Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:
Video conference via Zoom
Meeting date: 14 September 2020
Meeting time: 09.30

For further information contact:
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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

Informal pre-meeting (09:00-09:30)

1 Introduction, apologies, substitutions and declarations of interest

09.30

2 The Greenhouse Gas Emissions Trading Scheme Order 2020: Evidence session

09.30-11.00 (Pages 1 – 123)

Lesley Griffiths MS, Minister for Environment, Energy and Rural Affairs

CLA(5)-25-20 – Briefing

CLA(5)-25-20 – Paper 1 – Order

CLA(5)-25-20 – Paper 2 – Explanatory Memorandum

CLA(5)-25-20 – Paper 3 – Letter from the Minister for Environment, Energy and Rural Affairs to the Chair of the Climate Change, Energy and Rural Affairs Committee, 15 July 2020

CLA(5)-25-20 – Paper 4 – Letter from the Minister for Environment, Energy and Rural Affairs, 10 September 2020

CLA(5)-25-20 – Paper 5 – Written statement, 15 July 2020

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

11.00–11.10

Negative Resolution Instruments

3.1 SL(5)600 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No.6) Regulations 2020

(Pages 124 – 141)

CLA(5)-25-20 – Paper 6 – Report

CLA(5)-25-20 – Paper 7 – Regulations

CLA(5)-25-20 – Paper 8 – Explanatory Memorandum

CLA(5)-25-20 – Paper 9 – Letter from the Minister for Finance and Trefnydd, 21 August 2020

CLA(5)-25-20 – Paper 10 – Written statement, 20 August 2020

3.2 SL(5)603 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 7) Regulations 2020

(Pages 142 – 156)

CLA(5)-25-20 – Paper 11 – Report

CLA(5)-25-20 – Paper 12 – Regulations

CLA(5)-25-20 – Paper 13 – Explanatory Memorandum

CLA(5)-25-20 – Paper 14 – Letter from the Minister for Finance and Trefnydd, 28 August 2020

CLA(5)-25-20 – Paper 15 – Written statement, 27 August 2020

3.3 SL(5)604 – The Education (Student Support) (Postgraduate Master's Degrees) (Wales) (Amendment) (Coronavirus) Regulations 2020

(Pages 157 – 168)

CLA(5)-25-20 – Paper 16 – Report

CLA(5)-25-20 – Paper 17 – Regulations

CLA(5)-25-20 – Paper 18 – Explanatory Memorandum

CLA(5)-25-20 – Paper 19 – Letter from the Minister for Finance and Trefnydd, 28 August 2020

Made Affirmative Resolution Instruments

3.4 **SL(5)599 – The Health Protection (Coronavirus restrictions) (No. 2) (Wales) (Amendment) (No 6) Regulations 2020**

(Pages 169 – 185)

CLA(5)-25-20 – Paper 20 – Report

CLA(5)-25-20 – Paper 21 – Regulations

CLA(5)-25-20 – Paper 22 – Explanatory Memorandum

CLA(5)-25-20 – Paper 23 – Letter from the First Minister, 21 August 2020

CLA(5)-25-20 – Paper 24 – Written statement, 21 August 2020

3.5 **SL(5)602 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 7) Regulations 2020**

(Pages 186 – 204)

CLA(5)-25-20 – Paper 25 – Report

CLA(5)-25-20 – Paper 26 – Regulations

CLA(5)-25-20 – Paper 27 – Explanatory Memorandum

CLA(5)-25-20 – Paper 28 – Letter from the Minister for Health and Social Services, 27 August 2020

CLA(5)-25-20 – Paper 29 – Written statement, 27 August 2020

3.6 **SL(5)601 – The Curriculum Requirements (Amendment of paragraph 7(6) of Schedule 17 to the Coronavirus Act 2020) (Wales) Regulations 2020**

(Pages 205 – 219)

CLA(5)-25-20 – Paper 30 – Report

CLA(5)-25-20 – Paper 31 – Regulations

CLA(5)-25-20 – Paper 32 – Explanatory Memorandum

CLA(5)-25-20 – Paper 33 – Letter from the Minister for Education, 24 August 2020

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

11.10–11.15

4.1 **SL(5)595 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 4) Regulations 2020**

(Pages 220 – 228)

CLA(5)-25-20 – Paper 34 – Report

CLA(5)-25-20 – Paper 35 – Welsh Government response

CLA(5)-25-20 – Paper 35a – Letter from the First Minister, 10 September 2020

4.2 **SL(5)596 – The Education (School Day and School Year) (Wales) (Amendment) (Coronavirus) Regulations 2020**

(Pages 229 – 232)

CLA(5)-25-20 – Paper 36 – Report

CLA(5)-25-20 – Paper 37 – Welsh Government response

5 Written statements under Standing Order 30C

11.15-11.20

5.1 **WS-30C(5)166 – The Prohibition on Quantitative Restrictions (EU Exit) Regulations 2020**

(Pages 233 – 236)

CLA(5)-25-20 – Paper 38 – Written statement

CLA(5)-25-20 – Paper 39 – Commentary

6 Papers to note

11.20-11.25

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

(Page 237)

CLA(5)-25-20 – Paper 40 – Letter from the Counsel General, 27 August 2020

6.2 **Letter from the First Minister: Making Justice work in Wales**

(Page 238)

CLA(5)-25-20 – Paper 41 – Letter from the First Minister, 28 August 2020

6.3 **Letter from the President of Welsh Tribunals: Making Justice work in Wales**

(Pages 239 – 242)

CLA(5)-25-20 – Paper 42 – Letter from the President of Welsh Tribunals, 7 September 2020

6.4 **Letter from the Minister for Environment, Energy and Rural Affairs: Response to the Committee's report on the Legislative Consent Memorandum on the Environment Bill**

(Pages 243 – 254)

CLA(5)-25-20 – Paper 43 – Letter from the Minister for Environment, Energy and Rural Affairs, 28 August 2020

6.5 **Letter from the Counsel General: Inter-institutional Agreement – Intergovernmental Relations Review Ministerial Meetings**

(Pages 255 – 256)

CLA(5)-25-20 – Paper 44 – Letter from the Counsel General, 4 September 2020

6.6 **Letter from the First Minister: Legislation Handbook on Subordinate Legislation**

(Page 257)

CLA(5)-25-20 – Paper 45 – Letter from the First Minister, 8 September 2020

Legislation Handbook on Subordinate Legislation

6.7 **Letter from the Minister for Finance and Trefnydd: Competence for a vacant land tax in Wales**

(Pages 258 – 259)

CLA(5)-25-20 – Paper 46 – Letter from the Minister for Finance and Trefnydd, 8 September 2020

6.8 **Letter from the Minister for Housing and Local Government: Local Government and Elections (Wales) Bill**

(Pages 260 – 262)

CLA(5)-25-20 – Paper 47 – Letter from the Minister for Housing and Local Government, 10 September 2020

6.9 **Letter from the Counsel General: Section 109 Order**

(Page 263)

CLA(5)-25-20 – Paper 48 – Letter from the Counsel General, 10 September 2020

7 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting

11.25

8 The Greenhouse Gas Emissions Trading Scheme Order 2020: Consideration of evidence

11.25-11.40

9 Supplementary Legislative Consent Memorandum on the Fisheries Bill: Consideration of key issues

11.40-11.55 (Pages 264 - 294)

CLA(5)-25-20 - Paper 49 - Supplementary Legislative Consent Memorandum

CLA(5)-25-20 - Paper 50 - Letter to the Minister for Environment, Energy and Rural Affairs, 31 July 2020

CLA(5)-25-20 - Paper 51 - Letter from the Minister for Environment, Energy and Rural Affairs, 3 September 2020

CLA(5)-25-20 - Paper 52 - Legal advice note

10 Renting Homes (Amendment) (Wales) Bill: Consideration of key issues and correspondence with the Minister

11.55-12.10 (Pages 295 - 320)

CLA(5)-25-20 - Paper 53 - Letter from the Llywydd, 4 March 2020

CLA(5)-25-20 - Paper 54 - Letter from the Minister for Housing and Local Government, 11 August 2020

CLA(5)-25-20 - Paper 55 - Correspondence from Cytun, 18 August 2020

CLA(5)-25-20 - Paper 56 - Legal advice note

Renting Homes (Amendment) (Wales) Bill, as introduced

Explanatory Memorandum

11 Wales' Changing Constitution: Consideration of draft report

12.10-12.30 (Pages 321 - 377)

CLA(5)-25-20 - Paper 57 - Draft report

Date of the next meeting - 21 September 2020

Agenda Item 2

Document is Restricted

Draft Order in Council laid before Parliament, the Northern Ireland Assembly, the Scottish Parliament and Senedd Cymru under paragraph 11 of Schedule 3 to the Climate Change Act 2008 for approval by resolution of each House of Parliament, the Northern Ireland Assembly, the Scottish Parliament and Senedd Cymru

D R A F T S T A T U T O R Y I N S T R U M E N T S

2020 No. XXX

CLIMATE CHANGE

The Greenhouse Gas Emissions Trading Scheme Order 2020

Made - - - - ***

Coming into force in accordance with article 2

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At the Court at Buckingham Palace, the *** day of *** 2020

Present,

The Queen's Most Excellent Majesty in Council

This Order is made in exercise of the powers conferred by sections 44, 46(3), 54 and 90(3) of, and Schedule 2 and paragraph 9 of Schedule 3 to, the Climate Change Act 2008(**a**).

In accordance with paragraph 10 of Schedule 3 to that Act, before the recommendation to Her Majesty in Council to make this Order was made—

(a) the advice of the Committee on Climate Change, including on the amount of the limit referred to in section 48(2) of that Act, was obtained and taken into account; and

(b) such persons likely to be affected by the Order as the Secretary of State, the Scottish Ministers, the Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs considered appropriate were consulted.

In accordance with paragraph 11 of that Schedule, a draft of the instrument containing this Order was laid before Parliament, the Northern Ireland Assembly, the Scottish Parliament and Senedd

(**a**) 2008 c. 27.

Cymru and approved by resolution of each House of Parliament, the Northern Ireland Assembly, the Scottish Parliament and Senedd Cymru.

Accordingly, Her Majesty, by and with the advice of Her Privy Council, makes the following Order:

PART 1

Preliminary

Citation

1. This Order may be cited as the Greenhouse Gas Emissions Trading Scheme Order 2020.

Commencement

2.—(1) Except as provided by paragraph (2), this Order comes into force on the day after the day on which it is made.

(2) Article 25, Schedule 5 and paragraph 4 of Schedule 8 come into force—

(a) on the day after the day on which this Order is made; or

(b) immediately after IP completion day,

whichever is later.

Extent

3. This Order extends to the whole of the United Kingdom.

Interpretation

4.—(1) In this Order—

"2021-2025 allocation period" means the 2021, 2022, 2023, 2024 and 2025 scheme years;

"2026-2030 allocation period" means the 2026, 2027, 2028, 2029 and 2030 scheme years;

"aerodrome" means a defined area (including any buildings, installations and equipment) on land or water or on a fixed, fixed offshore or floating structure to be used either wholly or in part for the arrival, departure and surface movement of aircraft;

"aircraft operator" has the meaning given in article 6;

"allocation period" means—

(a) the 2021-2025 allocation period; or

(b) the 2026-2030 allocation period;

"allowance" means an allowance created under this Order (see article 18);

"aviation activity" means an activity set out in paragraph 1 of Schedule 1;

"aviation emissions" means emissions of carbon dioxide arising from an aviation activity;

"carbon price", in relation to a scheme year, has the meaning given in article 46;

"CCA 2008" means the Climate Change Act 2008;

"the Chicago Convention" means the Convention on International Civil Aviation which was, on 7th December 1944, signed on behalf of the Government of the United Kingdom at the International Civil Aviation Conference held at Chicago(**a**);

(**a**) Treaty Series No. 8 (1953); Cmd 8742.

"chief inspector" means the chief inspector constituted under regulation 8(3) of the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013(**a**);

"commercial air transport operator" means a person that, for remuneration, provides scheduled or non-scheduled air transport services to the public for the carriage of passengers, freight or mail and holds an air operator certificate (AOC) or equivalent document as required by Part I of Annex 6 to the Chicago Convention;

"Directive" means Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC(**b**);

"emission factor" has the same meaning as in the Monitoring and Reporting Regulation 2018;

"emissions monitoring plan" has the meaning given in article 28(1);

"EU ETS" means the system for greenhouse gas emission allowance trading established by the Directive;

"Eurocontrol" has the meaning given in section 24 of the Civil Aviation Act 1982(**c**);

"excluded flights" means flights set out in paragraph 2 of Schedule 1;

"flight" means one flight sector that is a flight or one of a series of flights which commences at a parking place of the aircraft and terminates at a parking place of the aircraft;

"full-scope flights" means flights departing from, or arriving in, an aerodrome situated in the United Kingdom, Gibraltar or an EEA state, other than excluded flights;

"GGETSR 2012" means the Greenhouse Gas Emissions Trading Scheme Regulations 2012(**d**);

"GGETSR emissions plan" means an emissions plan as defined in regulation 20 of the GGETSR 2012;

"greenhouse gas emissions permit" means a greenhouse gas emissions permit—

(a) issued under paragraph 3 or 9 of Schedule 6; or

(b) converted under paragraph 24 or 26 of Schedule 7 or paragraph 1(4) of Schedule 11;

"hospital and small emitter list for 2021-2025" has the meaning given in paragraph 3(2) of Schedule 7;

"hospital and small emitter list for 2026-2030" has the meaning given in paragraph 5(4)(b) of Schedule 7;

"hospital or small emitter" must be construed in accordance with paragraphs 3 and 4 of Schedule 7;

"hospital or small emitter permit" means a hospital or small emitter permit—

(a) issued under paragraph 9 of Schedule 7; or

(b) converted under paragraph 10 of Schedule 7 or paragraph 1(3) of Schedule 11;

"installation" must be construed in accordance with Schedule 2;

"monitoring and reporting conditions" means—

(a) in relation to a greenhouse gas emissions permit, the conditions referred to in paragraph 4(2) of Schedule 6;

(b) in relation to a hospital or small emitter permit, the conditions referred to in paragraph 11(2) of Schedule 7;

(**a**) S.R. 2013 No. 160.
(**b**) OJ No. L 275, 25.10.2003, p. 32.
(**c**) 1982 c. 16. Section 24 was amended by section 3(1) of the Civil Aviation (Eurocontrol) Act 1983 (c. 11).
(**d**) S.I. 2012/3038, to which there are amendments not relevant to this Order.

"Monitoring and Reporting Regulation 2012" means Commission Regulation (EU) No. 601/2012 of 21 June 2012 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council(**a**);

"Monitoring and Reporting Regulation 2018" means Commission Implementing Regulation (EU) 2018/2066 of 19 December 2018 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council(**b**) as given effect subject to modifications by article 24;

"non-commercial air transport operator" means a person who operates flights and is not a commercial air transport operator;

"NRW" means the Natural Resources Body for Wales(**c**);

"operator", in relation to an installation, has the meaning given in article 5;

"outermost region" means—

(a) the Canary Islands;

(b) French Guiana;

(c) Guadeloupe;

(d) Mayotte;

(e) Martinique;

(f) Réunion;

(g) Saint-Martin;

(h) the Azores; or

(i) Madeira;

"permit" means—

(a) a greenhouse gas emissions permit; or

(b) a hospital or small emitter permit,

and a reference to a permit includes the monitoring plan (see paragraph 4(1)(f) of Schedule 6 and paragraph 11(1)(g) of Schedule 7);

"regulated activity" has the meaning given in paragraph 3(1) of Schedule 2;

"regulator" must be construed in accordance with articles 9 to 13;

"relevant Northern Ireland electricity generator" means an installation within the meaning of GGETSR 2012 to which those Regulations continue to apply to regulate the carrying out of regulated activities at the installation on or after 1st January 2021;

"reportable emissions", in relation to an installation, means the total specified emissions (in tonnes of carbon dioxide equivalent(**d**)) from the regulated activities carried out at the installation;

"scheme year" means the calendar year beginning on 1st January 2021 or any of the 9 subsequent calendar years; and a reference to a scheme year described by a calendar year (for example, the "2021 scheme year") is a reference to the scheme year beginning on 1st January of that year;

"SEPA" means the Scottish Environment Protection Agency(**e**);

"specified emissions" has the meaning given in paragraph 3(7) of Schedule 2;

(**a**) OJ No. L 181, 12.7.2012, p. 30.
(**b**) OJ No. L 334, 31.12.2018, p. 1.
(**c**) The Natural Resources Body for Wales was established by article 3 of S.I. 2012/1903 (W.230).
(**d**) Section 93(2) of the Climate Change Act 2008 defines "tonne of carbon dioxide equivalent".
(**e**) The Scottish Environment Protection Agency was established by section 20 of the Environment Act 1995 (c. 25).

"surrender", in relation to an allowance, means use the allowance to account for reportable emissions or aviation emissions in a particular scheme year in such a way that the allowance ceases to be available for any other purpose;

"surrender condition" has the meaning given in paragraph 4(3) of Schedule 6;

"trading period" means the period beginning on 1st January 2021 and ending on 31st December 2030;

"UK coastal waters" has the meaning given in section 89(2) of CCA 2008;

"UK ETS" has the meaning given in article 16(1);

"UK ETS authority" has the meaning given in article 14;

"UK sector of the continental shelf" has the meaning given in section 89(2) of CCA 2008;

"ultra-small emitter" must be construed in accordance with paragraph 2 of Schedule 8;

"ultra-small emitter list for 2021-2025" has the meaning given in paragraph 2(2) of Schedule 8;

"ultra-small emitter list for 2026-2030" has the meaning given in paragraph 3(5) of Schedule 8;

"Verification Regulation 2012" means Commission Regulation (EU) No 600/2012 of 21 June 2012 on the verification of greenhouse gas emission reports and tonne-kilometre reports and the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council(**a**);

"Verification Regulation 2018" means Commission Implementing Regulation (EU) 2018/2067 of 19 December 2018 on the verification of data and on the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council(**b**).

(2) For the purposes of this Order, the amount of an installation's reportable emissions (including reportable emissions within the meaning of GGETSR 2012) from biomass must be treated as zero where the emission factor of the biomass under the Monitoring and Reporting Regulation 2012 or the Monitoring and Reporting Regulation 2018 is zero.

(3) For the purposes of this Order, an installation has ceased operation if—

(a) a regulated activity is no longer being carried out at the installation; and

(b) it is technically impossible to resume operation.

(4) For the purposes of this Order, the question of whether any waters are adjacent to Northern Ireland, Scotland or Wales must be determined in accordance with—

(a) any Order in Council made under section 98(8) of the Northern Ireland Act 1998(**c**);

(b) any Order in Council made under section 126(2) of the Scotland Act 1998(**d**);

(c) any Order in Council made under sections 58 and 158(4), or order made under section 158(3), of the Government of Wales Act 2006(**e**).

Meaning of operator

5.—(1) In this Order, the "operator" of an installation is the person who has control over its operation.

(2) But where—

(**a**) OJ No. L 181, 12.7.2012, p. 1.
(**b**) Commission Implementing Regulation (EU) 2018/2067 is amended prospectively by S.I. 2019/916 with effect from IP completion day and is further amended by this Order.
(**c**) 1998 c. 47.
(**d**) 1998 c. 46.
(**e**) 2006 c. 32. Section 58 was amended by paragraph 6(3) of Schedule 4 to the Marine and Coastal Access Act 2009 (c. 23) and sections 21(1) and 49 of the Wales Act 2017 (c. 4). Section 158(3) was substituted by section 43(3) of the Marine and Coastal Access Act 2009.

(a) a regulated activity has not begun to be carried out at an installation, the operator of the installation is the person who will have control over its operation when a regulated activity is carried out at the installation;

(b) a regulated activity is no longer carried out at an installation, the operator of the installation is the person who holds the permit for the installation or, if no permit authorises a regulated activity to be carried out at the installation, the person who had control over its operation immediately before regulated activities ceased to be carried out at the installation;

(c) the holder of a permit for an installation ceases to have control over its operation, the operator of the installation is the permit holder.

Meaning of aircraft operator

6.—(1) In this Order, a person is an aircraft operator in relation to a scheme year, where in respect of that year that person—

(a) performs an aviation activity; and

(b) is not exempt under article 7 or 8.

(2) For the purposes of paragraph (1)(a), an aviation activity is performed by the person who operates the aircraft at the time of the flight, or where that person is not known, the owner of that aircraft is deemed to be the person that performed the aviation activity.

Exempt commercial air transport operators

7.—(1) A commercial air transport operator is not an aircraft operator for the purposes of this Order in relation to a scheme year, where in respect of that year it operates—

(a) less than 243 full-scope flights per period for 3 consecutive 4-month periods; or

(b) full-scope flights with total annual emissions of less than 10,000 tonnes of carbon dioxide.

(2) In this article, "4-month period" means any of the following periods—

(a) January to April;

(b) May to August;

(c) September to December.

(3) For the purposes of this article, a full-scope flight is taken to have occurred in the 4-month period that included its local time of departure.

Exempt non-commercial air transport operators

8. A non-commercial air transport operator is not an aircraft operator for the purposes of this Order in relation to a scheme year, where in respect of that year it operates full-scope flights with total annual emissions of less than 1,000 tonnes of carbon dioxide.

Meaning of regulator

9.—(1) Each of the following is a "regulator" for the purposes of this Order—

(a) the chief inspector;

(b) the Environment Agency(**a**);

(c) NRW;

(d) the Secretary of State;

(e) SEPA.

(**a**) The Environment Agency was established by section 1 of the Environment Act 1995 (c. 25).

(2) In this Order, "regulator" means—

(a) in relation to an installation, the regulator determined in accordance with article 10;

(b) in relation to an aircraft operator, the regulator determined in accordance with articles 11 to 13.

(3) Each regulator is an administrator of the UK ETS for the purposes of paragraph 21 of Schedule 2 to CCA 2008.

Meaning of regulator: installations

10.—(1) This article applies for the purposes of article 9.

(2) The regulator, in relation to an installation set out in column 1 of table A, is the regulator set out in the corresponding entry in column 2.

Table A

Column 1 *Installation*	*Column 2* *Regulator*
Installation in— (a) England; (b) the territorial sea adjacent to England, except where the installation is used for a purpose referred to in paragraph (3)	Environment Agency
Installation in— (a) Northern Ireland; (b) controlled waters adjacent to Northern Ireland; (c) the territorial sea (other than controlled waters) adjacent to Northern Ireland, except where the installation is used for a purpose referred to in paragraph (3)(a)	Chief inspector
Installation in— (a) Scotland; (b) controlled waters adjacent to Scotland; (c) the territorial sea (other than controlled waters) adjacent to Scotland, except where the installation is used for a purpose referred to in paragraph (3)(a)	SEPA
Installation in— (a) Wales; (b) the territorial sea adjacent to Wales	NRW
Installation in— (a) the territorial sea adjacent to England, where the installation is used for a purpose referred to in paragraph (3); (b) the territorial sea (other than controlled waters) adjacent to Northern Ireland and Scotland, where the installation is used for a purpose referred to in paragraph (3)(a); (c) the UK sector of the continental shelf	Secretary of State

(3) The purposes are—

(a) a purpose connected with the exploration for, or exploitation of, petroleum (within the meaning of section 1 of the Petroleum Act 1998(**a**));

(b) a purpose connected with an activity referred to in section 2(3) of the Energy Act 2008(**b**) (unloading and storage of combustible gas);

(c) a purpose connected with an activity referred to in section 17(2) of that Act (storage of carbon dioxide).

(4) In this article—

"controlled waters" means the part of the territorial sea that is between the landward limit of the territorial sea and the line that is 3 nautical miles seaward of the landward limit of the territorial sea;

"territorial sea" means the territorial sea of the United Kingdom;

"territorial sea adjacent to England" means the part of the territorial sea that is not adjacent to Northern Ireland, Scotland or Wales.

(5) In this article, a reference to England, Northern Ireland, Scotland or Wales includes a reference to waters adjacent to England or, as the case may be, Northern Ireland, Scotland or Wales that are landward of the landward limit of the territorial sea.

Meaning of regulator: aircraft operators

11.—(1) This article applies for the purposes of article 9.

(2) Subject to articles 12 and 13 the regulator of an aircraft operator is—

(a) the Environment Agency, where the aircraft operator —

(i) has its registered office or place of residence in England; or

(ii) does not have a registered office or a place of residence in the United Kingdom;

(b) NRW, where the aircraft operator has its registered office or place of residence in Wales;

(c) SEPA, where the aircraft operator has its registered office or place of residence in Scotland;

(d) the chief inspector, where the aircraft operator has its registered office or place of residence in Northern Ireland.

Aircraft operator: change in regulator

12.—(1) This paragraph applies where—

(a) an aircraft operator ("A") does not have a registered office or a place of residence in the United Kingdom;

(b) "B" is the regulator of A; and

(c) a different regulator ("C") is satisfied that the highest percentage of aviation emissions of A in the 2023 and 2024 scheme years is attributable to flights departing from aerodromes situated in the area of C.

(2) Where paragraph (1) applies, on or before 30th June 2025, C must give notice to—

(a) A;

(b) B; and

(c) the UK ETS authority,

that C is the regulator of A from the beginning of the 2026-2030 allocation period.

(**a**) 1998 c. 17.
(**b**) 2008 c. 32.

(3) A notice under paragraph (2) must be accompanied by evidence demonstrating that the highest percentage of aviation emissions of A in the 2023 and 2024 scheme years is attributable to flights departing from aerodromes situated in the area of C.

(4) In this article, "area" in relation to a regulator, means—

(a) in respect of the Environment Agency, England;

(b) in respect of the NRW, Wales;

(c) in respect of the SEPA, Scotland;

(d) in respect of the chief inspector, Northern Ireland.

Aircraft operator: change in registered office

13.—(1) Where—

(a) an aircraft operator ("A") with a registered office or a place of residence in the area of a regulator, in the course of the 2021-2025 allocation period, changes the address of its registered office or place of residence to the area of a different regulator ("R"); and

(b) A's registered office or place of residence is in the area of R at the end of the 2021-2025 allocation period,

R is the regulator of A from the beginning of the 2026-2030 allocation period.

(2) Where—

(a) an aircraft operator ("B") which did not have a registered office or a place of residence in the United Kingdom at the beginning of the 2021-2025 allocation period acquires a registered office or a place of residence in the United Kingdom in the course of that period; and

(b) at the end of the 2021-2025 allocation period that registered office or place of residence is in the area of a regulator ("S") who is not the regulator of B in that allocation period,

S is the regulator of B from the beginning of the 2026-2030 allocation period.

(3) In this article "area" has the same meaning as in article 12.

Meaning of UK ETS authority, etc.

14.—(1) A reference in this Order to the "UK ETS authority" is a reference to all of the national authorities(**a**).

(2) Functions conferred or imposed by this Order on the "UK ETS authority" may be exercised—

(a) by all of the national authorities jointly; or

(b) by one of the national authorities (or by more than one of the national authorities jointly) on behalf of the other national authorities with their agreement.

(3) Where this Order provides for a person to do anything in relation to the "UK ETS authority" (for example, to give a notice to the UK ETS authority), it is sufficient for the person to do it in relation to any of the national authorities.

(4) Each national authority is an administrator of the UK ETS for the purposes of paragraph 21 of Schedule 2 to CCA 2008.

Applications, notices, etc.

15.—(1) Part 1 of Schedule 3 (which makes provision in relation to applications, notices and reports submitted to a regulator) has effect.

(**a**) Section 95(1) of the Climate Change Act 2008 defines "national authority".

(2) Part 2 of Schedule 3 (which makes provision in relation to notices given by a regulator, a national authority or the UK ETS authority) has effect.

PART 2

Basic elements of the UK ETS

CHAPTER 1

Establishment of the UK ETS and requirement for review

UK Emissions Trading Scheme

16.—(1) This Order establishes a trading scheme, known as the "UK Emissions Trading Scheme" or "UK ETS".

(2) The purpose of the UK ETS is to limit, or encourage the limitation of, the emission of greenhouse gases(**a**) in the trading period from the carrying out of—

(a) regulated activities by operators of installations; and

(b) aviation activities by aircraft operators.

Review of UK ETS

17.—(1) The UK ETS authority must before each review date—

(a) carry out a review of the operation of the UK ETS;

(b) publish a report setting out the conclusions of the review.

(2) The review dates are 31st December 2023 and 31st December 2028.

(3) The report must in each case—

(a) review the operation of the UK ETS (including assessing the extent to which the purpose of the UK ETS is being achieved);

(b) make any recommendations that the UK ETS authority considers appropriate as to the future operation and purpose of the UK ETS.

CHAPTER 2

Allowances and caps

Allowances

18.—(1) The UK ETS authority may direct that allowances be created for the purposes of the UK ETS.

(2) An allowance is an allowance to emit 1 tonne of carbon dioxide equivalent.

Cap for trading period

19. The number of allowances created in the trading period may not exceed the sum of—

(a) 736,013,432 multiplied by the 2021-2025 hospital and small emitter reduction factor; and

(b) 630,152,247 multiplied by the 2026-2030 hospital and small emitter reduction factor.

(**a**) Section 92(1) of the Climate Change Act 2008 defines "greenhouse gas".

Cap for scheme years

20.—(1) The number of allowances created in a scheme year may not exceed the base for the scheme year multiplied by—

(a) if the scheme year is in the 2021-2025 allocation period, the 2021-2025 hospital and small emitter reduction factor;

(b) if the scheme year is in the 2026-2030 allocation period, the 2026-2030 hospital and small emitter reduction factor.

(2) Paragraph (1) is subject to any direction given by the UK ETS authority for the creation of allowances for allocation under regulations made by the Treasury under the Finance Act 2020(**a**).

(3) But such a direction may not override article 19.

Cap: hospital and small emitter reduction factors

21.—(1) This article applies for the purposes of articles 19 and 20.

(2) The 2021-2025 hospital and small emitter reduction factor is $(RE_1 – SI_1)/RE_1$, where—

RE_1 is the total reportable emissions (within the meaning of GGETSR 2012) in 2016, 2017 and 2018 of all installations (within the meaning of GGETSR 2012) and all UK aircraft operators (within the meaning of GGETSR 2012);

SI_1 is the total reportable emissions (within the meaning of GGETSR 2012) in 2016, 2017 and 2018 of all installations included in the hospital and small emitter list for 2021-2025.

(3) The 2026-2030 hospital and small emitter reduction factor is $(RE_2 - SI_2)/RE_2$, where—

RE_2 is the total reportable emissions and the total aviation emissions, expressed in tonnes, in the 2021, 2022 and 2023 scheme years of all installations and all aircraft operators;

SI_2 is the total reportable emissions in the 2021, 2022 and 2023 scheme years of all installations included in the hospital and small emitter list for 2026-2030.

(4) In this article, a reference to reportable emissions or aviation emissions is a reference to reportable emissions or aviation emissions—

(a) verified in accordance with the Verification Regulation 2012 or the Verification Regulation 2018;

(b) where relevant, set out in an emissions report accompanied by the notice or declaration referred to in paragraph 3(8)(b)(ii) of Schedule 5 to GGETSR 2012 or paragraph 11(2)(b)(ii) of Schedule 7 to this Order; or

(c) where relevant, considered to be verified under regulation 35(7) of GGETSR 2012 or article 33(2) of this Order.

Cap: base for scheme years

22. For the purposes of article 20, the base for a scheme year set out in column 1 of table B is the value set out in the corresponding entry in column 2.

Table B

Column 1 *Scheme year*	*Column 2* *Base*
2021	155,671,581
2022	151,437,134
2023	147,202,686
2024	142,968,239
2025	138,733,792

(**a**) 2020 c. XXX.

2026	134,499,344
2027	130,264,897
2028	126,030,449
2029	121,796,002
2030	117,561,555

Trading in allowances

23. Allowances may be traded, except where prohibited by other legislation.

CHAPTER 3

Monitoring, reporting and verification

Monitoring and reporting of emissions

24. Commission Implementing Regulation (EU) 2018/2066 of 19 December 2018 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council(**a**) has effect for the purpose of the UK ETS, subject to the modifications in Schedule 4 and to Part 4 (see also paragraph 13 of Schedule 7 which makes further modifications in relation to hospitals and small emitters and paragraph 5 of Schedule 8 which makes further modifications in relation to ultra-small emitters).

Verification of data and accreditation of verifiers

25. Schedule 5 (amendments to the Verification Regulation 2018 adapting its provisions for the purpose of the UK ETS) has effect.

PART 3

Installations

Installations: requirement for permit to carry out regulated activity

26.—(1) No person may carry out a regulated activity at an installation in a scheme year unless the operator of the installation holds a greenhouse gas emissions permit or a hospital or small emitter permit for the installation that authorises the regulated activity to be carried out.

(2) Paragraph (1) does not apply to a regulated activity carried out at an installation in a scheme year for which the installation is an ultra-small emitter.

(3) Schedule 6 (which provides for applications for greenhouse gas emissions permits and generally for permits) has effect.

(4) Schedule 7 (which provides for hospitals and small emitters) has effect.

(5) Schedule 8 (which provides for ultra-small emitters) has effect.

Installations: requirement to surrender allowances

27. Where the operator of an installation holds a greenhouse gas emissions permit, the operator must surrender allowances in accordance with the surrender condition of the permit for each scheme year (or part of a scheme year) that the permit is in force.

(**a**) OJ No. L 334, 31.12.2018, p. 1.

PART 4

Aviation

Application for emissions monitoring plans

28.—(1) An aircraft operator must apply to the regulator for a plan setting out how the aircraft operator's aviation emissions are to be monitored for the purposes of this Order ("an emissions monitoring plan").

(2) An aircraft operator that has previously been issued with an emissions monitoring plan or a GGETSR emissions plan may not make an application under paragraph (1) without the agreement of the regulator (but see article 29(3)).

(3) An application under paragraph (1) is the means by which an aircraft operator submits a monitoring plan to the regulator for approval under Article 12 of the Monitoring and Reporting Regulation 2018.

(4) An aircraft operator must comply with the requirement in paragraph (1) before the end of the period of 42 days commencing with the day it becomes an aircraft operator.

Issue of emissions monitoring plans

29.—(1) If an aircraft operator applies for an emissions monitoring plan in accordance with article 28(1) and (2), the regulator must issue the emissions monitoring plan unless—

(a) the regulator is not satisfied that the application complies with the Monitoring and Reporting Regulation 2018; and

(b) the aircraft operator has not agreed to amendments of the application required to satisfy the regulator that the application does so comply.

(2) An emissions monitoring plan issued under paragraph (1) replaces any emissions monitoring plan previously issued to the aircraft operator.

(3) The regulator may issue an emissions monitoring plan to a person who was a UK administered operator for the purpose of GGETSR 2012 and held a GGETSR emissions plan.

(4) Subject to paragraph (5), an emissions monitoring plan issued under paragraph (3) must be in substantially the same terms as the GGETSR emissions plan.

(5) An emissions monitoring plan must contain any conditions that the regulator considers necessary to give proper effect to the Monitoring and Reporting Regulation 2018 and the Verification Regulation 2018.

Refusal of application for emissions monitoring plans

30.—(1) If the regulator refuses an application for an emissions monitoring plan the regulator must give notice to the applicant.

(2) A notice under paragraph (1) must state—

(a) the reasons for the decision; and

(b) if amendments of the application are required in order for an emissions monitoring plan to be issued, the nature of those amendments.

(3) An aircraft operator who is given a notice under paragraph (1) must make a revised application to the regulator before the end of the period of 31 days beginning with the day that the notice was given.

(4) Article 29 and this article apply to a revised application under paragraph (3) as they apply to the original application, but for the purposes of such a revised application, the references to the period of 2 months in paragraph 2 of Schedule 3 are to be read as references to a period of 24 days.

Variation of emissions monitoring plans

31.—(1) An aircraft operator—

(a) may apply to the regulator to vary its emissions monitoring plan;

(b) must apply to the regulator to vary its emissions monitoring plan where required to do so by a condition of the emissions monitoring plan.

(2) A variation applied for under paragraph (1) is given effect by the regulator giving notice to the aircraft operator.

(3) Paragraphs (1) and (2) do not affect the operation of any condition of an emissions monitoring plan that allows an aircraft operator to make a variation without applying to the regulator.

(4) The regulator may, by giving notice to an aircraft operator, make any variation of the aircraft operator's emissions monitoring plan that the regulator considers necessary in consequence of a report made by the aircraft operator under Article 69(4) of the Monitoring and Reporting Regulation 2018.

(5) The regulator may, by giving notice to an aircraft operator, vary the aircraft operator's emissions monitoring plan where the aircraft operator has failed to comply with a requirement in the emissions monitoring plan to make or apply for such a variation.

(6) The regulator may, by giving notice to an aircraft operator, vary the aircraft operator's emissions monitoring plan by modifying, adding or removing a condition if the regulator considers it necessary to do so to give proper effect to the Monitoring and Reporting Regulation 2018 or the Verification Regulation 2018.

(7) In this article references to an aircraft operator include any person who has been issued with an emissions monitoring plan.

Monitoring emissions and emissions monitoring plan conditions

32.—(1) Each aircraft operator must monitor its aviation emissions in accordance with—

(a) the Monitoring and Reporting Regulation 2018; and

(b) its emissions monitoring plan, including any written procedures required by Article 12 of the Monitoring and Reporting Regulation 2018.

(2) Each aircraft operator must comply with any condition included in its emissions monitoring plan under article 29(5) or 31(6).

Reporting aviation emissions

33.—(1) A person who is an aircraft operator in relation to a scheme year must prepare a report of its aviation emissions for that scheme year in accordance with the Monitoring and Reporting Regulation 2018; the report must be verified in accordance with the Verification Regulation 2018.

(2) The obligation for the report to be verified in accordance with the Verification Regulation 2018 does not apply, and the aviation emissions stated in the report are considered to be verified, where the person required to prepare the report in relation to a scheme year—

(a) had emissions of carbon dioxide for that scheme year amounting to either—

(i) less than 25,000 tonnes from full-scope flights; or

(ii) less than 3,000 tonnes from aviation activity; and

(b) determined its emissions using the small emitters tool approved under Commission Regulation (EU) No 606/2010, the tool having been populated with data by Eurocontrol.

(3) The report prepared under paragraph (1) must be submitted to the regulator on or before 31st March in the year following the scheme year to which it relates.

Surrender of allowances by aircraft operators

34.—(1) A person who is an aircraft operator in relation to a scheme year must surrender, on or before 30th April in the following year, an amount of allowances equal to its aviation emissions in that scheme year (expressed in tonnes).

(2) Where an aircraft operator's aviation emissions in a scheme year (the "non-compliance year") exceeds the allowances surrendered on or before 30th April in the following year, the aircraft operator's aviation emissions in the relevant scheme year must be treated as being increased by the difference.

(3) In paragraph (2), the relevant scheme year means—

(a) the scheme year following the non-compliance year; or

(b) if the failure to comply with paragraph (1) results from an error in the verified emissions report submitted by the aircraft operator, the scheme year in which the error is discovered.

PART 5

Charging

Charges

35.—(1) The regulator may charge an applicant, operator, aircraft operator or any other person an amount as a means of recovering costs incurred by the regulator in performing activities in accordance with or by virtue of this Order.

(2) The activities referred to in paragraph (1) include—

(a) giving advice in relation to an application under or by virtue of this Order or any other advice in relation to the operation of the UK ETS;

(b) considering an application under or by virtue of this Order;

(c) issuing, varying, transferring, cancelling, surrendering or revoking a permit;

(d) issuing or varying an emissions monitoring plan;

(e) giving any notice or other document provided for by or under this Order;

(f) receiving any notice or other document provided for by or under this Order;

(g) monitoring compliance with this Order;

(h) making a determination of emissions or aviation emissions under article 45.

(3) A charge under paragraph (1) may include an annual or other periodic charge to an operator or aircraft operator that does not relate to any specific activity.

(4) The regulator may apply different charges for different categories of person in relation to the same activity.

(5) Payment of a charge is not received until the regulator has cleared funds for the full amount due and a charge, if unpaid, may be recovered by the regulator as a civil debt.

(6) The regulator may require a charge to be paid before it carries out the activity to which the charge relates.

(7) If the regulator does not require a charge to be paid in accordance with paragraph (6), it is payable on demand.

(8) The regulator is not required to reimburse a charge where—

(a) an activity is not completed; or

(b) the person liable to pay the charge does not remain within the scheme for all of the period in relation to which the charge is payable or has been calculated.

Approval, publication and revision of charges

36.—(1) The regulator must publish a document ("charging scheme") setting out the charges payable in accordance with article 35(1) or how they will be calculated.

(2) Before publishing a charging scheme, the regulator must—

(a) bring its proposals to the attention of the persons likely to be affected by them; and

(b) specify the period within which representations or objections to the proposals may be made.

(3) A charging scheme cannot be published unless it has been approved—

(a) in the case of proposals by the Environment Agency, by the Secretary of State;

(b) in the case of proposals by SEPA, by the Scottish Ministers;

(c) in the case of proposals by NRW, by the Welsh Ministers;

(d) in the case of proposals by the chief inspector, by the Department of Agriculture, Environment and Rural Affairs.

(4) Where a proposed charging scheme has been submitted for approval under paragraph (3), the appropriate national authority—

(a) must consider any representations or objections made under paragraph (2)(b); and

(b) may make such modifications to the proposal as they consider appropriate.

(5) If the regulator proposes to revise a charging scheme in a material way, paragraphs (2) to (4) apply to the revised charging scheme.

(6) Paragraphs (2) to (5) do not apply to a charging scheme prepared and published by the Secretary of State.

Remittance of charges

37.—(1) The Environment Agency must pay the Secretary of State any charge received by it.

(2) SEPA must pay the Scottish Ministers any charge received by it.

(3) NRW must pay the Welsh Ministers any charge received by it.

(4) The chief inspector must pay the Department of Agriculture, Environment and Rural Affairs any charge received by it.

PART 6

Monitoring compliance

Authorised persons

38.—(1) The regulator may authorise a person to exercise, on behalf of the regulator and in accordance with the terms of the authorisation, the regulator's powers set out in this Part.

(2) In this Part, "authorised person" means a person authorised under—

(a) paragraph (1); or

(b) section 108(1) of the Environment Act 1995(**a**).

Inspections

39.—(1) The regulator may, at a reasonable time, inspect any premises and any thing in or on those premises in order to monitor compliance with this Order.

(**a**) 1995 c. 25; section 108(1) was relevantly amended by section 46(2)(a) of the Regulatory Reform (Scotland) Act 2014 (asp 3).

(2) Reasonable prior notice must be given before exercising the powers in this article.

(3) A person in control of the premises to which the regulator or authorised person reasonably requires access must allow the regulator or authorised person to have such access.

(4) The regulator or authorised person may, when inspecting premises—

(a) make any such examination and investigation as may be necessary;

(b) install or maintain monitoring equipment or other apparatus;

(c) request the production of any record;

(d) take measurements, photographs, recordings or copies of any thing;

(e) take samples of any articles or substances found in, or on, the premises and of the air, water or land in, on, or in the vicinity of, those premises;

(f) request any person at the premises to provide facilities or assistance to the extent that is within that person's control.

(5) Except to the extent agreed by the person in control of a place or premises, the power referred to in paragraph (1) does not apply to—

(a) a prohibited place for the purposes of the Official Secrets Act 1911(**a**); or

(b) any other premises to which the Crown restricts access on the ground of national security.

Powers of entry, etc.

40.—(1) The regulator or an authorised person may—

(a) enter any premises with a warrant issued in accordance with article 41, together with any equipment or material as may be required;

(b) when entering premises by virtue of sub-paragraph (a)—

(i) be accompanied by an authorised person and, if considered appropriate, a constable;

(ii) direct that any part of the premises be left undisturbed for so long as may be necessary;

(c) require any person believed to be able to give information relevant to an examination or investigation—

(i) to attend at a place and time specified by the regulator or authorised person;

(ii) to answer questions (in the absence of any person other than those whom the regulator or authorised person allows to be present and a person nominated by the person being asked questions);

(iii) to sign a declaration of truth of the answers given by that person;

(d) require the production of—

(i) records required to be kept under this Order;

(ii) other records which the regulator or authorised person considers it necessary to see for the purpose of an examination or investigation;

(iii) entries in a record referred to in this sub-paragraph;

(e) inspect and take copies of the records and entries referred to in sub-paragraph (d).

(2) The powers in paragraph (1) may only be exercised where the regulator or an authorised person reasonably believes there has been a failure to comply with the requirements of this Order.

(3) Except to the extent agreed by the person in control of a place or premises, the powers referred to in paragraph (1) do not apply in relation to—

(a) a prohibited place for the purposes of the Official Secrets Act 1911; or

(b) any other premises to which the Crown restricts access on the ground of national security.

(**a**) 1911 c. 28.

(4) It is an offence for a person—

(a) to fail to comply with a requirement imposed pursuant to this article; or

(b) to prevent any other person from—

(i) appearing before the regulator or an authorised person; or

(ii) answering a question to which the regulator or authorised person requires an answer.

(5) A person guilty of an offence under paragraph (4) is liable—

(a) on summary conviction in England and Wales, to a fine;

(b) on summary conviction in Scotland or in Northern Ireland, to a fine not exceeding the statutory maximum;

(c) on conviction on indictment, to a fine.

Warrants

41.—(1) A judge may issue a warrant in relation to any premises for the purpose of article 40(1)(a) where satisfied that—

(a) there are reasonable grounds for the exercise of the power in that sub-paragraph; and

(b) one or more of the conditions in paragraph (2) are fulfilled in relation to the premises.

(2) The conditions referred to in paragraph (1)(b) are that—

(a) the exercise of the power by consent in relation to the premises has been refused;

(b) a refusal of consent to the exercise of the power is reasonably expected;

(c) the premises are unoccupied;

(d) the occupier is temporarily absent from the premises and the case is one of urgency; or

(e) a request for admission to the premises would defeat the purpose of the entry.

(3) A warrant in accordance with this article continues to have effect until the purpose for which it was issued has been fulfilled.

(4) In paragraph (1), "judge" means—

(a) in England or Wales, a justice of the peace;

(b) in Northern Ireland, a lay magistrate;

(c) in Scotland, a justice of the peace or sheriff.

Admissible evidence

42.—(1) An answer given by a person in compliance with article 40(1)(c)(ii) is admissible in evidence—

(a) in England, Wales and Northern Ireland, against that person in any proceedings;

(b) in Scotland, against that person in criminal proceedings.

(2) In criminal proceedings in which the person referred to in paragraph (1) is charged with an offence, no evidence relating to the person's answer may be adduced and no question relating to it may be asked by, or on behalf of, the prosecution unless evidence relating to it has been adduced by, or on behalf of, the person.

(3) Paragraph (2) does not apply to an offence under—

(a) section 5 of the Perjury Act 1911(**a**);

(b) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995(**b**); or

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(**a**) 1911 c. 6.

(**b**) 1995 c. 39; section 44(2) was amended by section 200(2)(b) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13).

(c) article 10 of the Perjury (Northern Ireland) Order 1979(**a**).

Legal professional privilege

43. Nothing in this Part requires any person to produce a document which that person would be entitled to withhold the production of on grounds of legal professional privilege.

PART 7

Enforcement

CHAPTER 1

Enforcement notices and determination of emissions by regulator

Enforcement notices

44.—(1) Where the regulator considers that a person has contravened, is contravening or is likely to contravene a relevant requirement, the regulator may give notice (an "enforcement notice") to the person.

(2) In paragraph (1), "relevant requirement" means—

(a) a requirement imposed on the person by or under—

(i) this Order;

(ii) the Monitoring and Reporting Regulation 2018;

(b) a condition of a permit;

(c) a condition of an emissions monitoring plan.

(3) An enforcement notice must set out—

(a) the relevant requirement that the regulator considers has been contravened, is being contravened or is likely to be contravened;

(b) details of the contravention or likely contravention;

(c) the steps that must be taken to remedy the contravention or to ensure that a contravention does not occur;

(d) the period within which the steps must be taken;

(e) information about rights of appeal.

(4) The person to whom the enforcement notice is given must comply with the requirements of the notice within the period set out in the notice.

(5) The regulator may withdraw an enforcement notice at any time by giving notice of the withdrawal to the person to whom the enforcement notice is given.

Determination of reportable emissions or aviation emissions by regulator

45.—(1) The regulator must make a determination of emissions of an installation or an aircraft operator in either of the following circumstances—

(a) if the operator of the installation fails to submit a report of the installation's reportable emissions in accordance with a condition of a permit included under paragraph 4(2)(b) of Schedule 6 or paragraph 11(2)(b) of Schedule 7;

(b) if the aircraft operator fails to submit a report of aviation emissions in accordance with article 33.

(**a**) 1979 No. 1714 (N.I. 19).

(2) Where a verifier states in a verification report under the Verification Regulation 2018 that there are non-material misstatements in the annual emissions report of the operator of an installation or of an aircraft operator that have not been corrected by the operator or the aircraft operator before the verification report is issued—

(a) the regulator must—

(i) assess the misstatements;

(ii) if the regulator considers it appropriate, make a determination of emissions of the installation or the aircraft operator; and

(iii) give notice to the operator or the aircraft operator as to whether or not corrections are required to the annual emissions report and, if corrections are required, set out the corrections in the notice; and

(b) the operator or the aircraft operator must make the information referred to in sub-paragraph (a)(iii) available to the verifier.

(3) The regulator may make a determination of emissions of an installation or of an aircraft operator in any of the following circumstances—

(a) if the operator of the installation fails to satisfy the regulator in accordance with a condition of a permit included under paragraph 4(2)(c) of Schedule 6 (as to sustainability criteria in respect of the use of bioliquids);

(b) if the operator of the installation fails to submit a report in accordance with paragraph 11(4)(b) of Schedule 6;

(c) if the operator of the installation fails to submit a report in accordance with paragraph 12(5)(b) of Schedule 6;

(d) if the regulator considers that the determination of emissions is necessary for the purpose of imposing, or considering whether to impose, a civil penalty under article 47.

(4) In making a determination under paragraph (3)(a), the regulator may substitute an emission factor of greater than zero for the factor reported in respect of the bioliquids concerned.

(5) A regulator who makes a determination of emissions must give notice of the determination to the operator, the aircraft operator or the person on whom the civil penalty may be imposed.

(6) A notice of a determination of emissions determines for the purposes of this Order (including for calculating a civil penalty under article 47) the installation's reportable emissions or the aviation operator's aviation emissions for the period to which the determination relates.

(7) Where, after making a determination of emissions (including a rectified determination of emissions, or a further rectified determination of emissions, made under this paragraph), the regulator considers that there is an error in the determination, the regulator must—

(a) withdraw any notice of the determination given under paragraph (5);

(b) make a rectified determination of the emissions; and

(c) give notice of the rectified determination in accordance with paragraph (5),

and paragraph (6) applies to a notice of the rectified determination as it does to the notice of the previous determination.

(8) For the purposes of this article, emissions must be determined on the basis of a set of assumptions designed to ensure that no under-estimation occurs.

CHAPTER 2

Civil penalties

Carbon price

46.—(1) This article applies for the purpose of determining the price (the "carbon price") per tonne of carbon dioxide equivalent for a scheme year.

(2) The carbon price for the 2021 scheme year is the sum of the relevant amount for each auction of allowances held in the period beginning on 1st January 2021 and ending on 11th

November 2021 under regulations made by the Treasury under the Finance Act 2020 divided by the sum of the allowances sold at all those auctions.

(3) In paragraph (2), the relevant amount for an auction is the auction clearing price (that is to say, the price per allowance that, in accordance with the auction rules, each successful bidder must pay, irrespective of the original bid) multiplied by the number of allowances sold at the auction.

(4) The carbon price for the 2022 scheme year or any subsequent scheme year (the "relevant scheme year") is the average end of day settlement price, calculated over the relevant period, of the December futures contract for the relevant scheme year, as traded on the relevant carbon market exchange.

(5) For the purposes of paragraph (4), the "average" end of day settlement price is calculated by dividing the sum of the end of day settlement price for each day in the relevant period for which an end of day settlement price is published by the number of days in the relevant period for which an end of day settlement price is published.

(6) In paragraphs (4) and (5)—

"end of day settlement price", in relation to a futures contract, means the end of day settlement price per tonne of carbon dioxide equivalent published by the carbon market exchange on which the futures contract is traded;

"futures contract" means a futures contract for allowances;

"relevant carbon market exchange", in relation to a relevant scheme year, means the largest carbon market exchange as determined by volume of sales in the relevant period of the December futures contract for the relevant scheme year traded on the exchange;

"relevant period" means—

(a) in relation to the carbon price for the 2022 scheme year, the period beginning on 1st January 2021 and ending on 11th November 2021;

(b) in relation to the carbon price for the 2023 scheme year and any subsequent scheme year, the 12-month period ending on 11th November in the year preceding the relevant scheme year.

(7) The UK ETS authority must publish the carbon price for the 2021 scheme year on or before 30th November 2021.

(8) The UK ETS authority must publish the carbon price for subsequent scheme years on or before 30th November in the year preceding the scheme year.

Penalty notices

47.—(1) Where the regulator considers that a person is liable to a civil penalty under any of articles 50 to 68 the regulator may impose a civil penalty on the person.

(2) But where the regulator considers that a person is liable to a civil penalty under any of the following, the regulator must impose a civil penalty on the person——

(a) article 52 (failure to surrender allowances), but only if the person is liable to the excess emissions penalty referred to in article 52(2);

(b) article 54 (hospitals and small emitters: exceeding emissions target), except where paragraph (3) of that article applies;

(c) article 59 (ultra-small emitters: reportable emissions exceeding maximum amount).

(3) A civil penalty is imposed on a person by giving a notice (a "penalty notice") to the person.

(4) Where the civil penalty to which the person is liable consists of a non-escalating penalty only (or where the civil penalty consists of both a non-escalating penalty and a daily penalty, but the regulator decides not to impose a daily penalty), the penalty notice must set out—

(a) the grounds for liability;

(b) the amount of the non-escalating penalty (and, where relevant, how the amount is calculated);

(c) the date by which the non-escalating penalty must be paid (the "due date"), which must not be less than 28 days after the day on which the notice is given;

(d) the person to whom payment must be made (which must be either the regulator or the appropriate national authority);

(e) how payment may be made;

(f) information about rights of appeal.

(5) Where the civil penalty to which the person is liable consists of both a non-escalating penalty and a daily penalty and the regulator considers that the regulator may wish to impose a daily penalty, the regulator must, before giving a penalty notice to the person, first give a notice (an "initial notice") to the person.

(6) The initial notice must set out—

(a) the grounds for liability;

(b) the maximum amount of the non-escalating penalty that may be imposed;

(c) that the daily penalty that may be imposed begins to accrue on the day on which the initial notice is given;

(d) the maximum daily rate of the daily penalty and the maximum amount of the daily penalty that may be imposed.

(7) Where, after an initial notice is given to a person, the regulator considers that the total amount of the daily penalty to which the person is liable can be calculated (including where the daily penalty reaches its maximum amount), the regulator may give a penalty notice to the person.

(8) The penalty notice must set out—

(a) the grounds for liability;

(b) the amount of the civil penalty (including how the amount is calculated), which may include—

(i) a non-escalating penalty; and

(ii) a daily penalty;

(c) the date by which the civil penalty must be paid (the "due date"), which must not be less than 28 days after the day on which the notice is given;

(d) the person to whom payment must be made (which must be either the regulator or the appropriate national authority);

(e) how payment may be made;

(f) information about rights of appeal.

(9) The person to whom a penalty notice is given must pay the civil penalty set out in the notice to the person set out in the notice on or before the due date.

(10) A civil penalty imposed by a penalty notice is recoverable by the regulator as a civil debt.

(11) The regulator must, as soon as reasonably practicable—

(a) inform the appropriate national authority of a penalty notice given by the regulator;

(b) pay all sums received or recovered under a penalty notice to the appropriate national authority.

