where they can maintain social distancing and can operate safely. Indoor attractions must remain closed and this will be reviewed again next week. Consequential amendments to the Regulations will be brought forward in this area to avoid confusion.

Alongside this easement, and also from 6 July, people from two separate households will be able to join together to form one extended household. This is an exclusive arrangement between those two households only, which will allow that extended household to interact as if they all lived as a single household. This will enable families and friends to reunite, have physical contact, and stay at each other's homes. We are doing this primarily to address the significant issues associated with well-being and mental health of people who have suffered from loneliness and isolation, as well as providing much needed support for working parents and others with informal childcare and wider care and support needs.

To help control the spread of coronavirus, only two households can come together to form one exclusive extended household at this time. Once a household decides which other household it wants to join with, this arrangement will be fixed for the foreseeable future. Where any member of that extended household develops COVID-19 symptoms, all members of the extended household will need to self-isolate even if they do not live together.

In some cases, especially in larger families or in shared houses, this may mean making some difficult choices. If extended households focus on those with the greatest need for care and support I hope those that are not included, such as some members of extended families, can understand and recognise the importance of prioritising those individuals with the greatest need of support. Unfortunately, because the virus is still with us, we all have to face these choices together. In considering these choices I am urging people to:

- Think about who needs support and would benefit most from joining an extended household. Some households may need more help than others or have greater needs.
- Think about the risks. People who are vulnerable or shielding can benefit most from these arrangements, but the additional risks need to be understood and mitigated (e.g. keeping extended households as small as possible).
- Think about the consequences. If anyone in the extended household becomes ill, everyone will have to isolate for 14 days. For some people this will have a greater impact than for others, and needs to be thought about carefully.

Thanks to the efforts everyone has made over the last few months, we have seen the number of new cases of coronavirus decline – but it has not gone away. The last week has seen some disappointing scenes where people have participated in anti-social behaviour and have left significant amounts of litter behind. We do not want to see these hard-fought freedoms for all put at risk by the irresponsible behaviour of the few.

We need everyone to take personal responsibility to maintain social distancing and to respect both the environment and local guidance when they take advantage of the lockdown easements and travel across Wales and the UK.

Once again, I would like to thank everyone for their continued efforts in tackling this virus. Together we can Keep Wales Safe.

# Agenda Item 5.1

## SL(5)569 – The Cancellation of Student Loans for Living Costs Liability (Wales) Regulations 2020

### Background and Purpose

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These Regulations govern the student loan liability of full-time students who receive loans for living costs from the Welsh Ministers in respect of the academic year 2020/2021.

These Regulations provide for up to £1,500 of a borrower's living costs loan liability to be cancelled in certain circumstances, with effect from the day after the date on which their first loan repayment is considered to have been received.

### Procedure

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Negative.

### Technical Scrutiny

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

### Merits Scrutiny

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

### Implications arising from exiting the European Union

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These Regulations follow a written statement from the Minister for Education on 31 May 2019, "Funding and support for EU Nationals studying in Wales", which stated as follows:

"I am pleased to confirm that EU nationals who intend to study in Wales for the academic year 2020/21 will be eligible to pay the same tuition fees as Welsh students and will be eligible to receive loans and/or grants from Student Finance Wales (SFW), subject to existing eligibility criteria.

This is a continuation of the current policy and students will be eligible to receive support until they finish their course. This applies to all student finance from SFW for students in Wales for which EU nationals are eligible. This includes loans to cover tuition fees (for those resident in the EEA for three years), loans and grants for maintenance (limited to those resident in the UK for at least three years), and some other grants and allowances.

The rules applying to EU nationals who will apply for a place at university for the academic year 2020/21 to study a course which attracts student support are unchanged. SFW will assess these applications against existing eligibility criteria, and will provide loans and/or grants in the normal way. EU nationals, or their family members, who are assessed as eligible to receive grants and/or loans will be eligible for the duration of their study on that course."

### Government Response

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A Welsh Government response is not required.

### Legal Advisers







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

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**2020 No. 638 (W. 146)**

**EDUCATION, WALES**

**The Cancellation of Student Loans  
for Living Costs Liability (Wales)  
Regulations 2020**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations govern the student loan liability of full-time students who receive loans for living costs from the Welsh Ministers in respect of the academic year 2020/2021.

These Regulations provide for up to £1,500 of a borrower's living costs loan liability to be cancelled in certain circumstances, with effect from the day after the date on which their first loan repayment is considered to have been received.

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.