(12) In this article and article 48—

"appropriate national authority" means—

(a) in the case of a penalty notice given by the chief inspector, the Department of Agriculture, Environment and Rural Affairs;

(b) in the case of a penalty notice given by SEPA, the Scottish Ministers;

(c) in the case of a penalty notice given by NRW, the Welsh Ministers;

(d) in any other case, the Secretary of State;

"daily penalty" means a daily penalty set out in articles 51(3)(b), 55(2)(b), 61(2)(b), 62(2)(b), 63(2)(b), 64(2)(b), 65(2)(b) or 66(2)(b);

"non-escalating penalty" means a civil penalty under articles 50 to 68 that is not a daily penalty.

(13) This article is subject to article 48.

Penalty notices: supplementary

48.—(1) Subject to paragraph (3), a penalty notice imposing a civil penalty under any of articles 50 to 68 (the "relevant provision") may set out—

(a) a non-escalating penalty of an amount lower than the amount referred to in the relevant provision;

(b) where the civil penalty consists of both a non-escalating penalty and a daily penalty—

(i) a daily penalty based on a daily rate of an amount lower than the amount referred to in the relevant provision; or

(ii) no daily penalty.

(2) Subject to paragraphs (3) and (4), the regulator may, by giving notice to the person to whom a penalty notice is given—

(a) extend the due date for payment set out in the penalty notice;

(b) amend the penalty notice by substituting a lower non-escalating penalty or a daily penalty based on a lower daily rate;

(c) withdraw the penalty notice.

(3) Paragraphs (1) and (2) do not apply to—

(a) a penalty notice imposing the excess emissions penalty referred to in article 52;

(b) a penalty notice imposing a civil penalty under article 54, except where paragraph (3) of that article applies;

(c) a penalty notice imposing a civil penalty under article 59.

(4) But the regulator may withdraw a penalty notice referred to in paragraph (3) if there is an error in the notice (including an error in the basis on which the civil penalty imposed by the notice is calculated).

Regulator must publish names of persons subject to civil penalty under article 52

49.—(1) The regulator must publish the name of every person on whom the excess emissions penalty referred to in article 52 is imposed as soon as reasonably practicable after—

(a) the expiry of the period for bringing an appeal against the penalty notice imposing the penalty; or

(b) if an appeal is brought, the determination or withdrawal of the appeal.

(2) But paragraph (1) does not apply if, following an appeal, the person is found not to be liable to a civil penalty.

Installations: carrying out regulated activity without permit contrary to article 26

50.—(1) Where a regulated activity that is not authorised by a permit is carried out at an installation in a scheme year, contrary to article 26, the operator of the installation is (after the end of the scheme year) liable to a civil penalty.

(2) Subject to paragraph (3), the civil penalty is CA + (RE x CP), where—

CA is an estimate of the costs avoided by the operator in the scheme year as a result of carrying out the regulated activity without the authorisation of a permit;

RE is an estimate of the installation's reportable emissions in the part of the scheme year during which a regulated activity that was not authorised by a permit was carried out;

CP is the carbon price for the scheme year.

(3) When setting the amount of the civil penalty to be imposed, the regulator may increase the amount calculated under paragraph (2) by a factor designed to ensure that the amount of the civil penalty exceeds the value of any economic benefit that the operator has obtained as a result of failing to comply with article 26.

(4) The regulator must—

(a) estimate CA and RE under paragraph (2); and

(b) exercise the regulator's functions under paragraph (3),

in accordance with a direction given by the relevant national authority under section 52 of CCA 2008.

(5) This article is subject to paragraph 7(6)(b) of Schedule 8.

Installations: failure to comply with conditions of permit, etc.

51.—(1) The operator of an installation is liable to the civil penalty referred to in paragraph (3) where the operator fails to comply (or to comply on time) with—

(a) a condition of a greenhouse gas emissions permit;

(b) a condition of a hospital or small emitter permit;

(c) a requirement of a surrender notice set out in paragraph 11(4)(b)(i) or (ii) of Schedule 6;

(d) a requirement of a revocation notice set out in paragraph 12(5)(b)(i) or (ii) of that Schedule.

(2) But an operator is not liable to the civil penalty referred to in paragraph (3) where the failure to comply with a condition of a permit gives rise to liability for a civil penalty under—

(a) article 52;

(b) article 56.

(3) The civil penalty is—

(a) £20,000; and

(b) a daily penalty at a daily rate of £500 for each day that the operator fails to comply with the condition or requirement, beginning with the day on which the initial notice is given, up to a maximum of £45,000.

Failure to surrender allowances

52.—(1) Subject to paragraphs (4) to (9), the operator of an installation or an aircraft operator is liable to the civil penalty (the "excess emissions penalty") referred to in paragraph (2) where—

(a) in the case of the operator, the operator fails to surrender sufficient allowances, contrary to—

(i) article 27;

(ii) the requirement of a surrender notice set out in paragraph 11(4)(b)(iii) of Schedule 6;

(iii) the requirement of a revocation notice set out in paragraph 12(5)(b)(iii) of that Schedule;

(b) in the case of the aircraft operator, the aircraft operator fails to surrender sufficient allowances, contrary to article 34.

(2) The excess emissions penalty is £100 multiplied by the inflation factor for each allowance that the operator or the aircraft operator fails to surrender.

(3) For the purpose of calculating the excess emissions penalty—

(a) under paragraph (1)(a)(i), a deemed increase in the installation's reportable emissions under paragraph 4(4) of Schedule 6 must be disregarded;

(b) under paragraph (1)(b), a deemed increase in an aircraft operator's aviation emissions under article 34(2) must be disregarded.

(4) This paragraph applies where—

(a) the regulator becomes aware that an installation's reportable emissions (as determined by the regulator under article 45) in a scheme year exceed the installation's verified reportable emissions for that year; and

(b) the operator of the installation failed to surrender allowances equal to the difference—

(i) on or before 30th April in the year following the scheme year referred to in sub-paragraph (a); or

(ii) where the end date set out in a surrender notice under paragraph 11 of Schedule 6 or a revocation notice under paragraph 12 of that Schedule falls in the scheme year referred to in sub-paragraph (a), on or before the date set out in the notice for the surrender of allowances.

(5) In paragraph (4), "verified reportable emissions" means reportable emissions—

(a) verified in accordance with a condition of a permit included under paragraph 4(2)(b) of Schedule 6 (including for the purpose of complying with the requirements of a surrender notice under paragraph 11, or a revocation notice under paragraph 12, of that Schedule); or

(b) previously determined by the regulator under article 45.

(6) Where paragraph (4) applies, the operator is liable to the civil penalty referred to in paragraph (10) (and not the excess emissions penalty) in respect of the failure to surrender allowances referred to in paragraph (4)(b).

(7) This paragraph applies where the regulator becomes aware that—

(a) an aircraft operator's aviation emissions (as determined by the regulator under article 45) in a scheme year exceed the aircraft operator's verified aviation emissions for that year; and

(b) the aircraft operator failed to surrender allowances equal to the difference on or before 30th April in the year following the scheme year referred to in sub-paragraph (a).

(8) In paragraph (7), "verified aviation emissions" means aviation emissions—

(a) verified under article 33(1);

(b) considered verified under article 33(2); or

(c) previously determined by the regulator under article 45.

(9) Where paragraph (7) applies, the aircraft operator is liable to the civil penalty referred to in paragraph (10) (and not the excess emissions penalty) in respect of the failure to surrender allowances referred to in paragraph (7)(b).

(10) The civil penalty is £20 multiplied by the inflation factor for each allowance that the operator or the aircraft operator failed to surrender.

(11) For the purposes of this article, the inflation factor is $(CPI_2\text{-}CPI_1)/CPI_1$ or 1, whichever is greater, where—

CPI_2 is the consumer prices index for the most recent March for which the consumer prices index is published when the penalty notice is given;

CPI_1 is the consumer prices index for March 2021.

(12) In paragraph (11), "consumer prices index" means—

(a) the all items consumer prices index published by the Statistics Board(**a**); or

(**a**) The Statistics Board was established by section 1 of the Statistics and Registration Service Act 2007 (c. 18).

(b) if that index is not published for a month, any substituted index or index figures published for that month by the Statistics Board.

Installations: failure to transfer or surrender allowances where underreporting discovered after transfer

53.—(1) A person is liable to a civil penalty where the person fails—

(a) to effect a transfer (or to effect a transfer on time) of allowances, contrary to paragraph 10(3) of Schedule 6 (transfer of permits: underreporting discovered after transfer);

(b) to surrender (or to surrender on time) allowances, contrary to paragraph 10(4) of that Schedule.

(2) The civil penalty is £20 multiplied by the inflation factor for each allowance that the person failed to transfer or surrender.

(3) In this article, "inflation factor" has the meaning given in article 52(11).

Hospitals and small emitters: exceeding emissions target

54.—(1) Where an installation's reportable emissions in a scheme year for which the installation is a hospital or small emitter exceed the installation's emissions target for that year, contrary to paragraph 19 of Schedule 7, the operator of the installation is liable to a civil penalty.

(2) The civil penalty is (RE-ET) x CP, where—

RE is the installation's reportable emissions in the scheme year;

ET is the installation's emissions target for the scheme year;

CP is the carbon price for the scheme year.

(3) For the purposes of article 47(2)(b), this paragraph applies where the regulator considers that the installation's emissions target for the scheme year was incorrectly calculated.

(4) In this article, "emissions target" has the meaning given in paragraph 1 of Schedule 7.

Hospitals and small emitters: failure to pay civil penalty for exceeding emissions target

55.—(1) Where the operator of an installation fails to pay a civil penalty (the "first penalty") under article 54 on or before the due date set out in the penalty notice imposing the first penalty, the operator is liable to a further civil penalty.

(2) The further civil penalty is—

(a) 10% of the first penalty; and

(b) a daily penalty at a daily rate of £150 for each day that the operator fails to pay the first penalty beginning with the day on which the initial notice is given, up to a maximum of £13,500.

Hospitals and small emitters: under-reporting of emissions

56.—(1) The operator of an installation is liable to a civil penalty where the installation has unreported emissions in a scheme year for which the installation is a hospital or small emitter, that is to say reportable emissions in the scheme year that—

(a) are not reported in the emissions report submitted for the scheme year under paragraph 11(2)(b) of Schedule 7; but

(b) are determined by the regulator under article 45.

(2) The civil penalty is £5,000 + (UE x CP), where—

UE is the unreported emissions in the scheme year (in tonnes of carbon dioxide equivalent);

CP is the carbon price for the scheme year.

Hospitals and small emitters: failure to notify when ceasing to meet criteria

57.—(1) This article applies where—

(a) either—

(i) a hospital-qualifying installation ceases to be an installation that primarily provides services to a hospital in a scheme year for which the installation is a hospital or small emitter; or

(ii) the reportable emissions of an installation (other than a hospital-qualifying installation) in a scheme year for which the installation is a hospital or small emitter exceed the maximum amount; and

(b) the operator of the installation fails to comply (or to comply on time) with a requirement to give notice on or before 31st March in the following year (the "default year") under a condition of a hospital or small emitter permit included under paragraph 11(3)(a) or (4) of Schedule 7.

(2) Where the operator fails to give notice on or before 31st March in the default year, but does give notice on or before 31st October in that year, the operator is liable to a civil penalty of £2,500.

(3) Where the operator fails to give notice on or before 31st October in the default year—

(a) if there is no penalty year, the operator is liable to a civil penalty of £5,000;

(b) if there is a penalty year, the operator is liable (after the end of the last penalty year) to a civil penalty of the sum of—

(i) £5,000; and

(ii) 2 x the avoided compliance costs for each penalty year.

(4) The avoided compliance costs, for each penalty year, are (RE x CP) – PP, where—

RE is the installation's reportable emissions (determined as if the modification made to Article 38(2) of the Monitoring and Reporting Regulation 2018 by paragraph 13(4)(a) of Schedule 7 did not apply) in the penalty year;

CP is the carbon price for the penalty year;

PP is, where a penalty notice imposing a civil penalty under article 54 in respect of the penalty year has previously been given to the operator, the amount of the civil penalty.

(5) In this article—

"hospital-qualifying installation" has the meaning given in paragraph 1 of Schedule 7;

"maximum amount" has the meaning given in that paragraph;

"penalty year" means a scheme year for which the installation—

(a) is a hospital or small emitter; but

(b) would not have been a hospital or small emitter if, by reason of the matters referred to in paragraph (1)(a)(i) or (ii), the regulator had, in the default year, given a conversion notice as required by paragraph 23(1) to (3) of Schedule 7 to the operator of the installation.

Installations: failure to apply to surrender permit

58. The operator of an installation is liable to a civil penalty of £5,000 where the operator fails to apply (or to apply on time) to surrender a permit, contrary to paragraph 11(1) of Schedule 6.

Ultra-small emitters: reportable emissions exceeding maximum amount

59.—(1) Subject to paragraph (3), where an installation's reportable emissions in a scheme year for which the installation is an ultra-small emitter exceed the maximum amount, the operator of the installation is liable to a civil penalty.

(2) The civil penalty is (RE – maximum amount) x CP, where—

RE is the installation's reportable emissions in the scheme year;

CP is the carbon price for the scheme year.

(3) A civil penalty under this article may be imposed only in respect of—

(a) the first scheme year in an allocation period in which the installation's reportable emissions exceed the maximum amount; and

(b) if the following scheme year is in the same allocation period, that scheme year.

(4) In this article, "maximum amount" has the meaning given in paragraph 1 of Schedule 8.

Ultra-small emitters: failure to notify where reportable emissions exceed maximum amount

60.—(1) Where—

(a) an installation's reportable emissions in a scheme year (the "excess year") for which the installation is an ultra-small emitter exceed the maximum amount; and

(b) the operator of the installation fails to give notice to the regulator under paragraph 6 of Schedule 8 on or before 31st March in the following year (the "default year") or at all,

the operator is liable to a civil penalty.

(2) The civil penalty is the sum of—

(a) £2,500; and

(b) CA + (RE x CP) for each scheme year (or part of a scheme year) falling within the penalty period (if any), where—

CA is an estimate of the costs avoided by the operator in the scheme year (or part of the scheme year) as a result of carrying out a regulated activity without the authorisation of the relevant permit;

RE is an estimate of the installation's reportable emissions in the scheme year (or part of the scheme year) during which a regulated activity that was not authorised by a permit was carried out;

CP is the carbon price for the scheme year.

(3) The penalty period is the period—

(a) beginning on 1st January in the year following the default year; and

(b) ending on the earlier of the following—

(i) the day before the day on which a permit for the installation comes into force; and

(ii) the last day of the same allocation period as the excess year is in.

(4) But there is no penalty period if—

(a) 1st January in the year following the default year is not in the same allocation period as the excess year; or

(b) a permit for the installation is in force on that date.

(5) When setting the amount of the civil penalty to be imposed, the regulator may increase the amount calculated under paragraph (2)(b) by a factor designed to ensure that the amount of the civil penalty exceeds the value of any economic benefit that the operator has obtained as a result of carrying out a regulated activity that was not authorised by the relevant permit.

(6) The regulator must—

(a) estimate CA and RE under paragraph (2); and

(b) exercise the regulator's functions under paragraph (5),

in accordance with a direction given by the relevant national authority under section 52 of CCA 2008.

(7) In this article—

"maximum amount" has the meaning given in paragraph 1 of Schedule 8;

"relevant permit" means—

(a) where a hospital or small emitter permit for the installation comes into force before the last day of the same allocation period as the excess year is in, a hospital or small emitter permit;

(b) in any other case, a greenhouse gas emissions permit.

Aviation: failure to apply or make revised application for emissions monitoring plan

61.—(1) An aircraft operator is liable to a civil penalty where the aircraft operator fails—

(a) to apply (or to apply on time) to the regulator for an emissions monitoring plan, contrary to article 28; or

(b) to make a revised application (or to make a revised application on time) for an emissions monitoring plan, where required to do so under article 30(3).

(2) The civil penalty is—

(a) £20,000; and

(b) a daily penalty at a daily rate of £500 for each day that the application is not submitted or, as the case may be, the revised application is not submitted, beginning with the day on which the initial notice is given, up to a maximum of £45,000.

Aviation: failure to comply with condition of emissions monitoring plan

62.—(1) An aircraft operator is liable to a civil penalty where the aircraft operator fails to comply (or to comply on time) with a condition of an emissions monitoring plan, contrary to article 32(2).

(2) The civil penalty is—

(a) £20,000; and

(b) a daily penalty at a daily rate of £500 for each day that the person fails to comply with the condition, beginning with the day on which the initial notice is given, up to a maximum of £45,000.

Aviation: failure to monitor aviation emissions

63.—(1) An aircraft operator is liable to a civil penalty where the aircraft operator fails to monitor aviation emissions in accordance with article 32(1).

(2) The civil penalty is—

(a) £20,000; and

(b) a daily penalty at a daily rate of £500 for each day that the person fails to monitor aviation emissions in accordance with article 32(1), beginning with the day on which the initial notice is given, up to a maximum of £45,000.

Aviation: failure to report aviation emissions

64.—(1) An aircraft operator is liable to a civil penalty where the aircraft operator fails to submit (or to submit on time) a verified report of aviation emissions to the regulator, contrary to article 33(1).

(2) The civil penalty is—

(a) £20,000; and

(b) a daily penalty at a daily rate of £500 for each day that the report is not submitted, beginning with the day on which the initial notice is given, up to a maximum of £45,000.

Failure to comply with enforcement notice given by regulator

65.—(1) A person is liable to a civil penalty where the person fails to comply (or to comply on time) with the requirements of an enforcement notice given by the regulator under article 44.

(2) The civil penalty is—

(a) £20,000; and

(b) a daily penalty at a daily rate of £1,000 for each day that the person fails to comply with the requirements of the notice, beginning with the day on which the initial notice is given, up to a maximum of £45,000.

Failure to comply with information notice

66.—(1) A person is liable to a civil penalty where the person fails to comply (or to comply on time) with the requirements of a notice (the "information notice") given under article 75.

(2) The civil penalty is—

(a) £5,000; and

(b) a daily penalty at a daily rate of £500 for each day that the person fails to comply with the requirements of the information notice, beginning with the day on which the initial notice is given, up to a maximum of £45,000.

Providing false or misleading information, etc.

67. A person is liable to a civil penalty of £50,000 where the person provides false or misleading information, or makes a statement that is false or misleading in a material respect, where the information is provided, or the statement is made—

(a) in an application under this Order;

(b) in compliance with a notice given to the person under this Order;

(c) in a notice that the person is required to give under this Order;

(d) in compliance with a condition of a permit or an emissions monitoring plan;

(e) in a report of aviation emissions under article 33.

Inspection: refusal to allow access to premises

68. A person in control of premises is liable to a civil penalty of £50,000 where the person does not allow the regulator or authorised person (within the meaning of Part 6) access to the premises contrary to article 39(3).

PART 8

Appeals

Interpretation

69. In this Part—

"appeal body" has the meaning given in article 71;

"decision" includes a deemed refusal under this Order;

"notice" includes—

(a) in the case of a notice determining an application for a permit or the transfer of a permit, the provisions of any permit attached to the notice; and

(b) in the case of a notice determining an application for an emissions monitoring plan, the conditions included in the plan issued by the notice.

Right of appeal

70.—(1) Subject to paragraph (3), the following may appeal to the appeal body—

(a) a person who is aggrieved by a decision of the regulator determining an application made by the person under this Order;

(b) a person who is aggrieved by a notice given to the person, under a provision referred to in paragraph (2).

(2) Those provisions are—

(a) article 30(1) (refusal of application for an emissions monitoring plan);

(b) article 31(4), (5) or (6) (variation of an emissions monitoring plan);

(c) article 44(1) (enforcement notices);

(d) article 45(5) (determination of reportable emissions by regulator);

(e) article 47(3) or (7) (penalty notices);

(f) article 75(1) (information notices);

(g) paragraph 1(12) of Schedule 3 (application to be treated as being withdrawn);

(h) paragraph 6(4) or (5) of Schedule 6 (variation of permits);

(i) paragraph 10(2) of Schedule 6 (transfer of permits: underreporting discovered after transfer);

(j) paragraph 12(4) of Schedule 6 (revocation of permits);

(k) paragraph 23(1) or (2) of Schedule 7 (conversion notices);

(l) paragraph 7(2) of Schedule 8 (end of ultra-small emitter status);

(m) paragraph 1(3)(b) or (4)(b) of Schedule 11 (permits under GGETSR 2012).

(3) An appeal under paragraph (1) may not be made to the extent that the decision implements—

(a) a direction given under—

(i) section 40 of the Environment Act 1995(**a**);

(ii) section 52 of CCA 2008;

(iii) article 11 of the Natural Resources Body for Wales (Establishment) Order 2012(**b**);

(iv) regulation 40 of the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013(**c**);

(b) a direction given by an appeal body under this Order.

(4) To avoid doubt, no appeal may be brought under paragraph (1)(a) in respect of a preliminary assessment under—

(a) paragraph 5(3) of Schedule 7;

(b) paragraph 3(3) of Schedule 8.

Appeal body

71.—(1) In an appeal against a decision of SEPA, the appeal body is the Scottish Land Court(**d**).

(2) In an appeal against a decision of the chief inspector, the appeal body is the Planning Appeals Commission(**e**).

(**a**) Section 40 was amended by S.I. 2011/1043 and 2013/755 and amended prospectively by S.I. 2019/458 with effect from IP completion day.
(**b**) S.I. 2012/1903 (W. 230).
(**c**) S.R. (NI) 2013 No. 160.
(**d**) The Scottish Land Court was established by section 3 of the Small Landholders (Scotland) Act 1911 (c. 49) and continued in being under section 1 of the Scottish Land Court Act 1993 (c. 45).
(**e**) The Planning Appeals Commission was continued by section 203(1) of the Planning Act (Northern Ireland) 2011 (c. 25).

(3) In an appeal against any other decision, the appeal body is the First-tier Tribunal(**a**).

Effect of appeals

72.—(1) Subject to paragraphs (2) to (4), the bringing of an appeal under article 70 (right of appeal) suspends the effect of the decision or notice pending the final determination or withdrawal of the appeal.

(2) The bringing of an appeal does not suspend the effect of—

(a) a decision refusing an application;

(b) a deemed refusal;

(c) a notice under—

(i) article 31(4), (5) or (6) (variation of an emissions monitoring plan);

(ii) article 44(1) (enforcement notices);

(iii) paragraph 6(4) or (5) of Schedule 6 (variation of permits);

(iv) paragraph 23(1) or (2) of Schedule 7 (end of hospital or small emitter status);

(v) paragraph 7(2) of Schedule 8 (end of ultra-small emitter status).

(3) Where a permit has been granted or varied (following an application for a permit or for the transfer of a permit), the bringing of an appeal against the provisions of the permit or the terms of the variation does not suspend the effect of those provisions or terms.

(4) Where an emissions monitoring plan has been issued following an application under article 28(1), the bringing of an appeal against the conditions included in the plan does not suspend the effect of those conditions.

(5) The bringing of an appeal against a determination of reportable emissions or aviation emissions under article 45(5) suspends the effect of the decision only for the purpose of assessing whether there has been compliance with article 27 or 34 (surrender of allowances).

Determination of appeals

73.—(1) In determining an appeal under article 70, the appeal body may—

(a) affirm the decision;

(b) quash the decision or vary any of its terms;

(c) substitute a deemed refusal with a decision of the appeal body;

(d) give directions as to the exercise of the regulator's functions under this Order.

(2) The appeal body may not make a determination that would result in a decision which could not otherwise have been made under this Order.

Procedure for appeals

74.—(1) Schedule 9 (which makes provision in relation to appeals to the Scottish Land Court) has effect.

(2) Schedule 10 (which makes provision in relation to appeals to the Planning Appeals Commission) has effect.

(**a**) The First-tier Tribunal was established by section 3(1) of the Tribunals, Courts and Enforcement Act 2007 (c. 15).

PART 9

Miscellaneous

Information notices

75.—(1) The UK ETS authority, a national authority or a regulator may, by giving a notice (an "information notice") to a person, require the person to provide information for purposes connected with the exercise of functions under—

(a) this Order;

(b) the Monitoring and Reporting Regulation 2018;

(c) the Verification Regulation 2018.

(2) The information notice must set out—

(a) the information to be provided;

(b) the form in which the information must be provided;

(c) the period within which or the time when the information must be provided;

(d) the place where the information must be provided.

(3) The information that a person may be required to provide includes information that, although it is not in the person's possession or it would not otherwise come into the person's possession, is information that it is reasonable to require the person to obtain or compile for the purpose of complying with the information notice.

Crown application

76.—(1) This Order applies to the Crown.

(2) Articles 39 and 40 and Part 2 of Schedule 3 make specific provision relevant to their application to the Crown.

Transitional provisions

77.—(1) Schedule 11 (which makes transitional provision for installations) has effect.

(2) An application for a GGETSR emissions plan under regulation 32A of GGETSR 2012 that has not been determined under GGETSR 2012 may be treated by the regulator as an application made under article 28.

(3) An application for the variation of a GGETSR emissions plan that has not been determined under GGETSR 2012 may be treated by the regulator as an application made under article 31.

Name
Clerk of the Privy Council

SCHEDULE 1

Article 4(1)

Aviation activity

Aviation activity

1.—(1) An aviation activity consists of any of the following activities other than excluded flights—

(a) a flight departing from an aerodrome situated in the United Kingdom and arriving in an aerodrome situated—

(i) in the United Kingdom;

(ii) in an EEA State;

(iii) in Gibraltar;

(iv) on an offshore structure in the UK sector of the continental shelf or an offshore structure in the continental shelf of an EEA state;

(b) a flight arriving in an aerodrome situated in the United Kingdom from an aerodrome situated in Gibraltar.

(2) In this paragraph a reference to a flight departing from an aerodrome situated in the United Kingdom and arriving in an aerodrome situated in an EEA state does not include a reference to a flight departing from an aerodrome situated in the United Kingdom and arriving in an aerodrome situated in an outermost region.

(3) In this paragraph, "continental shelf of an EEA state" means an area beyond the territorial sea of an EEA state, within which rights with respect to the seabed and subsoil and their natural resources are exercisable by that EEA state.

Excluded flights

2.—(1) For the purposes of this Order, subject to sub-paragraph (2), all of the following are excluded flights—

(a) flights performed exclusively for the transport, on official mission, of a reigning Monarch and their immediate family, Heads of State, Heads of Government and Government Ministers, of a country other than the United Kingdom;

(b) military flights;

(c) customs and police flights performed by both civil registered and military aircraft;

(d) search and rescue flights;

(e) firefighting flights;

(f) humanitarian flights;

(g) emergency medical service flights;

(h) flights performed exclusively under the visual flight rules set out in Annex 2 to the Chicago Convention;

(i) flights terminating at the aerodrome from which the aircraft has taken off and during which no intermediate landing has been made;

(j) training flights performed exclusively for the purpose of obtaining a licence, or a rating in the case of cockpit flight crew, provided that the flights do not serve for the transport of passengers or cargo;

(k) flights performed exclusively for the purpose of scientific research partially or totally performed in-flight;

(l) flights performed exclusively for the purpose of checking, testing or certifying aircraft or equipment whether airborne or ground-based;

(m) flights performed by aircraft with a certified maximum take-off mass of less than 5,700 kilograms.

(2) Excluded flights referred to in sub-paragraph (1)(a), (j), (k) and (l) do not include flights for the positioning or ferrying of the aircraft.

(3) In this paragraph—

"emergency medical service flights" means flights for the exclusive purpose of facilitating emergency medical assistance, where immediate and rapid transportation is essential, by carrying medical personnel, medical supplies, including equipment, blood, organs, drugs, or ill and injured persons and other persons directly involved;

"firefighting flights" means flights performed exclusively to combat wildfires;

"Government Ministers" are the members of the government as listed in the national official journal of the country concerned, excluding members of regional or local governments of a country;

"humanitarian flights" means flights operated exclusively for humanitarian purposes which carry relief personnel and relief supplies such as food, clothing, shelter, medical and other items during or after an emergency or disaster, or are used to evacuate persons from a place where their life or health is threatened by such emergency or disaster to a safe haven in the same State or another State willing to receive such persons;

"immediate family" comprises exclusively the spouse, any partner considered as equivalent to the spouse, the children and the parents;

"military flights" means flights directly related to the conduct of military activities and performed by military aircraft;

"official mission" means a mission in which the person concerned is acting in an official capacity;

"search and rescue flights" means flights offering search and rescue services, including the performance of distress monitoring, communication, coordination and search and rescue functions, initial medical assistance or medical evacuation, through the use of public and private resources, including cooperating aircraft, vessels and other craft and installations.

SCHEDULE 2

Article 4(1)

Meaning of installation and regulated activity

Interpretation

1.—(1) In this Schedule—

"combustion unit" means a stationary technical unit in which fuels are combusted (and includes all types of boiler, burner, turbine, heater, furnace, incinerator, calciner, kiln, oven, dryer, engine, fuel cell, chemical looping combustion unit, flare and thermal or catalytic post-combustion unit);

"hazardous waste" means—

(a) in relation to an installation in Northern Ireland or UK coastal waters adjacent to Northern Ireland, hazardous waste for the purposes of regulation 6 of the Hazardous Waste Regulations (Northern Ireland) 2005(**a**);

(b) in relation to an installation in Scotland or UK coastal waters adjacent to Scotland, special waste within the meaning of regulation 2 of the Special Waste Regulations 1996(**b**);

(c) in relation to an installation in Wales or UK coastal waters adjacent to Wales, hazardous waste for the purposes of regulation 6 of the Hazardous Waste (Wales) Regulations 2005(**c**);

(d) in any other case, hazardous waste for the purposes of regulation 6 of the Hazardous Waste (England and Wales) Regulations 2005(**d**);

"municipal waste" has the meaning given in section 21(3) of the Waste and Emissions Trading Act 2003(**e**).

(2) For the purposes of this Schedule, a combustion unit or installation that uses only biomass as a fuel includes a combustion unit or installation that uses fossil fuels only during start-up or shut-down of operations.

Meaning of installation

2.—(1) Subject to sub-paragraph (2), in this Order, "installation" means a stationary technical unit or units where one or more regulated activities are carried out.

(2) "Installation" does not include any of the following (which are outside the scope of the UK ETS)—

(a) an installation that uses only biomass as a fuel;

(b) an installation, or part of an installation, the primary purpose of which is research and development (including the testing of new products and processes);

(c) an installation, the primary purpose of which is the incineration of hazardous or municipal waste;

(d) a relevant Northern Ireland electricity generator.

(3) In sub-paragraph (2), a reference to an installation is a reference to what would be an installation, but for that sub-paragraph.

(4) References in this Order to an installation include references to part of an installation.

(**a**) S.R. 2005/300, to which there are amendments not relevant to this Order.
(**b**) S.I. 1996/972. The definition of "special waste" was substituted by regulation 2(3) of S.S.I 2004/112 and is substituted prospectively by regulation 7(4) of S.S.I. 2019/26 with effect from IP completion day.
(**c**) S.I. 2005/1806. Regulation 6 was amended by regulation 3(5) of S.I. 2015/1417.
(**d**) S.I. 2005/894, to which there are amendments not relevant to this Order.
(**e**) 2003 c. 33. Section 21(3) was amended by regulation 6(2)(b) of S.I. 2011/2499.

Meaning of regulated activity, etc.

3.—(1) In this Order, "regulated activity" means—

(a) an activity set out in an entry in column 1 of table C that results in emissions of the gases set out in the corresponding entry in column 2; and

(b) where such an activity is carried out on a site, the combustion of fuels in any combustion unit (including a combustion unit referred to in sub-paragraph (5)(a) or (b)) operated on the site that results in emissions of such gases, except for a combustion unit to which sub-paragraph (2) applies.

(2) This sub-paragraph applies to a combustion unit if—

(a) the primary purpose of the unit is the incineration of hazardous or municipal waste; and

(b) the unit does not exclusively serve the stationary technical unit or units where the activity referred to in sub-paragraph (1)(a) is carried out.

(3) But sub-paragraph (2) does not apply to a combustion unit that is a flare.

Table C

Column 1 *Activities*	*Column 2* *Greenhouse gases*
Combustion of fuels on a site where combustion units with a total rated thermal input exceeding 20 megawatts are operated	Carbon dioxide
Refining of mineral oil	Carbon dioxide
Production of coke	Carbon dioxide
Metal ore (including sulphide ore) roasting or sintering, including palletisation	Carbon dioxide
Production of pig iron or steel (primary or secondary fusion) including continuous casting, with a capacity exceeding 2.5 tonnes per hour	Carbon dioxide
Production or processing of ferrous metals (including ferro-alloys) on a site where combustion units with a total rated thermal input exceeding 20 megawatts are operated (and "processing" includes processing in rolling mills, re-heaters, annealing furnaces, smitheries, foundries, coating and pickling)	Carbon dioxide
Production of primary aluminium	Carbon dioxide Perfluorocarbons
Production of secondary aluminium on a site where combustion units with a total rated thermal input exceeding 20 megawatts are operated	Carbon dioxide
Production or processing of non-ferrous metals (including production of alloys, refining and foundry casting) on a site where combustion units with a total rated thermal input (including fuels used as reducing agents) exceeding 20 megawatts are operated	Carbon dioxide
Production of cement clinker in rotary kilns with a production capacity exceeding 500 tonnes per day or in other furnaces with a production capacity exceeding 50 tonnes per day	Carbon dioxide
Production of lime or calcination of dolomite or magnesite in rotary kilns or in other furnaces with a production capacity exceeding 50 tonnes per day	Carbon dioxide
Manufacture of glass including glass fibre with a melting capacity exceeding 20 tonnes per day	Carbon dioxide
Manufacture of ceramic products by firing, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain, with a production capacity exceeding 75 tonnes per day	Carbon dioxide
Manufacture of mineral wool insulation material using glass, rock or slag with a melting capacity exceeding 20 tonnes per day	Carbon dioxide
Drying or calcination of gypsum or production of plaster boards and other gypsum products on a site where combustion units with a total rated	Carbon dioxide

thermal input exceeding 20 megawatts are operated	
Production of pulp from timber or other fibrous materials	Carbon dioxide
Production of paper or cardboard with a production capacity exceeding 20 tonnes per day	Carbon dioxide
Production of carbon black involving the carbonisation of organic substances such as oils, tars, cracker and distillation residues on a site where combustion units with a total rated thermal input exceeding 20 megawatts are operated	Carbon dioxide
Production of nitric acid	Carbon dioxide Nitrous oxide
Production of adipic acid	Carbon dioxide Nitrous oxide
Production of glyoxal and glyoxylic acid	Carbon dioxide Nitrous oxide
Production of ammonia	Carbon dioxide
Production of bulk organic chemicals by cracking, reforming, partial or full oxidation or by similar processes, with a production capacity exceeding 100 tonnes per day	Carbon dioxide
Production of hydrogen (H_2) and synthesis gas by reforming or partial oxidation with a production capacity exceeding 25 tonnes per day	Carbon dioxide
Production of soda ash (Na_2CO_3) and sodium bicarbonate ($NaHCO_3$)	Carbon dioxide
Capture of greenhouse gases from other installations for the purpose of transport and geological storage in a storage site	Carbon dioxide
Transport of greenhouse gases by pipelines for geological storage in a storage site	Carbon dioxide
Geological storage of greenhouse gases in a storage site	Carbon dioxide

(4) For the purpose of calculating the production or other capacity set out in an entry in column 1 of table C, where more than one activity referred to in the entry is carried out on a site, the capacities of all such activities must be added together.

(5) For the purpose of calculating the total rated thermal input of combustion units operated on a site, the rated thermal input of all combustion units on the site must be added together, except for—

(a) combustion units with a rated thermal input below 3 megawatts;

(b) combustion units that use only biomass as a fuel.

(6) Where the carrying out of an activity referred to in paragraph (a) of sub-paragraph (1) (that is to say, an activity set out in an entry in column 1 of table C) falls within both—

(a) an entry that does not refer to a threshold expressed as total rated thermal input; and

(b) an entry that refers to such a threshold,

for the purpose of this Order, the reference to the activity in that paragraph must be treated as a reference to the activity falling within the entry referred to in paragraph (a) of this sub-paragraph.

(7) In this Order, "specified emissions" means, in relation to a regulated activity referred to in sub-paragraph (1), the emissions of the gases referred to in that sub-paragraph.

SCHEDULE 3

Article 15

Applications, notices, etc.

PART 1

Applications, notices, etc. submitted to regulators

Submission of applications, notices, etc. to regulators

1.—(1) This paragraph applies to an application, notice or report submitted to a regulator under—

(a) this Order;

(b) a permit;

(c) an emissions monitoring plan.

(2) An application, notice or report—

(a) must be in writing; and

(b) unless the regulator agrees otherwise in writing, must be made on a form provided by the regulator for that purpose.

(3) The regulator must set out in the form—

(a) the information required by the regulator to determine the application; or

(b) the matters required to be included in the notice or report.

(4) Unless the regulator agrees otherwise in writing—

(a) the form must be submitted to the regulator electronically and, if the form specifies an email address for submission, to that address;

(b) if the form is provided by the regulator for submission through a website, the form must be submitted through the website and in accordance with any instructions given for completion and submission.

(5) Unless the information has been provided in a previous application made to the regulator, an application must set out—

(a) the name, postal address (including postcode) and telephone number of the applicant;

(b) either—

(i) an email address for service; or

(ii) a postal address (including postcode) in the United Kingdom for service.

(6) In the case of an application under paragraph 7 of Schedule 6 (transfer of permits), sub-paragraph (5) applies to both the transferring operator and the new operator referred to in that paragraph.

(7) Subject to sub-paragraphs (8) and (9), an application must be accompanied by the charge for the application set out in the charging scheme published under article 36.

(8) Where an application is submitted electronically, the charge may be sent to the regulator separately from the application; and in that case, for the purposes of this Order, the application must be treated as not being received by the regulator until the charge is also received.

(9) Where an application is made to the Secretary of State (including an application submitted electronically), the charge need not be paid until the end of the period of 28 days beginning with the date on which the Secretary of State gives notice to the applicant requesting payment of the charge.

(10) An application may be withdrawn at any time before it is determined.

(11) The regulator may, by notice to a person submitting an application, require the applicant to provide such further information specified in the notice, within the period so specified, as the regulator may require to determine the application.

(12) For the purposes of this Order, the application must be treated as being withdrawn if—

(a) the applicant fails to provide that information before the end of that period (or on or before such later date as may be agreed with the regulator); and

(b) the regulator gives notice to the applicant that the application is treated as having been withdrawn.

(13) For the purposes of this paragraph, "application" includes any proposed plan required to be submitted with the application.

Determination of applications by regulators

2.—(1) Where an application under this Order is made to a regulator in accordance with the requirements of this Order, the application must be determined by the regulator within—

(a) the period of 2 months beginning with the date on which the application is received; or

(b) such longer period as may be agreed in writing with the applicant.

(2) For the purposes of sub-paragraph (1)—

(a) an application is determined when notice of the determination is given to the applicant by the regulator;

(b) in calculating the period of 2 months, no account must be taken of any period beginning with the date on which a notice under paragraph 1(11) is given to the applicant and ending with the date on which the applicant provides the information specified in the notice.

(3) Where the regulator fails to determine an application before the end of the period referred to in sub-paragraph (1)—

(a) the applicant may give to the regulator notice that the applicant treats the application as having been refused; and

(b) if such notice is given, for the purposes of this Order, the application must be treated as having been refused at the end of that period.

(4) Where the application is an application for a permit or for the transfer of a permit, any permit that is issued or transferred as a result of the application must be attached to the notice under sub-paragraph (2)(a).

(5) This paragraph does not apply to an application under—

(a) paragraph 5 of Schedule 7 (obtaining hospital or small emitter status for 2026-2030 allocation period);

(b) paragraph 3 of Schedule 8 (obtaining ultra-small emitter status for 2026-2030 allocation period).

PART 2

Notices, etc. given by regulators, national authorities or UK ETS authority

Service of notices, etc.

3.—(1) This paragraph applies to a notice or direction that must or may be given under this Order by—

(a) a regulator;

(b) a national authority;

(c) the UK ETS authority.

(2) A notice or direction must be in writing.

(3) A notice or direction may be given to a person in any of the following ways—

(a) by delivering it to the person;

(b) by sending it to a postal or email address provided by the person for the purpose of the service of notices or directions;

(c) by leaving it at the person's proper address;

(d) by sending it by post or electronic means to the person's proper address;

(e) if the person is a body corporate, by giving it to the secretary or clerk of the body in accordance with any of sub-paragraphs (a) to (d);

(f) if the person is a partnership, by giving it to a partner or a person having the control or management of the partnership business in accordance with any of sub-paragraphs (a) to (d).

(4) In this paragraph, "proper address" means—

(a) in the case of a body corporate—

(i) the registered or principal office of the body; or

(ii) the email address of the secretary or clerk of the body;

(b) in the case of a partnership—

(i) the principal office of the partnership; or

(ii) the email address of the partner or person having control or management of the partnership business;

(c) in any other case, the person's last known address (including an email address).

(5) For the purposes of sub-paragraph (4), where a body corporate registered outside the United Kingdom or a partnership established outside the United Kingdom has an office in the United Kingdom, the principal office of the body corporate or partnership is its principal office in the United Kingdom.

(6) For the purposes of sub-paragraph (4)(c), where the person is an aircraft operator, the proper address includes an address derived from information supplied by Eurocontrol.

Service on certain Crown operators

4.—(1) This paragraph applies in relation to an installation operated by a person acting on behalf of—

(a) the Royal Household;

(b) the Duchy of Lancaster; or

(c) the Duke of Cornwall or other possessor of the Duchy of Cornwall.

(2) In relation to the giving of notices or directions under this Order, the following person must be treated as the operator—

(a) in relation to sub-paragraph (1)(a), the Keeper of the Privy Purse;

(b) in relation to sub-paragraph (1)(b), the person appointed by the Chancellor of the Duchy of Lancaster for that purpose;

(c) in relation to sub-paragraph (1)(c), the person appointed by the Duke of Cornwall or other possessor of the Duchy of Cornwall for that purpose.

SCHEDULE 4

Article 24

Modifications to Commission Regulation (EU) 2018/2066

1. Commission Implementing Regulation (EU) 2018/2066 is to be read as if—

(a) for "competent authority" in each place it occurs there were substituted "regulator";

(b) Articles 10, 52, 57, 70, 74, 75, 76 and 77 were omitted; and

(c) the words "This Regulation shall be binding in its entirety and directly applicable in all Member States", immediately following Article 78, were omitted,

and subject to the following additional modifications.

2. Article 1 is to be read as if for the words from "pursuant to" to the end there were substituted "for the purposes of the 2020 Order".

3. Article 2 is to be read as if for the words from "greenhouse gas emissions" to the end of the first subparagraph there were substituted "specified emissions (as defined in the 2020 Order) from regulated activities, activity data from installations, CO_2 emissions from aviation activity and tonne-kilometre data from aviation activity".

4. Article 3 is to be read as if—

(a) in the words before point (1), for "the following definitions" there were substituted "except where the context otherwise requires, terms defined in the Greenhouse Gas Emissions Trading Scheme Order 2020 have the meanings given by that Order and the following additional definitions";

(b) before point (1), there were inserted—

"(A1) 'greenhouse gas emissions' and 'emissions' mean specified emissions (as defined in the 2020 Order) from regulated activities or CO_2 emissions from aviation activity;";

(c) for point (2), there were substituted—

"(2) 'trading period', in references to the trading period immediately preceding the first trading period of the UK ETS, means the period beginning with 1st January 2013 and ending with 31st December 2020;";

(d) after point (2), there were inserted—

"(2a) 'the 2020 Order' means the Greenhouse Gas Emissions Trading Scheme Order 2020;";

(e) after point (5), there were inserted—

"(5a) 'monitoring plan' in relation to an aircraft operator, except in Articles 11 to 13 of this Regulation, means the aircraft operator's emissions monitoring plan as defined in article 4 of the 2020 Order;";

(f) in point (12), the words from "or, for tonne-kilometre data" to the end were omitted;

(g) point (18) were omitted;

(h) in point (28), for "Annex II to Directive 2003/87/EC" substitute "column 2 of table C in Schedule 2 to the 2020 Order";

(i) in point (44) ", or equivalent applicable international rules" were omitted;

(j) in each of points (46) and (47), "listed in Annex I to Directive 2003/87/EC" were omitted;

(k) point (50) were omitted;

(l) in each of points (54) and (55), for "under Directive 2009/31/EC" there were substituted "in accordance with the CCS licensing regime";

(m) after point (55), there were inserted—

"(55a) 'the CCS licensing regime' means Chapter 3 of Part 1 of the Energy Act 2008(**a**) and other domestic legislation which immediately before IP completion day implemented Directive 2009/31/EC(**b**);".

5. Article 4 is to be read as if for "under Directive 2003/87/EC" there were substituted "for the purposes of the Greenhouse Gas Emissions Trading Scheme Order 2020".

6. Article 5 is to be read as if for the words from "activities listed" to "that Directive" there were substituted "regulated activities and aviation activity".

7. Article 9 is to be read as if for "Article 15 of Directive 2003/87/EC" there were substituted "Commission Implementing Regulation (EU) No 2018/2067".

8. Article 12 is to be read as if paragraph 3 were omitted.

9. Article 13 is to be read as if—

(a) for paragraph 1 there were substituted—

"1. Subject in each case to the approval of the regulator, operators and aircraft operators may use standardised or simplified monitoring plans that conform to templates published by the regulator.";

(b) in paragraph 2, for "Member States" there were substituted "The regulator".

10. Article 14(1) is to be read as if "in accordance with Article 7 of Directive 2003/87/EC" were omitted.

11. Article 15 is to be read as if—

(a) in paragraph 3—

(i) in point (g), for "or *de minimis*" there were substituted ", *de minimis* or marginal";

(ii) point (h) were omitted.

(b) in paragraph 4—

(i) in point (a)(ii), for "calculation methods as laid down in Annex III" there were substituted "the calculation methods referred to in Article 53(2)";

(ii) in point (a)(iv), for "Article 28a(6) of Directive 2003/87/EC" there were substituted "article 33(2) of the 2020 Order".

12. Article 16(1) is to be read as if for the words from "shall carry out" to the end there were substituted "must use, in parallel, both the modified and the original monitoring plan to carry out all monitoring and reporting, according to both plans, and must keep the results of both monitoring approaches in their records".

13. Article 18 is to be read as if—

(a) in paragraph 1, for "EUR 20" there were substituted "£20";

(b) in paragraph 3(c)—

(i) for "Member State" there were substituted "United Kingdom";

(ii) after "adopted", there were inserted "before IP completion day";

(c) in paragraph 4—

(i) for "EUR 2000" there were substituted "£2000";

(ii) for "EUR 500" there were substituted "£500".

14. Article 19(3) is to be read as if—

(a) after point (b) there were inserted—

(**a**) 2008 c. 32.
(**b**) OJ No. L 140, 5.6.2009, p. 114.

"(ba) marginal source streams, where the source streams selected by the operator jointly account for less than 10 tonnes of fossil CO_2 per year;";

(b) in the final subparagraph, for "or a *de minimis* source stream" there were substituted ", a *de minimis* source stream or a marginal source stream".

15. Article 20 is to be read as if—

(a) in paragraph 1, in the second subparagraph—

(i) after "belonging to" there were inserted "regulated";

(ii) the words from "and listed in" to the end were omitted;

(b) in paragraph 3—

(i) in the first subparagraph, for "within the meaning of Directive 2009/31/EC" there were substituted "containing a storage site permitted in accordance with the CCS licensing regime";

(ii) in the second subparagraph, for "pursuant to Article 16 of Directive 2009/31/EC have been taken", there were substituted "have been taken in accordance with the CCS licensing regime".

16. Article 26(3) is to be read as if after "source streams" there were inserted "and marginal source streams".

17. Article 31(1)(b) is to be read as if for "Member State" there were substituted "United Kingdom".

18. Article 38 is to be read as if—

(a) in paragraph 2, after "zero" there were inserted ", but the emission factor for bioliquids shall be zero only if the sustainability criteria set out in Article 17(2) to (5) of Directive 2009/28/EC have been fulfilled";

(b) in paragraph 4, after "*de minimis*" there were inserted "or marginal".

19. Article 39 is to be read as if—

(a) in paragraph 2, the third subparagraph were omitted;

(b) in paragraph 3, for "Articles 2(j) and 15 of Directive 2009/28/EC" there were substituted "the Electricity (Guarantees of Origin of Electricity Produced from Renewable Energy Sources) Regulations 2003(**a**) or the Electricity (Guarantees of Origin of Electricity Produced from Renewable Energy Sources) Regulations (Northern Ireland) 2003(**b**)".

20. Article 42(1) is to be read as if, in the second subparagraph, ", standards published by the Commission" were omitted.

21. Article 47(1) is to be read as if for "Annex I to Directive 2003/87/EC" there were substituted "paragraph 3 of Schedule 2 to the 2020 Order".

22. Article 48(2) is to be read as if—

(a) for "activities covered by Annex I to Directive 2003/87/EC or included pursuant to Article 24 of that Directive" there were substituted "regulated activities";

(b) for "activity covered by that Directive" there were substituted "regulated activity";

(c) for "not covered by that Directive" there were substituted "not covered by the 2020 Order".

23. Article 49 is to be read as if—

(**a**) S.I. 2003/2562, amended by S.I. 2010/2715 and 2011/1043 and amended prospectively by S.I. 2018/1093 with effect from IP completion day.

(**b**) S.R. 2003 No. 470, amended by S.R. 2010 No. 374 and S.I. 2011/1043; there are other amending instruments, but none is relevant.

(a) in paragraph 1—

(i) in the words before point (a), for "activities covered by Annex I to Directive 2003/87/EC" there were substituted "regulated activities";

(ii) in point (a), for "under Directive 2009/31/EC" in each place it occurs there were substituted "in accordance with the CCS licensing regime";

(b) in paragraph 2—

(i) in the first subparagraph, the words from "the operator" in the first place it occurs to "other cases," were omitted;

(ii) for the second subparagraph there were substituted—

"In its annual emissions report, the operator of the receiving installation shall provide the name, address and contact information of a contact person for the transferring installation.".

24. Article 50 is to be read as if—

(a) in paragraph 1—

(i) in the first subparagraph, for "activities covered by Annex I to Directive 2003/87/EC for which that Annex specifies N_2O as relevant" there were substituted "regulated activities in respect of which N_2O emissions are specified emissions (as defined in the 2020 Order)";

(ii) in the third subparagraph, for "not covered by Directive 2003/87/EC" there were substituted "not covered by the 2020 Order";

(b) for paragraph 2 there were substituted—

"2. In its annual emissions report, the operator of the transferring installation shall provide the name, address and contact information of a contact person for the receiving installation.

In its annual emissions report, the operator of the receiving installation shall provide the name, address and contact information of a contact person for the transferring installation.".

25. Article 51 is to be read as if—

(a) in paragraph 1, for "activities for all flights included in Annex I to Directive 2003/87/EC that are" there were substituted "activity that is";

(b) paragraphs 2 to 4 were omitted.

26. Article 53 is to be read as if—

(a) in paragraph 2, for "section 1 of Annex III" there were substituted "Appendix 2 to Annex 16, Volume IV to the Chicago Convention"(**a**);

(b) in paragraph 3, for "section 1 of Annex III" there were substituted "Appendix 2 to Annex 16, Volume IV to the Chicago Convention".

27. Article 54 is to be read as if—

(a) the second, third and fourth subparagraphs were omitted;

(b) in the fifth subparagraph, for "Article 18 of Directive 2009/28/EC" there were substituted "Articles 12 and 13A of the Renewable Transport Fuel Obligations Order 2007(**b**)".

28. Article 55(2) is to be read as if for "Commission" there were substituted "UK ETS authority".

29. Article 58(1) is to be read as if the second subparagraph were omitted.

(**a**) 1st Edition, October 2018, available electronically at https://www.icao.int/environmental-protection/CORSIA/Pages/SARPs-Annex-16-Volume-IV.aspx or in paper form from the International Civil Aviation Organisation, 999 Robert-Bourassa Boulevard, Montreal, Quebec, Canada H3C 5H7.

(**b**) S.I. 2007/3072; relevant amending instruments are S.I. 2011/2937 and 2018/374.

30. Article 68 is to be read as if for the whole Article there were substituted—

"Article 68

Obligations for reporting

Annex X (minimum content of annual reports) has effect for the purposes of article 33 of and paragraph 4(2)(b) of Schedule 6 and paragraph 11(2)(b) of Schedule 7 to the 2020 Order.".

31. Article 71 is to be read as if—

(a) the first sentence were omitted;

(b) for "With regard to the application of the exception, as specified in Article 4(2)(d) of Directive 2003/4/EC", there were substituted "With regard to the potential application in relation to emission reports of the exemption in section 43 of the Freedom of Information Act 2000(**a**), the exception in regulation 12(5)(e) of the Environmental Information Regulations 2004(**b**) or the exception in regulation 10(5)(e) of the Environmental Information (Scotland) Regulations 2004(**c**)".

32. Article 72(3) is to be read as if "calculating the distance and payload pursuant to Article 57 and" were omitted.

33. Article 73 is to be read as if—

(a) in the words before point (a), for the words from "Each activity" to "aircraft operator" there were substituted "Each regulated activity carried out by an operator and each aviation activity carried out by an aircraft operator";

(b) points (b) and (c) were omitted;

(c) for point (d) there were substituted—

"(d) the UK Standard Industrial Classification (SIC) of Economic Activities, issued under section 9 of the Statistics and Registration Service Act 2007(**d**), and as updated from time to time.".

34. Article 78 is to be read as if the words from "However" to the end were omitted.

35. Annex 1 is to be read as if—

(a) in section 1, in point (2)(b), for "and *de minimis*" in both places it occurs there were substituted ", *de minimis* and marginal";

(b) in section 2, in point 1—

(i) in point (a), "the administering Member State," were omitted;

(ii) in point (d), for "covered by Annex I to Directive 2003/87/EC" there were substituted "an aviation activity";

(iii) in point (k), for "Article 28a(6) of Directive 2003/87/EC" there were substituted "article 33(2) of the 2020 Order";

(c) in section 2, in point 2(b)(i), the words "(Method A or Method B)" were omitted.

36. Annex 2 is to be read as if, before section 2.1, in the first subparagraph, for "all activities as listed in Annex I to Directive 2003/87/EC or included in the Union system under Article 24 of that Directive" there were substituted "all regulated activities".

37. Annex 3 is to be read as if section 1 were omitted.

38. Annex 4 is to be read as if—

(**a**) 2000 c. 36.
(**b**) S.I. 2004/3391, to which there are amendments not relevant to this Order.
(**c**) S.S.I. 2004/520, to which there are amendments not relevant to this Order.
(**d**) 2007 c. 18.

(a) in section 1, in subsection A, for "all activities as listed in Annex I to Directive 2003/87/EC or included in the Union system under Article 24 of that Directive" there were substituted "all regulated activities";

(b) in each of the headings of sections 21, 22 and 23, for "Directive 2009/31/EC" there were substituted "the CCS licensing regime";

(c) in section 21, in subsection A, for "other activities covered by Directive 2003/87/EC" there were substituted "other regulated activities";

(d) in section 22, in subsection B, for "Directive 2003/87/EC" in both places it occurs there were substituted "the 2020 Order";

(e) in section 23—

(i) in subsection A, in the first subparagraph, for "Directive 2009/31/EC" there were substituted "the CCS licensing regime";

(ii) in subsection A, in the second subparagraph, after "with", there were inserted "domestic legislation which immediately before IP completion day implemented";

(iii) in subsection B.3, in the definition of "T_{end}", after "with", there were inserted "domestic legislation which immediately before IP completion day implemented".

39. Section 2(7) of Annex 9 is to be read as if—

(a) in point (c)—

(i) after "storage permit", there were inserted "for the storage site";

(ii) for "Article 9 of Directive 2009/31/EC" there were substituted "the CCS licensing regime";

(b) in each of points (d), (e) and (f), after "with", there were inserted "domestic legislation which immediately before IP completion day implemented".