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

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**2020 No. 638 (W. 146)**

**EDUCATION, WALES**

**The Cancellation of Student Loans  
for Living Costs Liability (Wales)  
Regulations 2020**

<i>Made</i>	<i>23 June 2020</i>
<i>Laid before Senedd Cymru</i>	<i>25 June 2020</i>
<i>Coming into force</i>	<i>1 August 2020</i>

The Welsh Ministers make the following Regulations in exercise of the powers conferred upon the Secretary of State by sections 22(2)(g), (3)(d) and 42(6) of the Teaching and Higher Education Act 1998<sup>(1)</sup> and now exercisable by them<sup>(2)</sup>.

**Title and commencement**

**1.**—(1) The title of these Regulations is the Cancellation of Student Loans for Living Costs Liability (Wales) Regulations 2020.

(2) These Regulations come into force on 1 August 2020.

**Application**

**2.** These Regulations apply in relation to Wales and to the provision of support to students in respect of the Academic Year 2020/2021.

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(1) 1998 c. 30.

(2) The functions of the Secretary of State under section 22(2)(g) and (3)(d) of the Teaching and Higher Education Act 1998 were transferred to the National Assembly for Wales so far as they relate to making provision in relation to Wales by section 44 of the Higher Education Act 2004 (c. 8),. The Secretary of State's function in section 42(6) was transferred, in so far as exercisable in relation to Wales, to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999, article 2 and Schedule 1 (S.I. 1999/672). The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

## Interpretation

### 3. In these Regulations—

“the 1998 Act” (“*Deddf 1998*”) means the Teaching and Higher Education Act 1998;

“the 2008 Act” (“*Deddf 2008*”) means the Sale of Student Loans Act 2008(1);

“academic year” (“*blwyddyn academaidd*”) means the period of twelve months beginning on 1 September, 1 January, 1 April or 1 July of the calendar year in which the academic year of the course in question begins, according to whether that academic year begins on or after 1 August but before 1 January, on or after 1 January but before 1 April, on or after 1 April but before 1 July, or on or after 1 July but before 1 August, respectively;

“Academic Year 2020/2021” (“*Blwyddyn Academaidd 2020/2021*”) means an academic year which begins on or after 1 September 2020 but before 1 September 2021;

“borrower” (“*benthyciwr*”) means a person who has received a loan for living costs;

“loan for living costs” (“*benthyciad at gostau byw*”) is a loan received from the Welsh Ministers in respect of the Academic Year 2020/2021 under Part 6 of the Education (Student Support) (Wales) Regulations 2017(2) or under Part 8 of the Education (Student Support) (Wales) Regulations 2018(3) in respect of a full-time course;

“Outstanding Liability” (“*Atebolrwydd sydd heb ei Dalu*”) has the meaning given in regulation 7;

“Repayment Date” (“*Dyddiad Ad-dalu*”) means the day after the date on which the borrower’s first loan repayment is considered to have been received by either Her Majesty’s Revenue and Customs or the Welsh Ministers, whichever is considered (in accordance with regulations made under section 22 of the 1998 Act(4)) to have received it first;

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- (1) 2008 c. 10.
- (2) S.I. 2017/47 (W. 21), amended by S.I. 2018/191 (W. 42), S.I. 2018/814 (W. 165), S.I. 2019/235 (W. 54), S.I. 2019/424 (W. 98) as from the “completion day” (as defined by the European Union (Withdrawal Agreement) Act 2020 c. 1, section 39(1) to (5)), S.I. 2019/1094, S.I. 2019/1192 (W. 209), S.I. 2020/142 (W. 25) and S.I. 2020/143 (W. 26).
- (3) S.I. 2018/191 (W. 42), amended by S.I. 2018/813 (W. 164), S.I. 2018/814 (W. 165), S.I. 2019/235 (W. 54), S.I. 2019/424 (W. 98) as from the “completion day” (as defined by the European Union (Withdrawal Agreement) Act 2020 c. 1, section 39(1) to (5)), S.I. 2019/1094, S.I. 2019/1192 (W. 209) S.I. 2020/142 (W. 25) and S.I. 2020/143 (W. 26).
- (4) At the time of making these Regulations, the date on which a borrower’s repayment is considered to have been received is determined in accordance with regulation 17 of the Education (Student Loans) (Repayment) Regulations 2009 (S.I. 2009/470).

“Satisfaction Date” (“*Dyddiad Bodloni*”) has the meaning given in regulation 9;

“Specified Amount” (“*Swm Penodedig*”) has the meaning given in regulation 6; and

“Welsh Ministers” (“*Gweinidogion Cymru*”) includes any person to whom they have transferred or delegated their functions under section 23 of the 1998 Act<sup>(1)</sup> or to whom they have transferred their rights under section 9 of the 2008 Act.

#### **Qualification for cancellation**

**4.** A borrower qualifies for cancellation of the Specified Amount of their Outstanding Liability in the circumstances set out in regulation 5 (“the Circumstances”).