40. Annex 10 is to be read as if—

(a) in the heading, for "68(3)" there were substituted "68";

(b) in section 1—

(i) in point (6), for "Information" there were substituted "Subject to the subparagraph after point (13), information";

(ii) in the subparagraph after point (13), at the end there were inserted "Emissions occurring from marginal source streams may be reported in an aggregate manner.";

(iii) in the final subparagraph, after "with", there were inserted "domestic legislation which immediately before IP completion day implemented";

(c) in section 2—

(i) in point (1), after "Directive 2003/87/EC", there were inserted "(read as if references in that Annex to "its administering Member State" and "in the administering Member State" were omitted and as if references to "aviation activities listed in Annex I" were references to "aviation activity")";

(ii) in point (6), for "aviation activities covered by Annex I to Directive 2003/87/EC" there were substituted "aviation activity";

(iii) in point (9), for "Member State" there were substituted "state";

(iv) in point (13), for "operator" in both places it occurs there were substituted "aircraft operator";

(d) in section 3—

(i) in point (1), after "Directive 2003/87/EC", there were inserted "(read as if references in that Annex to "its administering Member State" and "in the administering Member State" were omitted and as if references to "aviation activities listed in Annex I" were references to "aviation activity")";

(ii) in point (6), for “aviation activities covered by Annex I to Directive 2003/87/EC” there were substituted “aviation activity”;

(iii) in point (8), for “aviation activities listed in Annex I of Directive 2003/87/EC” there were substituted “aviation activity”.

SCHEDULE 5

Article 25

Amendments to the Verification Regulation 2018

1. The Verification Regulation 2018 is amended as follows.

2. For "competent authority" in each place it occurs substitute "regulator".

3. In Article 1, for "2012 Regulations" substitute "2020 Order".

4. In Article 2, for the words from "2019" to the end substitute "2021, reported pursuant to Implementing Regulation (EU) 2018/2066".

5. In Article 3—

(a) for the words before point (A1), substitute—

"In this Regulation, references to Implementing Regulation (EU) 2018/2066 are to that Regulation as modified by the Greenhouse Gas Emissions Trading Scheme Order 2020 and expressions used in that Regulation have the same meaning as in that Regulation; in addition:";

(b) omit point (A1);

(c) in point (2), for "a" in the first place it occurs substitute "the";

(d) in point (3), for "a national" substitute "the national";

(e) after point (3), insert—

"(3a) 'national accreditation body' means the national accreditation body of the United Kingdom appointed in accordance with Article 4(1) of Regulation (EC) 765/2008(**a**);";

(f) omit point (4a);

(g) omit point (4b);

(h) in point (7), for "regulation 35(4) and paragraph 2(1)(e)(ii) of Schedule 4 to the 2012 Regulations" substitute "a permit issued in accordance with Schedule 6 or 7 to the 2020 Order or pursuant to article 33 of the 2020 Order";

(i) omit point (7a);

(j) omit point (7b);

(k) omit point (12a);

(l) in point (13)(a), omit "greenhouse gas emissions";

(m) in points (22) and (23), for "EU" in each place it occurs substitute "UK";

(n) in point (22), for "an" in the first place it occurs substitute "a";

(o) in point (26), for "a" in the second place it occurs substitute "the".

6. Omit Article 3a.

7. In Article 5, for "bodies" substitute "body".

8. In Article 7—

(a) in paragraph 3, for "competent authorities" substitute "regulator";

(b) in paragraph 4(b), omit "greenhouse gas emissions".

9. In Article 10(1)(a), omit "greenhouse gas emissions".

(**a**) Regulation (EC) 765/2008 is amended prospectively by S.I. 2019/696 with effect from IP completion day.

10. In Article 17(4) for "and the CO_2" substitute "or transferred N_2O is not counted in accordance with Article 50 of that Regulation and the CO_2 or N_2O transferred".

11. In Article 27(3)(g), for "activity, other than aviation, listed in Annex 1 to Directive 2003/87/EC" substitute "regulated activity".

12. In Article 31—

(a) in paragraph 1, for "a" in the first place it occurs substitute "the";

(b) in paragraph 3(b), at the beginning insert "in the case of installations which are not within Article 32(5),";

(c) after paragraph 3, insert—

"3A. The verifier must carry out site visits to installations within Article 32(5) at least twice in the trading period.".

13. In Article 36—

(a) in paragraphs 2(b) and 6, for "EU" in each place it occurs substitute "UK";

(b) in paragraph 6, for "an" substitute "a".

14. In Article 37—

(a) in paragraph 2, for "an" substitute "a";

(b) in paragraphs 2 and 6, for "EU" in each place it occurs substitute "UK";

(c) in paragraph 5, in the first subparagraph, omit the second sentence.

15. In Article 38—

(a) for "EU ETS" in each place it occurs (including the heading) substitute "UK ETS";

(b) in paragraph 1, in the words before point (a), for "An" substitute "A";

(c) in paragraph 1(a)—

(i) for "Directive 2003/87/EC" substitute "the 2020 Order";

(ii) for "Secretary of State" substitute "the national authorities".

(d) in paragraph 2—

(i) for "An" substitute "A";

(ii) for "an" substitute "a".

16. In Article 39(2), for "an EU" substitute "a UK".

17. In Article 40, for "EU" in each place it occurs substitute "UK".

18. In Article 43(1), at the end insert "or under the trading scheme established by the 2020 Order".

19. In Article 45, in the words before point (a), for "each" substitute "the".

20. In Article 47(1), for "each" substitute "the".

21. In Article 59(1)(b), for "Directive 2003/87/EC" substitute "the 2020 Order".

22. In Article 60(2)(a), for "Directive 2003/87/EC" substitute "the 2020 Order".

23. In Article 69—

(a) in paragraph 1, omit "in accordance with Article 74(1) of Implementing Regulation (EU) 2018/2066";

(b) in paragraph 2, omit "in accordance with Article 74(2) of Implementing Regulation (EU) 2018/2066".

24. In Article 70—

(a) in paragraph 1—

(i) for "the Secretary of State" substitute "UK ETS authority";

(ii) for "their" substitute "the";

(b) in paragraph 2—

(i) for the words from "Where" to "competent authorities" substitute "The Environment Agency or such other regulator as may be designated by the national authorities from time to time is";

(ii) after "information" insert "for the purposes of this Chapter".

25. In Article 71—

(a) in paragraph 1, in the words before point (a), for "that" in the first place it occurs substitute "the";

(b) in paragraph 3—

(i) in the words before point (a), for "that" in the second place it occurs substitute "the";

(ii) in point (a), for "that" in the second place it occurs substitute "the".

26. In Article 76(1)—

(a) for "National accreditation bodies, or where applicable national authorities referred to in Article 55(2)," substitute "The national accreditation body";

(b) for "competent authorities" substitute "regulators".

SCHEDULE 6

Article 26(3)

Permits

PART 1

Application for greenhouse gas emissions permits

Greenhouse gas emissions permits: application

1.—(1) The operator of an installation may apply to the regulator for a greenhouse gas emissions permit for the installation(**a**).

(2) But an application may not be made if a permit for the installation is already in force.

(3) In sub-paragraph (2), "permit" includes a permit within the meaning of GGETSR 2012 to which paragraph 1 of Schedule 11 applies (permits to be converted).

Greenhouse gas emissions permits: content of application

2.—(1) An application for a greenhouse gas emissions permit must contain—

(a) an address to which correspondence relating to the application should be sent (in addition to the addresses required by paragraph 1(5) of Schedule 3);

(b) if the operator of the installation is a body corporate—

(i) its registered number and the postal address of its registered or principal office; and

(ii) where the operator is a subsidiary of a holding company, the name of the holding company (other than a holding company which is itself a subsidiary) and the postal address of the holding company's registered or principal office,

and in this paragraph "subsidiary" and "holding company" have the meanings given in section 1159 of the Companies Act 2006(**b**);

(c) in relation to the site of the installation—

(i) the postal address and national grid reference of the site (or in the case of an installation in UK coastal waters or the UK sector of the continental shelf equivalent information identifying the installation and its location);

(ii) a description of the site and the location of the installation on it; and

(iii) the name of any local authority where the site is situated;

(d) a description of the installation, the regulated activities to be carried out at the installation and the specified emissions from those activities;

(e) a description of the raw and auxiliary materials used in carrying out regulated activities at the installation, the use of which is likely to lead to specified emissions;

(f) a description of the sources of specified emissions from the regulated activities carried out at the installation;

(g) a monitoring plan in accordance with Article 12 of the Monitoring and Reporting Regulation 2018, together with—

(i) the supporting documents referred to in Article 12(1) of that Regulation;

(**a**) Paragraphs 24 and 26 of Schedule 7 and paragraph 1 of Schedule 11 provide for the conversion of permits into greenhouse gas emissions permits.

(**b**) 2006 c. 46. In section 1159 of the Companies Act 2006, "company" includes any body corporate.

(ii) except where the installation is an installation with low emissions within the meaning of Article 47(2) of that Regulation, the uncertainty assessment carried out under Article 28(1)(a) of that Regulation;

(h) a description, including the reference number, of any environmental licence issued in relation to the installation;

(i) any additional information that the operator wishes the regulator to take into account in considering the application;

(j) a non-technical summary of the information referred to in paragraphs (d) to (i); and

(k) the date on which the operator wishes the permit to come into force.

(2) In sub-paragraph (1)(h), "environmental licence" means—

(a) an authorisation under—

(i) Part 1 of the Environmental Protection Act 1990(**a**);

(ii) the Industrial Pollution Control (Northern Ireland) Order 1997(**b**);

(b) a permit under—

(i) the Pollution Prevention and Control (Scotland) Regulations 2012(**c**);

(ii) the Offshore Combustion Installations (Pollution Prevention and Control) Regulations 2013(**d**);

(iii) the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013(**e**);

(iv) the Environmental Permitting (England and Wales) Regulations 2016(**f**);

(v) the Environmental Authorisations (Scotland) Regulations 2018(**g**).

Greenhouse gas emissions permits: issue of permit

3. A greenhouse gas emissions permit may be issued only if the regulator considers that from the date on which the permit comes into force the operator of the installation will be capable of monitoring and reporting the installation's reportable emissions in accordance with the monitoring and reporting conditions of the permit.

Greenhouse gas emissions permits: content of permit

4.—(1) A greenhouse gas emissions permit must contain—

(a) the name and postal address in the United Kingdom (including postcode) of the operator and any other address for correspondence included by the operator in the application;

(b) the postal address and national grid reference of the installation (or, in the case of an installation in UK coastal waters or the UK sector of the continental shelf, equivalent information identifying the installation and its location);

(c) a description of the installation, the regulated activities to be carried out at the installation and the specified emissions from those activities;

(d) a description of the site and the location of the installation on the site;

(e) the date on which the permit comes into force;

(f) the monitoring plan—

(**a**) 1990 c. 43.
(**b**) S.I. 1997/2777 (N.I. 18).
(**c**) S.S.I. 2012/360.
(**d**) S.I. 2013/971.
(**e**) S.R. 2013/160.
(**f**) S.I. 2016/1154.
(**g**) S.S.I. 2018/219.

(i) where an application is made for the permit, approved in relation to the installation under Articles 11 to 13 of the Monitoring and Reporting Regulation 2018;

(ii) where an existing permit is converted into a greenhouse gas emissions permit, approved in relation to the installation under Articles 11 to 13 of the Monitoring and Reporting Regulation 2012 or Articles 11 to 13 of the Monitoring and Reporting Regulation 2018 for the purpose of monitoring specified emissions at the installation immediately before the greenhouse gas emissions permit comes into force;

(g) the monitoring and reporting conditions (see sub-paragraph (2));

(h) the surrender condition (see sub-paragraphs (3) to (5));

(i) any conditions that the regulator considers necessary to ensure that the operator notifies the regulator of any planned or effective changes to the capacity, activity level or operation of the installation, on or before 31st December in the year in which the change is planned or occurs;

(j) any other conditions that the regulator considers appropriate to include in the permit.

(2) The monitoring and reporting conditions are—

(a) a condition requiring the operator to monitor the installation's reportable emissions in accordance with—

(i) the Monitoring and Reporting Regulation 2018; and

(ii) the monitoring plan (including the written procedures supplementing the monitoring plan);

(b) a condition requiring the operator to prepare in accordance with the Monitoring and Reporting Regulation 2018 a report of the installation's reportable emissions in each scheme year that is verified in accordance with the Verification Regulation 2018 and to submit the report to the regulator on or before 31st March in the following year;

(c) a condition requiring the operator to satisfy the regulator, if an emission factor of zero is reported in respect of the use of bioliquids, that the sustainability criteria set out in Article 17(2) to (5) of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources(**a**) have been fulfilled; and

(d) any further conditions that the regulator considers necessary to give proper effect to the Monitoring and Reporting Regulation 2018 or the Verification Regulation 2018.

(3) The surrender condition is a condition requiring the operator to surrender allowances equal to the installation's reportable emissions in a scheme year on or before 30th April in the following year.

(4) For the purposes of the surrender condition, where an installation's reportable emissions in a scheme year (the "non-compliance year") exceeds the allowances surrendered on or before 30th April in the following year, the installation's reportable emissions in the relevant scheme year must be treated as being increased by the difference.

(5) In sub-paragraph (4), the relevant scheme year means—

(a) the scheme year following the non-compliance year; or

(b) if the failure to comply with the surrender condition results from an error in the verified emissions report submitted by the operator, the scheme year in which the error is discovered.

Greenhouse gas emissions permits: effect of permit, etc.

5.—(1) A greenhouse gas emissions permit for an installation—

(a) comes into force on the date set out in the permit;

(**a**) O.J. No. L 140, 5.6.2009, p. 16, amended by Council Directive 2013/18/EU (O.J. No. L 158, 10.6.2013, p. 230) and Directive (EU) 2015/1513 (O.J. No. L 239, 15.9.2015, p. 1).

(b) authorises the regulated activities set out in the permit to be carried out at the installation.

(2) The operator of the installation must comply with the conditions of the permit.

PART 2

Greenhouse gas emissions permits and hospital or small emitter permits

Variation of permits

6.—(1) The operator of an installation—

(a) may apply to the regulator to vary the installation's permit;

(b) must apply to the regulator to vary the installation's permit where required by a condition of the permit.

(2) The regulator may vary an installation's permit at any time if the regulator considers that it is necessary to do so for the purposes of the UK ETS and in particular may do so in consequence of any of the following—

(a) a report of the operator referred to in Article 69 of the Monitoring and Reporting Regulation 2018;

(b) a notification under a condition included under paragraph 4(1)(i) (notification of planned changes in operation);

(c) a failure by the operator to comply with a condition of the permit to apply for a variation.

(3) The regulator may vary a permit to comply with—

(a) paragraph 9(3), (4) or (5) (transfer of permits);

(b) any of the following provisions of Schedule 7—

(i) paragraph 10 (conversion of permit to hospital or small emitter permit);

(ii) paragraph 18 (calculation of later emissions targets where initial targets based on estimates);

(iii) paragraph 20 (banking overachieved target);

(iv) paragraph 21 (emissions targets for 2026-2030 allocation period);

(v) paragraph 24 (conversion of permit on loss of hospital or small emitter status);

(vi) paragraph 26 (conversion of permit at end of 2021-2025 allocation period).

(4) The variation of an installation's permit is given effect by the regulator giving a notice to the operator of the installation setting out the variations to the permit.

(5) Where a permit is varied, the regulator may, by giving notice to the operator, replace the permit with a consolidated version that includes the variations.

Transfer of permits: application

7.—(1) Subject to sub-paragraphs (3) and (4), a permit holder (the "transferring operator") and another person (the "new operator") may jointly apply to the regulator—

(a) for the transfer of the permit to the new operator;

(b) for the partial transfer of the permit to the new operator.

(2) For the purposes of this Order, the partial transfer of a permit is the transfer in respect of part of the installation at which the permit authorises a regulated activity to be carried out.

(3) An application for the transfer or partial transfer of a permit may not be made in respect of an installation (or part of an installation) that has ceased operation.

(4) An application may not be made for the partial transfer of a hospital or small emitter permit.

(5) In this paragraph and paragraphs 8 to 10—

"existing permit" has the meaning given in paragraph 9(5);

"new operator" has the meaning given in sub-paragraph (1);

"transferred activities" has the meaning given in paragraph 8(a);

"transferred units" has the meaning given in paragraph 8(a);

"transferring operator" has the meaning given in sub-paragraph (1).

Transfer of permits: contents of application

8. An application for the transfer or partial transfer of a permit must contain—

(a) a description of the installation (or part of an installation) in respect of which the application is made (the "transferred units") and of the regulated activities authorised to be carried out there (the "transferred activities");

(b) in relation to both the transferring operator and the new operator, an address to which correspondence relating to the application should be sent (in addition to the addresses required by paragraph 1(5) of Schedule 3);

(c) if the new operator is a body corporate, the matters referred to in paragraph 2(1)(b) in relation to the new operator;

(d) either—

(i) the new operator's monitoring plan in accordance with Article 12 of the Monitoring and Reporting Regulation 2018, together with—

(aa) the supporting documents referred to in Article 12(1) of that Regulation;

(bb) except where the transferred units are an installation with low emissions within the meaning of Article 47(2) of that Regulation, the uncertainty assessment carried out under Article 28(1)(a) of that Regulation; or

(ii) the new operator's specification of the parts of the existing monitoring plan that it is proposed be varied and any necessary corresponding update of the supporting documents and any uncertainty assessment;

(e) in the case of an application for a partial transfer of a permit, the transferring operator's specification of the parts of the existing monitoring plan that it is proposed be varied and any necessary corresponding update of the supporting documents and any uncertainty assessment.

Transfer of permits: grant of application

9.—(1) An application for the transfer or partial transfer of a permit may be granted only if the regulator considers that from the transfer date, the new operator—

(a) will be the operator of the installation; and

(b) will be capable of monitoring and reporting the installation's reportable emissions in accordance with the monitoring and reporting conditions of the permit (including as varied under this paragraph).

(2) Where an application for a transfer or a partial transfer is granted, the regulator must give notice of the transfer to—

(a) the transferring operator; and

(b) the new operator.

(3) Where an application for the partial transfer of a permit is granted—

(a) the regulator must issue a new greenhouse gas emissions permit (the "new permit") to the new operator that—

(i) sets out that the new permit comes into force on the transfer date;

(ii) sets out the transferred activities and the transferred units at which the transferred activities may be carried out;

(iii) includes such other provisions as the regulator considers appropriate to take account of the transfer;

(b) the regulator may make such corresponding variations under paragraph 6 to the permit (the "original permit") held by the transferring operator as the regulator considers appropriate to take account of the transfer;

(c) the new permit comes into force on the transfer date to authorise the transferred activities to be carried out at the transferred units from that date;

(d) the variations to the original permit have effect from the transfer date (which must be set out in the original permit).

(4) Where an application for the transfer of a permit (other than for a partial transfer) is granted—

(a) the regulator must vary the permit under paragraph 6 so that it includes—

(i) the name and other particulars of the new operator;

(ii) the transfer date;

(iii) such variations to the monitoring plan as the regulator considers appropriate;

(b) the new operator is the holder of the permit as varied from the transfer date.

(5) But if the new operator already holds a permit (the "existing permit") for an installation that is on the same site as the transferred units, the regulator may, instead of varying the transferring operator's permit under sub-paragraph (4)—

(a) vary the existing permit under paragraph 6 so that it includes such variations as the regulator considers necessary to take account of the transferred units and transferred activities; and the variations have effect from the transfer date, which must be set out in the existing permit; and

(b) by giving notice to the transferring operator, cancel the permit held by the transferring operator so that the permit ceases to authorise regulated activities to be carried out from the transfer date.

(6) In this paragraph, "transfer date" means the date agreed by the transferring operator, the new operator and the regulator as the date on which the transfer or partial transfer to the new operator is to take effect.

Transfer of permits: underreporting discovered after transfer

10.—(1) This paragraph applies where—

(a) after the transfer of a greenhouse gas emissions permit under paragraph 9 takes effect, the regulator becomes aware, following a determination of reportable emissions under article 45, of an error in a report submitted for a scheme year by the transferring operator under the monitoring and reporting conditions of the permit; and

(b) as a result of the error, the transferring operator failed to comply with the surrender condition of the permit in respect of the scheme year to which the error relates.

(2) The regulator must give notice to the transferring operator of the error as soon as reasonably practicable.

(3) The transferring operator must within 1 month of the notice effect a transfer to the new operator of allowances equal to the reportable emissions in respect of which, as a result of the error, the transferring operator failed to comply with the surrender condition of the permit.

(4) The new operator must surrender the allowances within 1 month after the transfer of the allowances.

(5) In sub-paragraph (1), the reference to the transfer of a greenhouse gas emissions permit under paragraph 9 includes a reference to an application for a transfer of a permit to which effect is given by a variation of the new operator's existing permit under sub-paragraph (5) of that paragraph.

Surrender of permits

11.—(1) Where a permit authorises a regulated activity to be carried out at an installation that has ceased operation, the operator must apply to the regulator to surrender the permit on or before—

(a) the last day of the period of 1 month beginning with the day on which it ceased operation; or

(b) such later date as may be agreed by the regulator.

(2) Where a permit authorises a regulated activity to be carried out at an installation where a regulated activity is no longer being carried out but it is not technically impossible to resume operation, the operator of the installation may apply to the regulator to surrender the permit.

(3) Where the regulator grants an application to surrender a permit under sub-paragraph (1) or (2), the regulator must give a notice (a "surrender notice") to the operator.

(4) The surrender notice must—

(a) set out a date (the "end date") on which the surrender of the permit takes effect;

(b) require the operator to—

(i) submit to the regulator on or before a date set out in the notice a report of the installation's reportable emissions in the period beginning on 1st January in the scheme year (the "end year") in which the end date falls and ending on the end date;

(ii) ensure that the report is prepared and verified in accordance with the monitoring and reporting conditions of the permit;

(iii) where the permit is a greenhouse gas emissions permit, on or before a date set out in the notice, surrender allowances equal to the installation's reportable emissions in the period referred to in sub-paragraph (i).

(5) The operator must comply with the requirements of the surrender notice.

(6) Where a surrender notice is given—

(a) the permit ceases to be in force on the end date (and therefore ceases to authorise a regulated activity to be carried out at the installation from that date); but

(b) the conditions of the permit continue to have effect as if the permit were in force until the regulator certifies that the conditions of the permit and the requirements of the surrender notice have been complied with.

(7) The reference in sub-paragraph (6)(b) to the conditions of the permit that continue to have effect includes a reference to conditions relating to reportable emissions before the end year that the operator is required to comply with on or before a date that may fall after the end date (for example, in the case of a greenhouse gas emissions permit, the condition referred to in paragraph 4(2)(b) and the surrender condition or, in the case of a hospital or small emitter permit, the condition referred to in paragraph 11(2)(b) of Schedule 7).

Revocation of permits

12.—(1) Where the operator of an installation fails to apply to surrender the installation's permit under paragraph 11(1) on or before the date referred to in that sub-paragraph, the regulator must revoke the permit as soon as reasonably practicable after that date.

(2) Where a permit authorises a regulated activity to be carried out at an installation that is included in the ultra-small emitter list for 2026-2030, the regulator must revoke the permit so that it ceases to be in force at the end of 31st December 2025.

(3) The regulator may revoke a permit if—

(a) the operator fails to comply with—

(i) a requirement imposed on the operator by or under—

(aa) this Order;

(bb) the Monitoring and Reporting Regulation 2018;

(cc) the Verification Regulation 2018;

(ii) a condition of the permit; or

(b) the operator of an installation fails to pay the charge for maintaining the permit in force(**a**).

(4) A permit is revoked by giving a notice (a "revocation notice") to the operator.

(5) The revocation notice must—

(a) set out a date (the "end date") on which the revocation of the permit takes effect;

(b) require the operator to—

(i) submit to the regulator on or before a date set out in the notice a report of the installation's reportable emissions in the period beginning on 1st January in the scheme year (the "end year") in which the end date falls and ending on the end date;

(ii) ensure that the report is prepared and verified in accordance with the monitoring and reporting conditions of the permit;

(iii) where the permit is a greenhouse gas emissions permit, on or before a date set out in the notice, surrender allowances equal to the installation's reportable emissions in the period referred to in sub-paragraph (i).

(6) The operator must comply with the requirements of the revocation notice.

(7) Where a revocation notice is given—

(a) the permit ceases to be in force on the end date (and therefore ceases to authorise a regulated activity to be carried out at the installation from that date); but

(b) the conditions of the permit continue to have effect as if the permit were in force until the regulator certifies that the conditions of the permit and the requirements of the revocation notice have been complied with.

(8) The reference in sub-paragraph (7)(b) to the conditions of the permit that continue to have effect includes a reference to conditions relating to reportable emissions before the end year that the operator is required to comply with on or before a date that may fall after the end date (for example, in the case of a greenhouse gas emissions permit, the condition referred to in paragraph 4(2)(b) and the surrender condition or, in the case of a hospital or small emitter permit, the condition referred to in paragraph 11(2)(b) of Schedule 7).

(9) A regulator who gives a revocation notice may, by notice to the operator, withdraw the revocation notice at any time before the end date.

(**a**) Paragraph 23(4) of Schedule 7 provides for the regulator to give a conversion notice in respect of the hospital or small emitter permit instead of revoking the permit.

SCHEDULE 7

Article 26(4)

Hospitals and small emitters

PART 1

Preliminary

Interpretation

1.—(1) In this Schedule—

"conversion notice" has the meaning given in paragraph 23;

"emissions report" has the meaning given in paragraph 11(2)(b);

"emissions target", in relation to an installation, means a target for the installation's reportable emissions (excluding emissions from biomass) set out in the installation's hospital or small emitter permit; and an emissions target for a scheme year is the emissions target for that year set out in the permit;

"hospital-qualifying installation" means—

(a) in relation to an installation included in the hospital and small emitter list for 2021-2025, an installation stated in that list to be a "hospital" by the inclusion of "Y" in the entry relating to the installation in the column headed "Hospital (YES/NO)";

(b) in relation to an installation included in the hospital and small emitter list for 2026-2030, an installation that meets condition A (whether or not the installation also meets condition B or C) (see paragraphs 5 and 6);

(c) in relation to an installation included in the ultra-small emitter list for 2021-2025 or the ultra-small emitter list for 2026-2030—

(i) in respect of which a notice under paragraph 7(2) of Schedule 8 is given; and

(ii) that is a hospital or small emitter for a scheme year by virtue of paragraph 4 of this Schedule,

an installation that primarily provided services to a hospital in the scheme year before the notice was given;

"maximum amount" means 24,999 tonnes of carbon dioxide equivalent.

(2) For the purposes of this Order, in determining whether or not an installation's reportable emissions or an estimate of reportable emissions exceed the maximum amount or an emissions target and in calculating an installation's emissions target based on reportable emissions or an estimate, emissions from biomass must be excluded.

Meaning of installation that primarily provides services to a hospital in scheme year

2.—(1) For the purposes of this Schedule, an installation is an installation that primarily provides services to a hospital in a scheme year if at least 85% of the heat produced by the installation in that year is used by or supplied to one or more hospitals.

(2) In sub-paragraph (1), "hospital" means—

(a) an institution for the reception and treatment of persons suffering from illness;

(b) a maternity home;

(c) an institution for the reception and treatment of persons during convalescence or persons requiring medical rehabilitation;

(d) a clinic, dispensary or out-patient department maintained in connection with an establishment referred to in any of paragraphs (a) to (c);

(e) a research or teaching facility that is associated with an establishment referred to in any of paragraphs (a) to (c) that has as its primary purpose medical research or medical teaching;

(f) any other facility that has as its primary purpose the provision of such services as are necessary to maintain the proper functioning of an establishment referred to in any of paragraphs (a) to (d), including in particular—

(i) blood transfusion services;

(ii) catering services;

(iii) laundry services;

(iv) medical sanitisation services.

(3) In sub-paragraph (2), "illness" includes any disorder or disability of the mind and any injury or disability requiring medical or dental treatment or nursing.

PART 2

Hospital or small emitter status

Hospital or small emitter status

3.—(1) This paragraph and paragraph 4 apply to determine whether or not an installation is a hospital or small emitter for a scheme year.

(2) Subject to sub-paragraphs (3) and (4), an installation is a hospital or small emitter for the scheme years in the 2021-2025 allocation period if the installation is included in the list (the "hospital and small emitter list for 2021-2025") of installations to be excluded from the EU ETS under Article 27 of the Directive from 1st January 2021 published for the purposes of the EU ETS on the website of SEPA on 28th May 2020(**a**).

(3) Where a conversion notice is given to the operator of the installation stating that the installation is not a hospital or small emitter for a scheme year in the 2021-2025 allocation period, the installation is not a hospital or small emitter for that scheme year or subsequent scheme years in the allocation period.

(4) Where a regulated activity does not begin to be carried out before 1st November 2020 at an installation that is included in the hospital and small emitter list for 2021-2025—

(a) the installation is not a hospital or small emitter for the scheme years in the 2021-2025 allocation period; and

(b) for the purposes of this Order, the hospital and small emitter list for 2021-2025 must be treated as not including the installation.

(5) Subject to sub-paragraphs (6) and (7), an installation is a hospital or small emitter for the scheme years in the 2026-2030 allocation period if the installation is included in the hospital and small emitter list for 2026-2030.

(6) Where a conversion notice is given to the operator of the installation stating that the installation is not a hospital or small emitter for a scheme year in the 2026-2030 allocation period, the installation is not a hospital or small emitter for that scheme year or subsequent scheme years in the allocation period.

(**a**) The hospital and small emitter list for 2021-2025 can be accessed at www.sepa.org.uk/media/504726/uk-article-27-27a-installation-list.pdf. A copy of the list may be inspected at the Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET; the Industrial Pollution and Radiochemical Inspectorate, Department for Agriculture, Environment and Rural Affairs, Klondyke Building, Cromac Avenue, Belfast BT7 2JA; the Scottish Government Directorate of Energy & Climate Change, Fourth Floor, 5 Atlantic Quay, 150 Broomielaw, Glasgow G2 8LU; and the offices of the Welsh Government, Cathays Park 2, Cathays Park, Cardiff CF10 2NQ.

(7) Where a regulated activity does not begin to be carried out before 1st November 2025 at an installation that is included in the hospital and small emitter list for 2026-2030—

(a) the installation is not a hospital or small emitter for the scheme years in the 2026-2030 allocation period; and

(b) for the purposes of this Order, the hospital and small emitter list for 2026-2030 must be treated as not including the installation.

Hospital or small emitter status: former ultra-small emitters

4.—(1) This paragraph applies to an installation if—

(a) the installation is included in—

(i) the ultra-small emitter list for 2021-2025; or

(ii) the ultra-small emitter list for 2026-2030;

(b) the regulator gives notice to the operator of the installation under paragraph 7(2) of Schedule 8 stating that the installation will not be an ultra-small emitter for a scheme year (the "relevant scheme year"); and

(c) the regulator gives notice to the operator under paragraph 7(5)(b) of that Schedule that the regulator considers that the installation is not an ineligible installation.

(2) Subject to paragraph 3(3), an installation to which this paragraph applies by virtue of sub-paragraph (1)(a)(i) is a hospital or small emitter for the relevant scheme year and for subsequent scheme years in the 2021-2025 allocation period.

(3) Subject to paragraph 3(6), an installation to which this paragraph applies by virtue of sub-paragraph (1)(a)(ii) is a hospital or small emitter for the relevant scheme year and for subsequent scheme years in the 2026-2030 allocation period.

(4) For the purpose of this paragraph, an installation is an ineligible installation if—

(a) where the activity referred to in column 1 of the first entry in table C in Schedule 2 (combustion of fuels) is carried out at the installation, the installation's rated thermal input is 35 megawatts or above—

(i) where the installation is included in the ultra-small emitter list for 2021-2025, in any of the scheme years (within the meaning of GGETSR 2012) beginning on 1st January 2016, 2017 or 2018;

(ii) where the installation is included in the ultra-small emitter list for 2026-2030, in any of the 2021, 2022 or 2023 scheme years; and

(b) the installation is not an installation that primarily provided services to a hospital in the scheme year preceding the scheme year in which the notice under paragraph 7(2) of Schedule 8 is given.

Obtaining hospital or small emitter status for 2026-2030 allocation period

5.—(1) The operator of an installation who wishes to apply for the installation to be a hospital or small emitter for the scheme years in the 2026-2030 allocation period must submit the following to the regulator—

(a) details of the installation, including details of any permit in force;

(b) evidence that the installation meets condition A, B or C (see paragraph 6);

(c) where the operator submits evidence that the installation meets condition A, the evidence and any estimate required by paragraph 6(3);

(d) where the operator submits evidence that the installation meets condition C, any estimate required by paragraph 6(6).

(2) An application—

(a) may not be made before 1st April 2024;

(b) must be made on or before 30th June 2024.

(3) After receiving an application, the regulator must on or before 30th September 2024—

(a) make a preliminary assessment of whether or not the installation meets condition A, B or C; and

(b) send the preliminary assessment and the reasons for it to the UK ETS authority.

(4) After receiving the preliminary assessment—

(a) the UK ETS authority must make a final assessment of whether or not the installation meets condition A, B or C; and

(b) if the UK ETS authority considers that the installation meets condition A, B or C, the UK ETS authority must include the installation in a list (the "hospital and small emitter list for 2026-2030").

(5) The UK ETS authority must publish the hospital and small emitter list for 2026-2030 on or before 30th April 2025.

(6) Evidence of an installation's historic reportable emissions may not be taken into account for the purposes of assessing whether or not an installation meets condition B or C unless the evidence is—

(a) verified in accordance with the Verification Regulation 2018; or

(b) where relevant, set out in an emissions report accompanied by the declaration referred to in paragraph 11(2)(b)(ii).

(7) An application may not be made under this paragraph and paragraph 3 of Schedule 8.

Obtaining hospital or small emitter status for 2026-2030 allocation period: Conditions A, B and C

6.—(1) This paragraph applies for the purposes of paragraph 5.

Condition A

(2) Condition A is that the installation—

(a) is an installation that primarily provides services to a hospital in the 2023 scheme year; or

(b) if a regulated activity has not begun to be carried out at the installation at the date of the application—

(i) a regulated activity will begin to be carried out at the installation before 1st November 2025; and

(ii) the installation will be an installation that primarily provides services to a hospital after that date.

(3) Where the operator submits evidence that the installation meets condition A, the operator must also submit—

(a) if a regulated activity begins to be carried out at the installation on or before 1st January 2021, evidence of—

(i) the installation's reportable emissions in each of the 2021, 2022 and 2023 scheme years, verified as mentioned in paragraph 5(6);

(ii) where the activity referred to in column 1 of the first entry in table C in Schedule 2 (combustion of fuels) is carried out at the installation, the installation's rated thermal input in each of those years;

(b) in any other case—

(i) where a regulated activity has begun to be carried out at the installation at the date of the application, such evidence of the matters referred to in paragraph (a)(i) and (ii) as is available at the date of the application; and

(ii) where the evidence submitted under sub-paragraph (i) does not include evidence of reportable emissions for a complete scheme year, an estimate of the installation's reportable emissions in the 2026 scheme year.

Condition B

(4) Condition B is that—

(a) a regulated activity begins to be carried out at the installation on or before 1st January 2021;

(b) the installation's reportable emissions in each of the 2021, 2022 and 2023 scheme years do not exceed the maximum amount; and

(c) where the activity referred to in column 1 of the first entry in table C in Schedule 2 (combustion of fuels) is carried out at the installation, the installation's rated thermal input is below 35 megawatts in each of those years.

Condition C

(5) Condition C is that—

(a) if a regulated activity is carried out at the installation at the date of the application, the regulated activity began to be carried out at the installation after 1st January 2021;

(b) if a regulated activity has not begun to be carried out at the installation at the date of the application, a regulated activity will begin to be carried out at the installation before 1st November 2025;

(c) the installation's reportable emissions—

(i) are not likely to exceed the maximum amount in each of the scheme years in the 2026-2030 allocation period; and

(ii) if a regulated activity has begun to be carried out at the installation at the date of the application, do not exceed the maximum amount in each of the scheme years for which, at the date of the application, evidence of reportable emissions is available; and

(d) where the activity referred to in column 1 of the first entry in table C in Schedule 2 (combustion of fuels) is carried out at the installation, the installation's rated thermal input—

(i) is likely to be below 35 megawatts in each of the scheme years in the 2026-2030 allocation period; and

(ii) if a regulated activity has begun to be carried out at the installation at the date of the application, is below 35 megawatts in each of the scheme years for which, at the date of the application, evidence of rated thermal input is available.

(6) Where the evidence submitted under sub-paragraph (5) does not include evidence of reportable emissions for a complete scheme year, the operator must also submit an estimate of the installation's reportable emissions in the 2026 scheme year.

PART 3

Hospital or small emitter permits

Hospital or small emitter permits: application

7.—(1) The operator of an installation that is a hospital or small emitter for a scheme year may apply to the regulator for a hospital or small emitter permit to come into force in that year(**a**).

(2) But an application may not be made if a permit for the installation is already in force.

(**a**) Paragraph 10 of Schedule 7 and paragraph 1 of Schedule 11 provide for the conversion of permits into hospital or small emitter permits.

(3) In sub-paragraph (2), "permit" includes a permit within the meaning of GGETSR 2012 to which paragraph 1 of Schedule 11 applies (permits to be converted).

Hospital or small emitter permits: content of application

8. An application for a hospital or small emitter permit must contain the matters set out in paragraph 2 of Schedule 6, except for the uncertainty assessment referred to in sub-paragraph (1)(g)(ii) of that paragraph.

Hospital or small emitter permits: issue of permit

9. A hospital or small emitter permit may be issued only if the regulator considers that—

(a) the application is made for a permit to come into force in a scheme year for which the installation is a hospital or small emitter; and

(b) from the date on which the permit comes into force the operator of the installation will be capable of monitoring and reporting the installation's reportable emissions in accordance with the monitoring and reporting conditions of the permit.

Hospital or small emitter permits: conversion of existing greenhouse gas emissions permit for 2026-2030 allocation period

10.—(1) This paragraph applies where a greenhouse gas emissions permit is in force for an installation that is included in the hospital and small emitter list for 2026-2030.

(2) The regulator must convert the greenhouse gas emissions permit into a hospital or small emitter permit with effect from 1st January 2026 by varying it under paragraph 6 of Schedule 6, so that the provisions of the permit are replaced by provisions that satisfy the requirements of paragraph 11.

(3) When varying a permit under sub-paragraph (2), the regulator may make only such variations as the regulator considers necessary in consequence of the installation's inclusion in the hospital and small emitter list for 2026-2030.

(4) The conversion of the permit does not affect the obligations of the operator under the greenhouse gas emissions permit in respect of specified emissions before 1st January 2026.

Hospital or small emitter permits: content of permit

11.—(1) A hospital or small emitter permit must contain—

(a) the name and postal address in the United Kingdom (including postcode) of the operator and any other address for correspondence included by the operator in the application;

(b) the postal address and national grid reference of the installation (or, in the case of an installation in UK coastal waters or the UK sector of the continental shelf, equivalent information identifying the installation and its location);

(c) a description of the installation, the regulated activities to be carried out at the installation and the specified emissions from those activities;

(d) a description of the site and the location of the installation on the site;

(e) the date on which the permit comes into force;

(f) an emissions target for the installation, calculated by the regulator in accordance with paragraphs 15 to 17—

(i) subject to paragraph 18, where the installation is included in the hospital and small emitter list for 2021-2025, for each scheme year in the 2021-2025 allocation period;

(ii) subject to paragraph 18, where the installation is included in the hospital and small emitter list for 2026-2030, for each scheme year in the 2026-2030 allocation period;

(iii) where the installation is included in the ultra-small emitter list for 2021-2025, for each scheme year in the 2021-2025 allocation period for which the installation is a hospital or small emitter (see paragraph 4(2));

(iv) where the installation is included in the ultra-small emitter list for 2026-2030, for each scheme year in the 2026-2030 allocation period for which the installation is a hospital or small emitter (see paragraph 4(3));

(g) the monitoring plan—

(i) where an application is made for the permit, approved in relation to the installation under Articles 11 to 13 of the Monitoring and Reporting Regulation 2018;

(ii) where an existing permit is converted into a hospital or small emitter permit, approved in relation to the installation under Articles 11 to 13 of the Monitoring and Reporting Regulation 2012 or Articles 11 to 13 of the Monitoring and Reporting Regulation 2018 for the purpose of monitoring reportable emissions at the installation immediately before the hospital or small emitter permit comes into force;

(h) the monitoring and reporting conditions (see sub-paragraph (2));

(i) any other conditions that the regulator considers appropriate to include in the permit.

(2) The monitoring and reporting conditions are—

(a) a condition requiring the operator to monitor the installation's reportable emissions in each scheme year for which the installation is a hospital or small emitter in accordance with—

(i) the Monitoring and Reporting Regulation 2018; and

(ii) the monitoring plan (including the written procedures supplementing the monitoring plan);

(b) a condition requiring the operator to prepare in accordance with the Monitoring and Reporting Regulation 2018 a report (the "emissions report") of the installation's reportable emissions in each scheme year for which the installation is a hospital or small emitter that is—

(i) verified in accordance with the Verification Regulation 2018; or

(ii) accompanied by a declaration stating that—

(aa) in preparing the emissions report the operator has complied with the Monitoring and Reporting Regulation 2018;

(bb) the operator has complied with the monitoring plan; and

(cc) the emissions report is free from material misstatements,

and to submit the emissions report (and any declaration) to the regulator on or before 31st March in the following year; and

(c) any further conditions that the regulator considers necessary to give proper effect to the Monitoring and Reporting Regulation 2018 or the Verification Regulation 2018.

(3) A hospital or small emitter permit for a hospital-qualifying installation must contain conditions requiring the operator—

(a) if the installation ceases to be an installation that primarily provides services to a hospital in a scheme year for which the installation is a hospital or small emitter, to give notice to the regulator on or before 31st March in the following year;

(b) except where the operator gives notice under paragraph (a)—

(i) to maintain records demonstrating that the installation continues to be an installation that primarily provides services to a hospital; and

(ii) to comply with requests from the regulator to inspect the records for the purpose of verifying the accuracy of the records and of the emissions report.

(4) A hospital or small emitter permit for an installation that is not a hospital-qualifying installation must contain a condition requiring the operator, if the installation's reportable

emissions in a scheme year for which the installation is a hospital or small emitter exceed the maximum amount, to give notice to the regulator on or before 31st March in the following year.

(5) This paragraph is subject to paragraph 14.

Hospital or small emitter permits: effect of permit, etc.

12.—(1) A hospital or small emitter permit for an installation—

(a) comes into force on the date set out in the permit;

(b) authorises the regulated activities set out in the permit to be carried out at the installation.

(2) The operator of the installation must comply with the conditions of the permit.

Hospitals and small emitters: modifications to Monitoring and Reporting Regulation 2018

13.—(1) Where an installation is a hospital or small emitter for a scheme year, the Monitoring and Reporting Regulation 2018 has effect with the following modifications (in addition to the modifications in Schedule 4).

(2) References in the Monitoring and Reporting Regulation 2018 to a greenhouse gas emissions permit are to be read as references to a hospital or small emitter permit.

(3) Article 19 is to be read as if—

(a) in paragraph 2 for the words from "in one of the following categories" to the end there were substituted "as a category A installation";

(b) paragraph 5 were omitted.

(4) Article 38(2) is to be read as if—

(a) in the first subparagraph ", but the emission factor for bioliquids shall be zero only if the sustainability criteria set out in Article 17(2) to (5) of Directive 2009/28/EC have been fulfilled" were omitted;

(b) in the second subparagraph for "each fuel" there were substituted "a mixed fuel".

(5) Article 47 is to be read as if—

(a) every installation that is a hospital or small emitter for a scheme year were an installation to which Article 47 applies (that is to say, an installation that operates with low emissions, disregarding the second subparagraph of paragraph 1 of that Article);

(b) paragraph 8 were omitted.

(6) Where an emissions report submitted to the regulator under paragraph 11(2)(b) is accompanied by a declaration referred to in paragraph 11(2)(b)(ii) (and is not verified in accordance with the Verification Regulation 2018), in the Monitoring and Reporting Regulation 2018—

(a) Annex 10 must be read as if section 1(2) were omitted;

(b) a reference to a verified annual emission report is to be read as a reference to the emissions report;

(c) a reference to verified annual emissions or verified emissions is to be read as a reference to the reportable emissions reported in the emissions report;

(d) a reference to a verifier is to be read as a reference to the regulator;

(e) a reference to verifying or verification is to be read as a reference to auditing the reportable emissions reported in the emissions report by the regulator in accordance with the regulator's procedures for auditing reportable emissions of installations, the operators of which submit emissions reports under paragraph 11(2)(b)(ii);

(f) a reference to a verification report is to be read as a reference to the record of such an audit given to the operator by the regulator.

Former ultra-small emitters: hospital or small emitter permits coming into force after beginning of scheme year

14.—(1) This paragraph applies where a hospital or small emitter permit for an installation referred to in paragraph 4(2) or (3) comes into force on a day after 1st January in the relevant scheme year.

(2) References in paragraph 11(2) to a scheme year for which the installation is a hospital or small emitter must be treated as not including a reference to the part of the relevant scheme year before the date on which the permit comes into force.

(3) The installation's emissions target for the relevant scheme year is the emissions target calculated under paragraph 16 or, as the case may be, 17 multiplied by the factor set out in sub-paragraph (4).

(4) The factor is (Y – D)/Y, where—

Y is the number of days in the relevant scheme year;

D is the number of days in the relevant scheme year before the date on which the permit comes into force.

(5) Paragraph 19 has effect as if the reference to the installation's reportable emissions in the relevant scheme year were a reference to the installation's reportable emissions in the relevant scheme year on and after the date on which the permit comes into force.

(6) In this paragraph, "relevant scheme year" has the meaning given in paragraph 4(1)(b).

PART 4

Emissions targets

Emissions targets other than for hospital-qualifying installations may not exceed maximum amount

15.—(1) Except in the case of a hospital-qualifying installation, an emissions target for a scheme year may not exceed the maximum amount.

(2) This paragraph overrides paragraphs 16 and 17.

Emissions targets for 2021-2025 allocation period

16.—(1) This paragraph applies for the purpose of calculating an installation's emissions targets for the scheme years in the 2021-2025 allocation period under paragraph 11(1)(f)(i) and (iii).

(2) Where a regulated activity began to be carried out at the installation before 2019, the installation's emissions target for a scheme year is the installation's relevant emissions multiplied by the reduction factor for the scheme year.

(3) For the purpose of sub-paragraph (2), the relevant emissions of an installation are—

(a) where a regulated activity began to be carried out at the installation before 2016, the sum of the installation's reportable emissions in 2016, 2017 and 2018 divided by 3;

(b) where a regulated activity began to be carried out at the installation in 2016, the sum of the installation's reportable emissions in 2017 and 2018 divided by 2;

(c) where a regulated activity began to be carried out at the installation in 2017, the installation's reportable emissions in 2018;

(d) where a regulated activity began to be carried out at the installation in 2018, the installation's reportable emissions in 2019.

(4) Where a regulated activity began to be carried out at the installation in 2019, the installation's emissions target—

(a) for the 2021 scheme year is the 2021 estimate multiplied by the reduction factor for the 2021 scheme year;

(b) for every other scheme year (the "relevant scheme year") in the 2021-2025 allocation period is the installation's reportable emissions in 2020 multiplied by the reduction factor for the relevant scheme year.

(5) Where a regulated activity began to be carried out at the installation in the period beginning on 1st January 2020 and ending on 31st October 2020, the installation's emissions target—

(a) for the 2021 scheme year is the 2021 estimate multiplied by the reduction factor for the 2021 scheme year;

(b) for the 2022 scheme year is the 2021 estimate multiplied by the reduction factor for the 2022 scheme year;

(c) for every other scheme year (the "relevant scheme year") in the 2021-2025 allocation period is the installation's reportable emissions in the 2021 scheme year multiplied by the reduction factor for the relevant scheme year.

(6) In sub-paragraphs (4) and (5), "2021 estimate" means the conservative estimate of annual average emissions referred to in Article 19(4) of the Monitoring and Reporting Regulation 2012 used for the purposes of a monitoring plan submitted under that Regulation and contained in the application for a permit under GGETSR 2012 (see paragraph 1(1)(f) of Schedule 4 to GGETSR 2012).

(7) For the purpose of this paragraph, the reduction factor for a scheme year set out in column 1 of table D is the value set out in the corresponding entry in column 2.

Table D

Column 1 *Scheme year*	*Column 2* *Reduction factor*
2021	0.8697
2022	0.8461
2023	0.8224
2024	0.7988
2025	0.7751

(8) In this paragraph, a reference to reportable emissions is a reference to reportable emissions (within the meaning of GGETSR 2012 or this Order)—

(a) verified in accordance with the Verification Regulation 2012 or the Verification Regulation 2018;

(b) where relevant, set out in an emissions report accompanied by the notice or declaration referred to in paragraph 3(8)(b)(ii) of Schedule 5 to GGETSR 2012 or paragraph 11(2)(b)(ii) of this Schedule.

(9) This paragraph is subject to paragraph 14.

Emissions targets for 2026-2030 allocation period

17.—(1) This paragraph applies for the purpose of calculating an installation's emissions targets for the scheme years in the 2026-2030 allocation period under—

(a) paragraph 11(1)(f)(ii) and (iv);

(b) paragraph 21.

(2) Where a regulated activity begins to be carried out at the installation before 2024, the installation's emissions target for a scheme year is the installation's relevant emissions multiplied by the reduction factor for the scheme year.

(3) For the purpose of sub-paragraph (2), the relevant emissions of an installation are—

(a) where a regulated activity begins to be carried out at the installation before 2021, the sum of the installation's reportable emissions in 2021, 2022 and 2023 divided by 3;

(b) where a regulated activity begins to be carried out at the installation in 2021, the sum of the installation's reportable emissions in 2022 and 2023 divided by 2;

(c) where a regulated activity begins to be carried out at the installation in 2022, the installation's reportable emissions in 2023;

(d) where a regulated activity begins to be carried out at the installation in 2023, the installation's reportable emissions in 2024.

(4) Where a regulated activity begins to be carried out at the installation in 2024, the installation's emissions target—

(a) for the 2026 scheme year is the 2026 estimate multiplied by the reduction factor for the 2026 scheme year;

(b) for every other scheme year (the "relevant scheme year") in the 2026-2030 allocation period is the installation's reportable emissions in the 2025 scheme year multiplied by the reduction factor for the relevant scheme year.

(5) Where a regulated activity begins to be carried out at the installation in the period beginning on 1st January 2025 and ending on 31st October 2025, the installation's emissions target—

(a) for the 2026 scheme year is the 2026 estimate multiplied by the reduction factor for the 2026 scheme year;

(b) for the 2027 scheme year is the 2026 estimate multiplied by the reduction factor for the 2027 scheme year;

(c) for every other scheme year (the "relevant scheme year") in the 2026-2030 allocation period is the installation's reportable emissions in the 2026 scheme year multiplied by the reduction factor for the relevant scheme year.

(6) In sub-paragraphs (4) and (5), "2026 estimate" means the estimate of the installation's reportable emissions in the 2026 scheme year provided under—

(a) in the case of a hospital-qualifying installation, paragraph 6(3)(b);

(b) in any other case, paragraph 6(6).

(7) For the purpose of this paragraph, the reduction factor for a scheme year set out in column 1 of table E is the value set out in the corresponding entry in column 2.

Table E

Column 1 *Scheme year*	*Column 2* *Reduction factor*
2026	0.8882
2027	0.8602
2028	0.8322
2029	0.8043
2030	0.7763

(8) In this paragraph, a reference to reportable emissions is a reference to reportable emissions—

(a) verified in accordance with the Verification Regulation 2018; or

(b) where relevant, set out in an emissions report accompanied by the declaration referred to in paragraph 11(2)(b)(ii).

(9) This paragraph is subject to paragraph 14.

Emissions targets: calculation of later targets where initial targets based on estimates

18.—(1) This paragraph applies where an installation's emission targets for the scheme years in an allocation period are required to be calculated under—

(a) paragraph 16(4) or (5);

(b) paragraph 17(4) or (5).

(2) Paragraph 11(1)(f)(i) and (ii) do not require the installation's hospital or small emitter permit to contain emissions targets for scheme years (the "relevant scheme years") for which, at the date of issue of the permit, the information required to calculate the emission targets is not available.

(3) As soon as reasonably practicable after the information to calculate the installation's emissions targets for the relevant scheme years becomes available, the regulator must vary the installation's hospital or small emitter permit under paragraph 6 of Schedule 6 by adding the emissions targets.

(4) But sub-paragraph (3) does not apply if the regulator has given a conversion notice to the operator of the installation, the effect of which is that the installation will not be a hospital or small emitter for the relevant scheme years.

Emissions targets: hospital or small emitters must not exceed targets

19.—(1) The operator of an installation must ensure that the installation's reportable emissions in a scheme year for which the installation is a hospital or small emitter do not exceed the emissions target for that year.

(2) This paragraph is subject to paragraph 14.

Emissions targets: banking overachieved target

20.—(1) In this paragraph, an installation's "bankable amount", in relation to a scheme year, means ET – RE, where—

ET is the installation's emissions target for that year;

RE is the reportable emissions stated in the installation's emissions report for that year.

(2) But if the installation's emissions target for a scheme year is calculated in accordance with any of the following provisions (emissions targets based on estimates), for the purposes of this paragraph the installation's bankable amount for that scheme year must be treated as zero—

(a) paragraph 16(4)(a);

(b) paragraph 16(5)(a) or (b);

(c) paragraph 17(4)(a);

(d) paragraph 17(5)(a) or (b).

(3) Subject to sub-paragraphs (5) and (6), where an installation's bankable amount for a scheme year (the "scheme year in question") is greater than zero—

(a) the regulator may increase the installation's emissions target for the following scheme year (the "next scheme year") by the bankable amount; and

(b) if the regulator does so, the regulator must vary the installation's hospital or small emitter permit under paragraph 6 of Schedule 6 by substituting the increased emissions target for the existing target.

(4) Subject to sub-paragraph (6), where the amount of reportable emissions stated in the installation's emissions report for the scheme year in question is amended following a determination of emissions under article 45, the regulator must—

(a) calculate the bankable amount for the scheme year in question as if RE in sub-paragraph (1) were the amount of reportable emissions for that year as amended following the determination; and

(b) where an increased emissions target for the next scheme year has been substituted under sub-paragraph (3)(b), further vary the permit under paragraph 6 of Schedule 6 by substituting a revised emissions target for that year, based on the revised calculation of the bankable amount under paragraph (a).

(5) Sub-paragraph (3) does not apply if the scheme year in question is—

(a) the 2025 scheme year;

(b) the 2030 scheme year.

(6) Except where the installation is a hospital-qualifying installation, if increasing the emissions target for the next scheme year would result in an emissions target that exceeds the maximum amount, the emissions target must be increased by such amount as results in an emissions target of the maximum amount.

Emissions targets: targets for 2026-2030 allocation period for hospital or small emitters in 2021-2025 allocation period

21.—(1) This paragraph applies where—

(a) a hospital or small emitter permit is in force for an installation that contains emissions targets for a scheme year in the 2021-2025 allocation period; and

(b) the installation is included in the hospital and small emitter list for 2026-2030.

(2) The regulator must, on or before 31st December 2025—

(a) calculate an emissions target for the installation for each scheme year in the 2026-2030 allocation period; and

(b) vary the installation's hospital or small emitter permit under paragraph 6 of Schedule 6 to include those emissions targets.

(3) But sub-paragraph (2) does not apply if the regulator has given a conversion notice to the operator of the installation (the effect of which is that the installation will not be a hospital or small emitter for the scheme years in the 2026-2030 allocation period).