#### **Circumstances**

**5.** The Circumstances for the purposes of regulation 4 are that the Welsh Ministers consider that, on the Repayment Date, the borrower—

- (a) is not in breach of any obligation contained in any agreement for a student loan or in any regulations made under section 22 of the 1998 Act;
- (b) does not have outstanding penalties, costs, expenses or charges in relation to such a loan pursuant to any such agreement or regulations; and
- (c) has not received a cancellation (including a cancellation of £0.00) under the provisions of—
  - (i) the Cancellation of Student Loans for Living Costs Liability (Wales) Regulations 2010<sup>(2)</sup>;
  - (ii) the Cancellation of Student Loans for Living Costs Liability (Wales) Regulations 2011<sup>(3)</sup>;
  - (iii) the Cancellation of Student Loans for Living Costs Liability (Wales) Regulations 2012<sup>(4)</sup>;
  - (iv) the Cancellation of Student Loans for Living Costs Liability (Wales) Regulations 2013<sup>(5)</sup>;

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(1) Section 23 was amended by section 146 of the Learning and Skills Act 2000 (c. 21), S.I. 2002/808 and S.I. 2010/1158.  
(2) S.I. 2010/1704 (W. 164).  
(3) S.I. 2011/1654 (W. 189).  
(4) S.I. 2012/1518 (W. 201).  
(5) S.I. 2013/1396 (W. 135).

- (v) the Cancellation of Student Loans for Living Costs Liability (Wales) Regulations 2014<sup>(1)</sup>;
- (vi) the Cancellation of Student Loans for Living Costs Liability (Wales) Regulations 2015<sup>(2)</sup>;
- (vii) the Cancellation of Student Loans for Living Costs Liability (Wales) Regulations 2016<sup>(3)</sup>;
- (viii) the Cancellation of Student Loans for Living Costs Liability (Wales) Regulations 2017<sup>(4)</sup>;
- (ix) the Cancellation of Student Loans for Living Costs Liability (Wales) Regulations 2018<sup>(5)</sup>; or
- (x) the Cancellation of Student Loans for Living Costs Liability (Wales) Regulations 2019<sup>(6)</sup>

of any of their liability for payment in respect of a loan received from the Welsh Ministers.

#### **Specified Amount**

6. The Specified Amount is the lesser of—

- (a) £1,500; or
- (b) the Outstanding Liability.

#### **Outstanding Liability**

7.—(1) Subject to paragraph (2), the Outstanding Liability is the total amount considered to be payable by the borrower on the Repayment Date in respect of any loan for living costs, but does not include any interest accrued or any penalties, costs, expenses or charges incurred in respect of any such loan.

(2) For the purposes of regulation 9, the Outstanding Liability is the total amount considered to be payable by the borrower on the Satisfaction Date in respect of any loan for living costs, but does not include any interest accrued or any penalties, costs, expenses or charges incurred in respect of any such loan.

(3) For the purposes of calculating the Outstanding Liability in paragraphs (1) and (2), the amount considered to be payable by the borrower is calculated

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(1) S.I. 2014/1314 (W. 134).  
(2) S.I. 2015/1418 (W. 142).  
(3) S.I. 2016/48 (W. 20).  
(4) S.I. 2017/489 (W. 102).  
(5) S.I. 2018/818 (W. 166).  
(6) S.I. 2019/1073 (W. 191).

in accordance with regulations made pursuant to section 22 of the 1998 Act<sup>(1)</sup>.

### **Cancellation**

**8.** In the Circumstances in regulation 5, the Welsh Ministers must cancel the Specified Amount with effect from the Repayment Date.

**9.** If any of the Circumstances in regulation 5 are not satisfied on the Repayment Date, but they become satisfied at a later date, the Welsh Ministers may cancel the Specified Amount with effect from the date that they consider the Circumstances to have been satisfied (“the Satisfaction Date”).

*Kirsty Williams*

Minister for Education, one of the Welsh Ministers

23 June 2020

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(1) At the time of making these Regulations the amount which a borrower is considered to have repaid and therefore the amount that is considered to still be payable is determined in accordance with the Education (Student Loans) (Repayment) Regulations 2009 (S.I. 2009/470). See in particular regulations 17, 29, 44 and 76.

## **Explanatory Memorandum to the Cancellation of Student Loans for Living Costs Liability (Wales) Regulations 2020**

This Explanatory Memorandum has been prepared by the Higher Education Division and is laid before the Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Cancellation of Student Loans for Living Costs Liability (Wales) Regulations 2020.

Kirsty Williams MS  
Minister for Education

25 June 2020



## **1. Description**

These Regulations provide for up to £1,500 of a full-time undergraduate student's living costs loan (also known as a maintenance loan) for academic year 2020/2021, to be cancelled in certain circumstances. The cancellation will take effect from the day after the date on which the student's first loan repayment is received.

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

None.