Emissions targets: errors

22.—(1) This paragraph applies where the amount of an installation's reportable emissions used to calculate the installation's emission targets (including revised emissions targets under paragraph 20) for scheme years in an allocation period is amended following a determination of emissions under article 45.

(2) The regulator may calculate revised emissions targets for the current and future scheme years in the allocation period and, if the regulator does so, the regulator must vary the installation's hospital or small emitter permit under paragraph 6 of Schedule 6 to include those emissions targets.

(3) In calculating revised emissions targets under sub-paragraph (2), the regulator may take account of what revised emissions targets for past scheme years in the allocation period calculated under this paragraph might have been if the determination had been made earlier (but may not calculate revised emissions targets for past years).

(4) In this paragraph—

(a) a reference to reportable emissions used to calculate emissions targets for the 2021-2025 allocation period includes a reference to reportable emissions within the meaning of GGETSR 2012; and

(b) a reference to a determination of emissions under article 45 includes, in the case of reportable emissions referred to in paragraph (a), a reference to a determination of emissions under regulation 44(3) of GGETSR 2012 or Article 70(1) of the Monitoring and Reporting Regulation 2012.

PART 5

End of hospital or small emitter status

End of hospital or small emitter status: ceasing to meet criteria

23.—(1) Where—

(a) an installation (other than a hospital-qualifying installation) is a hospital or small emitter for any of the 2021, 2022, 2023, 2026, 2027 and 2028 scheme years; and

(b) the regulator considers that the installation's reportable emissions in any of those years exceed the maximum amount,

the regulator must, as soon as reasonably practicable, give a notice (a "conversion notice") to the operator of the installation.

(2) Where the regulator considers that a hospital-qualifying installation ceases to be an installation that primarily provides services to a hospital in a scheme year (the "relevant scheme year") for which the installation is a hospital or small emitter, the regulator must, as soon as reasonably practicable, give a notice (a "conversion notice") to the operator of the installation.

(3) But sub-paragraph (2) does not apply—

(a) where the relevant scheme year is in the 2021-2025 allocation period and the installation was in operation in any of the 2016, 2017 and 2018 scheme years (within the meaning of GGETSR 2012), if—

(i) the installation's reportable emissions in each of those years did not exceed the maximum amount; and

(ii) where the activity referred to in column 1 of the first entry in table C in Schedule 2 (combustion of fuels) was carried out at the installation, the installation's rated thermal input was below 35 megawatts in each of those years.

(b) where the relevant scheme year is in the 2026-2030 allocation period and the installation was in operation in any of the 2021, 2022 and 2023 scheme years, if—

(i) the installation's reportable emissions in each of those years do not exceed the maximum amount; and

(ii) where the activity referred to in column 1 of the first entry in table C in Schedule 2 (combustion of fuels) is carried out at the installation, the installation's rated thermal input is below 35 megawatts in each of those years.

(4) Where a hospital or small emitter permit may be revoked under paragraph 12 of Schedule 6, the regulator may instead of revoking the permit give a notice (a "conversion notice") to the operator of the installation.

Conversion notices

24.—(1) A conversion notice must—

(a) set out the grounds for the notice;

(b) state that the installation is not a hospital or small emitter for the scheme year following the year in which the notice is given;

(c) state that the operator must comply with the conditions of a greenhouse gas emissions permit from 1st January (the "date of conversion") in the scheme year following the year in which the notice is given;

(d) state that the operator must apply to vary the monitoring plan to comply with the requirements of a greenhouse gas emissions permit.

(2) Where a conversion notice is given, the regulator must convert, with effect from the date of conversion, the installation's hospital or small emitter permit (if any) into a greenhouse gas emissions permit by varying it under paragraph 6 of Schedule 6 so that the provisions of the permit are replaced by provisions that satisfy the requirements of paragraph 4 of Schedule 6.

(3) But if the regulator considers that the operator will not be capable of monitoring and reporting the installation's reportable emissions in accordance with the monitoring and reporting conditions of a greenhouse gas emissions permit, the regulator must revoke the permit under paragraph 12 of Schedule 6 instead of converting it.

(4) When varying a permit, the regulator may make only such variations as the regulator considers necessary in consequence of the installation ceasing to be a hospital or small emitter.

(5) The conversion of the permit does not affect the obligations of the operator under the permit in respect of specified emissions before the date of conversion.

End of hospital or small emitter status: ceasing to meet criteria: publication

25.—(1) The regulator must, as soon as reasonably practicable, inform the UK ETS authority about each installation in respect of which a conversion notice is given.

(2) The UK ETS authority must, from time to time, publish the information referred to in sub-paragraph (1).

End of hospital or small emitter status: end of allocation period

26.—(1) The regulator must, on or before 31st May 2025 give notice to the operator of an installation to which sub-paragraph (2) applies—

(a) stating that the operator must comply with the conditions of a greenhouse gas emissions permit from 1st January 2026; and

(b) requesting the operator to submit any proposed changes to the monitoring plan approved in relation to the installation under Articles 11 to 13 of the Monitoring and Reporting Regulation 2012 or Articles 11 to 13 of the Monitoring and Reporting Regulation 2018 to the regulator on or before 30th September 2025.

(2) This sub-paragraph applies to an installation that is a hospital or small emitter for the 2025 scheme year other than an installation that is included in—

(a) the hospital and small emitter list for 2026-2030; or

(b) the ultra-small emitter list for 2026-2030.

(3) Where a notice under sub-paragraph (1) is given, the regulator must convert, with effect from 1st January 2026, the installation's hospital or small emitter permit (if any) into a greenhouse gas emissions permit by varying it under paragraph 6 of Schedule 6 so that the provisions of the permit are replaced by provisions that satisfy the requirements of paragraph 4 of Schedule 6.

(4) But if, after the date referred to in paragraph (1)(b), the regulator considers that the operator will not be capable of monitoring and reporting the installation's reportable emissions in accordance with the monitoring and reporting conditions of a greenhouse gas emissions permit, the regulator must revoke the permit under paragraph 12 of Schedule 6 instead of converting it.

(5) When varying a permit, the regulator may make only such variations as the regulator considers necessary in consequence of the installation ceasing to be a hospital or small emitter.

(6) The conversion of the permit does not affect the obligations of the operator under the permit in respect of specified emissions before 1st January 2026.

SCHEDULE 8

Article 26(5)

Ultra-small emitters

Interpretation

1.—(1) In this Schedule, "maximum amount" means 2,499 tonnes of carbon dioxide equivalent.

(2) For the purposes of this Order, in determining whether or not an installation's reportable emissions exceed the maximum amount, emissions from biomass must be excluded.

Ultra-small emitter status

2.—(1) This paragraph applies to determine whether or not an installation is an ultra-small emitter for a scheme year.

(2) An installation is an ultra-small emitter for the scheme years in the 2021-2025 allocation period if the installation is included in the list (the "ultra-small emitter list for 2021-2025") of installations to be excluded from the EU ETS under Article 27a of the Directive from 1st January 2021 published for the purposes of the EU ETS on the website of SEPA on 28th May 2020(**a**).

(3) But if a notice under paragraph 7(2) is given to the operator of the installation stating that the installation is not an ultra-small emitter for a scheme year in the 2021-2025 allocation period, the installation is not an ultra-small emitter for that scheme year or subsequent scheme years in the allocation period.

(4) An installation is an ultra-small emitter for the scheme years in the 2026-2030 allocation period if the installation is included in the ultra-small emitter list for 2026-2030.

(5) But if a notice under paragraph 7(2) is given to the operator of the installation stating that the installation is not an ultra-small emitter for a scheme year in the 2026-2030 allocation period, the installation is not an ultra-small emitter for that scheme year or subsequent scheme years in the allocation period.

Obtaining ultra-small emitter status for 2026-2030 allocation period

3.—(1) The operator of an installation who wishes to apply for the installation to be an ultra-small emitter for the scheme years in the 2026-2030 allocation period must submit the following to the regulator—

(a) details of the installation, including details of any permit in force;

(b) evidence that the installation meets the relevant condition.

(2) An application—

(a) may not be made before 1st April 2024;

(b) must be made on or before 30th June 2024.

(3) After receiving an application, the regulator must on or before 30th September 2024—

(a) make a preliminary assessment of whether or not the installation meets the relevant condition; and

(b) send the preliminary assessment and the reasons for it to the UK ETS authority.

(4) The relevant condition is that—

(**a**) The ultra-small emitter list for 2021-2025 can be accessed at www.sepa.org.uk/media/504726/uk-article-27-27a-installation-list.pdf. A copy of the list may be inspected at the Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET; the Industrial Pollution and Radiochemical Inspectorate, Department for Agriculture, Environment and Rural Affairs, Klondyke Building, Cromac Avenue, Belfast BT7 2JA; the Scottish Government Directorate of Energy & Climate Change, Fourth Floor, 5 Atlantic Quay, 150 Broomielaw, Glasgow G2 8LU; and the offices of the Welsh Government, Cathays Park 2, Cathays Park, Cardiff CF10 2NQ.

(a) a regulated activity begins to be carried out at the installation on or before 1st January 2021; and

(b) the installation's reportable emissions in each of the 2021, 2022 and 2023 scheme years do not exceed the maximum amount.

(5) After receiving the preliminary assessment—

(a) the UK ETS authority must make a final assessment of whether or not the installation meets the relevant condition; and

(b) if the UK ETS authority considers that the installation meets the relevant condition, the UK ETS authority must include the installation in a list (the "ultra-small emitter list for 2026-2030").

(6) The UK ETS authority must publish the ultra-small emitter list for 2026-2030 on or before 30th April 2025.

(7) Evidence of an installation's reportable emissions may not be taken into account for the purposes of assessing whether or not an installation meets the relevant condition unless the evidence is—

(a) verified in accordance with the Verification Regulation 2018; or

(b) where relevant, in an emissions report accompanied by the declaration referred to in paragraph 11(2)(b)(ii) of Schedule 7.

(8) An application may not be made under this paragraph and paragraph 5 of Schedule 7.

Obtaining ultra-small emitter status for 2026-2030 allocation period: modifications to Verification Regulation 2018 for ultra-small emitters in 2021-2025 allocation period

4.—(1) For the purposes of paragraph 3(7)(a), where an installation is included in the ultra-small emitter list for the 2021-2025 allocation period, the Verification Regulation 2018 has effect with the following modifications.

(2) References in the Verification Regulation 2018—

(a) to the operator's report or emission report are to be read as references to the evidence of the installation's reportable emissions provided to the verifier by the operator for verification and intended to be submitted under paragraph 3(1)(b);

(b) to the monitoring plan or the monitoring plan approved by the regulator are to be read as references to the appropriate monitoring plan referred to in paragraph 5, including any modifications to the plan made under Article 14 of the Monitoring and Reporting Regulation 2018, as applied by paragraph 5(4) of this Schedule (even though such modifications do not require the approval of the regulator: see paragraph 5(5)).

(3) Article 2 is to be read as if "reported pursuant to Implementing Regulation (EU) 2018/2066" were omitted.

(4) Article 3(13)(a) is to be read as if "the permit and" were omitted.

(5) Article 7 is to be read as if—

(a) in paragraph 4—

(i) in point (a) "and meets the requirements laid down in Annex X to Implementing Regulation (EU) 2018/2066" were omitted;

(ii) in point (b) "the permit and" were omitted;

(b) in paragraph 5 the reference to non-compliance with the Monitoring and Reporting Regulation 2018 were a reference to non-compliance with the provisions of that Regulation referred to in paragraph 5(4) to (6) of this Schedule;

(c) paragraph 6 were omitted.

(6) Article 10(1) is to be read as if—

(a) point (a) were omitted;

(b) in point (b) "as well as any other relevant versions of the monitoring plan approved by the regulator, including evidence of the approval" were omitted;

(c) points (l) to (n) were omitted.

(7) Article 11 is to be read as if paragraph 4(c) were omitted.

(8) Article 17 is to be read as if paragraph 4 were omitted.

(9) Article 18(1) is to be read as if—

(a) the second subparagraph were omitted;

(b) in the third subparagraph for "is not able to obtain such approval in time" there were substituted "uses methods other than those referred to in the first subparagraph".

(10) Article 19(1) is to be read as if for "Implementing Regulation (EU) 2018/2066" there were substituted "the monitoring plan".

(11) Article 21(1) is to be read as if after "verification process" there were inserted "but at least once during the 2021-2025 allocation period (as defined in the Greenhouse Gas Emissions Trading Scheme Order 2020)".

(12) Article 22 is to be read as if—

(a) references to non-compliance with the Monitoring and Reporting Regulation 2018 were references to non-compliance with the provisions of that Regulation referred to in paragraph 5(4) to (6) of this Schedule;

(b) in paragraph 1 in the third subparagraph "notify the regulator and" were omitted.

(13) Article 27 is to be read as if—

(a) references to non-compliance with the Monitoring and Reporting Regulation 2018 were references to non-compliance with the provisions of that Regulation referred to in paragraph 5(4) to (6) of this Schedule;

(b) in paragraph 3—

(i) point (n) were omitted;

(ii) for point (p) there were substituted—

"(p) a confirmation whether the method used to complete the data gap pursuant to the last subparagraph of Article 18(1) is conservative and whether it does or does not lead to material misstatements;".

(14) Article 29(1) is to be read as if—

(a) the reference to the verification report related to the previous monitoring period were a reference to—

(i) the verification report under the Verification Regulation 2018 in respect of the scheme year (within the meaning of GGETSR 2012) beginning on 1st January 2020; or

(ii) where the operator has previously provided evidence of the installation's reportable emissions in the 2021-2026 allocation period to the verifier for verification for the purposes of submission under paragraph 3(1)(b) of this Schedule, the verifier's last report under the Verification Regulation 2018 (as modified by this paragraph) on that evidence;

(b) "according to the requirements on the operator referred to in Article 69(4) of Implementing Regulation (EU) 2018/2066, where relevant" were omitted;

(c) "pursuant to Article 69(4) of Implementing Regulation (EU) 2018/2066" were omitted.

(15) The Verification Regulation 2018 is to be read as if Articles 30 to 32 were omitted.

Duty to monitor reportable emissions, etc.

5.—(1) Where an installation is an ultra-small emitter for a scheme year, the operator of the installation must monitor the installation's reportable emissions in the scheme year in accordance with the appropriate monitoring plan.

(2) The appropriate monitoring plan is—

(a) the monitoring plan approved in relation to the installation under Articles 11 to 13 of the Monitoring and Reporting Regulation 2018 for the 2025 scheme year, including—

(i) any modifications approved by the regulator in that scheme year; and

(ii) any modifications that are not significant (within the meaning of Article 15(3) of that Regulation) notified to the regulator on or before 31st December 2025; or

(b) if there is no such monitoring plan, the monitoring plan approved in relation to the installation under Articles 11 to 13 of the Monitoring and Reporting Regulation 2012 for the purposes of the EU ETS for the scheme year (within the meaning of GGETSR 2012) beginning on 1st January 2020, including—

(i) any modifications approved by the regulator in that scheme year; and

(ii) any modifications that are not significant (within the meaning of Article 15(3) of that Regulation) notified to the regulator on or before 31st December 2020.

(3) Subject to sub-paragraphs (4) to (6), where an installation is an ultra-small emitter for a scheme year, the Monitoring and Reporting Regulation 2018 does not apply to the monitoring or reporting of emissions of greenhouse gases from the installation in the scheme year.

(4) Article 14 of the Monitoring and Reporting Regulation 2018 applies to the operator of an installation that is an ultra-small emitter for a scheme year, but is to be read as if—

(a) references to the monitoring plan were references to the appropriate monitoring plan;

(b) in paragraph 1 ", and whether the monitoring methodology can be improved" were omitted;

(c) in paragraph 2—

(i) after "the following situations" there were inserted "and those referred to in Article 15(3)(c), (f) and (i)";

(ii) points (b) and (d) to (f) were omitted.

(5) Any modifications to the appropriate monitoring plan under Article 14 of the Monitoring and Reporting Regulation 2018 must be made in accordance with the provisions of that Regulation; but this sub-paragraph does not require—

(a) the operator to give notice of the modifications to the regulator;

(b) the regulator to approve the modifications;

(c) the regulator to assess whether a monitoring methodology is technically feasible or would incur unreasonable costs.

(6) Where the appropriate monitoring plan is modified under Article 14 of the Monitoring and Reporting Regulation 2018, Article 16 of that Regulation applies in relation to the modifications, but is to be read as if—

(a) paragraphs 1 and 2 were omitted;

(b) in paragraph 3—

(i) references to the monitoring plan were references to the appropriate monitoring plan;

(ii) points (c) and (d) were omitted;

(iii) in point (e) "in accordance with paragraph 2 of this Article" were omitted.

(7) Where the appropriate monitoring plan is modified under Article 14 of the Monitoring and Reporting Regulation 2018, sub-paragraph (1) of this paragraph has effect as if the reference to the appropriate monitoring plan included a reference to the plan as modified.

Reportable emissions must not exceed maximum amount

6. If an installation's reportable emissions in a scheme year for which the installation is an ultra-small emitter exceed the maximum amount, the operator of the installation must give notice to the regulator on or before 31st March in the following year.

End of ultra-small emitter status: ceasing to meet criteria

7.—(1) This paragraph applies where—

(a) an installation is an ultra-small emitter for any of the 2021, 2022, 2023, 2026, 2027 and 2028 scheme years; and

(b) the regulator considers that the installation's reportable emissions in any of those years (the "excess year") exceed the maximum amount.

(2) Subject to sub-paragraph (7), the regulator must, as soon as reasonably practicable, give a notice to the operator of the installation.

(3) The notice must—

(a) set out the grounds for the notice;

(b) state that the installation is not an ultra-small emitter—

(i) where the notice is given in the scheme year following the excess year, for the scheme year following the scheme year in which the notice is given;

(ii) where the notice is given after the scheme year following the excess year, for the scheme year in which the notice is given;

(c) state that the operator must—

(i) apply for a greenhouse gas emissions permit; and

(ii) comply with the conditions of the permit—

(aa) where paragraph (b)(i) applies, from 1st January in the scheme year following the year in which the notice is given; or

(bb) where paragraph (b)(ii) applies, from no later than the date (the "relevant date") set out in the notice.

(4) But the notice must also state that, where sub-paragraph (5) applies, the operator must apply for a hospital or small emitter permit and comply with the requirements of that permit, instead of a greenhouse gas emissions permit.

(5) This sub-paragraph applies where—

(a) the operator within 14 days of the date of the notice—

(i) gives notice to the regulator that the operator prefers to comply with the conditions of a hospital or small emitter permit instead of a greenhouse gas emissions permit; and

(ii) submits evidence to the regulator that the installation is not an ineligible installation for the purposes of paragraph 4 of Schedule 7; and

(b) the regulator gives notice to the operator that the regulator considers that the installation is not an ineligible installation.

(6) Where sub-paragraph (3)(b)(ii) applies, although the installation is not an ultra-small emitter for the scheme year in which the notice is given (see paragraph 2), the operator—

(a) must comply with paragraph 5 in respect of the period beginning on 1st January in the scheme year in which the notice is given and ending on the earlier of—

(i) the day before a permit for the installation comes into force; and

(ii) the relevant date;

(b) is not liable to a civil penalty under article 50 in respect of that period (but is liable to a civil penalty under article 60).

(7) Sub-paragraph (2) does not apply where—

(a) it is not possible for the notice to be given in the same allocation period as the excess year; or

(b) although it is possible for the notice to be given in the same allocation period as the excess year, the regulator considers that it would not be reasonable to expect the operator to apply for a permit before the end of the allocation period.

End of ultra-small emitter status: publication

8.—(1) The regulator must, as soon as reasonably practicable, inform the UK ETS authority about—

(a) each installation in respect of which a notice under paragraph 7(2) is given; and

(b) where relevant, whether the operator of the installation applied for a greenhouse gas emissions permit or a hospital or small emitter permit.

(2) The UK ETS authority must, from time to time, publish the information referred to in sub-paragraph (1).

SCHEDULE 9

Article 74(1)

Appeals to Scottish Land Court

1.—(1) A person who wishes to appeal to the Scottish Land Court under article 70 against a decision of the regulator must—

(a) send the appropriate form to the Scottish Land Court together with the documents referred to in sub-paragraph (2);

(b) at the same time, send a copy of that form to the regulator together with copies of the documents referred to in sub-paragraph (2)(a) and (f).

(2) The documents are—

(a) a statement of the grounds of appeal;

(b) a copy of any relevant application;

(c) a copy of any relevant plan;

(d) a copy of any relevant correspondence between the appellant and the regulator;

(e) a copy of any notice (or particulars of any deemed refusal) which is the subject matter of the appeal;

(f) a statement indicating whether the appellant wishes the appeal to be—

(i) in the form of a hearing; or

(ii) to be disposed of on the basis of written representations.

(3) An appeal to the Scottish Land Court may be made on one or more of the following grounds—

(a) the decision or notice was based on an error of fact;

(b) the decision or notice was wrong in law;

(c) the decision or notice was unreasonable for any other reason (including that the amount of a penalty was unreasonable);

(d) any other reason.

(4) In this Schedule—

"appropriate form" has the meaning given in rule 3 of the Rules of the Scottish Land Court Order 2014(**a**);

"decision" includes a deemed refusal under this Order.

2.—(1) Subject to sub-paragraph (2), the appropriate form must be sent to the Scottish Land Court before the expiry of the period of 28 days beginning with the date of the decision.

(2) The Scottish Land Court may accept the appropriate form after the expiry of that period where satisfied that there was a good reason for the failure to bring the appeal in time.

3.—(1) The Scottish Land Court may determine an appeal, or any part of an appeal, on the basis of written representations and without a hearing where—

(a) the parties agree; or

(b) the Scottish Land Court considers it can determine the matter justly without a hearing.

(2) The Scottish Land Court must not determine the appeal without a hearing without first giving the parties notice of its intention to do so, and an opportunity to make written representations as to whether there should be a hearing.

(**a**) S.S.I. 2014/229.

4.—(1) The regulator must, within 16 days of receipt of the copy of the appropriate form, give notice of it to any person who appears to the regulator to have a particular interest in the appeal ("interested party").

(2) A notice under sub-paragraph (1) must—

(a) state that an appeal has been initiated;

(b) state the name of the appellant;

(c) describe the decision or notice to which the appeal relates;

(d) state that, if a hearing is to be held wholly or partly in public, an interested party will be notified of the date, time and location of the hearing;

(e) state that an interested party may request to be heard at a hearing.

(3) An interested party may request the regulator to provide the interested party with a copy of the documents set out in paragraph 1(2) only for the purposes of the appeal.

(4) Where a request is made under sub-paragraph (3), the regulator must provide the documents to the interested party as soon as reasonably practicable.

(5) An interested party may—

(a) make representations to the Scottish Land Court in relation to the appeal;

(b) be heard at a hearing in relation to the appeal.

(6) The representations by an interested party must be made within 16 days of the date of the notice under sub-paragraph (1).

(7) The Scottish Land Court must provide a copy of any representations to the parties.

(8) The regulator must, within 8 days of sending a notice under sub-paragraph (1), give notice to the Scottish Land Court of the persons to whom and the date on which the notice was sent.

(9) If an appeal is withdrawn, the regulator must give notice to all interested parties about the withdrawal.

SCHEDULE 10

Article 74(2)

Appeals to Planning Appeals Commission (Northern Ireland)

1.—(1) A person who wishes to appeal to the Planning Appeals Commission under article 70 against a decision of the regulator must give to the Planning Appeals Commission—

(a) written notice of the appeal; and

(b) a statement of the grounds of appeal.

(2) The notice of appeal must be accompanied by any fee for the appeal prescribed in regulations made under section 223(7)(b) of the Planning Act (Northern Ireland) 2011; and for that purpose section 223(7)(b) has effect as if the reference to an appeal under that Act included a reference to an appeal under this Order.

(3) The Planning Appeals Commission must as soon as reasonably practicable send a copy of the notice of appeal and the statement of grounds to the regulator.

2. A notice of appeal under paragraph 1 must be given before the expiry of the period of 47 days beginning with the date on which the decision of the regulator takes effect.

3.—(1) An appellant may withdraw an appeal by giving notice to the Planning Appeals Commission.

(2) If an appellant withdraws an appeal, the Planning Appeals Commission must give notice to the regulator of the withdrawal as soon as reasonably practicable.

4.—(1) The Planning Appeals Commission must determine the appeal; and section 204(1), (3) and (4) of the Planning Act (Northern Ireland) 2011 apply in relation to the determination of the appeal as they apply in relation to the determination of an appeal in accordance with that Act.

(2) The Planning Appeals Commission must—

(a) determine the process for determining the appeal; and

(b) when doing so, take into account any requests by either party to the appeal.

SCHEDULE 11

Article 77

Transitional provisions: installations

Permits under GGETSR 2012

1.—(1) This paragraph applies to a permit within the meaning of GGETSR 2012 that immediately before this Schedule comes into force authorises a regulated activity to be carried out at an installation.

(2) But this paragraph does not apply to a permit—

(a) in respect of which an application under regulation 13 of GGETSR 2012 for the surrender of the permit has been made but has yet to be determined;

(b) that is due, in accordance with provision made under GGETSR 2012, to be surrendered or revoked; or

(c) that authorises a regulated activity to be carried out at an installation included in the ultra-small emitter list for 2021-2025.

(3) Where the installation is included in the hospital and small emitter list for 2021-2025, the regulator must—

(a) convert the permit into a hospital or small emitter permit the provisions of which satisfy the requirements of paragraph 11 of Schedule 7 and that authorises the regulated activity to be carried out at the installation from 1st January 2021; and

(b) give notice of the conversion to the operator of the installation.

(4) In any other case, the regulator must—

(a) convert the permit into a greenhouse gas emissions permit the provisions of which satisfy the requirements of paragraph 4 of Schedule 6 and that authorises the regulated activity to be carried out at the installation from 1st January 2021; and

(b) give notice of the conversion to the operator of the installation.

(5) When converting a permit under sub-paragraph (3) or (4), the regulator may make only such changes to the operator's obligations under the permit as the regulator considers necessary to convert the permit into a greenhouse gas emissions permit or, as the case may be, a hospital or small emitter permit.

(6) But sub-paragraph (5) does not prevent the regulator correcting errors.

(7) When converting a permit under sub-paragraph (4), the regulator may include under paragraph 4(2)(d) of Schedule 6 a condition to give proper effect to Article 69(4) of the Monitoring and Reporting Regulation 2018 that requires the operator to submit a report to the regulator relating to non-conformities or recommendations for improvements stated in a verification report under the Verification Regulation 2018 in respect of the scheme year (within the meaning of GGETSR 2012) beginning on 1st January 2020.

(8) The conversion of a permit under sub-paragraph (3) or (4) does not affect the operator's obligations under the permit in respect of specified emissions before 1st January 2021 (and GGETSR 2012 continue to apply in relation to such obligations).

(9) A permit that is converted under this paragraph continues in force as if issued under this Order until cancelled, surrendered or revoked under this Order.

Applications for permits, etc. under GGETSR 2012

2.—(1) An application under regulation 10 of GGETSR 2012 for a permit for an installation that is made to the regulator before 1st January 2021, but not determined before that date—

(a) where the installation is included in the hospital and small emitter list for 2021-2025, must be treated as an application for a hospital or small emitter permit under paragraph 7 of Schedule 7 to this Order;

(b) in any other case (except where the installation is included in the ultra-small emitter list for 2021-2025), must be treated as an application for a greenhouse gas emissions permit under paragraph 1 of Schedule 6 to this Order.

(2) An application under regulation 11 of GGETSR 2012 to vary a permit that is made to the regulator before 1st January 2021, but not determined before that date, must be treated as an application to vary the permit under paragraph 6 of Schedule 6 to this Order.

(3) An application under regulation 12 of GGETSR 2012 for the transfer of a permit that is made to the regulator before 1st January 2021, but not determined before that date, must be treated as an application to transfer the permit under paragraph 7 of Schedule 6 to this Order.

Schedule does not apply to permits for relevant Northern Ireland electricity generators, etc.

3.—(1) This Schedule does not apply to—

(a) relevant Northern Ireland permits; or

(b) applications for, or in relation to, relevant Northern Ireland permits.

(2) In this paragraph, "relevant Northern Ireland permit" means a permit within the meaning of GGETSR 2012 that authorises a regulated activity to be carried out at a relevant Northern Ireland electricity generator.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order establishes a new emissions trading scheme covering greenhouse gas emissions from power and heat generation, energy intensive industries and aviation. The scheme will be called the UK Emissions Trading Scheme or UK ETS (see article 16). It is the successor, in the UK, to the EU Emissions Trading System (established by Directive 2003/87/EC).

Part 1 contains definitions that are used throughout the Order, including key concepts such as the "trading period" (1 January 2021 to 31 December 2030 – see article 4) the activities covered by the scheme ("regulated activity", defined in article 4 and Schedule 2, and "aviation activity", defined in article 4 and Schedule 1), the different greenhouse gases covered by the scheme (see article 4 and Schedule 2 for installations and the definition of "aviation emissions" for aircraft), the participants in the scheme ("operators" of installations, defined in article 5, and "aircraft operators", defined in articles 6 to 8) and who the scheme's "regulator" is for different purposes (articles 9 to 13). Article 15 introduces Schedule 3 which contains provision about applications, notices, etc.

Part 2, after introducing the scheme and establishing a review requirement (articles 16 and 17), sets out other elements of the scheme relevant to both operators of installations and aircraft operators. The basic proposition of the scheme is that, for each year, participants have to surrender "allowances" equivalent to their greenhouse gas emissions within the scope of the scheme. So article 18 sets out what an allowance is and articles 19 to 22 set out rules limiting the number of allowances that can be issued. Article 23 permits allowances to be traded except where this is prohibited by other legislation. The rules on how allowances are to be issued do not, however, appear in this Order and will be the subject of separate legislation on free allocation of allowances and auctioning. Articles 24 and 25 introduce Schedules 4 and 5 which adapt existing EU legislation on monitoring and reporting of greenhouse gas emissions, and how reports of emissions are verified, for the purposes of the UK ETS.

Parts 3 and 4 contain provisions specific (respectively) to operators of installations and aircraft operators. The scheme has slightly different rules for these different types of participants. For

operators of installations there is a general rule that they need a permit (article 26(1)) and need to surrender allowances to account for emissions (article 27). From the general rule, there are different levels of derogation for hospitals and small emitters and for ultra-small emitters. Detailed provision in respect of each category of operator is set out in Schedules 6 to 8, although for operators subject to the general rule, and for hospitals and small emitters, many of the rules take the form of specified contents of permits. For aircraft operators, there is no need for a permit as such. However, aircraft operators must apply for emissions monitoring plans which fulfil some of the same functions (article 28). For aircraft operators, provisions about reporting emissions and surrendering allowances are in articles 33 and 34.

Part 5 contains provision allowing the regulators to charge for the performance of their regulatory functions under the Order.

Part 6 contains provision allowing the regulators to monitor compliance with the Order, including through inspections of premises and exercising powers of entry.

Part 7 contains provision about enforcement, including a range of civil penalties (articles 50 to 68) that may be imposed in respect of specified breaches of the Order or of permit conditions. General provision about civil penalties is in articles 47 and 48. In addition, article 44 makes provision about enforcement notices and article 45 about circumstances where a regulator can determine the greenhouse gas emissions of a participant in the UK ETS.

Part 8, which is supplemented by Schedules 9 and 10, contains provision about appeals from decisions made by the regulator about applications and appeals in respect of a number of notices (specified in article 70(2)) that may be given under the Order.

Part 9 brings together provisions without a natural home elsewhere in the Order, covering information notices (article 75), Crown application (article 76) and transitional provisions (article 77 with Schedule 11).

A regulatory impact assessment of the effect that the UK ETS will have on the costs of business, the voluntary sector and the public sector is available from the Industrial Energy Directorate, Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET and is available alongside the instrument on www.legislation.gov.uk.

Explanatory Memorandum to The Greenhouse Gas Emissions Trading Scheme Order 2020

This Explanatory Memorandum has been prepared by the Department for Environment, Energy and Rural Affairs and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister/Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Greenhouse Gas Emissions Trading Scheme Order 2020. I am satisfied that the benefits justify the likely costs.

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs
15 July 2020

PART 1

1. Description

This Order establishes a UK-wide greenhouse gas emissions trading scheme (ETS), to encourage cost-effective emissions reductions from the power, industrial and aviation sectors. The UK ETS will commence on 1 January 2021 to ensure there is a carbon pricing policy in place when the UK ceases its participation in the EU Emissions Trading System (EU ETS).

The Order provides details about the scope of participants, the environmental ambition as indicated by the cap and trajectory of allowances, requirements for monitoring, reporting and verification, charging, compliance and enforcement, penalties and appeals, and scheme reviews.

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

Part 3 of Schedule 3 to the Climate Change Act 2008 (CCA) states that an emissions trading scheme that applies to England, Scotland, Wales and Northern Ireland – such as in this case – must be established by Order in Council. The appropriate procedure for an Order in Council is prescribed by section 48 to the CCA. As the Order sets up a trading scheme, the affirmative procedure will be used.

As the Order in Council will be subject to UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually.

Additional legislation is required, as the CCA[1] does not allow for the allocation of emissions allowances in a trading scheme in return for payment (i.e. auctioning). The UK Government has laid a Finance Bill, clause 93 of which gives it the power to establish rules for the auctioning of emissions allowances and mechanisms to support market stability. On 24 June 2020, the Welsh Government secured the consent of the Senedd for the UK Government to legislate in the form of clause 93.

Additional and minor elements of UK ETS will be introduced through a second instrument due to be laid in the Senedd in November 2020. This will amend the affirmative procedure instrument, once made, to include provisions for free allocation and the UK ETS registry. As this instrument is not envisaged to contain any provisions which would be caught by section 48(3) of the CCA, the negative procedure will be used.

[1] Paragraph 5(4) in Schedule 2.

3. Legislative background

Section 44 of the CCA provides the power to make an instrument to put in place a trading scheme relating to greenhouse gas emissions. That power is exercisable by "the relevant national authority" (the Scottish Ministers, Welsh Ministers, Northern Ireland Ministers or the Secretary of State). Section 47 of the CCA defines the Welsh Ministers as the relevant national authority for matters within the Senedd's legislative competence; or matters that relate to limiting or encouraging the limitation of activities in Wales that consist of the emission of greenhouse gases, other than activities in connection with offshore oil and gas exploration and exploitation.

The statutory procedure for putting in place a trading scheme is set out in Part 3 of Schedule 3 to the CCA. A UK-wide trading scheme must be established by Order in Council (paragraph 9 of Part 3 to Schedule 3). Pursuant to paragraph 11, before a recommendation may be made to Her Majesty in Council to make the Order in Council, a draft of the instrument containing the Order in Council must be laid before, and approved by, a resolution of each House of Parliament and the devolved legislatures. If it is approved by each of these, the Order will go to the Privy Council in November 2020, and will come into force the day after it is made.

4. Purpose and intended effect of the legislation

The purpose of this Order is to establish a UK-wide greenhouse gas emissions trading scheme (ETS), to encourage cost-effective emissions reductions which will contribute to the UK's emissions reduction targets and net zero goal. Policy positions for a UK ETS, which is operational from 1st January 2021, have been agreed by the four Governments of the UK nations, and are set out in the Government Response to the Future of Carbon Pricing consultation, which was published on 1 June 2020.

The territorial extent of this Order is England, Wales, Scotland and Northern Ireland. The Order impacts on industry, the power sector and aviation. Schedule 1 of the Order sets out the flights covered by the UK ETS and all excluded flights. Schedule 2 sets out the scope of activities within stationary installations covered by the UK ETS.

This is a policy replacement for the UK's participation in the EU Emissions Trading System, which will cease at the end of the Transition Period on 31 December 2020 (subject to the UK's obligations in the Withdrawal Agreement pursuant to Article 96(2) in respect of 2020 compliance and the Protocol on Ireland/Northern Ireland). This would also allow for the possibility and consideration of a link between a UK ETS and the EU ETS, subject to the UK Government's negotiations on a future relationship with the EU.

5. Consultation

Details of consultation have been included in the RIA below.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Background

The ETS is a key policy for reducing emissions in the power sector, energy intensive industries, and the aviation sector (the 'traded sectors'). Government intervention is necessary to ensure emissions from sectors currently covered by the EU ETS continue to be covered by a carbon pricing policy following UK withdrawal from the EU.

The objective of the policy is to incentivise cost-effective emissions reductions for sectors currently in scope of the EU ETS, while balancing this ambition with the competitiveness of UK industry.

Placing a price on carbon creates the incentive for emissions to be reduced in a cost effective and technology-neutral way, whilst mobilising the private sector to invest in emissions reduction technologies and measures. The establishment of a UK wide scheme will ensure continuity of a carbon pricing policy to stimulate decarbonisation of the power, industrial and aviation sectors. The traded sector accounted for approximately 46% of Wales' emissions in 2018; therefore, this is a key policy among a suite of interventions to reduce greenhouse gas emissions from Wales while managing business competitiveness issues.

Many of the design features mirror the EU ETS, providing continuity for businesses and facilitating linking with the EU system. However, in recognition of the commitment across the UK to move towards net zero greenhouse gas emissions by 2050, the cap has been set at 5% below the notional UK share of the EU ETS cap. This decision was informed by an understanding of current emissions compared to the notional cap, which identified there would be significant over-supply of allowances if we did not reduce the cap.

It may be necessary to adjust the cap further to ensure it is in line with our net zero ambitions. The Committee on Climate Change (CCC) will be providing advice on a pathway to net zero in December and we have committed to consult on any changes to the cap within 9 months and implement required changes by 1 January 2023 if possible and at the latest by 1 January 2024.

Given this Order is intended to operate alongside other pieces of legislation to establish the UK Emissions Trading Scheme, it was not appropriate to carry out several segmented Regulatory Impact Assessments but one holistic impact assessment of the policy as a whole.

A detailed UK-wide impact assessment of the scheme was published alongside the joint government response to the consultation and is available here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/889038/The_future_of_UK_carbon_pricing_impact_assessment.pdf

7. Options

The following options were assessed.

Standalone UK ETS
We assessed the design of the UK ETS set out in the government response document, in its initial years of operation (from 2021 to 2024). This system is intended to fulfil the policy objectives outlined above as a standalone system, while also providing a platform to negotiate a linked system with the EU ETS, if it is in the best interests of both parties.

Status Quo
The policy option is compared against a counterfactual of continued UK participation in the EU ETS in Phase IV of the system. This represents the main policy that would have covered greenhouse gas emissions in the traded sectors if the UK were to have remained part of the EU.

There were significant constraints on further options. The governments of the four UK nations are committed to continued statutory carbon pricing policy following the UK's departure from the EU. The establishment of a successor scheme to the EU ETS is one of the jointly agreed common framework areas.

Long-term ETS policy, including a linking agreement, is subject to ongoing negotiations between the UK Government and the EU and so quantitative analysis of this is not within scope of this IA.

7. Costs and benefits

The UK ETS system wide costs and benefits

The assessment considers the initial years of the UK ETS (2021-2024), based on the design set out in the government response:

- a cap on emissions set based on a 5% reduction on the UK's notional share of the EU ETS,
- free allocation based on the UK's notional share of the EU ETS, and
- a transitional auction reserve price starting at £15 per allowance.

For the analysis below, the Price Base Year is 2019, the PV Base Year is 2019 and the time period is 6 years.

Relative to the counterfactual the key monetised costs of the entire UK wide UK ETS are:

- the cost incurred by firms reducing their emissions to meet the cap i.e. 'resource' cost (£25 to 59 million);
- the administrative costs to firms in complying with the new policy (£4m); and

- the administrative cost to government (including regulators) in establishing and administering the policy (£7m).

Overall, the estimated range of monetised costs relative to the counterfactual is £36 to 70m (present value).

Relative to the counterfactual key non-monetised costs of the entire UK wide UK ETS include:

- potential loss of UK business competitiveness relative to international competitors, if higher carbon costs lead to increased production costs and significantly impact profitability and market share;
- potential carbon leakage as a result of higher carbon values;
- potential increase in cost to consumers if higher carbon costs to businesses are passed on in the form of higher prices.

However we do not expect these costs to materialise to a significant degree, as we do not expect a significant differential in carbon values in the UK ETS relative to counterfactual scenario.

Relative to the counterfactual the main monetised benefit of the policy scenario is the carbon benefit, which represents the benefit to society of reduced emissions in the sectors covered by the UK ETS. Based on the UK ETS design modelled, we expect greater emissions reductions under the policy compared to the counterfactual. The estimated range of the monetised benefit relative to the counterfactual is £102 to 162m (present value) for the entire UK wide scheme.

Relative to the counterfactual the key non-monetised benefits are:

- potential improvements in air quality if the policy leads to reduction in activities that generate pollutants as well as greenhouse gas emissions;
- potential long-term positive impacts on UK business competitiveness relative to international competitors, if higher carbon values increase investment and innovation in new low carbon technologies and processes;
- more efficient and cost-effective decarbonisation if the policy leads to reductions in emissions through the least-costly methods; and
- spill-over benefits through the growth of the green and circular economies.

Overall, the best estimate of the Net Benefit (Present Value (PV)) is £66 million to £92 million.

Impacts in Wales

The scope of the UK ETS in its first phase will be the same as the EU ETS in Phase IV for stationary sectors. Therefore, the following assessment is based on data relating to current EU ETS participants.

In 2019 there were 72 stationary installations participating in the EU ETS in Wales out of around 1,000 UK stationary installations. Having removed installations likely to opt out of the main policy under the small and ultra-small emitters opt-out schemes there are 62 installations remaining out of the estimated 655 UK wide (approximately 9% of the total number in the full scheme). The scope of activities covered by Welsh scheme participants will include the combustion of fossil fuels and a range of industrial activities including the production of pig iron or steel, production or processing of ferrous metals, refining of mineral oil, production of paper or cardboard, production of cement clinker, production of bulk organic chemicals and manufacture of mineral wool.

The emissions from the ETS participants accounted for 46% of total emissions from Wales in 2018 which is significantly higher than the around 30% at the UK level. This is reflective of the fact Wales is a net exporter of electricity and has a higher proportion of industrial activity (and consequently emissions), for instance our large steel works, oil refinery and cement works, compared to other nations of the UK. Therefore, notionally the impact of the policy will be greater on the overall emissions reduction pathway in Wales. However, given the purpose of the scheme is to deliver cost-effective decarbonisation across the whole population of scheme participants, and the decarbonisation potential and investment appetite of individual operators is not known, a specific amount of emissions reduction within Wales cannot be estimated confidently.

It should be noted there are considerable uncertainties around future industrial activity and associated emissions in Wales as a result of global competition added to the impacts of the coronavirus pandemic. Additionally, detail of abatement opportunities and investment appetite at the installation level are not publicly available. Therefore, the following assessment is illustrative of the potential scale of impact but should not be viewed as a projected estimate.

Costs to businesses (scheme participants)

The administrative costs to businesses in Wales will be broadly similar to that of remaining in the EU ETS. Government is paying the cost of establishing the IT system, and the reporting requirements do not add administrative costs. The permitting system will also be streamlined as far as possible.

Mechanisms have been introduced into the scheme to manage extremes of carbon prices, ensuring the incentive to decarbonise remains while protecting businesses against extremely high costs. This includes an auction reserve price (ARP) of £15 per allowance. Additionally, free allowances are allocated to

some industrial installations to ensure they remain globally competitive. The free allocation methodology will mirror that in phase 4 of the EU ETS.

By applying a proportion of the UK wide costs to Welsh participants (based on 9% of the installations based in Wales) the indicative scale of additional costs compared to the counterfactual is £2.25 million to £5.31 million across the same 6 year time period. Attributing costs as a proportion of the total emissions (approximately 15%) the indicative scale of additional costs compared to the counterfactual is £3.75 million to £8.85 million across the same 6 year time period. However, these are indicative only due to the number of variables impacting on costs.

The degree to which these costs are significant to individual businesses will depend on a wide range of factors and will vary depending on the characteristics of the business affected and the amount of free allocation that they receive. However, higher carbon costs in the short term could also increase the sustainability of our industrial base through an increased incentive for more innovation and investment in low-carbon technologies, which will improve their long-term competitiveness.

Therefore, the following are indicative total compliance costs of two illustrative scenarios based on £15 per tonne CO_2e (the Auction Reserve Price) and £32 per tonne CO_2e. Based on the 8.06 million allowances which were required to be purchased by Welsh participants in the EU ETS in 2019, the annual cost to businesses would be between £120.9 million and £257.93 million. It should be noted that the 2018 and 2019 ETS emissions were broadly similar, having seen a reduction of 3.5 million tonnes between 2017 and 2018 due to a number of factors including significantly reduced output from Aberthaw power station.

The number of allowances which Welsh businesses will need to purchase will vary year on year, and can be influenced by production changes in some of our major sites and whether the sites receive free allowances, the weather (cold, still winters will require more output from our fossil fuelled power stations) and implementation of energy efficiency and other decarbonisation measures. Given the number of variables, and the large impact commercial decisions by a few discrete businesses will have on the total emissions, accurate projections are not possible.

The balance of mitigating measures within the scheme design and the setting of the auction reserve price at a relatively conservative level are designed to ensure a smooth transition for businesses and limited additional costs.

Costs to the Welsh Government

The main costs to government in establishing the UK ETS are the costs of IT systems - a registry to hold emissions allowances and a system for permitting, monitoring, reporting and verification (PMRV). Both systems will replace the corresponding EU systems which the UK currently accesses.

The majority of the cost for both systems has to date been funded through the UK Government's EU exit funding pot. However, from 2021/22 it is anticipated all governments will contribute to the PMRV development costs, and future enhancements of both systems. An estimate of costs to the Welsh Government in 2021/22, based on use of the Barnett formula, is £80,000 - £120,000. Thereafter, costs are projected to be significantly lower.

Other costs include staff costs within the Welsh Government and within Natural Resources Wales. It is not anticipated the scheme will result in any additional staff costs compared to the counterfactual (remaining in the EU ETS).

Benefits – transfers to public funds

The public sector will benefit from any auction revenues from the scheme; therefore, using the two illustrative scenarios based on £15 per tonne CO_2e (the Auction Reserve Price) and £32 per tonne CO_2e, the 8.06 million allowances which were required to be purchased by Welsh participants in the EU ETS in 2019, and an assumption all allowances would be purchased at auction, the annual transfer to public sector would be between £120.9 million and £257.93 million. Under current practices, these funds are not hypothecated but contribute to general Treasury coffers. However, an alternative approach the Welsh Government supports for is the establishment of an industrial decarbonisation fund to recycle auction receipts into funding packages for deep decarbonisation of our industries.

The non-monetised costs and benefits will apply in Wales, subject to decisions by businesses to invest in decarbonisation measures for compliance purposes.

8. Consultation

Between 2 May 2019 and 12 July 2019, the UK Government and Devolved Administrations ran a 10 week public consultation seeking views on the UK's future carbon pricing policy. Additionally, two stakeholder events were held in Wales to gather views of interested parties including potential scheme participants.

This consultation stated a UK ETS linked to the EU ETS is the UK Government and Devolved Administrations' preferred carbon pricing policy, and if this could not be secured alternative options included a standalone UK emissions trading scheme, a carbon emissions tax, or remaining in Phase IV of the EU ETS. The consultation set out policy proposals for a UK ETS and sought views on these proposals from stakeholders.

Alongside the consultation, the governments jointly commissioned the Committee on Climate Change (CCC) for advice on both a standalone and linked UK ETS.

The public consultation received over 130 responses, from a range of stakeholders including current EU ETS participants and non-governmental organisations, with the majority supporting most of the proposals on the design of a UK ETS. A large proportion of stakeholders expressed a preference to link a UK ETS to the EU ETS.

However, there were concerns raised by industry, particularly around the need to take a fair, proportionate and considered approach to potential improvements to free allocation. While there will be no changes to free allocation at the outset of the scheme, given the lack of credible and robust data to support a different approach at this time, we will begin a full review of possible future changes in the coming months.

The government response to the consultation, including a summary of responses, was published on 1 June 2020.
Full details of the consultation can be found at:
https://gov.wales/future-uk-carbon-pricing

9. Competition Assessment

Given the UK ETS establishes a carbon market, the interpretation of “market” and “market share” here relates to emissions or allowances held. It is dominance of a few participants in the scheme which has the potential for competition impacts rather than the dominance of businesses within their own industrial sectors.

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

The policy design, in particular the issue of free allowances, is designed to protect businesses at highest risk of competitive disadvantage. Therefore, some scheme participants will be impacted by greater costs than others. However, given free allocation is to be based on activities and benchmarks, there should be no market distortion.

10. Post implementation review

The Order contains provision for the four governments of the UK nations, who will constitute the UK ETS authority, to carry out two reviews of the operation of the UK ETS within the 10 year phase. The UK ETS authority must publish its report setting out the conclusions of the review. The reviews must be concluded by 31 December 2023, in the case of the early phase review and 31 December 2028 for the later review.

The reports must review the operation of the UK ETS (including assessing the extent to which the purpose of the UK ETS is being achieved) and make any recommendations that the UK ETS authority considers appropriate as to the future operation and purpose of the UK ETS.

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

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA-LG-2248-20

Mike Hedges MS
Chair
Climate Change, Energy and Rural Affairs Committee

15 July 2020

Dear Mike

In my Written Statement of 1 June, I committed to update Senedd committees on the progress made on the future of carbon pricing in the UK after EU Exit and the joint policy position negotiated between the Governments of the four UK nations. I will explain the process of policy development, provide an overview of the policy design including the underpinning legislation and governance structures and finally suggest how my officials and I might assist Senedd committees in their scrutiny of this policy.

Environmental protection, including emissions reduction and climate change, are devolved matters. As a result of the UK's withdrawal from the European Union, it was necessary to ensure we continue to incentivise industrial decarbonisation. I have been working with my counterparts across the UK to develop a Common Framework to replace the EU Emissions Trading System (EU ETS). The European Union (Withdrawal) Act 2018 and the European Union (Withdrawal Agreement) Act 2020 do not provide sufficient powers to establish a new legislative regime. Therefore, the four Governments decided to jointly establish a UK Emissions Trading Scheme (UK ETS) using existing powers under Part 3 of the Climate Change Act 2008.

A joint public consultation exercise in 2019 sought views on proposals for a UK ETS to apply after the transition period, with the first ten year phase commencing on 1 January 2021. It would closely mirror the design of the EU ETS, to provide a smooth transition for businesses and facilitate a link to the EU ETS as soon as agreement was reached in the UK-EU negotiations. The stakeholder response to the consultation was supportive of a UK ETS, in particular one linked to the EU ETS. The UK Committee on Climate Change was also supportive of establishing a linked trading scheme.

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Since the consultation, the four Governments have continued to develop the technical aspects of the UK ETS policy design, which is described in the joint Government Response issued on 1 June. The policy design balances the challenges of ensuring environmental integrity while managing business competitiveness issues. This is critically important in Wales, as the traded sector accounts for around 46% of our emissions and includes some of our largest employers. The document can be accessed here: https://gov.wales/future-uk-carbon-pricing.

The UK ETS will be closely aligned to the EU ETS in the first instance. It applies to the same traded sectors and has the same obligations on participants to monitor and report emissions and surrender an equivalent number of allowances. The scheme provides for free allocation which follows EU method and eligibility criteria, and a continuation of a regulatory compliance and enforcement role for Natural Resources Wales.

There are, however, some differences between the UK ETS and the EU system. The initial UK ETS cap will be set at 5% less than the UK's notional share of the EU ETS cap, and will be reviewed following receipt of further advice on the pathway to 2050, to ensure alignment with our shared goal of net zero emissions across the UK by 2050. There will also be mechanisms to manage extremely high and low prices, including an auction reserve price (ARP) set at £15 per allowance.

The Greenhouse Gas Emissions Trading Scheme Order 2020, which establishes the UK ETS and contains provisions for key elements of the policy, is being laid before the Senedd today and will be scrutinised by each of the four legislatures within the same timescale. The Order must be approved by the Senedd, and a debate will be scheduled for the first week of November. A further Order using the negative procedure, which addresses some of the technical detail of the scheme, will be brought forward towards the end of 2020.

The Senedd recently gave its consent to powers enabling the auctioning of emissions allowances contained in the UK Government's Finance Bill[1]. The UK Government will be bringing secondary legislation forward in due course, to establish the detailed arrangements for auctioning.

The UK ETS is part of the Common Framework Programme overseen by the Joint Ministerial Committee on EU Negotiations (JMC(EN)) and has been developed using principles it set out in October 2017. A Framework Outline Agreement will set out the rationale for establishing the framework, the decision-making and governance arrangements. This will be accompanied by a concordat between the Ministers from all four governments. I will share these documents with the Committee for scrutiny as they are finalised and before they are presented to the JMC(EN).

I am keen to support the scrutiny of the legislation and wider framework, and I will be happy to give evidence. My officials are also available to provide a technical overview of the framework and details of the legislation if that would be helpful.

I am aware a number of other committees will have an interest in this framework. Consequently, I suggest my officials liaise with you to make arrangements for an efficient scrutiny process.

[1] When the Bill was introduced into the House of Commons on 18 March 2020, the relevant provision was clause 93 (Charge for allocating allowances under emissions reduction trading scheme). The Bill was amended by the Public Bill Committee, and clause 93 became clause 94. The Bill was introduced into the House of Lords on 2 July 2020, and clause 94 became clause 96. Although the numbering of the clause has changed, no amendments have been made to its substance since introduction. A record of the Bill can be found here: https://services.parliament.uk/Bills/2019-21/financedocuments.html.

The UK ETS is a technically complex policy, but it has important ramifications to our climate policy and our industrial base. I look forward to engaging with you during the scrutiny of the UK ETS.

I am copying this letter to the Chairs of the Economy, Infrastructure and Skills Committee, External Affairs and Additional Legislation Committee, Legislation, Justice and Constitution Committee and Business Committee.

Regards

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

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

Llywodraeth Cymru
Welsh Government

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

10 September 2020

Dear Mick

Ahead of my attendance at your committee meeting on Monday 14 September to assist in your scrutiny of The Greenhouse Gas Emissions Trading Scheme Order 2020, I attach the UK Emissions Trading Scheme (UK ETS) Common Framework Summary document. This document was developed by the four Governments collectively and has been made available to scrutiny committees in each of the legislatures.

The Summary document should answer your questions on the content of the negative Order in Council, as well as the other pieces of legislation associated with the operation of the scheme. It also addressed the development and timescales for the full Framework Outline Agreement and Concordat. The JMC(EN) is likely to endorse the documents via correspondence, therefore, we intend to make the documents available for provisional endorsement as soon as possible so we can then receive input from our legislatures before returning for final endorsement from the JMC(EN).

I look forward to discussing the UK ETS with you on Monday.

Regards

Lesley Griffiths

Lesley Griffiths AS/MS
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
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UK ETS Common Framework

Summary document

Policy Background

The UK currently participates in the EU Emissions Trading System (EU ETS), which is the world's largest trading system for greenhouse gas (GHG) emissions. Emissions trading schemes work on the 'cap and trade' principle, where a cap is set on the total amount of certain GHGs that can be emitted by participating installations and aircraft. Within the limits of this cap, participants receive or buy allowances equivalent to their own emissions, which they can trade with one another as needed. The overall cap is reduced over time, so that total emissions fall.

At the end of the Transition Period (on 31st December 2020), the UK will cease to participate in the EU ETS.[1] A replacement carbon pricing policy is required to stimulate emissions reduction from large UK emitters within the industrial, power and aviation sectors currently participating in the EU ETS.

In 2019, the UK Government and devolved administrations (DAs) undertook a public consultation seeking views on the UK's future carbon pricing policy. This consultation set out policy positions for a UK-wide Emissions Trading System (UK ETS), whilst noting that fall-back options included a carbon emissions tax, or remaining in Phase IV of the EU ETS.