## **3. Legislative background**

These Regulations are made by the Welsh Ministers in exercise of the powers conferred upon the Secretary of State by sections 22(2)(g), (3)(d) and 42(6) of the Teaching and Higher Education Act 1998 ("THEA") and which are now exercisable by them in relation to Wales.

Section 44 of the Higher Education Act 2004 transferred the relevant functions of the Secretary of State under section 22 of THEA to the National Assembly for Wales established by the Government of Wales Act 1998. The functions of the Secretary of State under section 42(6) of THEA were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999. All of these functions were then transferred to the Welsh Ministers by virtue of section 162 of and paragraphs 30(1) and 30(2)(c) of Schedule 11 to the Government of Wales Act 2006.

Undergraduate students who receive a living costs loan from the Welsh Ministers in academic year 2020/2021 will do so under the Education (Student Support) (Wales) Regulations 2017 (S.I. 2017/47 (W. 21)) or the Education (Student Support) (Wales) Regulations 2018 (S.I. 2018/191 (W. 42)), depending on when their course starts.

Provisions relating to the repayment of living costs loans are contained in the Education (Student Loans) (Repayment) Regulations 2009 (SI 2009/470), (as amended) which are made on a composite basis by the Welsh Ministers and the Secretary of State under sections 22 and 42 of THEA and sections 5 and 6 of the Sale of Student Loans Act 2008.

This instrument will follow the Negative Resolution procedure.

## **4. Purpose & intended effect of the legislation**

These Regulations make provision for students, who receive a living costs loan from the Welsh Ministers for academic year 2020/21 in respect of a full-time

undergraduate course, to benefit from a reduction in the balance of their loan of up to £1,500 when they start repaying their loan. This will not be in the form of a cash lump sum; rather the balance of an individual's loan will be reduced by the appropriate amount the day after a borrower's first repayment is made.

A student can only receive a partial cancellation once; they cannot receive a partial cancellation in respect of academic year 2020/21 if they have already received a cancellation in respect of any previous academic year. A student will not be entitled to a partial cancellation if there are any outstanding charges or penalties or if they are in breach of their loan agreement or any regulations made under section 22 of THEA.

## **5. Consultation**

No consultation has been undertaken as these Regulations are technical in nature and simply update the academic year for which this scheme will operate.

## **6. Regulatory Impact Assessment (RIA)**

An RIA has not been conducted for these Regulations as the changes relate to technical amendments that are necessary to update the applicable academic year.

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**WRITTEN STATEMENT  
BY  
THE WELSH GOVERNMENT**

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**TITLE**            **The Regulation (EU) No 2018/1724 The Single Digital Gateway Regulation (Revocation) (EU Exit) Regulations 2020**

**DATE**            **3 July 2020**

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

**The Single Digital Gateway Regulation (Revocation) (EU Exit) Regulations 2020**

**Policy Overview of the SI**

Regulation [EU 2018/1724](#) – The Single Digital Gateway is intended to provide a gateway for citizens and businesses to have easy access to high quality information, procedures and effective assistance services of the EU internal market.

The regulation establishes a Single Digital Gateway that will give access to,

- Information on rights, obligations and rules
- Information on online and offline procedures and links to online procedures
- Information on, and links to, the assistance services

By 11 December 2020, Member States must ensure that users have easy, online access on their national webpages to the following;

- Information about those rights, obligations and rules that are derived from national law.
- Information about those procedures that are established at a national level.
- Information about those assistance services that are provided at a national level.

There are two further stages of implementation below which fall outside the transition period.

- December 2022: provide information and assistance and problem-solving services on EU internal market rights and rules at local authority level (Annexes I & III)
- December 2023: digitalise 21 administrative 'life event' procedures and operability of the Once Only principle. The 'life event' procedures include birth and death registrations, applying for a study grant and claiming a pension. The Once Only system would allow Gateway user details to be re-used by other public authorities across borders so that users do not need to re-enter their details each time they access the Gateway (Annex II)

This SI is intended to repeal Regulation [EU 2018/1724](#) to ensure the UK and Wales do not have to comply with EU internal standards and EU timescales for implementation that fall outside of the transition period. This will also allow the UK and Wales to develop systems and standards independently from the EU.

This SI also repeals Regulation (EU) 1024/2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation'), to omit paragraph 12 of the Annex which refers to Regulation EU 2018/1724.

## **Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services**

### **The purpose of the amendments**

The purpose of the amendments is to correct deficiencies in legislation arising from the UK leaving the European Union relating to the implementation of a Single Digital Gateway. The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment are available here:

<https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-single-digital-gateway-regulation-revocation-eu-exit-regulations-2020>

### **Any impact the SI may have on the Welsh Ministers' executive competence**

The UK Government maintains that this SI is covered by Paragraph 10(2) of Schedule 7A to the Government of Wales Act 2006, which covers international relations including relations with the EU and its institutions. It has taken this view because the purpose of the EU Regulation concerns the sharing of information between EU Member States, and EU Member States and the Commission at the EU level, i.e. relations between the UK, as a Member State, and the EU and its institutions.