The four Governments are open to considering a link between a future UK ETS and the EU ETS, if such a linking agreement is in both sides' interests and recognises both parties as sovereign equals with our own domestic laws. A link between the UK and EU trading schemes could help to establish a much larger carbon market, which could increase opportunities for emissions reduction and cost-efficiency of emissions trading.

Rationale for seeking Common Framework

The UK Government and the DAs are committed to carbon pricing as an effective emissions reduction tool. Placing a price on carbon creates the incentive for emissions to be reduced in a cost effective and technology-neutral way, while mobilising the private sector to invest in emissions reduction technologies and measures.

Climate policy, including the establishment of emissions trading systems, falls within devolved competence. However, the UK Government and DAs have agreed to jointly introduce secondary legislation to establish a single, UK-wide ETS with a common set of rules for participants. There are several benefits of such an approach (as opposed to separate systems in the four UK nations):

- A UK-wide system will create a larger carbon market, with greater liquidity, and a consistent carbon price across the UK.

[1] By virtue of Article 9, Annex 4 of the Ireland / Northern Ireland Protocol, NI electricity generators will continue to participate in Phase IV of the EU ETS to ensure a common carbon price on the island of Ireland to maintain the SEM (Single Electricity Market)

- Access to a larger carbon market increases opportunity for emissions reduction and the cost effectiveness of emissions trading.

- A common, UK-wide approach to carbon pricing avoids 'carbon leakage'[2], which could have a negative effect on the contribution of the policy to reduce emissions in line with international obligations, and the UK's pathway towards our net zero target.

The UK ETS is designed to operate on a UK-wide basis, and therefore the rules for operators need to apply consistently across the UK to ensure the integrity of the system.

Nonetheless, any proposals for policy divergence between administrations will be considered by the four administrations jointly, using the agreed governance process that will be established in the UK ETS concordat. Any areas in which divergence is proposed will be considered by all parties to the concordat considering any potential impact on the functioning of the UK Internal Market, in line with the Common frameworks principles agreed at JMC(EN).[3]

Stakeholder engagement

Between May and July 2019, the UK Government and DAs jointly consulted on the future of carbon pricing in the UK after EU Exit, setting out policy proposals for a UK-wide ETS which would be operational from 1st January 2021. The consultation received over 130 responses, from a range of stakeholders across the UK including current EU ETS participants and NGOs, with the majority of respondents to each question supporting the proposal being put forward.

As part of this consultation, UKG and the DAs ran stakeholder events across England, Wales, Scotland and Northern Ireland. Views from all stakeholders on proposals for a UK-wide ETS were taken into account when considering the final policy design.

The joint Government Response to the consultation was published on 1st June 2020 and can be accessed here: https://www.gov.uk/government/consultations/the-future-of-uk-carbon-pricing

Approach to framework

The UK ETS will be established using secondary legislation made using existing primary powers under the Climate Change Act 2008 (the CCA), and through the Finance Act 2020. A non-legislative agreement (concordat) will set out the principles underpinning the ongoing oversight and governance of the system by Officials and Ministers from the four administrations, including decision-making and dispute resolution processes. These elements are explained in more detail below.

[2] Carbon leakage occurs when businesses transfer production to other countries with less stringent emissions constraints

[3] The JMC(EN) principles can be found here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/652285/Joint_Ministerial_Committee_communique.pdf

Legislation

UK ETS legislation comprises:

- *The Greenhouse Gas Emissions Trading Scheme Order 2020:* an affirmative procedure Order in Council under the **CCA** to set up a UK-wide ETS which will be operational from 2021. Key provisions included in this instrument cover the scope of the system, monitoring and reporting requirements, the cap and trajectory and the roles of the regulators in monitoring and enforcing the rules of the system. This Order was laid in the UK and Devolved Parliaments in July and is expected to be in force by the end of the Transition Period in all four nations.

- *The Greenhouse Gas Emissions Trading Scheme Order (Amendment) 2020*: a negative procedure Order in Council under the Climate Change Act which will amend the affirmative procedure instrument once made to include provisions for free allocation and the UK ETS registry. This Order is due to be laid in the UK and devolved Parliaments in November.

- A charging clause to be taken in the *Finance Act 2020,* to provide for the UK Government to charge participants for emissions allowances at auction.

- An affirmative procedure statutory instrument to be introduced under the Finance Act 2020 to establish rules for the auctioning of emissions allowances and mechanisms to support market stability. This instrument is expected to be laid in the UK Parliament in November.

- Additionally, the *Recognised Auction Platforms (Amendment) Regulations 2020* will be laid in draft before both the Commons and the Lords. This SI will set out the regulations for the trading of emissions allowances in the UK Emissions Trading System (ETS), including establishing the rules for access to the auction platform and rules for the relevant disclosures. It will enshrine an oversight role for the Financial Conduct Authority (FCA) such that the FCA can monitor the auctioning process and secondary market trading to prevent market abuse and ensure the effectiveness of the system. This SI will ensure that UK emissions allowances are subject to the relevant regulatory oversight and treatment as Financial Instruments.

UKG/DA governance concordat

The UK Government and DAs have together developed UK ETS governance principles and arrangements over the past two years, including processes for decision-making and dispute resolution. A non-legislative agreement in the form of a concordat will set out governance arrangements for the UK ETS, including processes for making decisions and resolving disputes under the system.

Governance processes shall be set out in more detail in the UK ETS Framework Outline Agreement (FOA), and in the resulting concordat. Key governance principles, which UK Government (BEIS, HMT and DfT) and the DAs have agreed to adhere to, are set out below:

- Proposals relating to all areas of UK ETS policy should be considered using the joint governance process.

- The four administrations are committed to, wherever possible, taking decisions jointly. Where the four administrations agree that an individual administration holds exclusive competence over a particular matter, that administration will not exercise that competence to take a decision unilaterally without first having discussed it with all other administrations.

- All four administrations will endeavour to ensure market and legislative stability throughout the agreed ETS phases. The UKG and DAs should adhere to planned review points and ensure that significant legislative and policy changes are aligned with these planned review points.

- The four administrations are committed to seeking advice from their statutory advisors, the Committee on Climate Change prior to laying legislation.

- Working groups for discussion of policy decisions and system interventions under the UK ETS should include representation from BEIS, the DAs, HMT, DfT (where appropriate) and the environmental regulators (where appropriate).

- At ministerial level, BEIS and DA Ministers (and DfT Ministers, where appropriate) will be sighted and engaged in discussions where a policy decision relating to elements of the policy set out under the Finance Act is being considered. A ministerial level discussion should constitute a two-way exchange, with BEIS and DA Ministers allowed sufficient time to consider the decision and raise challenges. Responsibility for final sign-off of decisions relating to the elements of a UK-wide emissions trading system set out in Finance Act provisions will lie with the Chancellor (HMT). Before final sign-off, HMT Ministers should respond to challenges raised and provide justification for decisions reached. Should a UKG or DA Minister dispute a decision in a reserved policy area, this can be escalated to the JMC Secretariat.

- As the UK Government department responsible for aviation policy, DfT should have the option to attend all Official and Senior level groups given the potential impact of decisions made under a UK ETS on aviation. Agreement from DfT ministers must be gained before agreeing a UK Government policy position focused on aviation under a UK ETS.

- For the most effective use of the governance structure, and ultimately the operation of the system, proposals should be discussed and, where possible, a recommendation agreed at Official Level working groups.

- For all proposals, the UK Government and DAs should seek to obtain appropriate and relevant evidence to support recommendations reached. Any relevant evidence obtained must be taken into account in reaching a recommendation.

- In all decision-making, the parties to the framework will adhere to the common framework principles agreed at JMC (EN) in October 2017.

Process for completion

Legislation

UK ETS Legislation		
Instrument	**Laying date**	**In force date**
The Greenhouse Gas Emissions Trading Scheme Order 2020	13th July (UK Parliament, Scottish Parliament), w/c 15th July, (Welsh Parliament) 15th July (NI Assembly)	Mid-November
The Greenhouse Gas Emissions Trading Scheme Order (Amendment) 2020	Mid-November	Mid-November
Finance Act 2020 (charging clause)	17th March 2020	22nd July 2020 (Royal Assent)
Auctioning and market stability mechanisms SI	October/November 2020 (TBC)	December 2020 – January 2021
Recognised Auction Platforms (Amendment) Regulations 2020	TBC	TBC

Framework Outline Agreement (FOA)

The UK ETS FOA will set out, in more detail, our approach to the common framework and proposed decision-making and dispute resolution processes. It has been used as a policy development tool.

The UK ETS FOA shall be cleared by UK Government and DA Ministers and will be presented to the UK and Devolved Parliaments alongside the concordat.

Governance concordat

Following JMC(EN) clearance of the provisional framework, the FOA and concordat will become available for parliamentary scrutiny. We expect that the FOA and concordat will be available for scrutiny in late October/early November.

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**Legislating for a UK Emissions Trading Scheme**
DATE	**15 July 2020**
BY	**Lesley Griffiths MS, Minister for Environment, Energy and Rural Affairs**

Today, I laid the legislation to establish a UK Emissions Trading Scheme from 1 January 2021. The UK ETS will support cost-effective emissions reduction from our highest emitting sites and its establishment ensures policy continuity when we leave the EU Emissions Trading System at the end of the implementation period.

The Greenhouse Gas Emissions Trading Scheme Order 2020 legislates for the substantive policy features described in the joint Government response to the consultation on the future of UK carbon pricing, which was published on 1 June. A debate on the draft Order will take place in early November.

I have written to the Senedd committees regarding this legislation and the wider framework, and look forward to working with them over the coming months as they scrutinise the framework.

The draft Order can be viewed here:
https://senedd.wales/laid%20documents/sub-ld13345/sub-ld13345-e.pdf

SL(5)600 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 6) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (the "International Travel Regulations"). The International Travel Regulations impose requirements on persons entering Wales after having been abroad. They include a requirement for persons arriving in Wales to isolate for a period determined in accordance with the Regulations. The requirements imposed by the International Travel Regulations are subject to exceptions, and certain categories of person are exempt from having to comply.

Persons entering Wales after being in one or more of the countries and territories listed in Schedule 3 to the International Travel Regulations ("exempt countries and territories") are not required to isolate. These Regulations amend the list of exempt countries and territories to add Portugal to the list [1], and to remove Austria, Croatia and Trinidad and Tobago.

The Regulations also amend the categories of persons who are exempt from the requirements to isolate upon arrival into Wales.

Procedure

Negative.

Technical Scrutiny

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

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

New paragraph 38 in Schedule 2 to the International Travel Regulations, which is inserted by regulation 8(3) of these Regulations, is drafted in the past tense in the English text, but in the present tense in the Welsh text.

Merits Scrutiny

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

[1] Although at the time of writing, Portugal has been removed from the list.

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

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

In particular, we note what the letter says that:

> *"Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity, and in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case."*

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

The Welsh Government website contains a PDF version of the International Travel Regulations labelled *"To show how The Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 have been amended*". This PDF is in Welsh (users are directed to the legislation.gov website for an up to date version in the English language). However it does not appear to have been updated since 15 June 2020 and so it does not reflect the amendments made by these Regulations, or any other amendments to the International Travel Regulations since 15 June. There does not therefore seem to be an easily accessible consolidated version of the Welsh text International Travel Regulations.

Implications arising from exiting the European Union

None.

Welsh Government response

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

Legal Advisers
Legislation, Justice and Constitution Committee
7 September 2020

WELSH STATUTORY INSTRUMENTS

2020 No. 886 (W. 196)

PUBLIC HEALTH, WALES

The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 6) Regulations 2020

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (S.I. 2020/574 (W. 132)) (the "International Travel Regulations"). The International Travel Regulations have been previously amended by:

- the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 (S.I. 2020/595) (W. 136);
- the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020 (S.I. 2020/714) (W. 160);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) Regulations 2020 (S.I. 2020/726) (W. 163);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/804) (W. 177);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 3) Regulations 2020 (S.I. 2020/817) (W. 179);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 4) Regulations 2020 (S.I. 2020/840) (W. 185);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment)

(No. 5) Regulations 2020 (S.I. 2020/868) (W. 190).

The International Travel Regulations impose requirements on persons entering Wales after having been abroad. They include a requirement for persons arriving in Wales to isolate for a period determined in accordance with the Regulations. The requirements imposed by the International Travel Regulations are subject to exceptions, and certain categories of person are exempt from having to comply. Persons entering Wales after being in one or more of the countries and territories listed in Schedule 3 to the International Travel Regulations are not required to isolate. The countries and territories listed in Schedule 3 are referred to as "exempt countries and territories".

Part 2 of these Regulations amends the list of exempt countries and territories.

Regulation 2 of these Regulations amends the International Travel Regulations to add Portugal to the list of exempt countries and territories.

Regulation 4 of these Regulations amends the International Travel Regulations to remove Austria, Croatia and Trinidad and Tobago from the list of exempt countries and territories.

Regulations 3 and 5 of these Regulations makes transitional provision relating to these countries' change of status. The transitional provision addresses a potential area of doubt in terms of the effect on the operation of the International Travel Regulations, of the amendments made by regulations 2 and 4 of these Regulations.

Part 3 of these Regulations makes various miscellaneous amendments to the International Travel Regulations.

Regulations 6 and 7 makes consequential amendments to regulations 9 and 10 of the International Travel Regulations as a result of regulation 8 of these Regulations.

Regulation 8 of these Regulations makes various amendments to Schedule 2 to the International Travel Regulations in respect of the exemptions for certain categories of workers. It firstly widens the definition of an inspector or surveyor of ships to include those part of a government of a relevant British possession. Further regulation 8 includes a new exemption to the isolation requirements in respect of elite athletes resident in the UK upon returning from an elite competition.

Regulation 9 of these Regulations adds further events and fixtures to the list of sporting events in Schedule 4 to the International Travel Regulations.

Regulation 9 also corrects an error identified in the Welsh language text of the International Travel 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.

WELSH STATUTORY INSTRUMENTS

2020 No. 886 (W. 196)

PUBLIC HEALTH, WALES

The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 6) Regulations 2020

Made *at 1.36 p.m. on 21 August 2020*

Laid before Senedd Cymru *at 5.30 p.m. on 21 August 2020*

Coming into force at 4.00 a.m. on 22 August 2020

The Welsh Ministers, in exercise of the powers conferred on them by sections 45B and 45P(2) of the Public Health (Control of Disease) Act 1984(**1**), make the following Regulations.

PART 1

General

Title, coming into force and interpretation

1.—(1) The title of these Regulations is the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 6) Regulations 2020.

(2) These Regulations come into force at 4.00 a.m. on 22 August 2020.

(**1**) 1984 c. 22. Part 2A was inserted by section 129 of the Health and Social Care Act 2008 (c. 14). The function of making regulations under Part 2A is conferred on "the appropriate Minister". Under section 45T(6) of the 1984 Act the appropriate Minister as respects Wales, is the Welsh Ministers.

(3) In these Regulations, the "International Travel Regulations" means the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020(**1**).

PART 2

Amendments to the list of exempt countries in Schedule 3 to the International Travel Regulations

Addition of Portugal to the list of exempt countries and territories

2. In Part 1 of Schedule 3 to the International Travel Regulations (exempt countries and territories outside the common travel area), at the appropriate place insert—

"Portugal".

Transitional provision in connection with regulation 2

3.—(1) Paragraph (2) applies where, immediately before 4.00 a.m. on 22 August 2020—

(a) a person ("P") was subject to an isolation requirement by virtue of having arrived in Wales from, or having been in Portugal, and

(b) P's last day of isolation is 22 August 2020 or a day after that day.

(2) The addition of Portugal to Part 1 of Schedule 3 to the International Travel Regulations does not affect the isolation requirement as it applies to P, nor affect how P's last day of isolation is determined under the International Travel Regulations.

(3) Paragraph (4) applies where a person ("P")—

(a) arrives in Wales at or after 4.00 a.m. on 22 August 2020, and

(b) was in Portugal within the period of 14 days ending with the day of P's arrival in Wales.

(4) For the purposes of regulations 7(1) and 8(1) of the International Travel Regulations, the question of whether P has arrived in Wales from, or having been in, a non-exempt country or territory is, in relation to Portugal, to be determined by reference to whether Portugal was a non-exempt country when P was last there (and not by reference to Portugal's status upon P's arrival in Wales).

(**1**) S.I. 2020/574 (W. 132) as amended by S.I. 2020/595 (W. 136), S.I. 2020/714 (W. 160), S.I. 2020/726 (W. 163), S.I. 2020/804 (W. 177), S.I. 2020/817 (W. 179), S.I. 2020/840 (W. 185) and S.I. 2020/868 (W. 190).

(5) In this regulation, "isolation requirement" has the meaning given by regulation 10(2) of the International Travel Regulations; and references to P's last day of isolation are to be interpreted in accordance with regulation 12 of those Regulations.

Removal of countries from the list of exempt countries and territories

4. In Part 1 of Schedule 3 to the International Travel Regulations (exempt countries and territories outside the common travel area), omit—

"Austria"

"Croatia"

"Trinidad and Tobago".

Transitional provision in connection with regulation 4

5.—(1) Paragraph (2) applies where a person ("P")—

(a) arrives in Wales at or after 4.00 a.m. on 22 August 2020, and

(b) was last in a country listed in regulation 4—

(i) within the period of 14 days ending with the day of P's arrival in Wales, and

(ii) before 4.00 a.m. on 22 August 2020.

(2) P is, by virtue of having been in that country, to be treated for the purposes of regulations 7(1) and 8(1) of the International Travel Regulations as having arrived in Wales from, or having been in, a non-exempt country or territory.

PART 3

Miscellaneous amendments

Amendment to regulation 9 (isolation requirements: exemptions)

6. In regulation 9(2) of the International Travel Regulations (isolation requirements: exemptions), for "36" substitute "38".

Amendments to regulation 10 (isolation requirements: exceptions)

7.—(1) Regulation 10 of the International Travel Regulations (isolation requirements: exceptions) is amended as follows.

(2) Omit paragraph (4)(je) to (jg).

(3) Omit paragraph (8)(b) to (e).

Amendments to Schedule 2 (exempt persons)

8.—(1) Schedule 2 to the International Travel Regulations (exempt persons) is amended as follows.

(2) For paragraph 9 substitute—

"**9.** An inspector, or a surveyor of ships, appointed under section 256 of the Merchant Shipping Act 1995(**1**) or by a government of a relevant British possession as defined in section 313(1) of that Act, where they have travelled to the United Kingdom in the course of their work. "

(3) At the end insert—

"**38.**—(1) A person habitually resident in the United Kingdom who—

(a) is an elite athlete who participated in an overseas elite competition,

(b) provided support or other coaching to an elite athlete at an overseas elite competition,

(c) officiated at, or was involved in running, an overseas elite competition,

where the person has travelled to the United Kingdom to return from the overseas elite competition.

(2) In this paragraph—

(a) "elite athlete" means a person—

(i) who derives a living from competing in a sport,

(ii) is an elite athlete within the meaning given in regulation 2 of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020(**2**), or

(iii) not falling within sub-paragraph (i) or (ii) who participates in the UEFA Champions' league or Europa league;

(b) "elite competition" means a sporting competition at which any of the participants compete—

(i) to derive a living, or

(ii) to qualify for, or as part of a selection process for, the Olympics, Paralympics or Commonwealth Games;

(**1**) 1995 c. 21.
(**2**) S.I. 2020/725 (W. 162).

(c) "overseas elite competition" means an elite competition taking place outside the United Kingdom; and a person is to be treated as having returned from such a competition if the person has within the period of 14 days ending with the person's last day of isolation, been in a non-exempt country or territory for the purposes of such a competition."

Amendments to Schedule 4 (specified sporting events)

9.—(1) Schedule 4 (specified sporting events) is amended as follows.

(2) For paragraph 3 substitute—

"**3.** Darts—

(a) Professional Darts Corporation - Summer Series;

(b) Betfred World Matchplay Darts;

(c) Professional Darts Corporation - Unibet Premier League;

(d) Professional Darts Corporation - Development Tour;

(e) Professional Darts Corporation - Challenge Tour;

(f) Professional Darts Corporation - Women's Series;

(g) Professional Darts Corporation - Players Championship;

(h) Professional Darts Corporation – World Youth Championship."

(3) For paragraph 10 substitute—

"**10.** Snooker—

(a) Betfred World Snooker Championship;

(b) World Snooker Tour - European Masters;

(c) World Snooker Tour - English Open;

(d) World Snooker Tour - Shoot Out;

(e) Matchroom Champion of Champions Snooker Tournament."

(4) In the Welsh language text, for paragraph 14 substitute—

"**14.** Bocsio—

(a) Matchroom Fight Camp - Gornest Ryngwladol Pwysau Trwm;

(b) Matchroom Fight Camp - Teitl Pwysau Trwm y Byd Cyngor Bocsio'r Byd;

(c) Matchroom Fight Camp - Teitl Pwysau Ysgafn y Byd y Menywod Sefydliad Bocsio'r Byd."

(5) At the end insert—

"**15.** Squash - Manchester Open 2020 Squash Tournament.

16. Ten Pin Bowling - Matchroom BetVictor Weber Cup.

17. Pool - Matchroom Partypoker Mosconi Cup Pool Tournament."

Vaughan Gething
Minister for Health and Social Services, one of the Welsh Ministers
At 1.36 p.m. on 21 August 2020

Explanatory Memorandum to the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No.6) 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, International Travel) (Wales) (Amendment) (No.6) Regulations 2020

Vaughan Gething
Minister for Health and Social Services

21 August 2020

1. Description

Subject to specified exemptions, until 10 July 2020, the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 ("the International Travel Regulations") required all passengers arriving in Wales from outside of the Common Travel Area (i.e. the open borders area comprising the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland) to provide their contact details and travel information and to isolate for a period of 14 days.

The International Travel Regulations were amended by the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020 so as to (among other things) introduce an exemption from the isolation requirement for passengers arriving from specified countries and territories, known as "exempt countries".

These Regulations further amend the International Travel Regulations to implement changes identified by the Joint Biosecurity Centre in the public health risk status of certain countries or territories, as is necessary for the protection of public health. The Regulations also make a number of other changes relating to the sectoral exemptions contained in Schedule 2, the addition of a number of sporting events to the list at Schedule 4 and other minor technical amendments of the International Travel Regulations.

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

Coming into force

In accordance with section 11A(4) of the Statutory Instruments Act 1946, the Llywydd has been informed that the Regulations come into force less than 21 days after being laid before the Senedd.

Similar amending Regulations are being introduced in England, Scotland and Northern Ireland as part of a UK-wide approach to avoiding the spread of infection or contamination from COVID-19 via any imported infections from travellers.

European Convention on Human Rights

The amendments contained in these Regulations do not change the engagement under the International Travel 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.

3. Legislative background

The Public Health (Control of Disease) Act 1984 ("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, as inserted by the Health and Social Care Act 2008, provides a legal basis to protect the public from threats arising from infectious disease or contamination from chemicals or radiation, and includes powers to impose restrictions or requirements on people, and in relation to things and premises, for use in rare circumstances where voluntary cooperation cannot be obtained. Overall, the amended 1984 Act sets out a framework for health protection which requires much of the detailed provisions to be delivered through regulations.

The Regulations are made in reliance on the powers in sections 45B and 45P(2) of the 1984 Act.

Section 45B of the 1984 Act provides a power of the appropriate Minister (defined in section 45T as the Secretary of State for England, or the Welsh Ministers for Wales) to make regulations for preventing danger to public health from conveyances (or the persons or articles on those conveyances) arriving at any place or for preventing the spread of infection or contamination by conveyances leaving any place. It also provides a power for regulations to give effect to international agreements or arrangements, for example World Health Organisation recommendations.

Section 45P(2) of the 1984 Act provides that the power to make regulations under Part 2A of the 1984 Act includes the power to make different provision for different cases or people or different areas, including to make different provision based on the purpose of the case.

4. Purpose and intended effect of the legislation

The International Travel Regulations were made on 5 June 2020 and came into force on 8 June 2020 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).

The International Travel Regulations are kept under review, and changes have been made to the list of exempt countries and territories from which travellers would not be required to self-isolate upon arrival in Wales – most recently on 14 August 2020.

Advice which has now been received from the Joint Biosecurity Centre indicates the risk to public health posed by the incidence and spread of coronavirus in Austria, Croatia and Trinidad and Tobago has risen. On the basis of this advice the Welsh Government considers that isolation requirements should now be reintroduced for travellers coming into Wales from these countries and territories. The requirements will come into effect for any travellers entering the Common Travel Area from these countries or territories on or after 4.00 am on 22 August 2020.

The Regulations also add Portugal to the list of exempt countries and territories in Schedule 2 on the basis that the data received from the Joint Biosecurity Council has indicated the risk to public health posed by arrivals from Portugal has now decreased and as such arrivals should be exempt from the isolation requirements. The amendments will come into force from 4.00 am on 22 August 2020.

The following amendments are being made to the sectoral exemptions:

- Amendment to exempt maritime inspectors and surveyors of the Red Ensign Group, who are co-located within the Maritime Coastal Agency in Southampton but work for the Overseas Territories (OT), from the isolation requirements.
- Amendments are being made to exempt elite athletes, habitually resident in the UK, from the isolation requirements upon returning to Wales after competing abroad. Elite athletes not resident in the UK will continue to be excepted from the isolation requirement to allow them to train and take part in competitions in Wales. Various consequential amendments have also been made as a result of this amendment.

Amendments are being made to the International Travel Regulations to add a number of sporting events to the list in Schedule 4 for which those involved are excepted from isolation requirements.

None of the amendments to the International Travel Regulations will affect the requirements under those Regulations for persons arriving into the Common Travel Area before the coming into force of the amendments.

The Welsh Ministers consider that these amendments 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 Regulations.

6. Regulatory Impact Assessment (RIA)

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

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

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/FM/2763/20

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

21 August 2020

Dear Llywydd,

The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 6) Regulations 2020

In accordance with sections 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this Statutory Instrument will come into force less than 21 days after it has been laid. The Explanatory Memorandum that accompanies the Regulations is attached for your information.

The Regulations being made today further amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 to remove the following countries from the list of exempt countries and territories:

- Austria
- Croatia
- Trinidad and Tobago

The Regulations also add Portugal to the list of exempt countries and territories.

The Regulations make these changes due to the identified changes in risk to public health posed by arrivals from these places.

The Regulations also make other various amendments to the Regulations in respect of the sectoral exemptions contained in Schedule 2 and the insertion of additional sporting events into Schedule 4.

Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity, and in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case.

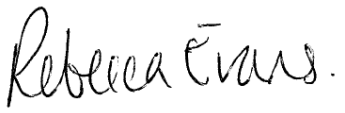
Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
Correspondence.Rebecca.Evans@gov.wales
Gohebiaeth.Rebecca.Evans@llyw.cymru

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Due to the immediacy of the Regulations they have not been subject to consultation.

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

Yours sincerely,



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

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The Health Protection (Coronavirus, International Travel) (Wales) Amendments**
DATE	**20 August 2020**
BY	**Vaughan Gething, Minister for Health and Social Services**

Members will be aware that the UK Government made provision to ensure that travellers entering the United Kingdom from overseas must self-isolate for 14 days, to prevent the further spread of coronavirus. These restrictions came into force on Monday 8 June 2020.

On 10 July the Welsh Government amended the Regulations to introduce exemptions from the isolation requirement for a list of countries and territories, and a limited range of people in specialised sectors or employment who may be exempted from the isolation requirement or excepted from certain provisions of the passenger information requirements.

Since then these regulations have been kept under review and a number of changes to the list of exempt countries and territories have been made.

I have today met with Ministers from across the 4 national governments in the UK to discuss the potential change to the International Travel Regulations. As a result of that meeting, it was decided to add Portugal and remove Austria, Croatia and Trinidad and Tobago from the list of exempt countries and territories. I will tomorrow lay the necessary regulations which will come into force at 04:00 on Saturday, 22 August.

This statement is being issued during recess in order to keep members informed. Should members wish me to make a further statement or to answer questions on this when the Senedd returns I would be happy to do so.

SL(5)603 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 7) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (the "International Travel Regulations"). The International Travel Regulations impose requirements on persons entering Wales after having been abroad. They include a requirement for persons arriving in Wales to isolate for a period determined in accordance with the Regulations. The requirements imposed by the International Travel Regulations are subject to exceptions, and certain categories of person are exempt from having to comply.

Persons entering Wales after being in one or more of the countries and territories listed in Schedule 3 to the International Travel Regulations ("exempt countries and territories") are not required to isolate. These Regulations amend the list of exempt countries and territories to add Cuba and Singapore to the list, and to remove the Czech Republic, Jamaica and Switzerland. The Regulations also add a further event to the list of sporting events in Schedule 4 for which those involved are either exempted or excepted from isolation requirements.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

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

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

We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a "made negative" instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Rebecca Evans MS, Minister for Finance and Trefnydd, in a letter to the Llywydd dated 28 August 2020.

In particular, we note what the letter says that:

> *"Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity, and in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case."*

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

Regulations 3 and 5 make transitional provisions relating to the countries' change of status and the requirement to isolate. We think that it would be helpful for members of the public if the Welsh Governent explained these transitional provisions in their guidance **Travellers exempt from Welsh border rules: coronavirus (COVID-19)**.

Implications arising from exiting the European Union

None.

Welsh Government response

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

Legal Advisers
Legislation, Justice and Constitution Committee
8 September 2020

WELSH STATUTORY INSTRUMENTS

2020 No. 917 (W. 205)

PUBLIC HEALTH, WALES

The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 7) Regulations 2020

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (S.I. 2020/574 (W. 132)) (the "International Travel Regulations"). The International Travel Regulations have been previously amended by:

- the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 (S.I. 2020/595) (W. 136);
- the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020 (S.I. 2020/714) (W. 160);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) Regulations 2020 (S.I. 2020/726) (W. 163);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/804) (W. 177);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 3) Regulations 2020 (S.I. 2020/817) (W. 179);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 4) Regulations 2020 (S.I. 2020/840) (W. 185);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment)

(No. 5) Regulations 2020 (S.I. 2020/868) (W. 190);

- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 6) Regulations 2020 (S.I. 2020/886) (W. 196).

The International Travel Regulations impose requirements on persons entering Wales after having been abroad. They include a requirement for persons arriving in Wales to isolate for a period determined in accordance with the Regulations. The requirements imposed by the International Travel Regulations are subject to exceptions, and certain categories of person are exempt from having to comply. Persons entering Wales after being in one or more of the countries and territories listed in Schedule 3 to the International Travel Regulations are not required to isolate. The countries and territories listed in Schedule 3 are referred to as "exempt countries and territories".

Part 2 of these Regulations amends the list of exempt countries and territories.

Regulation 2 of these Regulations amends the International Travel Regulations to add Cuba and Singapore to the list of exempt countries and territories.

Regulation 4 of these Regulations amends the International Travel Regulations to remove the Czech Republic, Jamaica and Switzerland from the list of exempt countries and territories.

Regulations 3 and 5 of these Regulations make transitional provision relating to these countries' change of status. The transitional provision addresses a potential area of doubt in terms of the effect on the operation of the International Travel Regulations, of the amendments made by regulations 2 and 4 of these Regulations.

Part 3 of these Regulations amends the list of sporting events.

Regulation 6 of these Regulations adds a further event to the list of sporting events in Schedule 4 to the International Travel 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.

WELSH STATUTORY INSTRUMENTS

2020 No. 917 (W. 205)

PUBLIC HEALTH, WALES

The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 7) Regulations 2020

Made	*at 12.15 p.m. on 28 August 2020*
Laid before Senedd Cymru	*at 4.30 p.m. on 28 August 2020*
Coming into force	*at 4.00 a.m. on 29 August 2020*

The Welsh Ministers, in exercise of the powers conferred on them by sections 45B and 45P(2) of the Public Health (Control of Disease) Act 1984(**1**), make the following Regulations.

PART 1

General

Title, coming into force and interpretation

1.—(1) The title of these Regulations is the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 7) Regulations 2020.

(2) These Regulations come into force at 4.00 a.m. on 29 August 2020.

(**1**) 1984 c. 22. Part 2A was inserted by section 129 of the Health and Social Care Act 2008 (c. 14). The function of making regulations under Part 2A is conferred on "the appropriate Minister". Under section 45T(6) of the 1984 Act the appropriate Minister as respects Wales, is the Welsh Ministers.

(3) In these Regulations, the "International Travel Regulations" means the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020(**1**).

PART 2

Amendments to the list of exempt countries in Schedule 3 to the International Travel Regulations

Additions to the list of exempt countries and territories

2. In Part 1 of Schedule 3 to the International Travel Regulations (exempt countries and territories outside the common travel area), at the appropriate places insert—

"Cuba"

"Singapore".

Transitional provision in connection with regulation 2

3.—(1) Paragraph (2) applies where, immediately before 4.00 a.m. on 29 August 2020—

(a) a person ("P") was subject to an isolation requirement by virtue of having arrived in Wales from, or having been in a country listed in regulation 2, and

(b) P's last day of isolation is 29 August 2020 or a day after that day.

(2) The addition of the countries listed in regulation 2 to Part 1 of Schedule 3 to the International Travel Regulations does not affect the isolation requirement as it applies to P, nor affect how P's last day of isolation is determined under the International Travel Regulations.

(3) Paragraph (4) applies where a person ("P")—

(a) arrives in Wales at or after 4.00 a.m. on 29 August 2020, and

(b) was in a country listed in regulation 2 within the period of 14 days ending with the day of P's arrival in Wales.

(4) For the purposes of regulations 7(1) and 8(1) of the International Travel Regulations, the question of whether P has arrived in Wales from, or having been

(**1**) S.I. 2020/574 (W. 132) as amended by S.I. 2020/595 (W. 136), S.I. 2020/714 (W. 160), S.I. 2020/726 (W. 163), S.I. 2020/804 (W. 177), S.I. 2020/817 (W. 179), S.I. 2020/840 (W. 185), S.I. 2020/868 (W. 190) and S.I. 2020/886 (W. 196).

in, a non-exempt country or territory is, in relation to a country listed in regulation 2, to be determined by reference to whether the country was a non-exempt country when P was last there (and not by reference to the country's status upon P's arrival in Wales).

(5) In this regulation, "isolation requirement" has the meaning given by regulation 10(2) of the International Travel Regulations; and references to P's last day of isolation are to be interpreted in accordance with regulation 12 of those Regulations.

Removal of countries from the list of exempt countries and territories

4. In Part 1 of Schedule 3 to the International Travel Regulations (exempt countries and territories outside the common travel area), omit—

"Czech Republic"

"Jamaica"

"Switzerland".

Transitional provision in connection with regulation 4

5.—(1) Paragraph (2) applies where a person ("P")—

(a) arrives in Wales at or after 4.00 a.m. on 29 August 2020, and

(b) was last in a country listed in regulation 4—

(i) within the period of 14 days ending with the day of P's arrival in Wales, and

(ii) before 4.00 a.m. on 29 August 2020.

(2) P is, by virtue of having been in that country, to be treated for the purposes of regulations 7(1) and 8(1) of the International Travel Regulations as having arrived in Wales from, or having been in, a non-exempt country or territory.

PART 3

Amendments to the list of sporting events in Schedule 4 to the International Travel Regulations

Amendments to Schedule 4 (specified sporting events)

6.—(1) Schedule 4 (specified sporting events) is amended as follows.

(2) In paragraph 14—

(a) at the end of sub-paragraph (c), for the full stop substitute ";";

(b) after sub-paragraph (c) insert—

"(d) Matchroom Fight Camp - Boxing Championship Matches.
"

Vaughan Gething
Minister for Health and Social Services, one of the Welsh Ministers
At 12.15 p.m. on 28 August 2020

Explanatory Memorandum to the Health Protection (Coronavirus, International Travel) (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, International Travel) (Wales) (Amendment) (No.7) Regulations 2020

Vaughan Gething
Minister for Health and Social Services

28 August 2020

1. Description

Subject to specified exemptions, until 10 July 2020, the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 ("the International Travel Regulations") required all passengers arriving in Wales from outside of the Common Travel Area (i.e. the open borders area comprising the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland) to provide their contact details and travel information and to isolate for a period of 14 days.

The International Travel Regulations were amended by the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020 so as to (among other things) introduce an exemption from the isolation requirement for passengers arriving from specified countries and territories, known as "exempt countries".

These Regulations further amend the International Travel Regulations to implement changes identified by the Joint Biosecurity Centre in the public health risk status of certain countries or territories, as is necessary for the protection of public health. The Regulations also make an amendment to the list of sporting events at Schedule 4 of the International Travel Regulations.

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

Coming into force

In accordance with section 11A(4) of the Statutory Instruments Act 1946, the Llywydd has been informed that the Regulations come into force less than 21 days after being laid before the Senedd.

Similar amending Regulations are being introduced in England, Scotland and Northern Ireland as part of a UK-wide approach to avoiding the spread of infection or contamination from COVID-19 via any imported infections from travellers.

European Convention on Human Rights

The amendments contained in these Regulations do not change the engagement under the International Travel 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.

3. Legislative background

The Public Health (Control of Disease) Act 1984 ("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, as inserted by the Health and Social Care Act 2008, provides a legal basis to protect the public from threats arising from infectious disease or contamination from chemicals or radiation, and includes powers to impose restrictions or requirements on people, and in relation to things and premises, for use in rare circumstances where voluntary cooperation cannot be obtained. Overall, the amended 1984 Act sets out a framework for health protection which requires much of the detailed provisions to be delivered through regulations.

The Regulations are made in reliance on the powers in sections 45B and 45P(2) of the 1984 Act.

Section 45B of the 1984 Act provides a power of the appropriate Minister (defined in section 45T as the Secretary of State for England, or the Welsh Ministers for Wales) to make regulations for preventing danger to public health from conveyances (or the persons or articles on those conveyances) arriving at any place or for preventing the spread of infection or contamination by conveyances leaving any place. It also provides a power for regulations to give effect to international agreements or arrangements, for example World Health Organisation recommendations.

Section 45P(2) of the 1984 Act provides that the power to make regulations under Part 2A of the 1984 Act includes the power to make different provision for different cases or people or different areas, including to make different provision based on the purpose of the case.

4. Purpose and intended effect of the legislation

The International Travel Regulations were made on 5 June 2020 and came into force on 8 June 2020 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).

The International Travel Regulations are kept under review, and changes have been made to the list of exempt countries and territories from which travellers would not be required to self-isolate upon arrival in Wales – most recently on 22 August 2020.

Advice which has now been received from the Joint Biosecurity Centre indicates the risk to public health posed by the incidence and spread of coronavirus in the Czech Republic, Jamaica and Switzerland has risen. On the basis of this advice the Welsh Government considers that isolation requirements should now be reintroduced for travellers coming into Wales from these countries and territories.

The Regulations also add Cuba and Singapore to the list of exempt countries and territories in Schedule 2. This is on the basis that the data received from the Joint Biosecurity Centre has indicated the risk to public health posed by arrivals from those countries has now decreased, and as such arrivals should be exempt from the isolation requirements.

An amendment is being made to the International Travel Regulations to add a further sporting event to the list in Schedule 4 for which those involved are either exempted or excepted from isolation requirements.

These revised requirements will come into effect for any travellers entering the Common Travel Area from these countries or territories on or after 4.00 am on 29 August 2020, as will the amendment on sporting events. None of the amendments to the International Travel Regulations will affect the requirements under those Regulations for persons arriving into the Common Travel Area before the coming into force of the amendments.

The Welsh Ministers consider that these amendments 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 Regulations.

6. Regulatory Impact Assessment (RIA)

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

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

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/VG/2819/20

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

28 August 2020

Dear Llywydd,

The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 7) Regulations 2020

In accordance with sections 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this Statutory Instrument will come into force less than 21 days after it has been laid. The Explanatory Memorandum that accompanies the Regulations is attached for your information.

The Regulations being made today further amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 to remove the following countries from the list of exempt countries and territories:

- Czech Republic
- Jamaica
- Switzerland

The Regulations also add the following countries to the list of exempt countries and territories:

- Cuba
- Singapore

The Regulations make these changes due to the identified changes in risk to public health posed by arrivals from these places.

The Regulations also make a further amendment in respect of the insertion of an additional sporting event into Schedule 4.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
Correspondence.Rebecca.Evans@gov.wales
Gohebiaeth.Rebecca.Evans@llyw.cymru

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity, and in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case.

Due to the immediacy of the Regulations they have not been subject to consultation.

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

Yours sincerely,

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

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The Health Protection (Coronavirus, International Travel) (Wales) Amendments**
DATE	**27 August 2020**
BY	**Vaughan Gething Minister for Health and Social Services**

Members will be aware that the UK Government made provision to ensure that travellers entering the United Kingdom from overseas must self-isolate for 14 days, to prevent the further spread of coronavirus. These restrictions came into force on Monday 8 June 2020.

On 10 July the Welsh Government amended the Regulations to introduce exemptions from the isolation requirement for a list of countries and territories, and a limited range of people in specialised sectors or employment who may be exempted from the isolation requirement or excepted from certain provisions of the passenger information requirements.

Since then these regulations have been kept under review and a number of changes to the list of exempt countries and territories have been made.

I have today met with Ministers from across the 4 national governments in the UK to discuss the potential change to the International Travel Regulations. As a result of that meeting, I have decided to add Cuba and Singapore and remove Czech Republic, Jamaica and Switzerland from the list of exempt countries and territories. I will tomorrow lay the necessary regulations which will come into force at 04:00 on Saturday, 29 August.

This statement is being issued during recess in order to keep members informed. Should members wish me to make a further statement or to answer questions on this when the Senedd returns I would be happy to do so.

SL(5)604 – The Education (Student Support) (Postgraduate Master's Degrees) (Wales) (Amendment) (Coronavirus) Regulations 2020

Background and Purpose

These Regulations amend the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019 ('the 2019 Regulations').

Due to the coronavirus pandemic a new student undertaking a distance learning postgraduate Master's course in Wales may find themselves unable to be present in Wales on the first day of the first academic year, as the 2019 Regulations require, through no fault of their own. The 2019 Regulations are amended to enable new students to receive support for their distance learning course if reasons connected to the coronavirus pandemic prevent them from being in Wales on the first day of the academic year. This applies in relation to courses the first year of the first academic year of which begin on or after 1 September 2020.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

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

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

We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a "made negative" instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Rebecca Evans MS, Minister for Finance and Trefnydd, in a letter to the Llywydd dated 28 August 2020 that:

> *"The Regulations as made will come into force before 21 days have elapsed. This is due to the late stage in the year. The Regulations need to be in force by 1 September (the first day of the academic year) to enable students commencing their course on that date to remain eligible for support, as changes cannot be made retrospectively. This ensures that no students are disadvantaged by circumstances outside their control."*

Whilst we recognise that a number of measures have had to be put in place urgently during the Coronavirus Pandemic, we are not clear why these Regulations in particular had to come into force so urgently as to breach the 21-day rule when the Welsh Minsters have had the power to do make these Regulations in good time.

Implications arising from exiting the European Union

None.

Welsh Government response

A Welsh Government response is not required as the explanation for breach of the 21 day rule has already been provided for in the Explanatory Memorandum and the letter sent to the Llywydd and Chair of the Committee as noted above.

Legal Advisers
Legislation, Justice and Constitution Committee
7 September 2020

WELSH STATUTORY INSTRUMENTS

2020 No. 918 (W. 206)

EDUCATION, WALES

The Education (Student Support) (Postgraduate Master's Degrees) (Wales) (Amendment) (Coronavirus) Regulations 2020

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under the Teaching and Higher Education Act 1998 and they amend the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019 ("the 2019 Regulations").

The 2019 Regulations provide for financial support for eligible students taking postgraduate master's degree courses which begin on or after 1 August 2019.

Regulation 2 amends regulation 10(1) of the 2019 Regulations (eligible students – exceptions), to remove the requirement for a student undertaking a distance learning course to be in Wales on the first day of the first academic year of that course, in cases where the absence relates to coronavirus.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Higher Education Division, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

WELSH STATUTORY INSTRUMENTS

2020 No. 918 (W. 206)

EDUCATION, WALES

The Education (Student Support) (Postgraduate Master's Degrees) (Wales) (Amendment) (Coronavirus) Regulations 2020

Made	*at 9.20 a.m. on 28 August 2020*
Laid before Senedd Cymru	*at 3.00 p.m. on 28 August 2020*
Coming into force	*1 September 2020*

The Welsh Ministers, in exercise of the powers conferred on the Secretary of State by sections 22(2)(a) and 42(6) of the Teaching and Higher Education Act 1998(**1**) and now exercisable by them(**2**), make the following Regulations:

Title and commencement

1.—(1) The title of these Regulations is the Education (Student Support) (Postgraduate Master's Degrees) (Wales) (Amendment) (Coronavirus) Regulations 2020.

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

(**1**) 1998 c. 30; section 22(2)(a) was amended by the Higher Education and Research Act 2017 (c. 29), section 86. *See* section 43(1) of the Teaching and Higher Education Act 1998 for the definition of "prescribed" and "regulations".

(**2**) The Secretary of State's functions in section 22(2)(a) of the Teaching and Higher Education Act 1998 was 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). Section 22(2)(a) is exercisable by the Welsh Ministers concurrently with the Secretary of State. The Secretary of State's function in section 42 was transferred, in so far as exercisable in relation to Wales, to the National Assembly for Wales by S.I. 1999/672. The above functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

Amendment of the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019

2.—(1) The Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019(**1**) are amended in accordance with this regulation.

(2) In regulation 10(1) (eligible students – exceptions), in exception 10—

(a) after "does not apply where—" start a new line and insert the heading "*Case 1*";

(b) at the end of sub-paragraph (c) for the full-stop substitute "; or";

(c) at the end of exception 10 insert—

"*Case 2*

(a) the first day of the first academic year of the course is on or after 1 September 2020; and

(b) P is unable to be in Wales on the first day of the first academic year of the course for a reason related to coronavirus."

(3) In Schedule 1 (interpretation), in paragraph 3(1), at the appropriate place insert—

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

(4) In Schedule 4 (index of defined terms), in Table 3 at the appropriate place insert—

""coronavirus" Schedule 1, paragraph 3(1)"

Kirsty Williams
Minister for Education, one of the Welsh Ministers
At 9.20 a.m. on 28 August 2020

(**1**) S.I. 2019/895 (W. 161). There are amendments to S.I. 2019/895 which are not relevant to these Regulations.

Education (Student Support) (Postgraduate Master's Degrees) (Wales) (Amendment) (Coronavirus) Regulations 2020

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

Minister for Education's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Education (Student Support) (Postgraduate Master's Degrees) (Wales) (Amendment) (Coronavirus) Regulations 2020. I am satisfied that the benefits justify the likely costs.

Kirsty Williams
Minister for Education
28 August 2020

Part 1

1. Description

The Education (Student Support) (Postgraduate Master's Degrees) (Wales) (Amendment) (Coronavirus) Regulations 2020 ('the Regulations') amend the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019 ('the 2019 Regulations')

The Regulations amend provision in the 2019 Regulations to enable students to receive support for distance learning courses if coronavirus prevents them being in Wales on the first day of the first academic year of the course (1 September 2020).

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

The Regulations will come into force on 1 September 2020, before 21 days have elapsed since laying. The Minister for Minister for Finance and Trefnydd has written to the Llywydd as required by Section 11A(4) of the Statutory Instruments Act 1946. The coming into force date will ensure students remain eligible for support during a time of global pandemic.

3. Legislative background

The Regulations are made under sections 22(2)(a) and 42(6) of the Teaching and Higher Education Act 1998 ('the 1998 Act'). Section 22 provides the Welsh Ministers with the power to make regulations authorising or requiring the payment of financial support to students studying courses of higher or further education designated by or under those regulations. This power enables the Welsh Ministers to prescribe, amongst other things, the amount of financial support (grant or loan) and who is eligible to receive such support.

Section 44 of the Higher Education Act 2004 ('the 2004 Act') provided for the transfer to the National Assembly for Wales of the functions of the Secretary of State under section 22 of the 1998 Act (except insofar as they relate to the making of any provision authorised by subsections (2)(j), (3)(e) or (f) or (5) of section 22). Section 44 of the 2004 Act also provided for the functions of the Secretary of State in section 22(2)(a), (c) and (k) of the 1998 Act to be exercisable concurrently with the National Assembly for Wales.

The functions of the Secretary of State under section 42(6) of the 1998 Act were transferred to the National Assembly for Wales, so far as exercisable in relation to

Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 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.

Each year, a number of functions of the Welsh Ministers in regulations made under section 22 of the 1998 Act are delegated to the Student Loans Company under section 23 of the 1998 Act.

This instrument will follow the negative resolution procedure.

4. Purpose and intended effect of the legislation

The Welsh Ministers make regulations to provide the basis for the system of financial support for students ordinarily resident in Wales and EU students studying in Wales taking designated courses of higher education. The 2019 Regulations provide for financial support for students taking designated postgraduate Master's courses which begin on or after 1 September 2019.

The coronavirus pandemic continues to affect all aspects of life. A new student undertaking a distance learning postgraduate Master's course in Wales may find themselves unable to be present in Wales on the first day of the first academic year, as the 2019 Regulations require, through no fault of their own. The 2019 Regulations are amended to enable new students to receive support for their distance learning course if reasons connected to the coronavirus pandemic prevent them from being in Wales on the first day of the academic year. This applies in relation to courses the first year of the first academic year of which begin on or after 1 September 2020.

These amendments ensure that no students are disadvantaged by circumstances outside their control.

5. Consultation

No consultation has been undertaken.

6. Regulatory Impact Assessment

An RIA has been conducted for the Regulations.

Options

Option 1: Business as usual

If the Regulations are not made the implication is that distance learning students who are unable to travel due to the coronavirus pandemic will not be eligible for student support, contrary to policy and existing eligibility provisions.

Option 2: Make the Regulations

Making the Regulations ensures that the implication noted above is avoided resulting in a legislative framework that correctly reflects the Welsh Ministers' policy for student support, ensuring all students are able to receive appropriate support.

Costs and benefits

Option 1: Business as usual

There are no additional costs to option one. There may be a small financial saving in the event that students are unable to be in Wales on the first day of the first academic year and thus are ineligible for student support.

Option 2: Make the Regulations

Distance learners whose ability to travel to Wales for the first day of the first academic year is affected by coronavirus would be ineligible for support. The amendment preserves the current policy intent and imposes no additional costs. The benefit to the student is the ability to receive support, as expected, to undertake their course.

Competition Assessment

The making of the Regulations has no impact on the competitiveness of businesses, charities or the voluntary sector.

Post-Implementation Assessment

The regulations governing the student support system are revised annually and are continually subject to detailed review, both by policy officials and delivery partners in their practical implementation of the regulations.

Summary

The making of the Regulations is necessary to update aspects of the higher education student support system for students ordinarily resident in Wales and EU students studying in Wales in the 2020/21 academic year.

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

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/KW/2777/20

Elin Jones MS
Llywydd
National Assembly for Wales
Ty Hywel
Cardiff Bay
CF99 1NA

28 August 2020

Dear Llywydd,

The Education (Student Support) (Postgraduate Master's Degrees) (Wales) (Amendment) (Coronavirus) Regulations 2020

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

The Education (Student Support) (Postgraduate Master's Degrees) (Wales) (Amendment) (Coronavirus) Regulations 2020 ("the Regulations") amend the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019 ("the 2019 Regulations").

Student support regulations, made under section 22 of the Teaching and Higher Education Act 1988, underpin the system of financial support for students who are ordinarily resident in Wales and taking designated courses of higher education.

The Regulations will amend the 2019 Regulations to enable new distance learning students who are unable to be in Wales on the first day of their first academic year, due to the inability to travel for any reason connected with the Coronavirus pandemic, to remain eligible for student support. This instrument follows the negative resolution procedure.

As noted, the Regulations as made will come into force before 21 days have elapsed. This is due to the late stage in the year. The Regulations need to be in force by 1 September (the first day of the academic year) to enable students commencing their course on that date to remain eligible for support, as changes cannot be made retrospectively. This ensures that no students are disadvantaged by circumstances outside their control.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
Correspondence.Rebecca.Evans@gov.wales
Gohebiaeth.Rebecca.Evans@llyw.cymru

Bae Caerdydd • Cardiff Bay
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CF99 1NA

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

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

Yours sincerely,

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

SL(5)599 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 6) Regulations 2020

Background and Purpose

These Regulations make further amendments to the Health Protection (Coronavirus Restrictions) (No.2) (Wales) Regulations 2020 ("the Principal Regulations") and the coronavirus restrictions in Wales. In particular, these Regulations permit:

- up to four households to join together in an extended household. This might take the form of two existing extended households joining together, or for households not already in an extended household arrangement to form one (or join an existing extended household).
- people to gather indoors (in a group of up to 30 People) for a small wedding reception, funeral tea or wake associated with a marriage or civil partnership ceremony or funeral that takes place on or after 22 August 2020.
- a pilot of a limited number of outdoor events for up to 100 spectators with express agreement of the Welsh Ministers to take place.

In addition, also amend regulation 18(9B) (Enforcement Actions) of the principal Regulations to make clear that information and answers given under regulation 18(7A) are not admissible in any proceedings other than proceedings under the principal Regulations.

Procedure

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

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

Merits Scrutiny

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

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

No public consultation or regulatory impact assessment has been carried out in relation to these Regulations. The explanatory memorandum states that "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 Regulations" and that "The First Minister, together with other Ministers and the Welsh Government, has continued to update individuals and businesses throughout subsequent changes to the Regulations. The First Minister signalled in his press conference of 14 August the intention to bring about the changes achieved in the Regulations made today, if circumstances allowed for it. These proposed changes were subsequently widely reported. The First Minister confirmed these changes would be made in his press conference of 21 August."

Implications arising from exiting the European Union

None.

Welsh Government response

A Welsh Government response is not required.

Legal Advisers
Legislation, Justice and Constitution Committee
26 August 2020

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

WELSH STATUTORY INSTRUMENTS

2020 No. 884 (W. 195)

PUBLIC HEALTH, WALES

The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 6) Regulations 2020

EXPLANATORY NOTE

(This note is not part of the Regulations)

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

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

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 (the "principal Regulations"). The amendments—

(a) allow members of up to four households (instead of two) to agree to be treated as a single (extended) household, which means that members of those households can interact with each other as if they were members of one household;

(b) provides that people have a reasonable excuse (under regulation 14 of the principal

Regulations) to gather indoors, in certain premises, in a group of up to 30 people to—

- celebrate a solemnization of a marriage, or formation of a civil partnership, that takes place on or after 22 August 2020, or
- celebrate the life of a person who has died and whose funeral takes place on or after 22 August 2020.

(c) provides that, as an exception to the rule prohibiting people from participating in outdoor gatherings of more than 30 people, a larger outdoor event may take place as long as—

- it is organised in accordance with the terms of the exception,
- it is approved in writing by the Welsh Ministers,
- it is attended by no more than 100 people (not including persons working, or providing voluntary services, at the event), and
- it is held in accordance with any conditions specified by the Welsh Ministers.

(d) clarifies that regulation 18(9B) of the principal Regulations (admissibility of evidence) applies to any proceedings other than to proceedings under 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.

WELSH STATUTORY INSTRUMENTS

2020 No. 884 (W. 195)

PUBLIC HEALTH, WALES

The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 6) Regulations 2020

Made	*at 11.00 a.m. on 21 August 2020*
Laid before Senedd Cymru	*at 3.30 p.m. on 21 August 2020*
Coming into force	*22 August 2020*

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

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

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

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

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

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

Title and coming into force

1. The title of these Regulations is the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 6) Regulations 2020 and they come into force on 22 August 2020.

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

2.—(1) The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020(**1**) are amended as follows.

(2) In regulation 2, omit paragraphs (4) to (7).

(3) After regulation 2, insert—

"**Extended households**

2A.—(1) Up to four households may agree to be treated as an extended household for the purposes of these Regulations.

(2) To agree to be treated as an extended household, all of the adults of the households in question must agree.