The Welsh Government does not agree with this assessment. Using this justification would make all EU Exit SIs a reserved matter and would render the Inter-governmental Agreement (IGA) relating to the EU (Withdrawal) Act 2018 obsolete. The wider purpose of the SDGR is about a citizen's access to public and governmental information, some of which clearly falls within devolved subject areas

(health, education etc.). It is within the Senedd's legislative competence to legislate on the digital provision of access to information, procedures, assistance and problem-solving services for citizens and businesses regarding devolved national laws and administrative requirements.

### **Any impact the SI may have on the legislative competence of the Senedd**

The SI has no impact on the Senedd's legislative competence.

The Senedd has always had powers to legislate on the digital provision of information in devolved areas, above and beyond the minimum standards of scope and content set out under SDGR. This SI removes the requirement of an EU minimum standard and allows Wales to formulate its own minimum requirements to meet the needs of citizens and businesses.

### **Why consent was given**

There is no divergence between the Welsh Government and the UK Government on the policy for the correction. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book.

Consenting to a UK wide SI ensures that there is a single legislative framework across the UK which promotes clarity and accessibility during this period of change. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

## UK MINISTERS ACTING IN DEVOLVED AREAS

### 162 - The Regulation (EU) No 2018/1724 The Single Digital Gateway Regulation (Revocation) (EU Exit) Regulations 2020

*Laid in the UK Parliament: 1 July 2020*

#### **Sifting**

Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	14 July 2020
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known
Date sifting period ends in UK Parliament	20 July 2020
Written statement under SO 30C:	Paper 21
SICM under SO 30A (because amends primary legislation)	Not required

#### **Scrutiny procedure**

Outcome of sifting	Not known
Procedure	Not known
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 are proposed to be made by the UK Government pursuant to section 8 of the European Union (Withdrawal) Act 2018.

This instrument is being made in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the UK from the EU.

Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures, and to assistance and problem-solving services, and amending Regulation (EU) No 1024/2012 (“the SDGR”), is a directly applicable European Union (EU) Regulation. Certain provisions of the SDGR will constitute retained EU law in accordance with section 3 of the European Union (Withdrawal) Act 2018.

The SDGR provides online access to the information, administrative procedures and assistance services that citizens and businesses need to live in, or conduct their business in, another EU country. It provides for the creation of a single EU web access point “the Gateway”, which will link EU and national websites and portals, and provide individuals and businesses with information relating to Single Market rights and rules.

The SDGR applies wholly within the EU Single Market and as such, the UK Government’s Explanatory Memorandum to these Regulations states (at paragraph 7.1) that “it would not be in the UK’s interest to be bound by the SDGR once the Transition Period has ended”, when the UK will cease to be part of the Single Market. As such, the purpose of this instrument is to revoke those provisions of the SDGR that will constitute retained EU law on and after 31 December 2020, so that the United Kingdom (UK) is no longer legally bound by the SDGR once the Transition Period ends.

These Regulations also amend Regulation (EU) 1024/2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC (‘the IMI Regulation’), to omit paragraph 12 of the Annex, which refers to Regulation EU 2018/1724.

Legal Advisers agree with the statement laid by the Welsh Government dated 3 July 2020 regarding the effect of these Regulations, including the Welsh Government’s conclusions in respect of the Senedd’s legislative competence.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

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.



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## WRITTEN STATEMENT BY THE WELSH GOVERNMENT

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**TITLE**            **The Professional Qualifications and Services (Miscellaneous Provisions) (EU Exit) 2020**

**DATE**            **08 July 2020**

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

**SO30C – Notification in Relation to Statutory Instruments made by UK Ministers in devolved areas under the European Union (Withdrawal) Act 2018 not laid before the Senedd**

### **Policy Overview of the SI**

The Regulations will ensure the EU Exit frameworks for the recognition of professional qualifications (RPQ) and the provision of services will function effectively after the transition period and make other minor corrections.

The regulations also contain other provisions which are made in accordance with powers under the European Communities Act 1972 and the European Union (Withdrawal Agreement) Act 2020. An explanation of these provisions is contained in the Annex to this Written Statement for information.

### **The [retained EU] Law which is being amended**

The Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2019

The Provision of Services (Amendment etc.) (EU Exit) Regulations 2018

Certain directly effective treaty rights which relate to the recognition of professional qualifications and which form part of retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018

### **The purpose of the amendments**

The purpose of the amendments is to correct deficiencies in retained EU law arising from the UK leaving the European Union relating to Professional Qualifications and Services.