(3) Where households agree to be treated as an extended household, any reference in these Regulations (other than in this regulation) to a "household" is to be read as including the households that have so agreed.

(4) A household may only agree to be treated as being in one extended household.

(5) A household ceases to be treated as being in an extended household if any adult in the household ceases to agree to be treated as being in the extended household.

(6) If a household ceases to be treated as being in an extended household, the household may not agree to be treated as being in an extended household with any other household.

(**1**) S.I. 2020/725 (W. 162), as amended by the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) Regulations 2020 (S.I. 2020/752 (W. 169)), the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/803 (W. 176)), the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 3) Regulations 2020 (S.I. 2020/820 (W. 180)), the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 4) Regulations 2020 (S.I. 2020/843 (W. 186)) and the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 5) Regulations 2020 (S.I. 2020/867 (W. 189)).

(7) Paragraph (8) applies where two households—

(a) agreed to be treated as a single (extended) household for the purposes of these Regulations before 22 August 2020, or

(b) were treated as having done so in accordance with regulation 2(7) of these Regulations before that date.

(8) Where this paragraph applies, the households—

(a) are to be treated as having agreed to be treated as an extended household in accordance with this regulation, and

(b) may agree to be treated as an extended household with up to two more households in accordance with this regulation."

(4) In regulation 14, after paragraph (2)(h) insert—

"(hza)participate in a gathering of no more than 30 people at open premises to—

(i) celebrate a solemnization of a marriage or formation of a civil partnership that takes place on or after 22 August 2020,

(ii) celebrate the life of a deceased person whose funeral is held on or after 22 August 2020;".

(5) In regulation 14A, after paragraph (2) insert—

"(3) But the restriction in paragraph (1) does not apply to an organised outdoor event—

(a) authorised in writing by the Welsh Ministers,

(b) at which no more than 100 people are in attendance (not including persons working, or providing voluntary services, at the event), and

(c) which is held in accordance with any conditions specified in writing by the Welsh Ministers.

(4) For the purposes of paragraph (3)(a), an event is an "organised outdoor event" if—

(a) it takes place outdoors,

(b) it is organised by—

(i) a business,

(ii) a public body or a charitable, benevolent or philanthropic institution,

(iii) a club or political organisation, or

(iv) the national governing body of a sport or other activity, and

(c) the person organising it has—

(i) carried out a risk assessment which would satisfy the requirements of regulation 3 of the Management of Health and Safety at Work Regulations 1999(**1**), whether or not the person is subject to those Regulations, and

(ii) complied with the requirements of regulations 12(2) and 13(1).

(5) For the purposes of paragraph (4)(c)—

(a) regulation 3 of the Management of Health and Safety at Work Regulations 1999 applies as if the event were an undertaking conducted by the person organising it;

(b) regulation 12(2) of these Regulations applies as if the place where the event takes place were open premises for which the person organising the event is responsible."

(6) In regulation 18(9B), for "proceedings under any enactment other than" substitute "any proceedings other than proceedings under".

Savings for offences and penalties in relation to prior acts

3. Regulations 20 and 21 of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 continue to have effect in relation to any offence committed, or reasonably believed to have been committed, before the amendments made by these Regulations came into force as if those amendments had not been made.

Mark Drakeford
First Minister, one of the Welsh Ministers
At 11.00 a.m. on 21 August 2020

(**1**) S.I. 1999/3242. Regulation 3 was amended by S.I. 2005/1541, S.I. 2015/21 and S.I. 2015/1637.

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 6) 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) (No. 2) (Wales) (Amendment) (No. 6) Regulations 2020.

Vaughan Gething
Minister for Health and Social Services

21 August 2020

1. Description

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (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 restrictions contained in the principal Regulations should be relaxed as soon as they are no longer considered necessary or proportionate to retain them in their existing form.

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.

<u>European Convention on Human Rights</u>

Whilst the Regulations engage individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights, the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health and are proportionate.

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 adaption of the requirements made under the principal Regulations by these Regulations, is a proportionate response. These provisions balance the need to maintain an appropriate response to the threat posed by 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 coronavirus, taking into account the scientific evidence.

The amendments made by these Regulations are a relaxation of restrictions that have a particular impact on the Article 8 right to respect for private and family life and the Article 11 right to freedom of assembly and association. As the public health risk posed by coronavirus is currently somewhat reduced given the recently decreasing prevalence of the virus in Wales, the Welsh Ministers consider it proportionate to respond to the current level of threat by loosening certain restrictions (in particular restrictions on the number of households that may be treated as a single extended household and consequently can meet indoors, and by introducing a mechanism for

approving certain outdoor events of up to 100 people). In arriving at that conclusion the Welsh Ministers had regard to the interference with those fundamental human rights and sought to balance that interference proportionately with the need to protect the public from the threat posed by coronavirus – a need which in of itself relates to the Article 2 right to life.

3. Legislative background

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

The Explanatory Memorandum to the principal Regulations provides further information on these powers.

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).

Extended households

Since 6 July two separate households in Wales have been able to join together to form one extended household. This allows people in those households to be treated as if they were a single households under the principal Regulations and therefore have the same legal freedoms people living in individual households currently have – such as being able to meet indoors, have physical contact, go places together and stay in each other's homes.

The amendments made by these Regulations will allow up to four households to join together in an extended household. This might take the form of two existing extended households joining together, or for households not already in an extended household arrangement to form one (or join an existing extended household).

Gathering indoors

The amendments made by these Regulations will allow people to gather indoors for a small wedding reception, funeral tea or wake associated with a marriage or civil partnership ceremony or funeral that takes place on or after 22 August 2020. The purpose is to allow these significant life events to be marked. The intention is that guidance will specify how these gatherings can be conducted safely.

Gathering outdoors

The amendment to the principal Regulations will allow for a pilot of a small number of events for up to 100 spectators with express agreement of the Welsh Ministers to take place.

Whilst the Government is not yet moving to allow outdoor events generally, by taking these steps an opportunity will be provided to learn from and reflect on how mitigations can work effectively.

This approach provides flexibility for the events to be amended should difficulties arise with those identified, and should additional pilot activity be identified Ministers could agree to it without requiring further amendments to the Regulations

These Regulations also amend regulation 18(9B) of the principal Regulations to make clear that information and answers given under regulation 18(7A) are not admissible in any proceedings other than proceedings under the principal Regulations. This responds to a technical scrutiny point raised by the Legislation, Justice & Constitution Committee in their draft report on amendments made by the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amending) (No. 4) Regulation 2020.

The Regulations come into force at the beginning of Saturday, 22 August 2020.

It is critical to take all reasonable steps to limit the 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 easing and adapting the restrictions by means of the amendments made to the principal Regulations are proportionate to what the principal Regulations 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, including the need to lift any restrictions which are no longer considered proportionate to that response, there has been no public consultation in relation to these Regulations.

More widely, individuals and businesses have been informed about the restrictions 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, together with other Ministers and the Welsh Government, has continued to update individuals and businesses throughout subsequent changes to the Regulations. The First Minister signalled in his press conference of 14 August the intention to bring about the changes achieved in the Regulations made today, if circumstances allowed for it. These proposed changes were subsequently widely reported. The First Minister confirmed these changes would be made in his press conference of 21 August.

6. Regulatory and other impact assessments

A regulatory impact assessment has not been prepared in relation to these Regulations due to the need to put them in place urgently as part of the ongoing response to a serious and imminent threat to public health

A summary equalities impact assessment has been prepared and will be published[1]. In summary, these Regulations should have a positive impact on equality given that they allow for greater numbers of people to gather together in various circumstances, which is important for the wellbeing of many different categories of people who have found the period of lockdown difficult.

[1] To be available at: https://gov.wales/equality-impact-assessments-coronavirus

Y Gwir Anrh/Rt Hon Mark Drakeford AS/MS
Prif Weinidog Cymru/First Minister of Wales

Llywodraeth Cymru
Welsh Government

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

21 August 2020

Dear Elin

The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 6) Regulations 2020

I have today made the Health Protection (Coronavirus Restrictions) (No.2) (Wales) (Amendment) (No. 6) Regulations 2020 under sections 45C(1), (3)(c), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984. These Regulations come into force on 22 August 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 11 October 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 intend to schedule these Regulations for debate in the Plenary on 22 September 2020.

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

MARK DRAKEFORD

Bae Caerdydd • Cardiff Bay
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Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**Review of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020**
DATE	**21 August 2020**
BY	**Mark Drakeford MS, First Minister**

The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 place a series of restrictions on gatherings, the movement of people, and the operation of businesses, including closures. They require businesses, which are open to take reasonable measures to minimize the risk of exposure to coronavirus. They are designed to protect people from the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

Welsh Ministers are required to review the need for the requirements and restrictions and their proportionality every 21 days.

The scientific and medical advice continues to show the level of coronavirus transmission in Wales remains low. However, the rise in cases we can see in other parts of the UK and further afield continues to remind us that the threat from the virus has not gone away. We are learning the lessons from those places, which indicates people meeting indoors remains a significant risk.

It is a priority for Welsh Government that schools in Wales should be able to open in September as planned. All the easements we make to restrictions have a cumulative effect on transmission rates and the headroom we have available. We will use the headroom we have to ensure children can resume their education next month.

In line with advice from the Chief Medical Officer for Wales and the scientific evidence of the risks from indoor settings, the conditions still do not permit me to ease the general restrictions on the ability of people to meet indoors. This is kept under continuous review and changes will be made when it is safe to do so.

This still means that we must not visit someone else's home indoors unless we are part of an extended household with them or providing care. It also means we can

only visit a business or premises indoors, such as a pub or restaurant, with members of our own household or extended household. It is, of course, possible to meet different people outdoors as long as social distancing is maintained.

I fully appreciate how difficult these continued restrictions can feel and the negative effects they might have on people's wellbeing. Therefore during this review period I am keen to provide relaxations to recognise the vital importance everyone places on being able to spend time with family and friends.

I can confirm that up to four households will be able to join together in an extended household from Saturday 22 August. This might take the form of two existing extended households joining together, or households not already part of one to join existing or new extended households.

Extended households have enabled families be reunited and helped those suffering from loneliness and isolation. They have also supported caring arrangements. I know families have had to make difficult choices however in deciding with whom they should form their extended household.

This change will benefit those previously not able to form an extended household as well as providing opportunities for people to meet with more friends and family. More people can visit each other indoors, go out and do things together, and stay overnight without social distancing.

Changes will also be brought forward to the Regulations to allow for some limited indoor celebrations following a wedding, civil partnership, or funeral for up to 30 people from 22 August. For now, these will be limited in scope, such as an organised meal in a hotel or restaurant, and must take place in a regulated setting. This will ensure that all reasonable measures are taken to limit the risks of infection and spread of coronavirus. We will learn the lessons from this relaxation to consider how they might be applied to other events in the future.

The risk from coronavirus is much lower outdoors, which has led to us easing restrictions more quickly in those areas. Our approach throughout this process has been to plan, where necessary pilot activity to learn lessons, and then ease restrictions further. Over the next few weeks we will pilot some limited outdoor events for up to 100 people.

We aim to do this through proposals that are in development for:

- Outdoor theatre events organised by Theatr Clwyd (over weekends beginning Friday 27 August);
- Small scale car rally at Trac Mon on Ynys Mon; and
- Welsh Triathlon's planned 'Return to Racing' competition at Pembrey Country Park.

To be clear, no other outdoor events of this sort will be allowed during the next three weeks. These pilots are being trialled to enable us to learn lessons, in the hope that more such events can be permitted in future.

Looking forward to the remainder of the three weeks of this review, we will use this time to look at how we can safely restart more activity indoors. This is important preparation for the autumn and winter when options to meet outdoors become less possible.

A number of people, including the Older People's Commissioner, have raised the growing concern about the impact restrictions on visiting care homes is having on people's emotional, mental and even physical health. I understand the distress this is causing.

The Welsh Government has been working closely with partners, to develop guidance that sets out the stringent considerations that care home providers should take in order safely to resume indoor visits. Everybody is concerned to ensure we prevent the spread of the virus amongst our most vulnerable citizens.

Our intention is to provide for indoor visits to recommence from Saturday 29 August subject to the strict controls set out in the guidance and conditions remaining favourable.

Subject to the completion of final preparatory work, casinos in Wales will also be able to reopen on Saturday 29 August.

Once again I am grateful to the people of Wales for their support as we collectively Keep Wales Safe.

SL(5)602 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 7) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 (the "principal Regulations").

The amendments:

- provide that no person may, without a reasonable excuse, be involved in organising certain unlicensed music events (within the meaning given in regulation 14B of the principal Regulations as to be inserted by regulation 2(7) of these Regulations). A person who fails to comply with the restriction commits an offence under regulation 20(1)(b) of the principal Regulations, and an enforcement officer may issue a fixed penalty notice of £10,000 under regulation 21 to anyone that the officer reasonably believes to have committed the offence,
- provide that people have a reasonable excuse (under regulation 14 of the principal Regulations) to gather indoors to visit a resident in a care home, hospice, or secure accommodation for children,
- clarify that people also have a reasonable excuse to gather to access educational services (both indoors as a reasonable excuse under regulation 14 of the principal Regulations, and outdoors as a reasonable excuse under regulation 14A of those Regulations),
- permit casinos to open, but measures must be taken to minimise the risk of exposure to coronavirus on the premises,
- make other technical changes, most of which are consequential on the other amendments made by these Regulations.

Procedure

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

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

Merits Scrutiny

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

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

There has been no public consultation in relation to these Regulations, the Explanatory Memorandum explains that this is due to "the serious and imminent threat arising from coronavirus and the need for an urgent public health response, including the need to lift any restrictions which are no longer considered proportionate to that response".

It is further explained that "more widely, individuals and businesses have been informed about the restrictions 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. In making the Regulations this week there has been ongoing discussions with the Chief Constables and Police and Crime Commissioners in Wales about the likelihood of unlicensed music events taking place in Wales, and the risk of organisers moving events from England to Wales if reciprocal provision was not made for Wales. All four police forces support the introduction of the new offence through this week's Regulations."

A regulatory impact assessment has not been prepared in relation to these Regulations due to the need to put them in place urgently as part of the ongoing response to a serious and imminent threat to public health. The Explanatory Memorandum does however state that a summary equalities impact assessment has been prepared and will be published.

Implications arising from exiting the European Union

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

Welsh Government response

A Welsh Government response is not required.

Legal Advisers
Legislation, Justice and Constitution Committee
8 September 2020

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

WELSH STATUTORY INSTRUMENTS

2020 No. 912 (W. 204)

PUBLIC HEALTH, WALES

The Health Protection (Coronavirus Restrictions) (No. 2) (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.

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 (the "principal Regulations"). The amendments—

(a) provide that no person may, without a reasonable excuse, be involved in organising certain unlicensed music events (within the meaning given in regulation 14B of the principal Regulations as to be inserted by regulation 2(7) of these Regulations). A person who fails to comply with the restriction commits an offence under regulation 20(1)(b) of the principal Regulations, and an enforcement officer may

issue a fixed penalty notice under regulation 21 to anyone that the officer reasonably believes to have committed the offence,

(b) provide that people have a reasonable excuse (under regulation 14 of the principal Regulations) to gather indoors to visit a resident in a care home, hospice, or secure accommodation for children,

(c) clarify that people also have a reasonable excuse to gather to access educational services (both indoors as a reasonable excuse under regulation 14 of the principal Regulations, and outdoors as a reasonable excuse under regulation 14A of those Regulations),

(d) permit casinos to open, but measures must be taken to minimise the risk of exposure to coronavirus on the premises,

(e) make other technical changes, most of which are consequential on the other amendments made by these Regulations.

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

WELSH STATUTORY INSTRUMENTS

2020 No. 912 (W. 204)

PUBLIC HEALTH, WALES

The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 7) Regulations 2020

Made	*27 August 2020*
Coming into force	*at 12.01 a.m. on 28 August 2020*
Laid before Senedd Cymru	*at 11.00 a.m. on 28 August 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.

(**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.

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

Title and coming into force

1. The title of these Regulations is the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 7) Regulations 2020 and they come into force at 12.01 a.m. on 28 August 2020.

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

2.—(1) The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020(**1**) are amended as follows.

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

"(o) "care home" means premises at which a "care home service" within the meaning given by paragraph 1 of Schedule 1 to the Regulation and Inspection of Social Care (Wales) Act 2016(**2**) is provided;

(p) "hospice" means premises wholly or mainly used for the provision of palliative care to persons who are suffering from a progressive disease in its final stages, by or behalf of an establishment the primary function of which is the provision of such care;

(q) "secure accommodation" means premises at which a "secure accommodation service" within the meaning given by paragraph 2 of Schedule 1 to the Regulation and Inspection of Social Care (Wales) Act 2016 is provided."

(**1**) S.I. 2020/725 (W. 162), as amended by the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) Regulations 2020 (S.I. 2020/752 (W. 169)), the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/803 (W. 176)), the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 3) Regulations 2020 (S.I. 2020/820 (W. 180)), the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 4) Regulations 2020 (S.I. 2020/843 (W. 186)), the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 5) Regulations 2020 (S.I. 2020/867 (W. 189)) and the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 6) Regulations 2020 (S.I. 2020/884 (W. 195)).

(**2**) 2016 anaw. 2, as amended by S.I. 2017/1326 (W. 299) and S.I. 2018/195 (W. 44).

(3) In regulation 7(2)(a), for "2, 5 or 6" substitute "2 or 5".

(4) In regulation 12(2A)—

(a) for the words before sub-paragraph (a) substitute "Measures that may be taken under paragraph (2) also include—",

(b) in sub-paragraph (c), for "the Welsh Ministers or to a public health officer upon either's request" substitute—

"any of the following, upon their request—

(i) the Welsh Ministers,

(ii) a public health officer,

(iii) a person designated by the local authority in whose area the premises are located to process information for the purposes of contacting persons who may have been exposed to coronavirus".

(5) In regulation 14(2)—

(a) after sub-paragraph (ja), insert—

"(jb)access educational services;",

(b) after sub-paragraph (p) insert—

"(q) visit a person who is resident in a care home, hospice, or in secure accommodation."

(6) In regulation 14A(2), after sub-paragraph (e) insert—

"(f) access educational services."

(7) After regulation 14A insert—

"Restriction on organising certain unlicensed music events

14B.—(1) No person may, without a reasonable excuse, be involved in organising a relevant unlicensed music event.

(2) For the purposes of this regulation "relevant unlicensed music event" means an event—

(a) which consists of more than 30 people,

(b) at which people are gathered in contravention of regulation 14(1) or 14A(1),

(c) at which music is played or performed for the purpose, or for purposes which include the purpose, of entertainment, and

(d) where the playing or performance of the music is—

(i) a licensable activity (within the meaning of the Licensing Act 2003(**1**)), and

(ii) not carried on under and in accordance with an authorisation (within the meaning given by section 136(5) of that Act).

(3) For the purposes of this regulation, a person is not involved in organising a relevant unlicensed music event if the person's only involvement is, or would be, attending it.

(4) For the purposes of paragraph (1), a reasonable excuse includes where the person has taken all reasonable measures to ensure that people were not gathered at the event in contravention of regulation 14(1) or 14A(1)."

(8) In regulation 18, after paragraph (5) insert—

"(5A) Where an enforcement officer has reasonable grounds for suspecting that a person is contravening, or is about to contravene, regulation 14B(1), the officer may—

(a) direct the person to follow such instructions as the officer considers necessary in order to stop or prevent the contravention;

(b) remove the person from the location or proposed location of the event which the officer suspects is being, or is about to be, organised in contravention of regulation 14B(1) (and the officer may use reasonable force to do so)."

(9) In regulation 20—

(a) in paragraph (1)(b), for "14(1) or 14A(1)" substitute "14(1), 14A(1) or 14B(1)",

(b) in paragraph (6), for "paragraph (1)" substitute "these Regulations".

(10) In regulation 21—

(a) after paragraph (7) insert—

"(7A) Where the notice is issued in respect of an alleged offence of contravening regulation 14B(1), the amount specified under paragraph (7)(c) must be £10,000 (and paragraphs (9) and (10) do not apply).";

(b) in paragraph (8), for "The" substitute "In any other case, the";

(c) in paragraph (11), after "account" insert ", but no account is to be taken of any fixed penalty notice issued to that person in respect of an

(**1**) 2003 c. 17.

alleged offence of contravening regulation 14B(1)".

(11) In Schedule 2, omit paragraph 6.

(12) In Schedule 4, after paragraph 44 insert—

"**45.** Casinos"

Savings for offences and penalties in relation to prior acts

3. Regulations 20 and 21 of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 continue to have effect in relation to any offence committed, or reasonably believed to have been committed, before the amendments made by these Regulations came into force as if those amendments had not been made.

Vaughan Gething
Minister for Health and Social Services, one of the Welsh Ministers
27 August 2020

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 2) (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) (No. 2) (Wales) (Amendment) (No. 7) Regulations 2020.

Vaughan Gething
Minister for Health and Social Services

28 August 2020

1. Description

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (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 restrictions contained in the principal Regulations should be relaxed as soon as they are no longer considered necessary or proportionate to retain them in their existing form.

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.

<u>European Convention on Human Rights</u>

Whilst the Regulations engage individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights, the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health and are proportionate.

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 adaption of the requirements made under the principal Regulations by these Regulations, is a proportionate response. These provisions balance the need to maintain an appropriate response to the threat posed by 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 coronavirus, taking into account the scientific evidence.

The relaxation of certain restrictions on visits to care homes, hospices and secure accommodation has a positive impact on the Article 8 right to respect for private and family life. The Welsh Ministers consider it proportionate to respond to the current level of threat by loosening those restrictions, in conjunction with the safeguards set out in supporting guidance.

The reopening of casinos raises no new human rights issues, and is considered proportionate from a public health perspective because of the existing inspection and enforcement regime.

The public health risks attaching to unlicensed musical events, together with the likelihood of these events going ahead based on advice from the four police forces in Wales, make the new offence a necessary and proportionate step to now take. The amendments also permit the police to take preventative action to stop these events being organise.d before they start. This is not easily done under existing licensing legislation but is considered to be an important and proportionate aspect consistent with the overarching aim of protecting public health

3. Legislative background

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

The Explanatory Memorandum to the principal Regulations provides further information on these powers.

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).

These Regulations amend the principal regulations so as to:

- explicitly enable visits (indoors) to residents and patients in care homes, hospices and secure accommodation. Prior to these changes it would not have been clear whether it was a reasonable excuse for persons to gather indoors for the purposes of undertaking visits to family and friends in care homes and similar settings. Although a number of care homes and hospices are permitting outdoor visits, and indoor visits in exceptional circumstances such as end of life, it is important to ensure that vital family and social connections are maintained. Circumstances now allow for this, and therefore the amendments to the principal Regulations create a new explicit reasonable excuse for gathering indoors, for the purpose of visiting a care home, hospice or premises providing secure accommodation

- re-open casinos. Such settings have not been permitted to open since late March 2020, and work with the sector has been underway to enable such premises to open safely. The Betting Gaming Council (the umbrella body for the sector) has developed membership guidance (at a UK level) which sets out health and risk management activity specific to their operations, aimed at keeping their employees and customers safe. This includes particular guidance for Wales which has been developed to reflect the requirements of the principal Regulations.

- create a new offence of organising (or being involved in holding) in an unlicensed music event that is in contravention of regulation 14(1) or 14A(1) of the principal Regulations. There is some evidence that events are being organised in various parts of Wales in breach of the principal Regulations, and some risk that in the absence of comparable penalties for organising these events in both England and Wales, event organisers might have an incentive to organise the events in Wales. Although participation in such events is already unlawful there has been, until now, no particular sanction could be imposed on those who place public health at risk by organising these events. The new offence ensures that action can be taken against those who organise events and came into force ahead of the August Bank Holiday, as this is a notoriously busy time for unlicensed music events.

  The commission of the offence is subject to having a reasonable excuse. This is consistent with the treatment of offences under the principal Regulations to date.

  A fixed penalty notice of £10,000 can be issued under regulation 20, in respect of this new offence.

  The amendments being made also provide that the offence is capable of being committed by a body corporate (by way of an amendment to regulation 20(6)). It is recognised that a body corporate could also commit offences under Schedule 5 to the Regulations (i.e. non-compliance with a closure notice), and as such the amendment now being made reflects that as well.

In addition the Regulations also make various technical and consequential changes to the principal Regulations, notably –

- adding a further reasonable excuse to gather indoors, i.e. “for educational reasons”. This is to put beyond doubt that individuals accessing certain educational services (for example, private schools and certain further education/higher education institutions) may gather indoor for those purposes.

- providing that the collection of contact tracing information is not only for the purposes of minimising the risk of exposure on the premises but also (and more appropriately) to minimise the risk of spreading the virus. Further to reflect that it is not only the Welsh Ministers and persons designated as public health officers under the Coronavirus Act 2020 who collect and process contact tracing information, the provisions now refer to persons designated by a local authority for this purpose.

The Regulations come into force at the beginning of Friday, 28 August 2020.

It is critical to take all reasonable steps to limit the 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 easing and adapting the restrictions by means of the amendments made to the principal Regulations are proportionate to what the principal Regulations 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, including the need to lift any restrictions which are no longer considered proportionate to that response, there has been no public consultation in relation to these Regulations.

More widely, individuals and businesses have been informed about the restrictions 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. In making the Regulations this week there has been ongoing discussions with the Chief Constables and Police and Crime Commissioners in Wales about the likelihood of unlicensed music events taking place in Wales, and the risk of organisers moving events from England to Wales if reciprocal provision was not made for Wales. All four police forces support the introduction of the new offence through this week's Regulations.

The First Minister, together with other Ministers and the Welsh Government, has continued to update individuals and businesses throughout subsequent changes to the Regulations. The First Minister signalled in his press conference of 21 August the intention to bring about some of the changes achieved in the Regulations made today, around casinos and visits to care homes, if circumstances allowed for it. These proposed changes were subsequently widely reported.

6. Regulatory and other impact assessments

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

A summary equalities impact assessment has been prepared and will be published. These Regulations are not believed to have any disproportionately negative impacts on groups with protected characteristics. The measures to allow for indoor visits to residents of care homes, hospices and secure accommodation is expected to have positive distributional impacts for the elderly, those with disabilities (particularly those with dementia), and children. The proposed easement will allow for feelings of isolation to be addressed for those in care and improve the well-being of them and their families/friends.

Vaughan Gething AS/MS
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

Llywodraeth Cymru
Welsh Government

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

27 August 2020

Dear Elin

The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 7) Regulations 2020

I have today made the Health Protection (Coronavirus Restrictions) (No.2) (Wales) (Amendment) (No. 7) Regulations 2020 under sections 45C(1), (3)(c), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984. These Regulations come into force at the beginning of 28 August 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 11 October 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 intend to schedule these Regulations for debate in the Plenary on 22 September 2020.

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,

Vaughan Gething

Vaughan Gething AS/MS
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

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Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**Interim review of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020**
DATE	**27 August 2020**
BY	**Vaughan Gething MS, Minister for Health and Social Services**

The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 place a series of restrictions on gatherings, the movement of people, and the operation of businesses, including closures. They require businesses, which are open to take reasonable measures to minimize the risk of exposure to coronavirus. They are designed to protect people from the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

Welsh Ministers are required to review the need for the requirements and restrictions and their proportionality every 21 days. The last full review – the seventh – took place on 20 August and signalled changes being planned for this week if conditions remained favourable.

The scientific and medical advice shows that, overall, levels of coronavirus transmission in Wales are low. We continue to remain concerned about the developing situations across the rest of the UK and the rest of the world.

We are making changes to the regulations on Friday 28 August that will allow for visits to residents of care homes (adults and children), hospices, or secure accommodation services for children. Guidance has been prepared with the industry to manage risks and each place will put in its own arrangements for visits. This change clarifies these can take place within the rules, but it is for each institution to determine when they are able to facilitate this activity. Given the benefits to resident's well-being, I hope that many homes can quickly update their procedures to enable indoor visits to take place safely. However, I do appreciate the anxiety that some providers will have about this significant change, and that some may need a little longer to put in place arrangements.

Casinos will also be able to open, having put in place mitigations and adaptations to minimise risks. Contact details will be collected and numbers of patrons limited.

Following discussions with the police, we are also amending the regulations to prohibit the organising of an unlicensed music event (which means an event that is not licensed or otherwise authorised under the Licensing Act 2003) for more than 30 people. A breach of this prohibition will be an offence punishable by conviction and an unlimited fine or, as an alternative to conviction, by a fixed penalty set at £10,000. This provides our police with broadly equivalent powers to those being introduced at the same time in England. The police will still utilise the four Es approach of Engage, Explain, Encourage, Enforce in acting proportionately.

We have not made any recent changes to the rules of gatherings. People should not gather in groups of more than 30 people outdoors or meet with people outside of their household or extended household indoors. It is therefore an offence to do otherwise without a reasonable excuse, such as the limited cases set out in the regulations.

The Deputy CMO has considered these changes and advised they are proportionate and cautious measures that are consistent with the overall aim of controlling the pandemic.

Coronavirus has not gone away – we all have a shared and ongoing responsibility to keep Wales safe.

SL(5)601 – The Curriculum Requirements (Amendment of paragraph 7(6) of Schedule 17 to the Coronavirus Act 2020) (Wales) Regulations 2020

Background and Purpose

These Regulations amend paragraph 7(6) of Schedule 17 to the Coronavirus Act 2020.

Paragraph 7(6) of Schedule 17 to the Coronavirus Act 2020 lists enactments that can be modified, and the manner in which they can be modified, by the Welsh Ministers for a specified period by notice. Regulation 2 of these Regulations adds the following provisions to this list:

- Section 69 of the School Standards and Framework Act 1998 which provides for a duty to secure due provision of religious education;
- Section 43 of the Education Act 1997 which imposes a duty to provide careers education in schools in Wales;
- Section 101 of the Education Act 2002 which makes provision for a basic curriculum for maintained schools in Wales;
- Sections 109 and 110 of the Education Act 2002 which imposes duties to implement the National Curriculum for Wales in schools and nursery schools; and
- Sections 116A to 116K of the Education Act 2002 which deals with formation and provision of local curricula for pupils in Key Stage 4.

The effect of Regulation 2 is that the Welsh Ministers are permitted to modify any of the duties above by notice, but only so that they can be discharged if reasonable endeavours have been used to discharge them.

The related notice, **Modification of Curriculum Requirements in Wales Notice 2020**, was issued on 27 August 2020 and published on the Welsh Government's website on 28 August 2020. The notice also modifies section 108 of the Education Act 2002, which was already listed in paragraph 7(6) of Schedule 17 to the Coronavirus Act 2020.

Procedure

Made affirmative.

These Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Regulations cease to have effect at the end of the period of 40 days (excluding recess of more than 4 days) beginning with the day on which the instrument is made unless, during that period, the Regulations are approved by the Senedd.

Technical Scrutiny

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

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

Regulation 2 adds provisions of certain enactments to the list of enactments in paragraph 7(6) of Schedule 17 to the Coronavirus Act 2020. The list in paragraph 7(6) runs in chronological order. However, Regulation 2 adds section 43 of the Education Act 1997 to the list after the School Standards and Framework Act 1998. This may cause confusion for anyone searching paragraph 7(6) for a specific statutory reference. An explanation would be welcomed as to why the Regulations depart from the chronological order utilised in the list in paragraph 7(6) of Schedule 17 to the Coronavirus Act 2020.

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

In the Welsh version of the Regulations, the footnote reference in regulation 2(2) is incorrect. It appears to refer to the Coronavirus Act 2020 instead of the Education Act 1996. This may cause confusion for some readers of the Regulations. This error is not replicated in the English version of the Regulations.

Merits Scrutiny

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

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 (Association of Directors of Education in Wales) 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 paragraph 7(6) in respect of which the Welsh Ministers can make notices to modify statutory requirements.

The Explanatory Memorandum goes on to state that in respect of any notices that are made, the impact of these will be detailed in an integrated impact assessment.

Implications arising from exiting the European Union

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

Welsh Government response

Technical scrutiny point 1:
The Welsh Government agrees that the entry for section 43 of the Education Act 1997 in the table in paragraph 7(6) does not appear in chronological order. This is inconsistent with the format of the table. However, whilst the entry is not in chronological order, this does not mean that the entry is ineffective, and this does not affect the validity of any notice issued in reliance on the entry.

Technical scrutiny point 2:
The reporting point states that the footnote provides the incorrect citation. The Welsh Government do not agree. The citation refers to the reference to the Coronavirus Act 2020 in the Preamble. There is a further footnoted reference in regulation 2(2) to the Education Act 1996. A temporary formatting error appears to have occurred during the registration process in the temporary version the Committee considered, as it is also numbered footnote (1). The footnote citation appears on the next page. This has now been corrected by the Queen's Printer during the publication process, and is correct in the official version published in dual column format and also available on legislation.gov.uk.

Legal Advisers
Legislation, Justice and Constitution Committee
3 September 2020

Regulations made by the Welsh Ministers and laid before Senedd Cymru under 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.

WELSH STATUTORY INSTRUMENTS

2020 No. 891 (W. 197)

EDUCATION, WALES

The Curriculum Requirements (Amendment of paragraph 7(6) of Schedule 17 to the Coronavirus Act 2020) (Wales) Regulations 2020

EXPLANATORY NOTE

(This note is not part of the Regulations)

The table in paragraph 7(6) 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)(b) of that Schedule, modify for a period specified in the notice, and the manner in which those enactments may be modified.

Regulation 2 amends the table to add new entries for—

- section 69 of the School Standards and Framework Act 1998 (duty to secure due provision of religious education);
- section 43 of the Education Act 1997 (provision of careers education in schools in Wales);
- section 101 of the Education Act 2002 (basic curriculum for maintained schools in Wales);
- section 109 of the Education Act 2002 (implementation of the National Curriculum for Wales in schools);
- section 110 of the Education Act 2002 (implementation of the National Curriculum for Wales in respect of nursery schools etc); and
- sections 116A to 116K of the Education Act 2002 (local curricula for pupils in Key Stage 4).

These new entries set out the modifications that may be made to those enactments by notice under paragraph 7(1)(b) of Schedule 17 to the 2020 Act.

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 of the costs and benefits of these Regulations.

Regulations made by the Welsh Ministers and laid before Senedd Cymru under 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.

WELSH STATUTORY INSTRUMENTS

2020 No. 891 (W. 197)

EDUCATION, WALES

The Curriculum Requirements (Amendment of paragraph 7(6) of Schedule 17 to the Coronavirus Act 2020) (Wales) Regulations 2020

Made	*24 August 2020*
Laid before Senedd Cymru	*25 August 2020*
Coming into force	*26 August 2020*

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

Title and coming into force

1.—(1) The title of these Regulations is the Curriculum Requirements (Amendment of paragraph 7(6) of Schedule 17 to the Coronavirus Act 2020) (Wales) Regulations 2020.

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

Amendment of paragraph 7(6) of Schedule 17 to the Coronavirus Act 2020

2.—(1) The table in paragraph 7(6) of Schedule 17 to the Coronavirus Act 2020 is amended as follows.

(2) After the entry for sections 512 to 512ZB of the Education Act 1996(**2**), insert—

(**1**) 2020 c. 7.
(**2**) 1996 c. 56.

"School Standards and Framework Act 1998	Section 69 (duty to secure due provision of religious education)	Any duty imposed on a person by section 69(1) is to be treated as discharged if the person has used reasonable endeavours to discharge the duty.
Education Act 1997	Section 43 (provision of careers education in schools in Wales)	Any duty imposed on a person by section 43(3) is to be treated as discharged if the person has used reasonable endeavours to discharge the duty."

(3) After the entry for section 140 of the Learning and Skills Act 2000(**1**), insert—

"Education Act 2002	Section 101 (basic curriculum for every maintained school in Wales)	Any duty imposed on a person by virtue of section 101 is to be treated as discharged if the person has used reasonable endeavours to discharge the duty."

(4) After the entry for section 108 of the Education Act 2002(**2**), insert—

"Education Act 2002	Section 109 (implementation of the National Curriculum for Wales in	Any duty imposed on a person by section 109 is to be treated

(**1**) 2000 c. 21.
(**2**) 2002 c. 32.

	schools)	as discharged if the person has used reasonable endeavours to discharge the duty.
Education Act 2002	Section 110 (implementation of the National Curriculum for Wales in respect of nursery schools etc)	Any duty imposed on a person by section 110 is to be treated as discharged if the person has used reasonable endeavours to discharge the duty.
Education Act 2002	Sections 116A to 116K (the local curricula)	Any duty imposed on a person by or under sections 116A to 116K is to be treated as discharged if the person has used reasonable endeavours to discharge the duty.”

Kirsty Williams
Minister for Education, one of the Welsh Ministers
24 August 2020

Explanatory Memorandum to the Curriculum Requirements (Amendment of paragraph 7(6) 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/Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Curriculum Requirements (Amendment of paragraph 7(6) of Schedule 17 to the Coronavirus Act 2020) (Wales) Regulations 2020

Kirsty Williams
25 August 2020

PART 1

1. Description

These regulations amend paragraph 7(6) of Schedule 17 to the Coronavirus Act 2020 ("the 2020 Act") so as to add:

- Section 69 of, and Schedule 19 to, the School Standards and Framework Act 1998,
- section 43 of the Education Act 1997,
- Sections 101(1), 109, 110 and 116A to 116K of the Education Act 2002,

to the list of enactments that can be modified by the Welsh Ministers for a specified period by notice.

The provisions added to this list of enactment confer functions on local authorities, governing bodies, head teachers and others in relation to the basic curriculum for Wales. That basic curriculum includes the following:

- Religious education
- Sex education
- Work-related education
- Personal and social education
- National Curriculum for Wales and
- local curriculum.

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. This is to ensure that the legislative requirements related to the provision of the curriculum can be modified prior to the start of the new academic year.

This is necessary to ensure schools have the flexibility to focus on the health and well-being of learners, supporting them to re-integrate back into a school environment. The flexibility will also allow schools to develop robust and coherent school-level plans to ensure that learning and teaching can continue

in all operational scenarios, including part-or full-closure of schools for periods as outlined in Welsh Government Learning Guidance.

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(6) of the 2020 Act that can be modified by the Welsh Ministers for a specified period by notice.

These Regulations are being made under the made affirmative procedure.

4. Purpose and intended effect of the legislation

Paragraph 7(6) of Schedule 17 to the 2020 Act sets out areas in respect of which the Welsh Ministers may issue notices to temporarily modify statutory education requirements to help mitigate the effects of the COVID-19 pandemic and enable the sector to adapt to the circumstances it is currently operating in. One of these areas is section 101 of the Education Act 2002 which places requirements on maintained schools in Wales to provide a basic curriculum including; the national curriculum, religious education, personal and social education, work related education and for secondary schools, sex education.

In preparing for the return to full operations of schools consideration has been given to current statutory requirements and whether schools and governing bodies could effectively meet these without a disproportionate administrative burden and in line with social distancing requirements. This identified the need to modify related curriculum provisions and associated assessment arrangements, namely:

- Section 69 of, and Schedule 19 to, the School Standards and Framework Act 1998 regarding the provision of religious education.

- Section 43 of the Education Act 1997 regarding provision of careers education in schools in Wales.

- Section 101(1) of the Education Act 2002 regarding the provision of the basic curriculum in maintained schools in Wales.

- Section 109 of the 2002 Act which requires the National Curriculum for Wales to be implemented in maintained schools in Wales and section 110 which requires it to be implemented in maintained nursery schools and some other nursery education settings in Wales.

- Sections 116A to 116K of the 2002 Act which make provision about the local curriculum including requirements that all young people are provided with a minimum offer of choices:

    - 25 choices at KS4 with a minimum of 3 vocational choices
    - 30 choices at post 16 with a minimum of 5 vocational choices

These provisions are not currently listed in paragraph 7(6) of Schedule 17 to the 2020 Act and as such regulations need to be made to add these provisions to paragraph 7(6) so that the Welsh Ministers may issue notices to temporarily modify statutory requirements.

Rationale for proposed modification

On 9 July, the Minister for Education announced that all pupils would be able to return to school in the autumn term, which would start on 1st September. Schools would have the flexibility to adopt a phased return to full operation, where needed, to reintegrate students and develop a plan for learning over the autumn term.

As such modification of the curriculum requirements and associated assessment arrangements to a reasonable endeavors basis will give schools and nursery settings the flexibility to respond to the unprecedented circumstances presented by COVID 19 and allow maintained schools and maintained nursery schools to focus and prioritise learning to meet the changing needs of learners in this time. Schools will be focusing on the health and well-being of learners and as they start to welcome learners back, further space and flexibility will be required to allow schools to focus on supporting learners back into a normal school environment, particularly where many learners will have faced different challenges and therefore progressed at different paces.

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(6) in respect

of which the Welsh Ministers can make notices to 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

24 August 2020

Dear Elin,

The Curriculum Requirements (Amendment of paragraph 7(6) of Schedule 17 to the Coronavirus Act 2020) (Wales) Regulations 2020

I have today made the Curriculum Requirements (Amendment of paragraph 7(6) 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 26 August. 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.

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 23 October 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. It may be helpful to know that I am minded to hold the plenary debate for this item of subordinate legislation on 29 September.

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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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SL(5)595 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 4) Regulations 2020

Background and Purpose

These Regulations set out the latest amendments to the coronavirus restrictions in Wales. The Regulations:

- Permit community centres, swimming pools, fitness studios, gyms, spas, leisure centres and indoor play areas to open; but measures must be taken to minimise the risk of exposure to coronavirus on the premises.
- Confer new powers on local authority enforcement officers to ensure that measures are taken to minimise the risk of exposure to coronavirus at workplaces and other premises that are open. An officer may issue a "premises improvement notice" requiring the person responsible for the premises to take specified measures, and if those measures are not taken an officer may issue a "premises closure notice" requiring the premises to close. Where necessary, an officer may also issue a premises closure notice without having previously issued a premises improvement notice. Provision is made for appeals against notices, for publicising notices, and for breach of the terms of either type of notice to be an offence.

Procedure

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

Two points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(i) - that there appears to be doubt as to whether it is intra vires

The Regulations create new offences relating to premises closure notices, punishable by up to 6 months' imprisonment or a fine. However, the Public Health (Control of Disease) Act 1984 provides that such offences cannot be punishable by imprisonment.

We note that the Welsh Government has already addressed this in the Health Protection (Coronavirus Restrictions) (No.2) (Wales) (Amendment) (No.5) Regulations 2020, by making it clear that such offences are punishable only by a fine.

The provision relating to imprisonment was in force between 10 August 2020 and 17 August 2020. We would be grateful if the Welsh Government could confirm that the provision had no practical effect during that time.

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

New regulation 18(7A) says that an enforcement officer may:

(a) require any person to give any information or answer any question that the enforcement officer considers to be relevant to the enforcement power,

(b) require the production of, inspect and take copies of any documents or electronic records.

New regulation 18(9B) says that no information or answer given under regulation 18(7A)(a) may be used as evidence against that person (or the person's spouse or civil partner) in proceedings under any enactment other than these Regulations.

Could the Welsh Government confirm:

(i) the reason for regulation 18(7A)(a) being expressly limited to information and answers that the enforcement officer considers to be relevant to the exercise of the enforcement power, while regulation 18(7A)(b) is not similarly expressly limited,

(ii) whether information or answers provided by a person under regulation 18(7A)(a) can be used against a person in any proceedings that are not brought under an enactment,

(iii) whether documents or electronic records referred to in regulation 18(7A)(b) can be used against a person in any proceedings (in other words, why does regulation 18(9B) refer only to regulation 18(7A)(a)).

Merits Scrutiny

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

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

The circumstances surrounding the coronavirus pandemic are constantly changing. One consequence of this is that the legislation setting out the restrictions that apply to individuals and businesses in Wales has now been made / amended 17 times to reflect those changing circumstances. This naturally makes is difficult for individuals and businesses to keep up to speed with the changes and what they are required to do. In turn, this raises question as to how the restrictions have been enforced.

With regard to enforcement of the coronavirus restrictions in Wales, could the Welsh Government:

(i) broadly set out how it works with the various enforcement agencies in Wales,

(ii) confirm whether the pace of change of the restrictions has any impact on the approach to enforcement (for example, does it lend itself to a regime that focuses only on the more serious breaches, and how much additional burden does it put on the various enforcement agencies).

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

These Regulations introduce enforcement measures to ensure that workplaces and other premises comply with the requirement to minimise the risk of exposure to coronavirus. The enforcement powers are given to local authority officers.

The Explanatory Memorandum does not refer to any discussions between the Welsh Government and Welsh local authorities in relation to these new enforcement powers.

Can the Welsh Government confirm what discussions it has had regarding the new enforcement powers, in particular regarding the resources required to carry out the enforcement powers. For example, if a business receives a premises closure notice and the business rectifies the issues immediately, how long might it be before an enforcement officer will return to the premises to terminate the premises closure notice and allow the business to open again?

Implications arising from exiting the European Union

None.

Government Response

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

Committee Consideration

The Committee considered the instrument at its meeting on 24 August 2020 and reports to the Senedd in line with the reporting points above. In addition, the Committee agreed to write to the Welsh Government in relation to the first technical scrutiny reporting point.

GOVERNMENT RESPONSE: THE HEALTH PROTECTION (CORONAVIRUS RESTRICTIONS) (NO. 2) (WALES) (AMENDMENT) (NO. 4) REGULATIONS 2020

1. This is a Government response to the report of the Legislation, Justice and Constitution Committee laid before the Senedd on 24 August 2020. Since laying their report, the Committee has also written to the First Minister on points relating to the custodial sentence (see below).

Technical scrutiny points:

Custodial sentence

2. The Committee's report has sought confirmation of any practical effect of including provision about custodial sentences in the Regulations.

3. The Government is not aware that during the period 10 August to the end of 16 August 2020, when the potential for an erroneous custodial sentence to be given was removed from the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020, that there had been any practical effect of its original inclusion.

4. As noted in the Explanatory Memorandum to the subsequent Regulations which removed the error, HMCTS Wales, the Ministry of Justice and the Judicial Office were notified on 10 August 2020 of the error by email (from the lead official with responsibility for such liaison). HMCTS Wales acknowledged the email, but there has not been any subsequent engagement from HMCTS, the Judicial Office or indeed the Lord Chief Justice's office who were also subsequently informed, on this matter.

5. Additionally, we have not been made aware of any instances when a custodial sentence had been sought, but in any case the courts had no correct powers to impose such a sentence in practice. Further, early indications from ongoing engagement with enforcement offers is that after the first week of operation (i.e. the relevant period) there were no reports of premises being closed, and that enforcement officers are – as would be expected – taking a proportionate approach to these Regulations and working with each other nationally to ensure a consistent approach.

Information and records

6. The Committee is seeking explanation of:

    a. the reason regulation 18(7A)(a) is expressly limited, whilst regulation 18(7A)(b) is not similarly limited;

    b. whether information or answers provided under regulation 18(7A)(a) can be used in proceedings not brought under an enactment; and

    c. why regulation 18(9B) refers only to regulation 18(7A)(a).

7. The difference between the wording of paragraphs (a) and (b) of regulation 18(7A) reflects the nature of the requests that would be made under each paragraph. When officers ask a specific question or require a person to give specific information under paragraph (a), they should know whether it is relevant to their inquiries, whereas when they are asking to see a document or record under paragraph (b) they may not be certain until they see it. However, in both cases the opening words of regulation 18(7A) make clear that the purpose of requiring information or documents must always be to facilitate the exercise of the enforcement powers in Schedule 5. An officer seeking documents or records under paragraph (b) will therefore need to think that documents or records are likely to contain information relevant to the exercise of those powers.

8. It was not the intention that the protection provided by regulation 18(9B) should be limited to proceedings brought under enactments, but the Government accepts that the wording of regulation 18(9B) did not accurately reflect its intended effect. The Welsh Ministers have therefore taken the opportunity in the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 6) Regulations 2020 to amend regulation 18(9B) to make clear that information and answers given under regulation 18(7A) is not admissible in any proceedings other than proceedings under the Regulations.

9. The protection given by regulation 18(9B) applies only to information and answers provided under regulation 18(7A)(a), and not to other documents and records that a person is required to produce. This is because there are particularly strong arguments for preventing answers and information given under compulsion in the course of a criminal investigation from being used against a person in other proceedings. The Government considers that a clear rule against admitting this material evidence is therefore justified in the interests of fairness. The arguments for excluding information and records that already existed independently of any investigation are generally less strong. A court would still need to consider whether it was fair to admit material obtained under regulation 18(7A)(b) in each case, but the Government does not consider that an outright prohibition on doing so is required.

Merits scrutiny points:

Enforcement of coronavirus restrictions

10. The Committee has asked the Government to:

    a. broadly set out how it works with the various enforcement agencies in Wales,

    b. confirm whether the pace of change of the restrictions has any impact on the approach to enforcement (for example, does it lend itself to a regime that focuses only on the more serious breaches, and how much additional burden does it put on the various enforcement agencies).

11. The Government is also asked to confirm what discussions it has had regarding the new enforcement powers, in particular regarding the resources required to carry out the enforcement powers.

12. The Government has worked closely with the four police forces in Wales on enforcement of the requirements of the legislation. Constables (police officers) may take action against those breaching the principal Regulations, including but not limited to issuing Fixed Penalty Notices (FPNs). Under the principal Regulations, the same enforcement powers are available to Police Community Support Officers, who have taken an active role in enforcement.

13. Forces have taken a 4 Es approach to the principal Regulations: engage, explain, encourage and using enforcement as a very last resort. Despite that a number of FPNs have been issued across the forces for a variety of reasons, and where appropriate additional FPNs have been issued for repeat offenders. On 10 July the National Police Chief's Council published a statistical analysis of FPNs – the full data pack can be found at: **https://cdn.prgloo.com/media/ce7016aa5ba24a188ebd06363fbc4d60.pdf**. The figures are for 27 March to 6 July, and therefore a number of FPNs were issued under the original principal Regulations[1]. However the report includes information on the reasons the fines were issued:

Contravene requirement as to restriction of movement during the emergency period	2,166
Contravene a direction or fail to comply with instruction	350
Contravene requirement to not participate in a gathering of more than two people	262
Contravene requirement from a relevant person	54
Obstruct person carrying out a function under the Regulations	9
Total	2,166

14. The analysis also sets out the number of FPNs issued for repeat offences during the reporting period:

Number of FPNs	
2	78
3	4
4	2
5	2
6	0
7	1
8	0

15. As can be seen the significant majority of FPNs were issued for breaches of travel restrictions. Dyfed Powys and North Wales police force areas issued the most fines, a significant majority of which were issued to people travelling into the area.

[1] The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020

16. It is recognised that the pace of change has been problematic in terms of enforcement, but throughout the process the Government has worked with Welsh Police and Crime Commissioners, police forces and the British Transport Police to ensure there has been as early sight as possible of the changes. Both Ministers and officials have briefed Police and Crime commissioners and Chief Constables ahead of changes being made.

17. As the principal Regulations have changed, the role played by policing in proactive enforcement has reduced as restrictions have been eased. The position now is one where policing is supporting other enforcement bodies – notably local authorities – rather than taking the lead. Usual policing demand has now returned to pre-pandemic levels. In fact, forces have identified in the last couple of weeks, calls for service demands over weekends that are in excess of that for New Year's Eve. This inevitably has a knock on effect in terms of policing's capacity to engage in other enforcement activity. That being said, where policing is required to intervene (such as in the case of unlawful gatherings) they continue to do so, but utilising more traditional policing powers. The Committee will also be aware that new provision to tackle unlicensed musical events has been introduced since the time of the draft report on the "No. 4" amending Regulations was prepared.

18. There have been extensive discussions between Government officials and local authorities during the preparation of the principal Regulations (and subsequent amendments), including with Directors of Health Protection, local authority chief executives and council leaders. These focused on how existing resources could be prioritised so as to create and implement legislation that would provide practical solutions to dealing the problems of non-compliance quickly but in a graduated, consistent and clear way.

19. Local authorities play a key role in enforcing environmental health, trading standards and latterly legislation aimed at reducing the spread of coronavirus. Enforcement powers provide authorities with the ability to prohibit practices, products or equipment where there is an immediate risk; to require improvements or changes to be made where appropriate; or to prosecute. None of these powers is used lightly and local authority inspectors are encouraged to work with business to improve, only resorting to enforcement action where there is an immediate threat, or where a business simply refuses to comply in relation to a significant issue.

20. Annex 1 to the Government's '*Guidance to enforcement officers on regulation 12: the requirement to take all reasonable measures to minimise risk of exposure to coronavirus in workplaces and premises open to the public'* sets out the principles underpinning how local authorities and officers should enforce the principal Regulations, including proportionality in application; targeting of enforcement action; consistency in approach; transparency about how enforcement officers operate and what can be expected, and accountability for actions taken. A practical framework as to how the Regulations should be implemented is at Annex 2.

Y Gwir Anrh/Rt Hon Mark Drakeford AS/MS
Prif Weinidog Cymru/First Minister of Wales

Llywodraeth Cymru
Welsh Government

Mick Antoniw MS
Chair
Legislation, Justice & Constitution Committee
Senedd Cymru
Cardiff Bay
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10 September 2020

Dear Mick

The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 4) Regulations 2020

Thank you for your letter of 25 August 2020 regarding the above Regulations. The Government has now provided a substantive response to the Committee's helpful report on these Regulations, which addresses the matters raised in your correspondence.

Yours sincerely

Mark Drakeford

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SL(5)596 – The Education (School Day and School Year) (Wales) (Amendment) (Coronavirus) Regulations 2020

Background and Purpose

The Regulations are made under the powers conferred on the Welsh Ministers by sections 551 and 569(4) and (5) of the Education Act 1996.

These Regulations amend the Education (School Day and School Year)(Wales) Regulations 2003 ("the 2003 Regulations"). The 2003 Regulations set out the minimum number of half-day sessions for which maintained schools must meet within a school year. The minimum number is 380 sessions (190 days).

These Regulations amend the 2003 Regulations in two ways:

1) To allow schools in Conwy, Pembrokeshire and Powys, which opened for an additional week at the end of the summer term of the 2019-2020 school year to hold at least 370 sessions during the 2020-2021 school year instead of at least 380 sessions.

2) To allow for up to 4 sessions to count as sessions on which the school met if they were devoted to the preparation of schools and planning required to enable schools to open to all learners following a reduction in operations as a result of the incidence and transmission of Coronavirus. These sessions would be held during the first two weeks of the 2020-2021 school year.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

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

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

The Explanatory Memorandum notes that the Welsh Government consulted with "*local authorities and the Welsh Local Government Association*". Local authority directors were issued with a letter on 29 July 2020 setting out the intentions, and "*local authorities were invited [to] raise any concerns in response.*" The Explanatory Memorandum does not explain whether or not local authorities did respond with any concerns.

The Education (School Day and School Year) (Wales) (Amendment) Regulations 2019 ("the 2019 Regulations") came into force on 1 September 2019, allowing schools one additional INSET day for each of the next three years. An eight week public consultation on the policy approach took place, and 899 responses were received. The Explanatory Memorandum issued by the Welsh Government in relation to the 2019 Regulations explained that a wide audience of key stakeholders were consulted, *"including*

Headteachers, schools, Regional Consortia, Teacher Unions, Local Authorities, and Estyn. The consultation was also publicised on social media."

Given the number of responses and the range of key stakeholders consulted in relation to the 2019 Regulations, clarification is sought as to why a wider range of stakeholders were not consulted in respect of these Regulations. It would be helpful to learn whether or not those consulted raised any concerns, in particular those local authorities where schools will be closed for an additional week, where families will need to ensure childcare arrangements for a week outside the usual school holidays period.

The Explanatory Memorandum further provides that an Equality Impact Assessment was undertaken which found that "*disadvantaged and vulnerable groups could be adversely affected by an extended half term break and by the two planning and preparation days at the start of term. Families who live in poverty or those whose income is reliant on actual hours worked may struggle with childcare for these extra days.*"

What steps has the Welsh Government undertaken to comply with regulation 8(1)(d) of the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 (2011/1064)? What steps has the Welsh Government taken to mitigate the impact on those groups and families identified in the Equality Impact Assessment as being adversely affected by an extended half term break?