To ensure the EU Exit frameworks for RPQ and Services will function as intended after the Transition Period ('TP'), the SI will make provisions to disapply aspects of retained EU law (directly effective treaty rights) and make miscellaneous amendments to previous EU Exit SIs, namely the Provision of Services (Amendment etc.) (EU Exit) Regulations 2018 and the Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2019.

### **Disapplication of directly effective treaty rights**

The directly effective rights addressed by this instrument may be inconsistent with rights available under RPQ EU Exit legislation and leave open the potential for professionals to circumvent established procedures when seeking recognition of their professional qualifications. This instrument will disapply retained RPQ rights derived from provisions of the Treaty on the Functioning of the European Union (TFEU) and the Agreement on the European Economic Area (the EEA Agreement) which relate to the free movement of workers (Article 45 TFEU and Article 28 of the EEA Agreement). This instrument will also disapply any retained directly effective rights derived from Article 9 and Annex 3 of the Swiss Free Movement of Persons Agreement (FMOPA). This is necessary to ensure legal clarity and maintain the integrity of the UK's recognition framework after the TP.

It is also necessary to disapply any directly effective rights relating to non-discrimination in so far as they apply to the disapplication of these RPQ Treaty rights, to prevent individuals relying on these rights to challenge this disapplication and to ensure legal clarity.

### **Miscellaneous amendments**

After the TP, the Services Directive will no longer apply to the UK or to EEA businesses or individuals providing services in the UK. Therefore, the Provision of Services Regulations 2009 have been amended by the Provision of Services (Amendment etc.) (EU Exit) Regulations 2018 ("the Services Regulations") to fix any deficiencies arising from the UK's withdrawal from the EU. The Services Regulations were not drafted to factor in a TP; so they must be amended to change the references in the body of the text from "exit day" to "IP completion day".

Similar technical amendments to "exit day" references will also be made to the Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2019.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here:

<https://statutoryinstruments.parliament.uk/timeline/4coIMQjV/SI-2020/>

### **Any impact the SI may have on the Welsh Ministers' executive competence**

As the regulation of certain professions is devolved, the consent of the Welsh Ministers has been sought in this instance. There is no transfer of powers as a consequence of the regulations.

## **Any impact the SI may have on the legislative competence of the National Assembly for Wales**

The SI has no impact on the National Assembly for Wales' legislative competence.

## **Why consent was given**

There is no divergence between the Welsh Government and the UK Government on the policy for the correction. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting to a UKwide SI ensures that there is a single legislative framework across the UK which promotes clarity and accessibility during this period of change. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

Annex

**Amendment of the European Union (Recognition of Professional Qualifications) Regulations 2015 under section 2(2) of the European Communities Act 1972**

This instrument will also correct a transposition error in the 2015 Regulations which needs to be rectified whilst the UK remains subject to EU law.

This is a 'business as usual' amendment. It is not intended to correct a deficiency in retained EU law.

**Amendments to the Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2019 and other sector specific legislation under section 12 of the European Union (Withdrawal Agreement) Act 2020**

This instrument implements into domestic law the Recognition of Professional Qualifications ("RPQ") provisions in the EU Withdrawal Agreement, the EEA EFTA Separation Agreement and the Swiss Citizens' Rights Agreement (collectively, "the Agreements"), that are not covered by existing RPQ EU Exit legislation.

It will do this by amending the Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2019 and other sector specific RPQ legislation, namely, the Farriers and Animal Health (Amendment) (EU Exit) Regulations 2019 and the Veterinary Surgeons and Animal Welfare (Amendment) (EU Exit) Regulations 2019.

The consent of the Welsh Ministers has been sought as the amendments relate to professions whose regulation is devolved.

The Welsh Ministers have given their consent to the making of these amendments in the circumstances related to the UK's withdrawal from the EU. There is no divergence between the Welsh Government and the UK Government on the policy for the amendments. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book.

## UK MINISTERS ACTING IN DEVOLVED AREAS

### 163 - The Professional Qualifications and Services (Miscellaneous Provisions) (EU Exit) 2020

*Laid in the UK Parliament: 6 July 2020*

#### **Sifting**

Subject to sifting in UK Parliament?	No
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	N/A
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 23
SICM under SO 30A (because amends primary legislation)	Not required

#### **Scrutiny procedure**

Outcome of sifting	N/A
Procedure	Draft affirmative
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 are proposed to be made by the UK Government pursuant to section 2(2) of the European Communities Act 1972, section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (“the 2018 Act”), and sections 12, 14 and 41(1) of, and paragraph 12 of Schedule 4 to, the European Union (Withdrawal Agreement) Act 2020.

These Regulations implements into domestic law the Recognition of Professional Qualifications (“RPQ”) provisions in the EU Withdrawal Agreement, the EEA EFTA Separation Agreement and the Swiss Citizens’ Rights Agreement, that are not covered by existing RPQ EU Exit legislation.