Implications arising from exiting the European Union

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

Government Response

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

Committee Consideration

The Committee considered the instrument at its meeting on 24 August 2020 and reports to the Senedd in line with the reporting point above. In addition, the Committee agreed to write to the Welsh Government to seek further clarification in relation to the reporting point.

Government Response: The Education (School Day and School Year) (Wales) (Amendment) (Coronavirus) Regulations 2020

Merit Scrutiny point:

The Minister for Education, when she announced “back to school plans” for September on 9 July, stated ‘there will be a period of flexibility in recognition that schools may want to focus on priority year groups, such as those new to secondary schools, those sitting exams next summer or those in reception classes. This will also allow time, up to a fortnight, for any planning and reorganisation’.

Planning and preparation days, without learners present in school, form part of these flexible arrangements.

The Association of Directors of Education in Wales (ADEW) group is engaged in regular dialogue with senior officials in the Education Directorate. It was from the discussions with this group that the issue of needing extra planning and preparation days at the beginning of the new autumn term arose. Local authorities were concerned that some schools would not have enough time to get ready to welcome back all learners from 1 September.

It was necessary to amend the Regulations in order to account for these extra days of planning and preparation, which are in addition to the allocated INSET days, otherwise many schools would be in breach of statutory legislation to provide a minimum number of sessions over the school year.

Three local authorities indicated, in response to letters from the Welsh Government, that two days’ planning and preparation would not be enough for their schools. An additional letter was issued to those authorities, reminding them of their statutory duties and urging them to reconsider their plans so as to keep any further missed schooling to an absolute minimum. No further concerns have been raised by local authorities regarding the arrangements.

As the changes applied to the new school year and it is not customary to consult with schools over the summer holidays, there was insufficient time to undertake a full consultation. Not making the amended 2020 Regulations was not a viable option as we recognised that some schools needed extra time in order to properly prepare for the safe return of children and young people to full-time education. This is one-off amendment to the Regulations in response to the effect of the coronavirus pandemic.

More generally, in line with the expectations set out in the Minister for Education’s decision framework, officials across the Directorate continue to work closely with a wide range of partners to help shape and inform policies and proposals relating to increasing operations in schools and settings. These include ADEW, the middle tier and headteachers’ group, the trades unions, as well as the Chief Scientific Advisor, Chief Medical Officer, Public Health Wales and the Technical Advisory Cell (TAC).

No issues have been raised with the Welsh Government in relation to the extended autumn half term break in those local authority areas where schools opened for an additional week at the end of the summer term.

The extended half term break was agreed with Welsh Ministers for those local authorities on 8 July. This followed the statutory procedure stipulated in the Education (Notification of School Term Dates) (Wales) Regulations 2014, whereby local authorities must gain the agreement to a change to notified term dates from all governing bodies of voluntary aided and foundation schools in their area and the Welsh Ministers.

The Minister for Education issued confirmation letters to those authorities immediately, asking them to update their published term dates and to ensure parents and families of the learners affected were made aware of the change.

Early notification to the change of term dates for these local authority areas has given parents the time to plan for any additional childcare needs for the extended half term break.

Under the Childcare Act 2006 local authorities in Wales are required to secure sufficient childcare to help parents to work or train. For these authorities, where half term will run for two weeks as opposed to the usual one week, discussion with childcare providers around extended holiday childcare schemes will need to take place.

The National Survey for 2018-19 reported that of the 48% of parents using childcare, 76% used informal childcare provided by family and friends. Single parent households and those with lower incomes are more likely to use informal childcare. This usage and reliance has been recognised in the Welsh Government's approach to supporting the formation of extended households.

Welsh Government has taken steps to comply with regulation 8(1)(d) of the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 by conducting impact assessments and ensuring local authorities are aware of their statutory responsibilities, both in providing the required number of school sessions and in providing sufficient childcare. Impact assessments will be published in due course.

SI laid in Parliament which amends secondary legislation in a devolved area

Title of the SI

The Prohibition on Quantitative Restrictions (EU Exit) Regulations 2020

Policy Overview of the SI

The SI provides that provisions on the prohibitions on quantitative restrictions on imports and exports between member states which continue as directly effective rights in domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018, should cease.

The retained EU Law which is being amended

- Directly effective rights under Articles 34, 35 and 36 of the Treaty on the Functioning of the EU (TFEU) 2007
- Directly effective rights under Articles 11, 12 and 13 of the European Economic Area (EEA) Agreement
- Directly effective rights under Articles 13, 13a and 20 of the Agreement between the European Economic Community and the Swiss Confederation
- Directly effective rights under Articles 5, 6 and 7 of Decision No. 1/95 of the EC-Turkey Association Council on implementing the final phase of the Customs Union as provided for under Articles 5 and 10 of the Agreement establishing an Association between the European Economic Community and Turkey signed at Ankara on 12th September 1963

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

There is no impact on legislative or executive competence

The purpose of the amendments

This negative procedure SI addresses the failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the EU.

The SI revokes directly effective rights under Articles 34 to 36 of the Treaty on the Functioning of the European Union, Articles 11 to 13 of the European Economic Area (EEA) Agreement, Articles 13, 13a and 20 of the Agreement between the European Economic Community and the Swiss Confederation and Articles 5, 6 and 7 of Decision No. 1/95 of the EC-Turkey Association Council on implementing the final phase of the Customs Union as provided for under Articles 5 and 10 of the Agreement establishing an Association between the European Economic Community and Turkey signed at

Ankara on 12th September 1963. These directly effective treaty rights (DETRs) will become retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018 at the end of the implementation period on 31 December 2020. If the DETRs are not revoked they will still apply after the end of the implementation period.

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

https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-prohibition-on-quantitative-restrictions-eu-exit-regulations-2020

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

166 - The Prohibition on Quantitative Restrictions (EU Exit) Regulations 2020

Laid in the UK Parliament: 13 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	21 July 2020
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	28 July 2020 – recommended upgrade to the affirmative procedure
Date sifting period ends in UK Parliament	7 September 2020
Written statement under SO 30C:	Paper 38
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(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 ("the Withdrawal Act").

These Regulations use powers in the Withdrawal Act to correct deficiencies in EU-derived legislation in relation to prohibitions on quantitative restrictions on imports and exports, after the end of the implementation period.

The purpose of these Regulations is to end the application of rights flowing from the provisions within the Treaty on the Functioning of the European Union (Articles 34 to 36) which prohibit the imposition of quantitative restrictions and equivalent measures on imports or exports within the EU, after the end of the implementation period. These directly

effective treaty rights will become retained EU law at the end of the implementation period, by virtue of section 4 of the European Union (Withdrawal) Act 2018, however these Regulations provide that these rights should cease.

These Regulations also make provisions in respect of similar provisions in the Agreement on the European Economic Area, the Agreement between the European Economic Community and the Swiss Confederation, signed at Brussels and the Agreement between the European Economic Community and Turkey, signed at Ankara.

The savings provision makes an exception allowing for the continuation of rights under the doctrine of exhaustion of intellectual property rights (the Intellectual Property (Exhaustion of Rights)(EU Exit) Regulations 2019.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 23 July 2020 regarding the effect of these Regulations:

The Welsh Government's statement provides that "*consenting to a UK wide SI ensures that there is a single legislative framework across the UK*". Whilst the territorial extent of this Regulation is the UK, the territorial application of these Regulations does not extend to Northern Ireland, as the Northern Ireland Protocol will apply to the movement of goods between Northern Ireland and both the European Union and Great Britain. The Northern Ireland Protocol does apply Articles 34 to 36 of the Treaty on the Functioning European Union, and the similar provisions made in the EEA Agreements and the agreements with Switzerland and Turkey, in Northern Ireland.

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.

Jeremy Miles AS/MS
Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition

Llywodraeth Cymru
Welsh Government

Mick Antoniw MS
Chair, Legislation, Justice and Constitution Committee
Senedd Cymru
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27 August 2020

Dear Mick,

I am writing to inform you, as per the inter-institutional relations agreement that on Thursday 3 September, the next Joint Ministerial Committee (EU Negotiations) will again take place virtually. The meeting will discuss the Common Frameworks programme, the UK Internal Market, negotiations between the UK-EU, and an update on transition matters including UK Readiness, engagement, the Northern Ireland Protocol and legislation.

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

Jeremy Miles AS/MS
Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd Counsel General and Minister for European Transition

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28 August 2020

Dear Mick

I am writing in response to your letter of 23 July and your invitation to attend the Legislation, Justice and Constitution Committee meeting on 12 October as part of the Committee's ongoing inquiry, "Making Justice work in Wales". Both I and the Counsel General look forward to attending.

You also referred to the second annual report of the President of Welsh Tribunals. I can confirm that we will schedule a debate on the report, a date for which is being explored by officials.

Best wishes

Mark

MARK DRAKEFORD

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Tribiwnlysoedd Cymru
Welsh Tribunals
Llywydd / President

7 September 2020

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

Dear Mr Antoniw

I set out below my answers to the additional questions asked of me by your letter of 22 July 2020

1. How should the Senedd scrutinise the administration of the Welsh Tribunals and devolved justice functions in Wales?

- I acknowledge, of course, that the manner in which the Senedd scrutinises the administration of the Welsh Tribunals and devolved justice functions in Wales is a matter, ultimately, for the Senedd. However, the Senedd has available to it the annual reports of each Tribunal, the annual report of PWT and it has the ability to invite PWT to appear before LJCC and/or any other Committee which is concerned with devolved justice functions. When I appeared before the Committee in July I was accompanied by the Head of WTU who supplemented my evidence where appropriate. I would certainly expect that PWT, accompanied by the head of WTU, will now appear annually before LJCC and, when necessary, any other committee of the Senedd.

- I note that the Equality Local Government and Communities Committee has recently produced a report upon the Impact of Covid-19. The report is wide-ranging and it includes a section on the impact of rule changes in the Mental Health Review Tribunal for Wales which were introduced, specifically, to meet the challenges which the pandemic might produce. I welcome the scrutiny of the Committee upon this issue but I note that the Committee took no evidence from PWT, the President of the Mental Health Review Tribunal, the head of WTU or the civil servants within WTU who are most familiar with the operation of the Tribunal. I would respectfully suggest that scrutiny of particular aspects of the work of tribunals as a whole and/or scrutiny of an individual tribunal necessarily involves taking evidence and/or obtaining views from those who are responsible for the operation of the tribunals or tribunal.

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2. How might the Senedd engage with the Welsh Tribunals in the development of their role and the development of new administrative law?

- So far as I am aware there is no dialogue between the Senedd as an institution and the Welsh Tribunals relating to the role of the tribunals and the development of new administrative law. PWT, accompanied by the Head of WTU, meets the First Minister (who is accompanied by the Counsel General and senior civil servants) on an annual basis to discuss matters of mutual interest and/or concern and, as I have said, I would expect that PWT and the Head of WTU would appear annually before LJCC henceforth and before any other Committee when necessary.

- It is difficult to see other than a limited role for the Welsh Tribunals in the development of new administrative law. A core function of the tribunals is to apply law made by the legislature. However, I could envisage circumstances in which PWT and the lead judge of a particular tribunal might be consulted about the impact upon the tribunals generally, or individually, of a proposed new law.

- The scope and role of each tribunal is defined by legislation. Some of that legislation is made in Westminster; some is made by the Senedd. I would expect that if changes to the role of a particular tribunal were being considered by the Senedd, civil servants in the justice policy division would consult with PWT, the judicial lead of the particular tribunal and the head of WTU so as to test the principles underpinning the proposed change and to obtain an informed view as to the practical ramifications of the proposed change. My understanding is that this happens, to an extent, currently. The judicial lead of the Special Education Needs Tribunal is being consulted about proposed new legislation affecting the role of that tribunal.

3. What are the reasons for the ‘significant overspend’ in 2019-20 that was referred to in your second annual report?

- The Welsh Tribunals Unit budget has remained the same over the last few years, whereas tribunal cases and costs have increased. In recent years the tribunal budget has had to absorb a number of costs. Examples are pensions for legal members, payment of fees to the President of Welsh tribunals and the cost of the provision of e-judiciary for around 200 tribunal members.

  The 2019/20 financial year highlighted a significant overspend which can be attributed to:

  - increased case numbers and hearings days together with an increase in the number of complex cases
  - vice president fees for RPT – this role was vacant role in 2018/19
  - revised fee structure to ensure parity of fees across devolved tribunals and wider UK judiciary
  - fees for two new legal members in ALT

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- 2% SSRB pay increase as opposed to the forecast 1%
- 13% pension contribution increase for legal members
- Less vacancies as compared to previous years within the Welsh Tribunals Unit staffing structure

- Welsh Tribunals Unit have a system in place to regularly monitor spending and when it becomes apparent to WTU that additional resources are needed these additional needs are flagged to the Welsh Government finance division at the earliest opportunity.

- The work of the Tribunals is demand led and in consequence it is difficult to forecast expenditure precisely for any one year. Trends from previous years along with the impact of tribunal reform provide a guide but no more than that. Forecasting work for 2020/21 indicated a similar projected overspend for the tribunals as occurred in 2019/20 and that would suggest the need to review the baseline budget for the Unit. The full financial impact of COVID is not yet known for the tribunals.

4. What are your views on the level of data and information on spending and performance included in the annual reports for each tribunal?

- I am satisfied that the data provided in the annual reports for each tribunal provide a satisfactory level of detail about spending and performance. I have not been made aware during my tenure (or before that when I was performing the role of PWT voluntarily) of any concern about a lack of detail. However, if there are particular concerns about the level of detail provided in the reports I would welcome specific suggestions from the Committee about proposed improvements which I would then willingly discuss with the judicial leads of the tribunals. I would be happy to receive correspondence from the Chair of the Committee as the means of communicating the views of the Committee.

5. What further observations, if any, would you like to make regarding external input on the preparation of tribunal annual reports? [See paragraphs 97-98 of the meeting transcript].

- I can confirm that there is no external input into the preparation of the annual reports for each tribunal, if the phrase “external input” is taken to be a reference to any person or body other than the Head of WTU and/or her staff. Having reflected upon the issue I hold to the view which I expressed in the session before the Committee that judicial independence dictates that the report should contain the independent view of the judicial lead insofar as it consists of comment or opinion. Obviously, the purely factual content of the report e.g. number and/or types of case and expenditure is provided to the judicial lead by the head of WTU and/or her staff. My understanding is that all the factual and statistical information provided is thoroughly checked and that there is no need for an external audit to ensure its accuracy.

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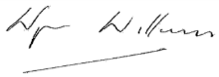
- I write the annual report of PWT. Purely factual material about the performance of the tribunal is provided to me by the head of WTU and her staff.

6. What further observations, if any, would you to make regarding the collection of specific Welsh data? [See paragraphs 120 and 128 of the meeting transcript].

- Most of the data about the justice function in Wales is collected by Her Majesty's Court and Tribunal Service. That is to be expected since in the main the justice function is not devolved. My understanding is that Wales is not treated as a separate country by HMCTS in the collection of this data save insofar as there may be data collected which is specific to the Wales Circuit.
- There is very little that I (or the head of WTU) can do about this since our sphere of influence relates to the devolved tribunals. It may be that if Welsh Government took up with the MOJ and/or HMCTS the way in which data was collected as it relates to Wales a different approach might be adopted which would "isolate" data about the justice function in Wales. If such a change was practicable it would, in my view, be a desirable reform.

Yours sincerely



SIR WYN WILLIAMS
LLYWYDD TRIBIWNLYSOEDD CYMRU/PRESIDENT OF WELSH TRIBUNALS

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Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

Llywodraeth Cymru
Welsh Government

Mick Antoniw MS
Chair of Legislation, Justice and Constitution Committee

28 August 2020

Dear Mick

Legislation, Justice and Constitution Committee Report on the Legislative Consent Memorandum for the UK Environment Bill

Thank you for providing a copy of the Legislation, Justice and Constitution Committee's report and recommendations on the Legislative Consent Memorandum for the UK Environment Bill.

Please find the Welsh Government's response to the report's recommendations at Annex A.

I would like to take this opportunity to update the Committee on the current situation with the UK Parliament and Senedd Cymru's consideration of the Bill. The Bill was being considered by a public bill committee in the House of Commons but sittings of the Committee were suspended on 18 March until further notice. The Committee is now scheduled to report by Tuesday 29 September. There has been no update on when the parliamentary scrutiny of the Bill will likely recommence.

Given the uncertainty in the UK Bill timetable, no legislative consent motion debate has been scheduled for the Senedd at present. I now expect this to take place after summer recess.

Regards

Lesley Griffiths

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Annex A

Welsh Government Responses to Recommendations from the Legislation, Justice and Constitution Committee on the Legislative Consent Memorandum for the UK Environment Bill

Recommendation	Welsh Government Response
Recommendation 1. The Minister should respond to all recommendations contained in this report as a matter of urgency and in good time ahead of the Welsh Government tabling the relevant legislative consent motion.	**Accept** **Financial Implications** – There are no financial implications as a result of accepting this recommendation.
Recommendation 2. The Minister should: ▪ state clearly which clauses of the UK Bill are in policy areas with identified common frameworks; ▪ explain how those clauses relate to the relevant planned common frameworks, in full or in part; ▪ state when a common framework in those policy areas will come forward and identify the mechanisms by which it will be achieved.	**Accept** The Bill includes provisions for chemicals and waste regulation. These are two policy areas where frameworks are being developed, namely the Chemicals Regulation (including Pesticides) Framework and the Waste and Resources Framework. The Bill does not provide a legislative basis to establish these frameworks. The frameworks are currently being developed on the basis they will be non-legislative in nature, likely to be underpinned by Ministerial Concordats. Once implemented, the frameworks may provide appropriate structures for the four governments to discuss the development of policy and legislation relating to those framework areas. For example, through inter-governmental groups established under the frameworks. Discussions are continuing between the four governments to develop these two frameworks. In particular, work is progressing on the draft Framework Outline Agreements which set out the proposed decision-making and governance arrangements. The aim is by the end of 2020 these frameworks will have a Framework Outline Agreement in place, which has received provisional confirmation by Ministers, and are operable in draft form. **Financial Implications** – There are no financial implications as a result of accepting this recommendation.
Recommendation 3.	**Accept**

The Minister should set out clearly, and with an appropriate explanation, which clauses of the UK Bill, as they apply to Wales: ✦ are necessary to meet legal obligations arising from the UK's departure from the EU; ✦ are related to the UK's departure from the EU but are not necessary to meet legal obligations	None of the clauses in the Bill, as they apply to Wales, are necessary to meet legal obligations arising from the UK's departure from the EU The following clauses are related to the UK's departure from the European Union but are not necessary to meet legal obligations. <u>Part 3</u> Clause 52 and Schedule 9 - Under Article 4 of the EU's Single Use Plastic Directive (DIR (EU) 2019/904), Member States have an obligation to achieve a 'substantial and sustained' consumption reduction in single use plastic cups for beverages and food container numbers. The Article does not stipulate how this reduction should be achieved, however suggested mechanisms includes the introduction of financial charges or levies. The single use carrier bag charge has shown the effectiveness of using this approach. Whilst the UK had voted to leave the EU at the point the Directive was introduced, there were ongoing uncertainties at the time of our future obligations and the details of any potential agreement with the EU. Despite this, the Directive's aim of reducing the environmental impact of single use plastics was supported by the Welsh Government and reflected our ambitions of moving Wales towards a circular economy. On this basis, a decision was made for Welsh Ministers to seek charging powers in the UK Environment Bill to enable us to maintain parity with other EU member states and to allow for the timely introduction of regulations in the absence of a suitable Welsh Bill. Clause 57 – Hazardous waste: The Hazardous Waste (Wales) Regulations 2005 were made under section 2(2) of the European Communities Act 1972. This Clause provides a power to allow Welsh Ministers to continue to be able to amend or replace the 2005 Regulations to ensure the manner in which hazardous waste is regulated prevents significant harm to the environment and human health. Clause 66 – Fixed Penalty Notices: This power is needed as there is no power in the Environmental Protection Act 1990 to amend the level of the FPNs relating to fly-tipping and householder duty of care. Such amendments have, in the past, been made under section 2(2) of the European Communities Act, which has now been repealed and cannot be used after the end of the Implementation Period. Without this new power, Welsh Ministers will be unable to amend existing penalties for the FPNs relating to fly-tipping and householder duty of care. <u>Part 8</u> Clause 125 and Schedule 19 (REACH) are related to the UK's departure from the EU, and are considered necessary to enable Ministers to keep the UK/GB REACH regime up-to-date

	(including mirroring changes to EU REACH where appropriate) following the end of the implementation period. **Financial Implications** – There are no financial implications as a result of accepting this recommendation.
Recommendation 4. The Minister should set out clearly which clauses of the UK Bill as they apply to Wales are not covered by recommendation 3.	**Accept** The following clauses, as they apply to Wales, are not covered by recommendation 3: <u>Part 1</u> Clause 19 - Statements about Bills containing new environmental law and Clause 43 - Meaning of environmental law (as it relates to clause 19). <u>Part 3</u> Clause 47 and Schedule 4 – Producer Responsibility Obligations Clause 48 and Schedule 5 – Producer Responsibility Disposal Costs Clauses 49 – 51 – Resource efficiency Clause 55: Electronic Waste Tracking Clause 60 – Regulations made under the Environmental Protection Act 1990 Clause 61 – Powers to make charging schemes Clause 63 and Schedule 10 – Enforcement Powers Clause 65 – Littering Enforcement1 Clause 67 – Regulation of Polluting Activities <u>Part 4</u> Clause 69 – Local Air Quality Management Clause 70 – Smoke Control Areas <u>Part 5</u> Clauses 75 and 76 – Plans and proposals Clause 77 – Authority's power to require information Clause 79 – Electronic service of documents Clause 81 – Water Quality Secretary of State Powers Clause 82 – Water Quality Welsh Ministers Powers Clause 85 – Water Quality interpretation Clauses 87 – 89 – Land drainage **Financial Implications** – There are no financial implications as a result of accepting this recommendation.
Recommendation 5. The Minister should explain why it was necessary to include the clauses identified in	**Accept** The former First Minister set out the criteria where it would be acceptable to use a UK Bill to take forward Welsh Government policy. These continue to be the policy approach used when determining the appropriateness of using UK Bills.

recommendation 4 within the UK Bill, rather than within a Welsh Bill in the Sixth Senedd	Powers requested for Welsh Ministers within the UK Environment Bill adhere to this criteria as either: • The UK Government's legislative proposal would also be appropriate for Welsh circumstances but there is no time available for similar provisions to be brought forward in the Assembly; • The interconnected nature of the relevant Welsh and English administrative systems mean it is most effective and appropriate for provision for both to be taken forward at the same time in the same legislative instrument. **Financial Implications** – There are no financial implications as a result of accepting this recommendation.
Recommendation 6 The Minister should explain why an Environmental Bill was not prioritised in any of the Welsh Government's annual legislative programmes to cover: ✦ environmental governance, including an appropriate body for Wales, arising from the UK's departure from the EU; ✦ other non-Brexit related environmental policies that now appear within the UK Bill.	**Accept** The First Minister announced changes to the Welsh Government's legislative programme for the remainder of this Senedd on 15 July. He reflected on the pressures that the end of transition and Covid-19 had put on the programme and that difficult decisions to remove Bills from the programme had been required based on priorities. Unfortunately, this meant legislation on environmental principles and governance could not be brought forward this term, but the First Minister reiterated his commitment to do so. As I have previously noted, the Welsh Government has finite resources for developing its legislative programme. There are always more proposals requiring primary legislation than there is the capacity to deliver. Decisions on which proposals are to be progressed and ultimately included in a legislative programme are taken by Cabinet, taking into consideration a number of factors such as the Government's priorities across all its responsibilities, the relative maturity of development of a proposal, its likely size and timescale for delivery and the other policy and legal pressures in a portfolio which might impact on delivery. My officials are currently developing and preparing interim measures for receiving complaints about Environmental Governance in Wales to take effect by the end of the transition period for leaving the EU on 31 December 2020. In relation to principles, whilst we have a set of environmental principles in our Environment Act, the Welsh Government has already committed to continue to apply the four EU environmental principles in policy making until we include these in legislation.

	Financial Implications – There are no financial implications as a result of accepting this recommendation.
Recommendation 7 The Minister should confirm that it remains the Welsh Government's policy to create a Welsh environmental governance body using primary legislation.	**Accept** The First Minister announced changes to the Welsh Government's legislative programme for the remainder of this Senedd on 15 July. He reflected on the pressures the end of transition and Covid-19 had put on the programme and difficult decisions to remove Bills from the programme had been required based on priorities. Unfortunately, this meant legislation on environmental principles and governance could not be brought forward this term, but the First Minister reiterated his commitment to do so. My officials are currently developing and preparing interim measures for receiving complaints about Environmental Governance in Wales to take effect by the end of the transition period for leaving the EU on 31 December 2020. In relation to principles, whilst we have a set of environmental principles in our Environment Act, the Welsh Government has already committed to continue to apply the four EU environmental principles in policy making until we include these in legislation. **Financial Implications** – There are no financial implications as a result of accepting this recommendation.
Recommendation 8. The Minister should confirm that primary legislation to create a Welsh environmental governance body will include standalone sections, in line with its commitment to consolidated legislation, and will not amend the UK Bill as a means of delivering the Welsh Government's policy objectives.	**Accept** The intention is for Wales to have its own Welsh Environmental Principles and Governance Bill, the provisions of which will provide the necessary framework and mechanics for a Welsh environmental governance body, along with legislating to enshrine the four EU environmental principles into Welsh law. At our current stage of policy development we do not envisage amending the UK Bill as a means of delivering the Welsh Government's policy objectives. However it may be necessary to make consequential amendments to the UK Bill once a Welsh Bill is in place to ensure both pieces of legislation are able to operate smoothly alongside one another. **Financial Implications** – There are no additional financial implications as a result of accepting this recommendation.
Recommendation 9.	**Accept**

The Minister should explain how she will seek amendments to the UK Bill to reflect the outcome of relevant Welsh Government consultation exercises that have closed after the UK Bill's introduction to the UK Parliament.	Should the outcome of recent consultations result in a need to change the proposed provisions in the Bill, I will request the UK Government seeks the necessary amendments on our behalf. **Financial Implications** – There are no financial implications as a result of accepting this recommendation.
Recommendation 10. The Minister should seek an amendment to the UK Bill such that the clauses covered by recommendation 4 are subject to a sunset clause requiring them to expire after a specified date.	**Reject** The First Minister announced changes to Government's legislative programme for the remainder of this Senedd on 15 July. He reflected on the pressures the end of transition and Covid-19 had put on the programme and difficult decisions to remove Bills from the programme had been required based on priorities. We usually consider sunset clauses in UK legislation where there is a clear timetable for replacement of Welsh provisions and as, we do not have an Environment Bill scheduled in this term, we do not have sufficient certainty.
Recommendation 11 The Minister should explain: ✦ why consent is required for clauses 21, 45, 46, 78, 90, 100, 115, 122 and 124 of the UK Bill in so far as they relate to the general provisions in Part 8 of the UK Bill; ✦ why information included in her letter of 14 May 2020 in response to Q11 is not included in the LCM with appropriate commentary and in accordance with Standing Order 29; ✦ why her response to Q11 does not refer to clauses 55, 57, 60, 61, 65, 66, 67, 75-77, 79, 81, 82, 85 and 87-89.	**Accept** The list provided in response to Q11 was included in error. The nature of the general provisions means that we cannot recite with certainty what their specific application will be in all cases, and therefore what specific nexus they might have with a 'relevant provision'. However, to the extent that the general provisions in clauses 126 to 133 either concern or else may be exercised or understood in such a way as to bite on a relevant provision elsewhere in the Bill (i.e. on clauses 19, 43, 47 to 52, 55, 57, 60 to 61, 63, 65 to 66 to 67, 69 to 70, 75 to 77, 79, 81 to 82, 85, 87 to 89 and 125), we believe they constitute a 'relevant provision' for the purposes of Standing Order 29 in their own right. **Financial Implications** – There are no financial implications as a result of accepting this recommendation.
Recommendation 12.	**Accept**

The Minister should provide information, in either a supplementary document or within any supplementary LCM, justifying why it is appropriate to take each of the delegated powers for the Welsh Ministers contained within the UK Bill, and the choice of procedure for each power.	The information provided in Annex A of the LCM fulfilled the requirements of SO29.3: "A Legislative Consent Memorandum must" SO29.3(iv):"where the Bill contains any relevant provision conferring power to make subordinate legislation on Welsh Ministers, set out the Senedd procedure (if any) to which the subordinate legislation to be made in the exercise of the power is to be subject;" I have since provided the additional information requested to the Committee in my letter of 14 May. In the interests of ensuring ease of access to all of the information, I will instruct my officials to collate the information into one document and publish this alongside the LCM after summer recess. **Financial Implications** – There are no financial implications as a result of accepting this recommendation
Recommendation 13. The Minister should confirm that she requested the procedure to be used for each delegated power for the Welsh Ministers contained in the UK Bill and that in each case her request was granted.	**Accept** For each delegated power for the Welsh Ministers, I agreed the procedure to be used. **Financial Implications** – There are no financial implications as a result of accepting this recommendation
Recommendation 14. The Minister should clarify why it was necessary to include regulation-making powers in the UK Bill under clause 52 and Schedule 9 rather than in a future Welsh Bill covering recycling policy as part of its wider environmental and sustainability agenda.	**Accept** As noted in Recommendation 3, the Welsh Government sought the inclusion of powers via the UK Bill as this provided the most suitable vehicle at the time, to enable us to meet potential EU Directive obligations. Whilst the terms of the UK's exit currently mean we are no longer legally obligated to transpose the Directive or meet the required timescales, the Welsh Government still aims to match its ambitions in relation to single use plastic. **Financial Implications** – There are no financial implications as a result of accepting this recommendation.
Recommendation 15 The Minister should explain why she is	**Accept.** I refer the Committee to my responses to recommendation 3 and 5.

taking regulation-making powers in the UK Bill without a clear indication of when she intends to use them and therefore why they could not be included in a Welsh Environmental Bill within the Sixth Senedd.	**Financial Implications** – There are no financial implications as a result of accepting this recommendation.
Recommendation 16 The Minister should seek an amendment to the UK Bill applying the affirmative procedure to the making of regulations under section 33ZB(10A) and 34ZB(8A) of the *Environmental Protection Act 1990*, as inserted by clause 66 of the UK Bill.	**Reject** Given this is an updating power (substituting one figure for another), negative procedure is deemed appropriate given its limited scope. The process of amending the penalty amounts requires secondary legislation and are subject to an appropriate assessment of impacts to ensure the fixed penalty notices are set at a suitable level.
Recommendation 17 The Minister should explain: ▪ why it is so important to include clause 70 as it applies to Wales in the UK Bill, rather than in the Clean Air Bill to be introduced in the Sixth Senedd; ▪ without these powers, when the Welsh Ministers would next be due to amend regulations relating to smoke control areas using their powers under the *Clean Air Act 1993*.	**Accept** In relation to air quality, specifically clause 70 and Schedule 12 to the UK Environment Bill, the rationale for using the UK Environment Bill is to bring about benefits for both manufactures and consumers as soon as possible. Businesses and manufacturers will benefit as the delay between obtaining a recommendation from the technical experts who recommend products for use and placing products on the market will be reduced; the adoption of published list will minimise the margin of error when recording and updating the lists of products which can be lawfully used; and a streamlined, more effective process will increase consumer choice as more products enter the market sooner. In addition to the economic benefits for manufacturers and increased consumer choice for the public, there will also be an environmental benefit as this improvement to the operation of the smoke control regime in Wales will make it easier to identify products which can be lawfully used in smoke control areas. The UK Environment Bill was judged to be the delivery vehicle which could bring about this improvement to the operation of the smoke control regime in Wales sooner than any other mechanism. Once clause 70 is enacted, the Welsh Ministers' power to make subordinate legislation to authorise approved fuels under section 20(6) of The Clean Air Act 1993 will be repealed, as will the Welsh Ministers' power to make subordinate legislation to exempt appliances/fireplaces under section 21(5) of the same

	Act. The duty on Welsh Ministers (as distinct from a power) introduced by the enactment of the Bill to create published lists will be an administrative function as opposed to a regulation-making/legislative function. **Financial Implications** – There are no financial implications as a result of accepting this recommendation.
Recommendation 18. The Minister should explain clearly why it is more appropriate to replace existing sections in the *Water Industry Act 1991* with regulation-making powers under that Act.	**Accept** Clause 75(3) in so far as it applies to Wales repeals section 37B and 37C of the Water Industry Act 1991. These provisions relate to Water Resource Management Plans and Drought Plans. Section 37B deals with the publication of, and representations on, those plans. This includes wide powers for the Welsh Ministers to make Regulations and Directions in respect of such plans. Section 37C then deals with the provisions of information between licensed water suppliers to provide the water undertakers. Section 37B includes a requirement for water companies to consult the Welsh Ministers and Natural Resources Wales before preparing a draft Water Resource Management of Drought Plan. However, a requirement to consult on draft plans is included in the Water Resources Management Plan Regulations 2007 and the Drought Plan Regulations 2005 and so the requirement to consult still exists despite the repeal of section 37B of the Act. Clause 75(7) of the Environment Bill inserts new Section 39F into the Water Industry Act 1991. This does not confer new powers on Ministers – it essentially re-enacts most of the powers currently contained in Section 37B to make regulations and directions and, instead of requiring consultation responses on plans to be sent to the Welsh Ministers it enables the regulations to provide for another system, for example to respond directly to the water company holding the consultation. **Financial Implications** – There are no financial implications as a result of accepting this recommendation.
Recommendation 19 The Minister should explain the rationale for taking the powers of direction in proposed sections 39G(1) and 94C(8) of the *Water Industry Act 1991* (inserted by clauses 75 and 76 of the UK Bill) and explain how they will be used.	**Accept** Proposed Section 39G(1) says regulations made under section 39F may confer on the Minister power to make provision by directions. This does not give the Minister Direction making powers – it enables regulations to provide the Minister with powers of Direction. The power to enable the Minister to give Directions is narrow and specific and is limited to the procedure and detail for preparing and publishing a water resource management or drought plans. They largely replicate the powers of Direction

	currently conferred on the Minister by section 37 which the Bill repeals and do not provide additional powers. An example is the Water Resources Management Plan (Wales) Directions 2016 which direct the water companies to prepare a WRMP for 2020 The procedure for preparing Drainage and Wastewater Management Plans is intended to broadly mirror the process applied to water resource management and drought plans, so section 94C(8) which applies to DWMP's replicates section 39G(1) which applies to the other plans. Any use of the powers of Direction will be prescribed the Regulations made under these provisions, and will form part of the regulatory framework. These will be consulted on before they are made. The powers of Direction will be used for detailed points of process or procedure as at present. **Financial Implications** – There are no financial implications as a result of accepting this recommendation.
Recommendation 20 The Minister should explain: ▪ why she has not discussed clause 81 with UK Ministers given that it is a concurrent plus power that impacts on Wales; and ▪ why the Secretary of State's powers under this clause are more limited in Scotland than in Wales.	**Accept** Engagement at Official level has been sufficient to secure agreement on these clauses. Welsh Government and Defra officials have discussed both the standalone Clause 82 and concurrent Clause 81. The rationale for the territorial extent of Clause 81 was, if the devolved administrations consented, the substances and standards to be taken into account in assessing the chemical status of surface water or groundwater could be set on a UK basis to the extent of England, Wales, NI and the cross border river basin districts with Scotland. This would deliver two benefits; having uniform standards across these territories and avoiding the need for several sets of regulations. The Secretary of State's powers in Clause 81 are not more limited in Scotland than in Wales. Subsection (4) establishes the Secretary of State can only exercise the powers in this section to make provision which could be made by the Welsh Ministers or DAERA under their own powers in clauses 82 and 83 respectively, with their consent. As there is no comparable standalone clause for Scottish Ministers*, subsection (5) establishes a similar consent mechanism should the Secretary of State exercise the powers in a part of a Scottish *cross-border* river basin districts which are in Scotland. This is necessary as subsection (2), which establishes the relevant water quality legislation, includes both the Solway Tweed and Northumbria River Basin District (RBD) Regulations. These are cross-border regions which straddle the border between England and Scotland.

	Scottish Ministers did not want to take a cl. 82/83 type stand alone power in the Environment Bill as the Regulations for the non-cross-border area of Scotland (the 'Scotland RBD') is set out in Scottish primary legislation and they plan to create powers of their own in a Scottish Bill. **Financial Implications** – There are no financial implications as a result of accepting this recommendation.

Jeremy Miles AS/MS
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Counsel General and Minister for European Transition

Llywodraeth Cymru
Welsh Government

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4 September 2020

Dear Mick,

Inter-institutional Agreement - Intergovernmental Relations Review Ministerial Meetings

The Joint Ministerial Committee (EU Negotiations) met in May this year and we agreed that work on the Intergovernmental Relations Review (IGRR) should resume. At our subsequent JMC(EN) in July we endorsed the progress that had been made on the Review, particularly on Dispute Avoidance and Resolution (DAR). At that meeting I called for the details to be finalised swiftly so that the outcomes of the review can be put into operation, and for efforts on IGR machinery proposals to be intensified. In order to continue discussions and bring speedy completion to the IGRR - now in its third year of review - JMC(EN) agreed that we would continue to finalise the details even through the summer recess.

Consequently, I am pleased to inform you that the IGR ministers met for the first time in a series of discussions focussing on DAR and machinery on 12 August.

The meeting was chaired by the Minister for the Constitution and Devolution, Chloe Smith MP, UK Government, with the Cabinet Secretary for Constitution, Europe and External Affairs, Mike Russell MSP, Scottish Government and First Minister, Rt Hon Arlene Foster MLA, Northern Ireland Executive also in attendance.

Discussions at that meeting were positive and I welcome the long overdue progress being made. To continue momentum we will further consider the detail of these topics at meetings scheduled to take place on 8 and 10 September.

As previously indicated, I will provide more information on these developments when the discussions with the UK Government and other devolved Governments have concluded.

I have written similarly to the Chair of the External Affairs and Additional Legislation Committee, David Rees MS.

Yours sincerely,

Jeremy Miles AS/MS
Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition

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Welsh Government

Ein cyf/Our ref: MA/FM/2111/20

Mick Antoniw MS
Chair
Legislation, Justice and Constitution Committee
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8 September 2020

Dear Mick

I am writing to draw your committee's attention to the *Legislation Handbook on Subordinate Legislation*. This is an internal guidance document for the Welsh Government Civil Service which covers the processes and procedures involved in preparing subordinate legislation, and in supporting Ministers as the legislation progresses through the Senedd scrutiny processes. The handbook has been published on the Welsh Government's website.

It complements the existing internal guidance for the Welsh Government Civil Service on primary legislation, the *Legislation Handbook on Assembly Bills* (to be reissued as the *Legislation Handbook on Senedd Bills* once updated).

I am copying this letter to the Llywydd and leaders of the opposition parties, and a copy of the handbook will be placed in the library.

Yours sincerely

Mark Drakeford

MARK DRAKEFORD

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Mick Antoniw MS
Chair, Legislation, Justice and Constitution Committee
Senedd Cymru

8 September 2020

Dear Mick,

I am writing to update you on the Welsh Government's progress with securing competence for a vacant land tax in Wales. In March, following agreement at a Joint Exchequer Committee that Welsh Government proposals were sufficiently developed to move to the next stage of the process, Welsh Government sent a formal request to the UK Government for devolution of the legislative competence in this area.

I have now received a reply from the Financial Secretary to the Treasury, who has responded that Welsh Government will need to provide further detail before our formal request can be taken forward. I am disappointed with this backwards step given Welsh Government has been fully and openly engaged with HM Treasury officials over the last two years, providing UK Government with a number of documents addressing the criteria set out in the Command Paper, including the scenarios in which a tax is likely to apply and not apply; who would be the intended target of any tax; potential interactions with devolved and reserved taxes, tax bases and tax revenues; and impacts on the UK tax system from devolving this power. This work culminated in a joint paper by Welsh Government and HM Treasury officials recommending the material provided to date serve as a basis for Welsh Government to write with a formal request to the UK Government.

I have written to the Financial Secretary to the Treasury to express my disappointment with his response. It is clear our experience to date moving through this process casts doubt on the effectiveness of the mechanism to devolve further tax competence to Wales.

I will keep the Committee updated as the situation develops. I am also publishing a Written Statement to keep Members updated on progress.

Yours sincerely,

Rebecca Evans.

Rebecca Evans AS/MS
Y Gweinidog Cyllid a'r Trefnydd
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10 September 2020

Dear Mick

Further to my letter of 23 March in response to the Legislation, Justice and Constitution Committee report I wanted to take the opportunity to update the Committee on some of the amendments I intend to bring forward which include new powers for the Welsh Ministers to make Regulations.

I have tabled amendments which address recommendations 5 and 9 of the committee's report in respect of the Senedd procedure for regulations made under section 93(2) of the Bill and the new section 52A of the Local Government Act 2000.

Having carefully considered the contents of the Bill and taking into account all of the Committees' comments and recommendations, I have also tabled amendments to remove the existing provisions in respect of the Welsh Ministers' power to establish an all-Wales database of electoral registration information and the Welsh Ministers' discretion to direct an election pilot be undertaken from the Bill. These amendments in effect remove the need to address recommendations 2 and 3.

Turning to other amendments, section 13 of the Bill inserts a new section 36A into the Representation of People Act 1983 enabling the Welsh Minister to make rules in respect of the conduct of local elections in Wales ('conduct rules'). As drafted for introduction these conduct rules may apply, with or without modifications, the parliamentary election rules set out in Schedule 1 to that Act.

Following further consideration of this power I intend to bring forward an amendment expanding the existing power to modify so as to enable the conduct rules to amend, modify, repeal or revoke any enactment. Similar powers were provided to the Secretary of State when the Supplementary Vote system was introduced for Police and Crime Commissioner elections. The Welsh Ministers will have to make rules on the conduct of the Single Transferable Vote ("STV"). An STV election has never been held in Wales therefore these rules will be the first of their kind. It is therefore vital for the Welsh Ministers to be provided

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with sufficient powers to make such rules and ensure they align with existing enactments as optional STV is introduced.

In addition, as stated by the Law Commission, electoral law is 'complex, voluminous and fragmented' with an enormous amount of primary and secondary legislation governing elections. As such new electoral legislation will often have implications on a range of existing legislation. It is important that any new electoral law is in agreement with all existing law and electoral practices, and that these can be modified where necessary to ensure the legislation is fit for purpose. It is therefore considered prudent to have a broad power.

These rules are subject to the affirmative Senedd procedure, following the Committees' comments and recommendations an amendment will also be brought forward to require the Welsh Ministers to consult before making such rules enabling the electoral community to have an opportunity to comment on them.

Whilst this power allows for the modification of any enactment and could be considered fairly broad, its application is strictly limited to modifications connected with, or as a consequence of any conduct rules. This will therefore limit the ability of the Welsh Ministers to modify enactments.

An amendment will also be made to enable the Welsh Ministers to make supplementary, incidental, consequential, transitional, transitory or saving provisions under such Rules. Section 201(3) of the Representation of the People Act 1983 provided such a power to the Welsh Ministers when making regulations. However, no provision clarified that this could also be relied on when making rules (such as the conduct rules). The amendment seeks to address this gap.

Potential Stage 3 amendments

The Committee will be aware of the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020 (the '2020 Regulations'), which make provision about remote attendance for a range of local government bodies and meeting arrangements and documents. These provisions have been warmly welcomed by stakeholders and it is my intention to seek to make some of these changes on a permanent basis, through amendment to the Bill at Stage 3. I intend to bring forward amendments in respect of remote attendance for the range of local government bodies covered by the 2020 Regulations and also to address existing provision in respect of meeting arrangements and documents.

The Covid-19 pandemic exposed how out-of-date the current provisions are, in particular the procedural and technical provisions which govern how meetings are recorded, how summonses are sent to members, and how documents including notices, agendas and minutes are publicised. The majority of these provisions are set out in primary legislation dating back from 1960, 1972 and 1985.

Experience of the pandemic has also exposed how difficult it is to update and change these provisions in primary legislation. The UK Parliament, the Senedd and the Scottish Parliament were all able to amend their working procedures relatively quickly as theirs were set out in standing orders. In stark contrast, to enable local authorities, local authority executives and committees in Wales to meet during the pandemic it required an emergency Bill to be passed (the Coronavirus Act 2020) and regulations made under broad powers in section 78 of that Act. This led to a delay in the arrangements for remote meetings being put in place and caused confusion in terms of councils' continuity of business.

I consider the modernisation of these arrangements to be a critical part of enabling authorities to move forward in the post Covid-19 world and build on the changes in practice they have already made.

In order to deliver the necessary changes, in addition to making certain amendments by virtue of the Bill, it is anticipated that it will also be necessary to create new Regulation making powers. These will include powers to amend and repeal primary legislation. The powers, which I intend to make subject to the affirmative procedure, would leave technical arrangements in a form which can be more readily updated and revised as necessary in the future.

My officials are currently working to develop these proposals and I will write again shortly setting out our intentions in more detail.

I have copied this letter to the Chair of the Equality, Local Government and Communities Committee.

Yours sincerely

Julie James AS/MS
Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government

Jeremy Miles AS/MS
Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition

Llywodraeth Cymru
Welsh Government

Mick Antoniw MS
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10 September 2020

Dear Mick,

The Welsh Government's consent to the creation of concurrent functions in UK SIs and UK Bills has always been underpinned by a commitment from the Office of the Secretary of State for Wales (OSSfW) to bring forward a section 109 Order to ensure that the Senedd could in future remove these functions without having to secure Minister of the Crown consent.

I expected that the OSSfW would have brought forward the Order to enable it to be laid before the Summer Recess, but unfortunately this has not taken place and I do not yet have confirmation of a new timetable. In view of this I will not be in a position to cover the matter in the evidence session on 21 September. My officials are working with the OSSfW to establish a new timetable and we will keep the Committee informed.

Yours sincerely,

Jeremy Miles AS/MS
Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
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SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 2)

Fisheries Bill

1. This Legislative Consent Memorandum is laid under Standing Order ("SO") 29.2. SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.

2. The Fisheries Bill ("the Bill") was introduced into the House of Lords on 29 January 2020 and completed its passage through the House of Lords on 1 July 2020. The latest version of the Bill can be found here:

   Bill documents - Fisheries Bill 2019-21 - UK Parliament (post Lords Report stage)

Policy Objective

3. The UK Government's stated position is the Bill will provide the legal framework for the UK to operate as an independent coastal state under the United Nations Convention on the Law of the Sea 1982 (UNCLOS) after the UK has left the European Union and the Common Fisheries Policy.

Summary of the Bill

4. The Bill is sponsored by the Department for Environment, Food and Rural Affairs.

5. The Bill makes provision for:
   - policy objectives in relation to fisheries, fishing and aquaculture, fisheries statements and fisheries management plans;
   - access to British fisheries;
   - the licensing of fishing boats;
   - the determination and distribution of fishing opportunities;
   - schemes to be established for charging for unauthorised catches of sea fish;
   - grants in connection with fishing, aquaculture or marine conservation
   - the recovery of costs in respect of the exercise of public functions relating to fish or fishing;
   - to confer powers to make further provision in connection with fisheries, aquaculture or aquatic animals;
   - to make provision about byelaws and orders relating to the exploitation of sea fisheries; and for connected purposes.

Update on position since the publication of the first Legislative Consent Memorandum

6. The Welsh Government laid a Legislative Consent Memorandum on 12 February 2020, based on the Bill as introduced into Parliament on 29 January 2020.

7. The Memorandum confirmed the Welsh Government is supportive of the Bill as introduced. We welcome the inclusion of what is now clause 45 which extends the Senedd's legislative competence for fisheries matters beyond Wales, into the Welsh zone. This brings the Senedd's competence in line with the Welsh Ministers' executive competence.

8. The Welsh Government will take powers for the Welsh Ministers in this Bill as an interim measure until a Welsh Fisheries Bill is brought forward to the Senedd.

Changes to the Bill since the publication of the first Legislative Consent Memorandum for which consent is required.

9. The following amendments which make provision in relation to Wales and are within the legislative competence of the Senedd, have been made to the Bill during the House of Lords Report stage (no amendments were made at Lords Committee stage):

10. Clause 1 defines a set of fisheries objectives which apply across the whole of the UK. An amendment has been made to the Sustainability Objective which makes sustainability the prime objective and raises up the relative importance of environmental concerns within that objective.

11. Clause 18 - a new clause has been included in the Bill titled National landing requirement. This new clause requires the Secretary of State to consult on and establish a 'national landing requirement' to ensure a minimum percentage of fish caught by both domestic and foreign fishing vessels in UK waters are then landed at a port in the UK, Isle of Man, Guernsey or Jersey.

12. Clause 26 - this amendment relocates the rules relating to the distribution of quota from the Common Fisheries Policy Regulation to the Bill.

13. Clause 27 - a new clause has been included in the Bill which requires the Secretary of State *before* making a UK determination to reserve a minimum allocation of England fishing opportunities for new entrants into the sector and for boats whose length is of 10 metres or less. Thereafter, the Secretary of State would have to consider the case for increasing this quota each year and lay statements before Parliament.

14. Our initial view is the drafting of clause 27 lacks clarity and results in a question around whether consent is required by the Senedd. Whilst it requires an element of English fishing opportunities to be reserved for new

entrants and vessels under 10 metres, the requirement for the calculation to be carried out *before* the Secretary of State makes the determination on UK fishing opportunities, raises questions as to how the calculation may impact upon the devolved administrations fishing opportunities. This may not be consistent with the current arrangements within the 2012 Fisheries Concordat. We do not believe this is the intention of the amendment but it has the potential to impact Welsh fishing opportunities and as drafted, we think it will require the consent of the Senedd. However, we think this is a drafting issue which will need to be clarified.

15. Clause 48 – a new clause has been included which mandates the use of remote electronic monitoring (REM) on all fishing vessels above 10 metres in length which fish in UK waters and requires plans to be published to extend REM to all vessels.

16. Change references to the National Assembly for Wales to Senedd Cymru. At the request of the Welsh Government, amendments were tabled by the UK Government and were subsequently agreed, to make changes to the Bill to update all references to the National Assembly for Wales to the Senedd Cymru. The amendments are made to references in Schedule 1, clauses 11 and 39, Schedule 8, and clauses 43, 47 and 50.

17. Schedule 10 – Common Fisheries Policy Regulation: Minor and consequential amendments. A new Schedule 10 has been inserted, which incorporates the material which was previously in that Schedule and makes further amendments to retained EU Regulations. Four technical amendments have been made via UK Government amendments:

18. References to Article 2 of the Common Fisheries Policy. Article 2 of the Common Fisheries Policy Regulation (1380/2013) sets out the objectives of the Common Fisheries Policy. This UK Government amendment revokes Article 2 so it is clear it does not apply as part of retained EU law. There are also consequential amendments to replace references to Article 2 with references to the Fisheries Objectives in this Bill throughout EU retained law.

19. Quota Flexibilities. This amendment relates to the Secretary of State's power to determine UK fishing opportunities. It would allow these opportunities to be set subject to the current range of flexibilities. Without this the current flexibilities (borrowing, inter species flexibility, de minimis, scientific quota, live bait exemption and predator damage exemption) could be prohibited by clause 28 (duties to ensure fishing opportunities are not exceeded) of the Bill, leading to an unworkable situation for fisheries management.

20. Additionally the length of time a determination can be made by the Secretary of State has been changed from a "calendar year" to a more flexible time period. The default position is still for the determination to be made on an annual basis but for some species and international agreements it is necessary to build in flexibility. This change also applies

to Welsh Government powers in Schedule 5 – sale of fishing opportunities, for consistency.

21. Multi-annual Plans. These amendments build in some flexibility to the existing Multi-annual Plans, including by making the application of the key provisions within them subject to variation where a "relevant change of circumstances" is identified (this is consistent with the approach in the Bill for the Joint Fisheries Statement and Fisheries Management Plans).

22. Consent is required for the above provisions because they modify the Senedd's legislative competence or because they fall within the Senedd's legislative competence.

Welsh Government position on the Bill as amended

23. The Welsh Government acknowledges all the amendments made at Lords Report stage.

24. The Welsh Government supports the Lords clause 26 amendment, which replicates the criteria in Article 17 of the Common Fisheries Policy Regulation on to the face of the Bill.

25. We welcome the amendments updating the Bill to reflect the Senedd Cymru change of name, following Royal Assent of the Senedd and Elections (Wales) Act 2020 in January 2020. These were tabled at the request of the Welsh Government.

26. We also support the UK Government amendments to Schedule 10, as these are operational changes, which we agree are necessary for a workable statute book at the end of the Implementation Period.

27. For the other amendments agreed at Lords Report stage to clauses 1, 18, 27 and 48, this is a rapidly developing situation and we need to consider the policy and devolution implications of each amendment in detail. Our key concerns are to ensure the changes introduced are consistent with our Welsh fisheries policies and do not cut across either the Senedd competence or Welsh Ministers executive powers.

28. If after detailed analysis, we are content for amendments to remain in the Bill, at the very least, we expect we would need drafting issues to be resolved, to add clarity in both policy intent and to more clearly reflect the devolution settlement.

29. Discussions continue with UK Government on some areas of the Bill and on the amendments made during the Lords Report stage. We will set out more detail on our position as the situation develops and the Bill continues its passage through the House of Commons.

Follow up from recent Senedd Committees reports on the Legislative Consent Memorandum on the Bill

30. Further to the scrutiny of the Legislative Consent Memorandum by the Legislation, Justice and Constitution Committee and their recommendation 7 we have set out, in Annex A, the SI-making powers for the Welsh Ministers contained within the Bill, the reasons for taking the powers and the choice of procedure for each power.

Financial implications

31. There are no direct financial implications for Wales as a result of taking these provisions in this Bill.

Conclusion

32. We remain committed to the UK wide approach to create the Fisheries Framework which can only be done in a UK bill. For the non-framework powers in the Bill, it is important the Welsh Ministers are able to act quickly and decisively in Wales, until we can bring forward a comprehensive Welsh Fisheries Bill.

33. We support the government amendments made to the Bill, and the clause 26 amendment. We are continuing with detailed analysis on the wider implications for industry and stakeholders on the other amendments made by the Lords to clauses 1, 18, 27 and 48. At the very least, should these amendments remain, we expect we would need drafting issues to be resolved, to add clarity in both policy intent and to more clearly reflect the devolution settlement.

34. We continue to work with the UK Government on this Bill. It began its progress in the House of Commons on 2 July and there will be further opportunities to seek to amend any parts of the Bill which do not currently work in the best interests of Wales.

35. It is anticipated a further Supplementary Legislative Consent Memorandum will be laid following House of Commons Committee stage, and in advance of a consent motion debate within the Senedd.

Lesley Griffiths AS/MS
Minister for Environment, Energy and Rural Affairs
July 2020

Annex A

Supplementary Legislative Consent Memorandum – UK Fisheries Bill 2019-21. Provisions which contain powers for the Welsh Ministers to make Regulations and Orders

The Bill provides a number executive powers or tools, which are vested in the Welsh Ministers (and the other administrations) in order to maximise each administrations' ability and power to manage their own fisheries. These tools will be used to implement and deliver the policies developed in the fisheries framework. These functions are operational and necessary to ensure we can put the policies agreed within the framework into effect, but in a way which is best tailored to the needs of Wales.