In addition, these Regulations also make changes to the domestic frameworks for RPQ and services, as follows: disapply certain retained

directly effective EU treaty rights relating to RPQ and revoke three pieces of direct EU legislation that would otherwise be retained in domestic law by virtue of sections 4 and 3 of the 2018 Act respectively; make corrections to RPQ EU Exit legislation; change some references to 'exit day' to account for the Transition Period in various RPQ and Services EU Exit legislation; and correct a transposition error in the European Union (Recognition of Professional Qualifications) Regulations 2015.

Legal Advisers agree with the statement laid by the Welsh Government dated 8 July 2020 regarding the effect of these Regulations.

However, it is noted that the statement refers to the instrument as the Professional Qualifications and Services (Miscellaneous Provisions) (EU Exit) 2020, rather than the Professional Qualifications and Services (Amendments and Miscellaneous Provisions) (EU Exit) Regulations 2020 (emphasis added).

The statement also refers to the National Assembly for Wales in two instances, rather than Senedd Cymru/Welsh Parliament.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

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.



Mick Antoniw MS Chair of the  
Legislation, Justice and Constitution  
Committee

By email

[Mick.Antoniw@senedd.wales](mailto:Mick.Antoniw@senedd.wales)

**URGENT**

Friday 03 July 2020

Dear Chair,

**Subject: Scrutiny of Welsh Government regulations and compliance with the Public Sector Equality Duty: Standing order 21.3C (iv)**

Your committee provides a vital role in scrutinising legislation laid before the Senedd. We are particularly grateful that you have recently highlighted the requirement to justify interference with human rights when Welsh Government is publishing subordinate legislation in response to the Coronavirus pandemic.

However, we have been concerned that Welsh Government is not complying with the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 when

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Bydd y Comisiwn yn croesawu gohebiaeth yn y Gymraeg a'r Saesneg.

The Commission welcomes correspondence in Welsh or English.

**Ff/T:** 029 2044 7710

**E:** [correspondence@equalityhumanrights.com](mailto:correspondence@equalityhumanrights.com)

Bloc 1, Cainc D, Adeiladau Llywodraeth, Heol Santes Agnes,  
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publishing subordinate legislation. In particular regulation 8 which requires that equality impact assessments are published with regulations.

We would ask that you consider reporting on this issue when you consider your merit scrutiny and standing order 21.3C (iv).

We think this is particularly relevant to the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 and are aware that you are due to report on them by 10<sup>th</sup> July 2020.

I am happy to discuss this matter further or to meet with you if you would find it helpful. My email address [ruth.coombs@equalityhumanrights.com](mailto:ruth.coombs@equalityhumanrights.com).

Yours sincerely,

Rev Ruth Coombs

Head of Wales

EHRC Wales | EHRC Cymru

Cc [SeneddLJC@senedd.wales](mailto:SeneddLJC@senedd.wales) [legislation@senedd.wales](mailto:legislation@senedd.wales)

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Bydd y Comisiwn yn croesawu gohebiaeth yn y Gymraeg a'r Saesneg.

The Commission welcomes correspondence in Welsh or English.

**Ff/T:** 029 2044 7710

**E:** [correspondence@equalityhumanrights.com](mailto:correspondence@equalityhumanrights.com)

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**Mick Antoniw MS**

Chair

Legislation, Justice and Constitution Committee

03 July 2020

Dear Mick

**Letter from Sue McAllister, Prison and Probation Ombudsman: end of life care in prisons.**

In my capacity as Chair to the Health, Social Care and Sport Committee, I have received a letter from Sue McAllister, Prison and Probation Ombudsman expressing her concerns regarding end of life care in prisons.

During our meeting yesterday, Members agreed to share a copy of the letter with your Committee as it may be of interest to your inquiry on making justice work for Wales. Please find this attached.

Yours sincerely



Dr Dai Lloyd MS

**Chair, Health, Social Care and Sport Committee**



**Senedd Cymru**

Bae Caerdydd, Caerdydd, CF99 1SN

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Pack Page 138

**Welsh Parliament**

Cardiff Bay, Cardiff, CF99 1SN

 [SeneddHealth@senedd.wales](mailto:SeneddHealth@senedd.wales)

 0300 200 6565



Health, Social Care and Sport Committee  
Welsh Parliament  
**BY EMAIL**

23 June 2020

Dear Health, Social Care and Sport Committee

I have recently been contacted by the Commons Justice Select Committee at the UK Parliament to provide written evidence for their inquiry into the ageing prison population. In my evidence about end of life care in prisons, I referred to an investigation we carried out into a death in custody at HMP Parc. As we have provided this evidence to the Commons Justice Select Committee I thought that it was also appropriate to share the same evidence with you.

Following an investigation into a death in custody at HMP Parc in August 2019 we raised some concerns about the care provided. The individual suffered from dementia and was referred for assessment, however there was disagreement with the Local Health Board as to who was funded to assess and provide support. The Local Health Board failed over a period of years to reach a solution to enable the individual to access appropriate specialist care for dementia. We recommended that discussions took place with the Local Health Board to ensure that patients with suspected dementia at HMP Parc have access to full service provisions. We are waiting for confirmation as to whether these discussions have taken place.

We would also like to take this opportunity to raise our concerns about the length of time it takes for inquests to be held in Wales. As an example, there was a death in a Secure Children's Home in Wales in February 2017 and we are still waiting for notification of an inquest date. There was also a death in custody that occurred at HMP Swansea in March 2014 and the inquest only concluded in February 2020. These are quite significant delays that are causing upset to bereaved families.

Please get in touch if you require any additional information.

Yours sincerely



**Sue McAllister CB**  
Prisons and Probation Ombudsman

Cc Healthcare Inspectorate Wales

# Agenda Item 7.3

Ministry  
of Justice

**Alex Chalk MP**  
Parliamentary Under-  
Secretary of State for Justice

Mick Antoniw MS  
Chair  
Legislation, Justice and Constitution Committee  
Welsh Parliament  
Cardif Bay  
Cardiff  
CF99 1SN

**MoJ ref:** ADR79396

7 July 2020

Dear Mick,

## **INQUIRY INTO MAKING JUSTICE WORK IN WALES – DATA ON ACCESS TO JUSTICE**

Thank you for your letter of 19 June to the Lord Chancellor, regarding the inquiry into Making Justice work in Wales and in particular, user needs for Welsh justice data.

As you have noted, the Justice in Wales Working Group recommended that we should undertake a review of how data collection and publishing practices reflect the distinctiveness of Wales, where possible disaggregating data to give a clear picture of how justice in Wales functions. Disaggregation of Welsh data is a matter that we have been seeking to resolve for some time, particularly the challenges involved in categorising Welsh individuals in the justice system, but I am pleased to say that we have made considerable progress.

HMCTS in Wales currently collects data on existing legacy Case Management Systems at Court and Tribunal venue level for all jurisdictions. This data can be aggregated at a local reporting level e.g. Local Justice Area or Local Family Justice Board areas, and then summarised in a top level HMCTS Wales data set, which can be used in Wales for performance monitoring against workloads and all Key Performance measures. The Ministry of Justice aggregate the data for the Office for National Statistics, which are released Quarterly.

When considering changes to the court and tribunal estate, HMCTS will always assess local data for a particular court and the surrounding area. They will consider the workload and operating costs of the court but also, through an equalities assessment, local populations and their characteristics. They will assess local journeys to court by public transport to make sure that any likely future journeys meet HMCTS' access to justice principles.

Legal Aid Provider Statistics provide legal aid data at national/regional level, so data for Wales can be isolated from the overall data for England and Wales. This is based on the provider location, not the client location. The published statistics give the type of work undertaken, covering both civil and crime billing data for completed claims. This dataset includes data from 2011/12 onwards.

With respect to family justice, we publish data at a regional level, which can be found here:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/895002/Family\\_Data\\_2020\\_Q1.zip](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/895002/Family_Data_2020_Q1.zip). This data set includes:

- The number of cases started/finishing by region and by case type (with 'count' referring the number of applications/orders etc depending on the start/end selection)
- The timeliness by region and case type and legal representation status (note that those without representation are where representation isn't recorded, rather than specifically being litigants in person)

Whilst your request does not cover prisons and probation, I thought you would find it helpful to know that HMPPS currently provides published statistics on how offender management services in the community and in custody are delivered. These statistics include key statistics relating to offenders, staff and performance against agreed service levels and measures. Where possible, for prisons, the statistics are disaggregated to the establishment level, including prisons in Wales. Similarly, statistical publications relating to community supervision are disaggregated to a regional level, including Wales. A narrative account of HMPPS in Wales, reflecting the devolved structure of the organisation and activities is provided in HMPPS Annual Report and Accounts.

One important development this year, however, has been the funding announced by Administrative Data Research to the Ministry of Justice for the Data First project. This work will provide a platform to link together data from across the justice system to help our understanding of people's experiences, including people from Wales, and will also provide greater secure access to data for researchers in Wales.

I hope this information is helpful and I would be happy to answer any follow up questions you may have in relation to the inquiry.

Thank you again for getting in touch.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Alex Chalk', is centered on a light gray background.

**ALEX CHALK MP**

# Agenda Item 10

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

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# Agenda Item 12

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

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# Agenda Item 13

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

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# Agenda Item 14

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

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