Provision number	Description of power	Legislative procedure
Schedule 3, para 7(1) (Sea fishing licences)	Make provision by Regulations as to - the manner in which a sea fish licensing authority's licensing functions are to be exercised; the time when a licence, or a variation, suspension or revocation of a licence has effect; the time when a licence condition or the addition, removal or variation of a condition has effect.	Negative resolution procedure
Schedule 3 para 7(3) (Sea fishing licences)	Make provision by Regulations authorising the making of charges in relation to a licence.	Negative resolution procedure
Schedule 3 para 7(5) (Sea fishing licences)	Make provision by Regulations as to the principles to be applied by a licensing authority when attaching conditions relating to time spent at sea.	If Regulations reduce the time which a fishing boat may spend at sea they are subject to the affirmative resolution procedure. Otherwise the negative resolution procedure applies.

Schedule 5, para 1 (Sale of Welsh fishing opportunities)	Provision for by Regulations the sale of rights to use one or more Welsh catch quotas and Welsh effort quotas.	Affirmative resolution procedure
Schedule 6, paras 2 (2) (Financial assistance)	Provision by Regulations to establish a scheme to give financial assistance for nine listed purposes connected to management of the marine and aquatic environment and fish and aquaculture purposes.	Affirmative resolution procedure
Schedule 7, para 2 (1) (Imposition of charges)	Make provision by Regulations for the Welsh Ministers to impose charges in respect of the exercise by them of a “relevant marine function”. A “relevant marine function” means a function relating to – (a) fishing quotas; (b) ensuring that commercial fish activities are carried out lawfully; (c) the registration of buyers and sellers of first-sale fish; (d) catch certificates for the import and export of fish.	Negative resolution procedure
Schedule 8, para 6 (1) and (4) (Powers to make further provision)	Make provision by Regulations to implement a regional fisheries management agreement to – (a) to implement an international obligation of the UK relating to fisheries, fishing or aquaculture	Affirmative resolution procedure if including provision: amending or repealing primary legislation; imposing fees; creating a criminal offence or increasing the penalty for, or

	(b) for a conservation purpose (c) for a fish industry purpose If not implementing a regional fisheries management agreement - to make provision by Regulations about sea fishing including quantities caught, landing, by catch, minimum size restrictions, marine stock targets, fishing equipment, methods of fishing, processing of sea fish, information, producer organisation, marketing of fishery products, record keeping, alien species, locally absent species and enforcement.	widening the scope of, a criminal offence; or conferring functions on, modifying functions of, or otherwise relating to the regulation of: a producer organisation in the UK; or an inter-branch in the UK. If regulations do not include the provision described above, they are subject to the negative resolution procedure.
Schedule 8, para 8(1) (Powers to make further provision)	Make provision by Regulations for the purpose of monitoring, controlling, preventing or eradicating diseases of fish or other aquatic animals.	Affirmative resolution procedure if including provision: amending or repealing primary legislation; imposing fees; creating a criminal offence or increasing the penalty for, or widening the scope of, a criminal offence; or conferring functions on, modifying functions of, or otherwise relating to the regulation of: a producer organisation in the UK; or an inter-branch in the UK.

		If regulations do not include the provision described above, they are subject to the negative resolution procedure.
Schedule 9, para 17, which inserts sections 134A, 134B and 134C into the Marine and Coastal Access Act 2009 (Amendments of the Marine and Coastal Access Act 2009)	Make provision by Order relating to the exploitation of sea fisheries resources in Wales and the Welsh zone for the purposes of conserving marine flora or fauna, or marine habitats.	No Assembly procedure.
Schedule 9, para 18 (Amendments of the Marine and Coastal Access Act 2009)	Make interim provision by Order relating to the exploitation of sea fisheries resources in the Welsh offshore region for the purpose of protecting any feature in an area in that region if the Welsh Ministers think there are reasons to consider designating the area as an MCZ and there is an urgent need to protect the feature.	No Assembly procedure.

Senedd Cymru
Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad
—
Welsh Parliament
Legislation, Justice and Constitution Committee

Lesley Griffiths MS
Minister for Environment, Energy and Rural Affairs

31 July 2020

Dear Lesley

Supplementary Legislative Consent Memorandum (Memorandum No 2) on the Fisheries Bill

Thank you for your letter of 30 June 2020 providing your **response** to the recommendations in our **report on the Legislative Consent Memorandum on the Fisheries Bill** (report on the LCM), which was published in May. Further, the information you provided on the progress of the Fisheries Bill (the Bill) in the UK Parliament was helpful.

On 8 July 2020, you laid before the Senedd a **Supplementary Legislative Consent Memorandum** (Memorandum No 2) on the Bill. You will be aware that the Business Committee has referred the Memorandum No 2 to our Committee and to the Climate Change, Environment and Rural Affairs (CCERA) Committee, and asked that we report to the Senedd by 24 September 2020.

Given the reporting deadline in place, it is not possible to schedule time within the Committee's work programme to invite you to attend a formal evidence session. For that reason, and to assist us in our scrutiny of the Memorandum No 2, the annex to this letter sets out a number of questions which we would be grateful if you would answer by Friday 4 September.

In addition, there are a number of issues which we would like to pursue further with you relating to your response to our report on the LCM. The annex also includes some questions on this matter.

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Yours sincerely

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

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

Annex

Questions on Memorandum No 2

1. In paragraph 27 of the Memorandum No 2, and in relation to the amendments to clauses 1, 18, 27 and 48 of the Bill, you state that "this is a rapidly developing situation" and you still need to consider the devolution implications of each amendment in detail. Paragraph 28 of the Memorandum No 2 goes on to state:

> If after detailed analysis, we are content for amendments to remain in the Bill, at the very least, we expect we would need drafting issues to be resolved, to add clarity in both policy intent and to more clearly reflect the devolution settlement.

   a. To what extent were you made aware of, and given sight of, the amendments proposed to clauses 1, 18, 27 and 48 before those amendments were agreed at the House of Lords Report Stage?
   b. What progress have you made in terms of undertaking a full assessment of the devolution implications of the amendments made to clauses 1, 18, 27 and 48?
   c. What are the specific drafting issues you refer to in paragraph 28 of Memorandum No 2?
   d. If the drafting issues are not resolved to your satisfaction, will this matter become a 'red line' and will this impact upon any recommendation you may make to the Senedd regarding consent for the relevant provisions in the Bill?

2. Paragraph 14 of the Memorandum No 2 notes that you believe the drafting of the new clause 27 lacks clarity and results in a question around whether consent is required by the Senedd. Further, you believe that the drafting of the new clause 27 raises questions as to how the requirements of the new clause may impact on the devolved administrations fishing opportunities, while also potentially being at odds with the 2012 Fisheries Concordat.
   a. What progress have you made with resolving these issues with the UK Government?
   b. What action have you asked the UK Government to take as regards the clarity of the drafting of this new clause?

3. New clause 48 requires the use of remote electronic monitoring (REM) on all fishing vessels above 10 metres in length which fish in UK waters and also requires plans to be published to extend REM to all motorised vessels. Before making regulations under new clause 48, the Secretary of State is under no statutory obligation to consult the Welsh Ministers or seek the consent of the Welsh Ministers or the Senedd.
   a. What discussions did you have with the UK Government about new clause 48 before the relevant amendment was tabled for consideration during the House of Lords Report Stage?
   b. Do you consider that a consultation requirement, in line with that provided for in clause 18, is necessary and therefore should be placed on the face of the Bill?

c. What are your views on whether the consent of the Welsh Ministers or the consent of the Senedd should be sought before the making of regulations under new clause 48?

4. We note that a new Schedule 10 has been inserted into the Bill which incorporates the material that was in the original Schedule 10 but with further amendments to retained EU legislation.
    a. Several of the references to "a fisheries administration" in this Schedule have been changed to "Secretary of State". Some of the provisions within new Schedule 10 could be considered to relate to the observation or implementation of international obligations, which is devolved. For example, the amendments proposed to articles 4 and 6 of Regulation 2018/973 (by paragraphs 6(4) and (6) of Schedule 10 to the Bill) include provisions that appear to confer functions on the Secretary of State, in place of the fisheries administrations, in relation to observing and implementing international obligations. While we acknowledge that consent is being sought in relation to Schedule 10, why are these functions being bestowed upon the Secretary of State rather than the fisheries administrations and why wasn't this highlighted in the Memorandum No 2?
    b. With regards to the power to determine fishing opportunities and quota flexibilities, and as noted in paragraphs 19 and 20 of the Memorandum No 2, the length of time a determination of UK fishing opportunities can be made by the Secretary of State has been changed. References to "calendar year" have been deleted and there is no substitute wording. Therefore, the possible period is open ended, although we acknowledge that regulations made under the provisions could include a timeframe. This change also applies to the Welsh Ministers' powers in Schedule 5 and we note that the Memorandum No 2 suggests this was to enable "consistency". Did you discuss the amendment to Schedule 10 with the UK Government and the consequential effect on the Welsh Minister's powers in Schedule 5, and can you confirm that the Senedd's consent should also be sought for the relevant amendments to Schedule 5?

5. Paragraphs 34 and 35 of the Memorandum No 2 state that there will be further opportunities "to seek to amend any parts of the Bill which do not currently work in the best interests of Wales", and that it is anticipated that a further Supplementary Legislative Consent Memorandum will be laid following the House of Commons Committee Stage. Can you confirm that it is your intention to ensure that there is sufficient time for Senedd Committees to consider any further Supplementary Legislative Consent Memorandum ahead of the relevant consent motion debate in Plenary?

<u>Questions regarding your response to the Committee's report on the Legislative Consent Memorandum on the Bill</u>

6. During your evidence session with the Committee on the Bill on 16 March you were asked whether we would be bound by a common framework agreement in the future and if there was anything in the Bill that would inhibit our ability to legislate in

this area of devolved competence, to which you answered “No, my understanding is not” (see paragraphs 46 and 47 of the **transcript**). Given this exchange, recommendation 3 of the Committee’s report asked that you explain how a future Welsh Fisheries Bill will work within a UK-wide common fisheries framework. In your response to recommendation 3, you state that any future Welsh Fisheries Bill will need to consider the UK Fisheries Objectives set out in the UK Fisheries Bill and that you “expect the key framework provisions, such as the objectives and the [Joint Fisheries Statement] to remain in the UK Bill”. Given the comments you made in our 16 March meeting, can you confirm that, whilst the Bill does not prevent the Welsh Government from bringing forward a Welsh Fisheries Bill containing provisions that replace those under the UK Bill that constitute a common framework agreement, you are committed to retaining the key framework provisions in the UK Bill (once enacted) as it applies in Wales and it is not the intention of this Welsh Government to move away from the UK-wide fisheries objectives should it be the Government in place during the Sixth Senedd?

7. With regards to recommendations 5 and 6 in our report, while we welcome your intention to ensure Members have an opportunity to review the Memorandum of Understanding in relation to clause 23 in advance of the relevant consent motion debate in Plenary, can you confirm that it is also your intention to ensure that there is sufficient time for Senedd Committees to consider the Memorandum of Understanding ahead of such a Plenary debate?

8. While we acknowledge your detailed response to recommendation 8 in our report regarding the regulation-making powers in Schedule 3 of the Bill, please can you provide further information on when Welsh Ministers would consider it expedient to exercise the powers in Schedule 3 as a sea fish licensing authority?

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

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/LG/2661/20

Mr Mick Antoniw AS/MS
Chair of Legislation, Justice and Constitution Committee
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3 September 2020

Dear Mick,

Thank you for letter dated 31 July relating to the Supplementary Legislative Consent Memorandum (Memorandum No 2) on the Fisheries Bill. I have provided a response to the specific questions you have raised below:

Supplementary Legislative Consent Memorandum (Memorandum No 2)

Update to the Committee on the policy and devolution implications of the amendments to Clauses 1, 18, 27 and 48 by House of Lords
In answer to your questions 1 a. – d. and 2 a. – b., 3 a. – c., I can provide an update on these. As you will see, the UK Government has tabled amendments for Commons Committee stage to reverse the amendments made during the Lords Report stage to clauses 1, 18, 27 and 48. Under Secretary of State Victoria Prentis MP sought my views on this approach and advised their position is they support the spirit of the amendments but the amendments themselves are legally and constitutionally unsound. My position is as follows:

Clause 1 – sustainability objective
This amendment results in legal uncertainty. In my response to Minister Prentis I recognised the concerns raised and noted there would need to be further refinement of this provision so that environmental sustainability is appropriately prioritised. The Welsh Government is committed to delivering sustainable fisheries. It is at the core of our fisheries management approach, which aligns with our duties under our flagship Welsh legislation, the Well-being of Future Generations (Wales) Act 2015 and our Environment (Wales) Act 2016, to carry out sustainable development in delivering our well-being goals, and delivering sustainable management of our natural resources. Our policies within the Joint Fisheries Statement will

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reflect these duties and our strong commitment to delivering sustainable development in Wales.

As such, I have emphasised our support for the spirit of the amendment to Minister Prentis and asked her to make this clear during Committee stage in the House of Commons.

Clause 18 – national landing requirement
As drafted this amendment does not reflect the devolution settlement and licence conditions requiring all UK vessels to establish an economic link with the UK are already in place. It is our intention to further develop Welsh policy in relation to economic link requirements as part of the holistic development of our future fisheries policy, subject to scrutiny by the Senedd. Therefore this provision for Welsh Ministers is not required in the UK Bill.

Clause 48 – remote electronic monitoring
This amendment cuts across our devolution settlement and as a matter of devolved policy it is for the Welsh Ministers to determine the appropriate approach in relation to Wales. It is our intention to further develop Welsh policy in relation to electronic monitoring in a way that reflects the needs and context of the Welsh fleet, therefore this provision for Welsh Ministers is not required in the UK Bill.

Clause 27 - new quota from the English allocation for new entrants and under 10m boats
We had immediate concerns on how this provision could be interpreted, due to it having the potential to impact on the UK quota "pot", which although we note is not the intention, could impact on our devolved competence. As such, any ring-fencing should take place only after fishing opportunities have been allocated to each administration.

I hope this explanation and the tabled amendments for Commons Committee stage, provide the clarity you are seeking.

Schedule 10 amendments
You have asked two questions on the amendments within Schedule 10 to retained direct EU legislation and changes of references to Secretary of State from fisheries administrations, you ask:

4. We note that a new Schedule 10 has been inserted into the Bill which incorporates the material that was in the original Schedule 10 but with further amendments to retained EU legislation.

a. Several of the references to "a fisheries administration" in this Schedule have been changed to "Secretary of State". Some of the provisions within new Schedule 10 could be considered to relate to the observation or implementation of international obligations, which is devolved. For example, the amendments proposed to articles 4 and 6 of Regulation 2018/973 (by paragraphs 6(4) and (6) of Schedule 10 to the Bill) include provisions that appear to confer functions on the Secretary of State, in place of the fisheries administrations, in relation to observing and implementing international obligations. While we acknowledge that consent is being sought in relation to Schedule 10, why are these functions being bestowed upon the Secretary of State rather than the fisheries administrations and why wasn't this highlighted in the Memorandum No 2?

My officials worked closely with UK Government officials, following legal analysis of each reference in retained EU law, to establish where the roles lie, in line with the devolution settlement. Officials were very clear about the nuances of the devolution settlement in relation to international obligations and our role in implementing them. It is my view, these

have been applied correctly in respect of the devolution settlement. I have provided a table at Annex 1 to explain the rationale for the amendments made via Schedule 10 of the Bill.

b. With regards to the power to determine fishing opportunities and quota flexibilities, and as noted in paragraphs 19 and 20 of the Memorandum No 2, the length of time a determination of UK fishing opportunities can be made by the Secretary of State has been changed. References to "calendar year" have been deleted and there is no substitute wording. Therefore, the possible period is open ended, although we acknowledge that regulations made under the provisions could include a timeframe. This change also applies to the Welsh Ministers' powers in Schedule 5 and we note that the Memorandum No 2 suggests this was to enable "consistency". Did you discuss the amendment to Schedule 10 with the UK Government and the consequential effect on the Welsh Minister's powers in Schedule 5, and can you confirm that the Senedd's consent should also be sought for the relevant amendments to Schedule 5?

Yes, my officials discussed and agreed these provisions in advance of them being tabled and I confirm the amendment made to paragraph 1 of Schedule 5 will require the consent of the Senedd.

5. Paragraphs 34 and 35 of the Memorandum No 2 state that there will be further opportunities "to seek to amend any parts of the Bill which do not currently work in the best interests of Wales", and that it is anticipated that a further Supplementary Legislative Consent Memorandum will be laid following the House of Commons Committee Stage. Can you confirm that it is your intention to ensure that there is sufficient time for Senedd Committees to consider any further Supplementary Legislative Consent Memorandum ahead of the relevant consent motion debate in Plenary?

Second Reading was held in the House of Commons on 1 September and Committee Stage is due to be held between 8 – 17 September. A number of government amendments have been tabled for Committee stage and I would draw your attention to those. My officials have been working with UK Government to agree the amendments relating to Wales, and I would like to provide early confirmation of my support for them.

The Legislative Consent Motion (LCM) debate has been scheduled for 29 September, prior to Commons Report stage, in line with our usual approach of aiming to ensure the UK Parliament has time to take account of the Senedd's consent decision before a Bill is passed. A Supplementary Legislative Consent Memorandum will be laid as soon as possible.

<u>Welsh Government response to your report on the Legislative Consent Memorandum on the Bill</u>

You have also asked some questions on our response to your report on the Legislative Consent Memorandum:

6. During your evidence session with the Committee on the Bill on 16 March you were asked whether we would be bound by a common framework agreement in the future and if there was anything in the Bill that would inhibit our ability to legislate in this area of devolved competence, to which you answered "No, my understanding is not" (see paragraphs 46 and 47 of the transcript). Given this exchange, recommendation 3 of the Committee's report asked that you explain how a future Welsh Fisheries Bill will work within a UK-wide common fisheries framework. In your response to recommendation 3, you state that any future Welsh Fisheries Bill will need to

consider the UK Fisheries Objectives set out in the UK Fisheries Bill and that you "expect the key framework provisions, such as the objectives and the [Joint Fisheries Statement] to remain in the UK Bill". Given the comments you made in our 16 March meeting, can you confirm that, whilst the Bill does not prevent the Welsh Government from bringing forward a Welsh Fisheries Bill containing provisions that replace those under the UK Bill that constitute a common framework agreement, you are committed to retaining the key framework provisions in the UK Bill (once enacted) as it applies in Wales and it is not the intention of this Welsh Government to move away from the UK-wide fisheries objectives should it be the Government in place during the Sixth Senedd?

Yes, we are committed to retaining the key framework provisions in the UK Bill as it applies in Wales. By their nature, the powers are in place to ensure we work across the UK within the same framework, replicating the approach in the Common Fisheries Policy to managing our shared resources. The objectives have been drafted to reflect the cornerstones of modern fisheries management. They are consistent with the progressive international principles of fisheries management, our devolved position and our own Welsh legislation. The Senedd's legislative competence will not be diminished by the framework. The fisheries objectives do effect Welsh Ministers executive powers, in such that the exercise of those functions must be in accordance with the objectives. However, the Senedd could remove or amend the objectives for Wales if it so wished.

I can confirm it is not our intention to move away from the UK-wide objectives. How each government achieves the objectives is a matter for them, acting either jointly or alone, within their own competence, and the policies for achieving or contributing to the achievement of the objectives will be set out in the Joint Fisheries Statement (JFS). The Welsh Ministers will then be required to act in accordance with the JFS.

7. With regards to recommendations 5 and 6 in our report, while we welcome your intention to ensure Members have an opportunity to review the Memorandum of Understanding in relation to clause 23 in advance of the relevant consent motion debate in Plenary, can you confirm that it is also your intention to ensure that there is sufficient time for Senedd Committees to consider the Memorandum of Understanding ahead of such a Plenary debate?

I am happy to provide an update to the Committee regarding progress being made to finalise the Fisheries Framework Memorandum of Understanding (MoU) and in particular progress relating to clause 24 (formally clause 23). My officials are engaging in a regular working group which is progressing the drafting of the MoU (including the Dispute Resolution Mechanism and consideration of the Concordat).

In lieu of the MoU, which is still in development and will therefore not be ready ahead of the completion of the Bill's passage, I have written to the UK Government to seek agreement on the key issues on which I need assurance in order to recommend the Senedd gives consent to the Bill. I will share the outcome of this request with the Committee at the earliest opportunity.

8. While we acknowledge your detailed response to recommendation 8 in our report regarding the regulation-making powers in Schedule 3 of the Bill, please can you provide further information on when Welsh Ministers would consider it expedient to exercise the powers in Schedule 3 as a sea fish licensing authority?

The licensing powers within the Bill and Schedule 3 provide the Welsh Ministers with the necessary powers to deliver an effective and robust licensing system now and in the future. As I noted in my response to your LCM report, we have amended our existing licensing SIs

to ensure they remain in place once the Bill comes into force, and the powers within the Bill replicate the previous powers set out in the Sea Fish (Conservation) Act 1967 and the Sea Fish Licensing Order 1992 in relation to British fishing boats. The Bill provisions also impose new licensing requirements upon foreign fishing boats fishing within British fishery limits, which are required in consequence of the UK's exit from the EU.

The sea fish licensing authority powers within the Bill enable us to continue to effectively control and licence fishing in our waters, with powers such as enabling us to condition, vary and revoke licences, work with other authorities where needed etc. These powers are, and will continue to be, used regularly in the normal course of exercising the sea fish licensing authority functions.

In terms of British fishing boats, the current licensing regime will continue. For foreign fishing vessels, the Welsh Ministers, along with the other administrations, have agreed for licences for foreign vessels to be issued by the Single Issuing Authority, who will act under a Section 83 GOWA arrangement. They won't have decision making powers as the Welsh Ministers will authorise the licences before they issue.

At present there are no current plans to use the regulation making powers to either amend the existing system or establish a new one. However, should the Welsh Ministers feel it expedient to do so in the future, the powers will be available to them. Any such regulations will be subject to approval by the Senedd.

I hope this helps to provide further clarity, however, if you have a specific concern, I would be happy to answer it.

I am writing in similar terms to Mike Hedges MS, Chair of Climate Change, Environment and Rural Affairs Committee

Regards

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

Annex 1 Rationale for the amendments made via Schedule 10 of the Bill

EU retained law (in Schedule 10)	Rationale for change from "fisheries administration" to "Secretary of State"
Common Fisheries Policy Regulation (Regulation (EU) No 1380/2013)	
Article 28, 29 and 33	Article 28 sets out that the objective of the external fishing policy of the United Kingdom is to ensure sustainable exploitation, management and conservation of marine biological resources and the marine environment by conducting the external relations of the United Kingdom is accordance with its international obligations and policy objectives. Article 29 provides that the Secretary of State should actively support and contribute to the activities of international organisations dealing with fisheries including regional fisheries management organisations. Article 33 provides that the Secretary of State must engage with third countries with a view to ensuring that stocks of common interest to the UK and third countries are managed sustainably. Under paragraph 10 (1) & (2) of Part 1 of Schedule 7A of the Government of Wales Act 2006 international relations are a reserved matter, International relations includes relations with territories outside of the UK, with the EU and its institutions and with other international organisations. Whilst paragraph 10(3) confirms that observing and implementing international obligations are outside of the reservation and are therefore devolved, we do not consider the subject matter of the above Articles could be described as observation of or implementation of international obligations. The Common Fisheries Regulation will, by operation of the European Union Withdrawal Act 2018, form part of the UK statute book as retained EU law. It was previously amended by the Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/739). Regulation 3 of those 2019 Regulations established the UK fisheries administrations and their remit for the purpose of any relevant retained direct EU legislation relating to the common fisheries policy. Regulation 3 also made amendments to articles 28, 29 and 33 to transfer functions under those articles from EU institutions to a fisheries administration. In relation to Wales, the Welsh Ministers are the fisheries administration in so far as the obligation or power under consideration would be within the legislative competence of the Senedd, if included in an Act of the Senedd, or if it could have been imposed or conferred by a function of the Welsh Ministers exercisable immediately before exit day. If a power or obligation does not fall into either of those categories the Secretary of State is the fisheries administration for that matter in relation to Wales. The impact of the amendments already made to these Articles by the 2019 Regulations was such that the functions under those articles were in effect already transferred to the Secretary of State in relation to Wales, in line with the devolution settlement. Officials therefore take the view that the amendments made by Schedule 10 do not change this position, but rather clarify it.
Regulation (EU) 2018/973 – North Sea Multi-Annual Plan	

Article 4, 6 & 13	Article 4 relates to targets in respect of fishing mortality and as amended requires the Secretary of State to request data from ICES, or a similar independent scientific body recognised at international level. Article 6 relates to requesting conservation reference points from the ICES, or a similar independent scientific body recognised at international level. Article 13 provides that the Secretary of State should engage with third countries with a view to ensuring that those stocks of common interest to the UK and a third country are arranged in a sustainable manner consistent with the Basic Regulation. Under paragraph 10 (1) & (2) of Part 1 of Schedule 7A of the Government of Wales Act 2006 international relations are a reserved matter, International relations includes relations with territories outside of the UK, with the EU and its institutions and with other international organisations. Whilst paragraph 10(3) confirms that observing and implementing international obligations are outside of the reservation and are therefore devolved, we do not consider the subject matter of the above Articles could be described as observation of or implementation of international obligations. Articles 4, 6, and 13 of this Regulation were previously amended by regulation 25 of the Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/753) to transfer functions under those articles from EU institutions to a fisheries administration. In relation to Wales, the Welsh Ministers are the fisheries administration in so far as the obligation or power under consideration would be within the legislative competence of the Senedd, if included in an Act of the Senedd, or if it could have been imposed or conferred by a function of the Welsh Ministers exercisable immediately before exit day. If a power or obligation does not fall into either of those categories the Secretary of State is the fisheries administration for that matter in relation to Wales. The impact of the amendments already made to these Articles by the 2019 Regulations was such that the functions under those articles were in effect already transferred to the Secretary of State in relation to Wales, in line with the devolution settlement. Officials therefore take the view that the amendments made by Schedule 10 do not change this position, but rather clarify it.
Regulation (EU) 2019/472 Western Waters Multi Annual Plan	
Article 4, 7 & 15	Article 4 relates to target in respect of fishing mortality and as amended requires the Secretary of State to request data from ICES, or a similar independent scientific body recognised at international level. Article 7 relates to requesting conservation reference points from the ICES, or a similar independent scientific body recognised at international level. Article 15 relates to the exploitation of stocks of common interest by third countries. It provides that the Secretary of State should engage with those third countries with a view to ensuring that those stocks are arranged in a sustainable manner consistent with the Basic Regulation.

	Under paragraph 10 (1) & (2) of Part 1 of Schedule 7A of the Government of Wales Act 2006 international relations are a reserved matter, International relations includes relations with territories outside of the UK, with the EU and its institutions and with other international organisations. Whilst paragraph 10(3) confirms that observing and implementing international obligations are outside of the reservation and are therefore devolved, we do not consider the subject matter of the above Articles could be described as observation of or implementation of international obligations. Regulation (EU) 2019/472 will by operation of the European Union Withdrawal Act 2018, form part of the UK statute book as retained EU law. It was previously amended by the Common Fisheries Policy and Animals (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/1312). Regulation 6 amended to articles 4, 7 and 15 to transfer functions under those articles from EU institutions to a fisheries administration. In relation to Wales, the Welsh Ministers are the fisheries administration in so far as the obligation or power under consideration would be within the legislative competence of the Senedd, if included in an Act of the Senedd, or if it could have been imposed or conferred by a function of the Welsh Ministers exercisable immediately before exit day. If a power or obligation does not fall into either of those categories the Secretary of State is the fisheries administration for that matter in relation to Wales. The impact of the amendments already made to these Articles by the 2019 Regulations was such that the functions under those articles were in effect already transferred to the Secretary of State in relation to Wales, in line with the devolution settlement. Officials therefore take the view the amendments made by Schedule 10 do not change this position, but rather clarify it.

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Cynulliad Cenedlaethol Cymru
Elin Jones AM, Presiding Officer
National Assembly for Wales

Mick Antoniw AM
Chair of the Legislation, Justice and Constitution Committee
National Assembly for Wales
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Our ref: LS253/EJ/NS

4 March 2020

Dear Mick

Renting Homes (Amendment) (Wales) Bill

I wrote on 10 February 2020 to the First Minister to confirm my view that, in accordance with section 110(3) of the Government of Wales Act 2006, the Renting Homes (Amendment) (Wales) Bill, would be within the legislative competence of the Assembly.

However, this conclusion was qualified on the basis that the Bill engages with Article 1 of Protocol 1 (Protection of Property) of the European Convention on Human Rights. In considering the legislative competence of the Bill, I came to the assessment that while it engages Article 1 of Protocol 1 it does not breach it.

I feel it is appropriate to share this with you, so as to recognise and facilitate the role of Assembly Members on your Committee in scrutinising the Bill.

The lawyer and Clerk supporting the Committee in that scrutiny will be able to provide more detailed information on the issues. I am writing in similar terms to John Griffiths as Chair of the Equality, Local Government and Communities Committee.

Yours sincerely,

Elin Jones AM
Llywydd

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

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Llywodraeth Cymru
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Legislation, Justice & Constitution Committee
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Cardiff Bay
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11 August 2020

Dear Mick,

I am writing in response to your letter of 09 March requesting responses to a series of questions regarding the Renting Homes (Amendment) (Wales) Bill.

Please find enclosed my responses to those questions.

I understand that the Committee does not have capacity to reschedule my evidence session which had originally been due to take place on 20 April. However, if there is any further information the Committee requires in order to complete its scrutiny of the Bill please do let me know

I hope this information is helpful to the committee.

Yours sincerely,

Julie James

Julie James AS/MS
Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government

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Responses from the Minister for Housing and Local Government to questions from the Legislation, Justice and Constitution Committee in relation to the Renting Homes (Amendment) (Wales) Bill

1. Why is this legislation necessary? The responses to the Welsh Government's consultation have not all been positive, with a number of responses highlighting some difficulties that this legislation could create in the rented sector in Wales. Further, in your evidence session with the Equality, Local Government and Communities Committee on 27 February 2020, you indicated that you are relying on an anecdotal evidence base.

We have made a policy commitment to improve security of tenure in the private rented sector and this Bill is necessary to achieve that.

The Bill will, if passed, add a further significant benefit for contract-holders to those already set out in the Renting Homes (Wales) Act 2016 ("the 2016 Act"). It will ensure that a section 173 possession notice (the appropriate notice to be served where there has been no 'fault' on the part of the contract-holder), cannot be served for the first six months of occupation and, where possession is sought, will give the contract holder six months' notice. The notice period for a section 173 notice currently is two months.

The Bill will particularly affect those who live in the private rented sector and occupy their homes under a 'standard occupation contract', the equivalent to the current assured shorthold tenancy, after the 2016 Act comes into force. This will provide valuable time for individuals and families, and the organisations and agencies that support them, to find a new home that is right for them and to make all necessary arrangements for a smooth transition to their new home.

As far as responses to our consultation are concerned, as I have previously stated, we would have been surprised if there hadn't been some objections from the private landlords' sector, given the reliance on section 21 of the Housing Act 1988 (the equivalent to section 173 of the 2016 Act in existing legislation) that has grown up over time.

There is plenty of independent evidence of the problems that 'no-fault' evictions cause tenants, from third sector organisations and others. What is harder to pinpoint in absolute terms is the number of occasions on which section 21 is being used in circumstances where other possession grounds would be more appropriate – and that is because the very nature of section 21 possessions does not require that information to be disclosed. The reference to 'anecdotal evidence' that I made during the ELGC Committee session on 27 February, referred to the casework that I and fellow AMs who sit on the Committee deal with on an all too regular basis, which confirms to us that there are clearly issues with existing arrangements.

2. Many Welsh citizens will need to be able to access and understand the provisions contained in this Bill within the context of the existing Renting Homes (Wales) Act 2016. Without access to commercial subscription services, such as Westlaw and LexisNexis, this may prove difficult. Did you consider bringing forward a single Bill that would restate the provisions of the Renting Homes (Wales) Act 2016 with the necessary modifications and additions that you wish to see made to that legislation? Will your decision not to do so affect the accessibility of this important legislation? Why have you chosen to amend an Act of the Assembly which is not yet in force?

All of the information which is needed by stakeholders will be provided within the model written statements and a range of guidance will be made available details of which will be widely circulated. For landlords and contract-holders, these will be the principal means by which they will access and understand the legislation and what it will mean for them.

The Bill will amend the 2016 Act, so that, once in force, the 2016 Act will be a single piece of legislation incorporating all amendments made by the Bill. It will not be necessary to read the Bill alongside the Act, citizens will only need to access an up to date version of the 2016 Act. Members will be aware the Counsel General is keen to ensure that legislation is available in an up to date form and free at the point of use, therefore we are working closely with legislation.gov.uk to enable amendments to existing primary legislation, such as those being made by this Bill, to be incorporated swiftly and in both languages.

As far as amending an Act which is not yet in force, the 2016 Act sets out the legal framework under which people in Wales will rent their homes in future. This amending Bill is intended to make amendments to the 2016 Act which do not radically overhaul that system but rather improve specific aspects of it, to better reflect the changing nature of the private rented sector and those who rent their homes in Wales. That said, we consider it would have caused citizens more confusion to implement the 2016 Act and then make the amendments proposed by this Bill shortly afterwards. One set of changes all taking place at the same time was therefore the preferred approach.

3. The Bill contains a number of Henry VIII powers to amend primary legislation. What is the justification for the inclusion of these powers? Why is it not preferable to include in the Bill a regulation making power to include, for example, certain classes of contract which will not be subject to some or all of the changes the Bill will introduce?

The Bill exclusively amends the 2016 Act (and other primary legislation). It does not contain any stand-alone provision so it would be unusual to amend the Bill once commenced because its provisions will be live within the 2016 Act (if this is indeed the alternative suggested by the question). The majority of the Schedules to the Bill

will be inserted into the 2016 Act. The Schedules to the 2016 Act contain a power for the Welsh Ministers to amend them, as we will need to review the matters contained within those Schedules as the housing landscape evolves over time. We need to have the flexibility to react to those changes and make appropriate provision within the various Schedules, as necessary. The Bill therefore adopts the same approach. The alternative would seem to be regulations which would also amend primary legislation or, alternatively, would need to be read alongside the primary legislation, resulting in detail falling outside of primary legislation into secondary legislation, which can itself attract criticism so far as scrutiny and accessibility of the law issues are concerned.

4. In the Statement of Policy Intent, the reason given for including regulation making powers in Schedules 1 to 4 is to "reflect changes in the provision of housing". In relation to Schedule 2, which sets out new Schedule 9A to the 2016 Act listing restrictions on a landlord giving notice, there is an additional reason included for including a regulation making power; to reflect "legislative changes". Can you explain what is meant by this and why a different approach has been taken?

This approach has been taken because there may be legislative changes, made outside of the Renting Homes legislative framework, which may need to be reflected in new Schedule 9A. For example, a statutory duty may be placed upon landlords at some point in the future, which may need to be included in the list in new Schedule 9A. It is not possible to predict now what those duties might be. This power therefore provides the necessary flexibility to deal with those legislative changes. In this respect, Schedule 2 to the Bill is different from Schedules 1, 3 and 4 to the Bill.

5. What will the impact of the Bill be on the Human Rights of both tenants and landlords, and how have you assessed these impacts?

We have conducted a human rights analysis in respect of the Bill provisions, so far as their impact on landlords and tenants are concerned. We consider that there will be an impact and ECHR rights are engaged but we consider any interference with those rights to be justified and proportionate to the public interest.

6. Sections 5 and 11 of the Bill introduce a restriction on the use of break clauses in fixed term contracts so they cannot be used in contracts of less than 24 months and cannot be activated by the landlord until 18 months into the contract. How do you justify, in terms of human rights, and specifically the landlord's A1P1 rights, restricting a break clause to 18 months when the contract holder has, at that point, had more than the minimum 12 months' security of tenure envisaged by the Bill?

The aim of these provisions is to ensure that the policy of increasing security of tenure in respect of periodic standard contracts is not undermined.

Given the Bill provisions which increase the moratorium and notice period in respect of notices served under section 173 of the 2016 Act, some landlords may choose to offer only long term fixed term contracts from the outset. Making break clauses available only in contracts made for 24 months or more is intended to discourage landlords from offering only longer term fixed term contracts. Some landlords may accept having to wait an extra 6 months to regain possession of their property in the shorter term (as compared with a periodic standard contract), in order to buy certainty of income and to lock contract-holders in for the long term. These provisions are an appropriate and proportionate means of addressing these issues.

Restricting the use of break clauses in this way is likely to be sufficient to prevent landlords from viewing the long term fixed term option as the preferred option. We do not wish to create a regime where long term fixed term contracts would become a landlord's preferred option because contract-holders are unable to release themselves from that contract were, for example, an offer of social housing to be made to them.

While these provisions will mean that a landlord will have to wait longer to regain possession of their property under a fixed term standard contract than under a periodic standard contract, the length of that period will place both regimes on an equal footing in terms of how they are viewed by landlords. This will encourage an environment where an 'inequality of arms' as between the landlord and the contract-holder, at the outset of the contract, has less impact on the contract-holder in terms of the renting regime they end up accepting.

Extending the period before which a landlord may exercise a break clause, to 18 months, is therefore a proportionate means of ensuring that the competing interests of the landlord and contract-holder are fairly and properly balanced. Other, potentially more intrusive means of achieving this aim were considered but this approach strikes a fair balance between the A1P1 rights of the landlord and the contract-holder's Article 8 rights. A landlord may choose to offer a fixed term standard contract to ensure certainty of income but will not be incentivised to do so in order to circumvent amendments which the Bill makes in respect of periodic standard contracts, including the increased moratorium and notice period in respect of section 173 notices and the restrictions against repeat service of those notices.

7. Section 7 of the Bill allows a landlord to issue a second section 173 notice without having to wait for six months to pass after the expiry of the first one, provided the second notice is given within 14 days of the first. Outside this 14 day window, landlords who make a mistake in a section 173 notice have to

wait another six months before they can issue another notice. How is this justified on human rights grounds where there is only a minor error which does not lead to any confusion or any detriment to the contract-holder? Is a 14 day 'cooling off period' long enough to justify restricting a landlord's access to their property for an additional six months in such circumstances?

A specific form will be provided for landlords to use when issuing this notice to a contract-holder, which should reduce the risk of errors being made. Given the serious consequences associated with issuing possession notices, we would expect landlords to behave professionally and responsibly so as to avoid making mistakes when issuing a notice, as far as possible.

However, it is recognised that a small proportion of notices may still contain an error which may affect a landlord's ability to regain possession and create uncertainty for the contract-holder. In such circumstances it is considered appropriate to allow a window of two weeks during which time a landlord can review the notice and where necessary correct any such errors. A 14 day 'cooling off' period is routinely a feature of other types of contractual transactions where a period of time to reassess and carry out checks is thought to be beneficial to the parties. Extending this two week period would risk extending the period of uncertainty for the contract-holder.
We have conducted a human rights analysis in respect of this provision and we consider any interference with the landlord's rights to be justified and proportionate to the public interest.

8. As drafted, the Bill requires the landlord to give six months' notice at the end of a fixed term contract. Does this place a landlord at a distinct disadvantage when trying to make future plans for the property, and how do you justify this provision on human rights grounds? For example, the requirement to provide six months' notice applies even if the contract has run for three years, by which point the contract holder will have had more than the 12 months' security of tenure that you say is the policy aim of the Bill?

The Bill only requires a landlord to give notice at the end of the fixed term if the landlord would like to regain possession of the property six months thereafter. The vast majority of current tenancies are provided on the basis of a six month fixed term, with the intention of both parties being that this fixed term will lead seamlessly into a periodic contract.

Amendments to the way in which fixed term standard contracts operate are essential to ensure that the Bill provisions which seek to increase security of tenure in periodic standard contracts are not undermined. Allowing a landlord to terminate a fixed term standard contract of, say, six months, at the end of the fixed term would

fundamentally undermine the improved security of tenure being sought by the Bill. This would present a potential 'loophole' which would encourage the practice of landlords issuing six month fixed term contracts at the outset of the contract and, at the same time, issue a notice to end the contract at the end of the fixed term, following which, either a landlord would take possession or the contract-holder would leave the property. Alternatively, where the contract-holder wishes to remain in occupation, a landlord could offer another fixed term of six months with a notice to end the contract at the end of the fixed term because this would avoid a landlord having to offer the 12 months' security of tenure provided by a periodic standard contract. Provision was clearly required to prevent landlords from circumventing the Bill provisions which increase security of tenure in respect of periodic standard contracts.

We have conducted a human rights analysis in respect of this provision and we consider any interference with the landlord's rights to be justified and proportionate to the public interest. This provision is the least intrusive means of achieving that aim and balances the competing interests of landlords (who may desire the certainty of income offered by a fixed term contract) with those of the contract-holder, (who should expect to benefit from the increased security of tenure offered by periodic standard contracts provided by the Bill, without the prospect of a landlord circumventing those provisions by only offering fixed term standard contracts).

As well as offering increased security of tenure, the Bill seeks to offer contract-holders sufficient notice to move to alternative accommodation, regardless of the length of time a contract-holder has been in occupation. Indeed, the longer the contract-holder has been in occupation, the more challenging a move might prove to be. We cannot therefore see a justification for allowing a contract-holder who has been in occupation for three years (as per the example in the question) less notice to secure alternative accommodation than a contract-holder who has been in occupation for a shorter period.

These provisions simply afford contract-holders commensurate safeguards with respect to termination, whether they occupy dwellings under fixed term or periodic arrangements.

In relation to a landlord's ability to make future plans for the property, these provisions are prospective so landlords will be aware of this position prior to entering into a fixed term standard contract and will therefore be aware that they may not be able to rent to a different contract-holder at the end of the fixed term.

9. How do you justify, on human rights grounds, the landlord being prevented from obtaining possession of their property after six months, in circumstances

where the parties to a tenancy may have originally agreed that the tenancy would only be for six months?

If it is the intention of both parties that the contract should come to an end at the end of the fixed term, then the contract-holder can leave the property at the end of the fixed term. There is nothing in the Bill to prevent this. However, the Bill offers 12 months' security of tenure to those contract-holders who wish to benefit from it.

We have conducted a human rights analysis in respect of this provision and we consider any interference with the landlord's rights to be justified and proportionate to the public interest.

10. Are there any provisions in the Bill that you envisage acting retrospectively? Paragraph 10.3 of the Explanatory Memorandum to the Bill states that the restrictions on serving certain notices in respect of some pre-existing contracts will not be "truly retrospective"; what does this mean?

The following Bill provisions will apply to converted contracts, that is, tenancies existing prior to the coming into force of the 2016 Act, which convert to standard contracts:

- <u>Restrictions on giving further landlord's notices under periodic standard contract</u>

  The Bill will prevent landlords under a periodic standard contract from serving a notice under section 173 of the 2016 Act within six months of the expiry or withdrawal of a previous section 173 notice. This restriction on serving notices in immediate succession will apply to landlords under converted contracts, as well as to landlords under contracts created after the Bill comes into force. As this provision applies to converted contracts, it is retrospective in the very limited sense that it will apply to existing contracts but only in a way that has prospective effects. This approach is necessary in order to avoid the problems created for tenants by the practice of issuing notices, such that a tenancy is always subject to a possession notice. If the provision were to apply only to new contracts, entered into after the coming into force of the Bill and 2016 Act, contract-holders under converted contracts would be treated less favourably than those under new contracts because they would continue to be open to the threat of repeat notices, until such time as that converted contract comes to an end. These provisions will not have effect in respect of repeat notices issued before the 2016 Act comes into force, but would affect landlords of tenancies which were in place prior to the 2016 Act coming into force.

- Restriction on giving notice under section 173 under a periodic standard contract and under landlord's break clause under a fixed term standard contract following retaliatory possession claim.

  The Bill will prevent landlords from serving a notice under section 173 under a periodic standard contract or under a break clause in a fixed term standard contract for a period of six months, from the date upon which a court finds that a previous possession claim was retaliatory.

  This restriction will apply to landlords under converted contracts, as well as to landlords under contracts created after the Bill comes into force. This will mean that the provision will have an element of retrospectivity.

  The finding of a retaliatory claim would post-date the Bill's enactment and therefore the element of retrospectivity (insofar as the matter might be deemed to be retrospective) is limited to the fact that it only affects landlords of tenancies which have converted (and therefore is of limited effect). This will protect contract-holders who have been subject to a retaliatory claim from receiving a further notice immediately after that court order. Any claim which is retaliatory in nature (namely made for the purpose of avoiding obligations to keep a dwelling in good repair) will be one wrongly and unreasonably brought.

  A six month period will offer a contract holder a period of security following a claim to which they should never have been subjected in the first place. It offers a period of security and stability following that court process.

  The restriction does not prevent a landlord from serving notice under any other ground, it simply restricts the service of a further notice under section 173 or a landlord's break clause. Other notices for possession, where appropriate, will be capable of being served during the restriction period.

  These restrictions will bite on prospective actions only and in that respect they are not 'truly retrospective'.

11. What impact will the commencement of the 2016 Act, and the amendments to it made by this Bill, have on tenancies made before the date the 2016 Act, as amended, comes into force?

The vast majority of tenancies made before the date the 2016 Act, as amended, comes into force, will convert to occupation contracts and will be governed by the provisions of the Act. The effect of the 2016 Act on those tenancies was considered, at the time the 2016 Act was passed. The response to question 10 above, sets out the provisions of this Bill which will impact on converted contracts.

12. What transitional provisions will need to be in place to ensure that the Bill does not apply retrospectively to tenants and landlords who enter into contracts based on the current legal framework?

Provision is made within the Bill itself to guard against Bill provisions having retrospective effect. Paragraph 23 of Schedule 6 to the Bill amends Schedule 12 to the 2016 Act to make provision that retains the position under the 2016 Act as originally enacted in so far as deemed necessary for tenancies and licences entered into before the 2016 Act is commenced. We don't anticipate further transitional provision being required to deal with the changes being made by the Bill. The response to question 10 above, sets out the provisions of this Bill which will impact on converted contracts.

13. Can you explain the effect of paragraph 24 of Schedule 6 and the interaction between this Bill and the Renting Homes (Fees etc.) (Wales) Act 2019?

Paragraph 24 of Schedule 6 to the Bill amends the Renting Homes (Fees etc.) (Wales) Act 2019 ("the 2019 Act") to take account of the fact that some of the provisions in the 2019 Act will be redundant upon implementation of the 2016 Act. The provisions omitted by paragraph 24 to Schedule 6 of the Bill will no longer be required. Section 25 of the 2019 Act was required to make transitional provision by regulations, applying the 2019 Act to assured shorthold tenancies under the Housing Act 1988, pending implementation of the 2016 Act.

14. When do you intend that this Bill, if it is approved by the Assembly, and the 2016 Act would come into force?

Prior to the suspension of scrutiny as a result of the coronavirus outbreak it had been our intention to bring the provisions of the 2016 Act, as amended by this Bill, into force before the end of the current Senedd term (i.e. before April 2021). A revised timetable for the Bill has now been agreed which will see scrutiny completed in January, and, if passed by the Senedd, the Bill should receive Royal Assent in March. However, the provisions of the Bill, and the 2016 Act it amends, will not be brought into force before the autumn of next year. This is because I remain committed to my promise that the sector should have six months lead-in time to prepare themselves for the new arrangements.

15. When will the secondary legislation that is necessary to implement the 2016 Act be made, particularly the regulations containing supplementary terms and model contracts?

We had intended to undertake a public consultation on the model written contracts during the spring. However, we have postponed this exercise for the time-being in order to allow stakeholders to focus on coronavirus-related priorities. The consultation will begin as soon as it appropriate to do so.

As far as the Supplementary Provisions and other secondary legislation which has already been subject to public consultation is concerned, we will publish the consultation responses, which will include the draft regulations themselves, as soon as possible, although again we are holding-off doing so until the current public health emergency pressures have receded and the Senedd has resumed its wider scrutiny work.

We had planned to lay all of the necessary secondary legislation within the current Senedd term. However, coronavirus priorities mean this is not now possible. All of the subordinate legislation will be made as soon as possible in the next Senedd term.

16. The order making power in section 17(2) enables the Welsh Ministers to provide for commencement of section 6(5) and paragraph 24 of Schedule 6 of the Bill. The commencement order will not be subject to an Assembly scrutiny procedure. This Committee's previous recommendations on this matter on other Bills have been that commencement orders that include 'transitory, transitional or saving provision' should be subject to the negative procedure. What assessment was undertaken before it was decided that an order made under section 17(2) would not follow a formal Assembly scrutiny procedure?

Section 17(2) of the Bill is a very narrow power and any 'transitory, transitional or saving provision' made under that power must be connected to commencement of the provisions referred to in section 17(2). We would need to use section 255 of the 2016 Act to make wider transitory, transitional or saving provisions.

17. Have you explored whether the courts will have the necessary capacity to deal with the potential for an increased number of claims, particularly if there is an increase in the use of breach of contract claims, rather than a continued use of no fault eviction grounds?

As I have made clear in my evidence to other Committees scrutinising this Bill, my view is that landlords in Wales, particularly our social landlords, should only consider eviction proceedings as an absolute last resort. I expect all of our landlords to provide support and intervention at an early stage when problems first start to emerge with a tenancy. They should work proactively with tenants to address those issues, rather than evict and simply pass the problem on.

Having said that, whilst we accept that there is likely to be a small increase in the

number of claims requiring hearings from private landlords as a result of the Bill, this needs to be set alongside the significant reduction in evictions by social landlords that we are seeking to achieve through other means, which should provide the courts with sufficient capacity to deal with any increase in claims from private landlords.

The Ministry of Justice agreed with our Justice Impact Assessment conclusion that the overall impact of the new legislation on caseload for the court system in Wales is likely to be negligible over time. This is based on the fact that around two-thirds of current possession claims are from social landlords and the Welsh Government's policy is to significantly reduce social landlord repossessions. This will free up sufficient court time to offset any increase in claims from private landlords that may result from the longer section 173 notice period incentivising landlords' to use alternative grounds to end contracts[1].

18. The First Minister, in his letter dated 10 January 2020 to the Llywydd, indicated that the Bill may affect the prerogative, private interests or hereditary revenues of the Queen or the Duke of Cornwall, and that Crown consent may be required. Has the Minister sought and received the necessary consent?

The necessary consents will be sought at the appropriate time during the passage of the Bill through the Senedd.

During 2018, 3,640 possession orders which required a court hearing were granted by the courts in Wales, of which 3,050 were granted to social landlords and 590 to private landlords. In addition, 616 orders were granted under the Section 21 'accelerated procedure' which does not require a court hearing

Parch./Revd Gethin Rhys
Swyddog Polisi'r Cynulliad Cenedlaethol / National Assembly Policy Officer

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4ydd Mawrth 2020.

Annwyl gyfeillion / Dear friends

Renting Homes (Amendment) (Wales) Bill – consultation response

Cytûn is the umbrella body for the main Christian denominations of Wales and a number of other Christian organisations. A full membership list can be found at http://www.cytun.co.uk/hafan/en/who-we-are/

Most of our member churches are served by paid clergy and other church workers - defined as a "minister of religion" in the Housing Act 1988 - who live in tied accommodation (known variously as manses, presbyteries, parsonages, etc). This accommodation is provided for the use of the minister and his/her family rent-free, and is usually regarded as his/her principal workplace and recognised as such by HMRC. In most cases, HMRC regards the *whole* property as a workplace. Ministers of religion usually have no set working hours and members of the public may attend the property to seek assistance at any time of day or night.

This response is presented following extensive consultation amongst the property and legal officers of our member churches.

General principles of the Bill

In the commercial private rented sector where houses are let as an investment, we believe that longer notice periods are reasonable and fairer to tenants. This includes properties held by our member churches as investment properties. As explained below, six months is too long in the case of housing for ministers of religion. Churches need possession of properties sooner to house a minister of religion.

Unintended consequences of the Bill

The principal purpose of this response is to draw attention to an unintended consequence for churches who hold property on trust for the occupation of ministers of religion, but who during periods of vacancy let these properties on the private rented market. We detailed this consequence in our response to the Welsh Government consultation in 2019. Although our response (together with a similar response from others relating to agricultural tenancies) is referenced on page 41 in the summary of responses, no mitigation is offered in the legislation as tabled.

The disappointingly brief Equality Impact Assessment on page 60 of the Explanatory Memorandum also fails to address the issue, which relates to properties owned and occupied by adherents of a particular religion, a protected characteristic under the Equality Act 2010.

The majority of houses let by member churches are awaiting occupation by a minister of religion. When one minister leaves a post (and the associated church-owned house), it can often be several

months before a new minister is appointed (the vacancy period). It is the practice of most member churches to let houses where possible during this period.

The longer notice period is likely to mean that trustees of church residential property will not let houses during vacancy periods and the properties are likely to be retained as empty properties pending occupation by a minister of religion.

Furthermore, for houses intended primarily for the occupation by a minister of religion, the effective 12 month minimum tenancy period in this Bill (caused by the changes proposed to Section 173 of the Renting Homes (Wales) Act 2016) is too long and would prevent churches from letting such properties given that churches need to readily regain possession in order to house ministers of religion serving in the community.

The Methodist Church is in a particularly difficult position. It carries out an annual 'stationing' process across Great Britain, and ministers move each August to take up a new appointment on September 1st. This requires that manses (housing for ministers of religion) be available for occupation at the same time across England, Scotland and Wales. The maximum feasible letting period for a Methodist manse is therefore 11 months, and any delay in vacating a property in one part of Britain can have severe knock-on effects across the Church. In practice, therefore, Methodist manses in Wales not needed for a particular year would be left vacant for that year as vacant possession in August could not otherwise be guaranteed.

Leaving a property vacant inevitably increases the risk of vandalism or illegal occupation. From the perspective of the duties of responsible charity trustees, it also reduces income being generated from an asset held on charitable trusts. This income is essential to assist in the proper care and maintenance of the property and/or the general charitable purposes of the church in its local community.

Crucially, the changes proposed would mean both:

a. **fewer houses available in the PRS**

b. **those who currently find church short-term lets useful** (e.g. those in the process of seeking a house having moved to a new area with their work, or those needing temporary accommodation while renovating a newly purchased property) **will be pushed into the main PRS, reducing the supply of housing for those in long-term housing need.**

Some church properties are governed by model trusts which require the trustees to ensure that the property is readily available for its intended purpose of housing a minister of religion. As charity and trust law is not devolved, Welsh legislation cannot alter that obligation which will continue to bind trustees even should they be willing to offer a longer contract in some circumstances.

Proposed solution

We therefore believe a procedure should be introduced to allow shorter notice (perhaps 3 months) by prior notice at the start of an agreement along the lines of the Housing Act 1988 Schedule 2 Part 1 Ground 5 (Mandatory Grounds). This is reproduced below:

The dwelling-house is held for the purpose of being available for occupation by a minister of religion as a residence from which to perform the duties of his office and—

(a) not later than the beginning of the tenancy the landlord gave notice in writing to the tenant that possession might be recovered on this ground; and

(b)the court is satisfied that the dwelling-house is required for occupation by a minister of religion as such a residence.'

The Private Housing (Tenancies) (Scotland) Act 2016, which removed a landlord's automatic right to terminate a residential lease, as a matter of contract, when the lease term came to an end, allowed religious bodies to retain the right to recover possession of let houses if they were required for use by a "religious worker". However, the law as passed restricted the ability to trigger the religious use provision to those properties which had previously been occupied for that purpose. This meant that possession could be regained of a property which had previously been occupied by a religious worker, but a newly acquired property which had not been so occupied could not be re-acquired. We would oppose any such qualification being introduced in Wales, not least because it would inhibit churches from 'downsizing' from large houses to smaller ones – releasing larger properties onto the market – and from changing from less energy efficient to more energy efficient properties in accord with responding to the climate emergency.

A second unintended consequence

Many ministers of religion living in church-owned houses will let their own homes in the meantime. A six month notice period to terminate such agreements may mean that ministers of religion whose appointment is terminated at six months or less notice (perhaps due to ill-health) may have to leave their 'tied' houses before their tenants' notice expires. This could mean ministers are temporarily homeless and thus need to call on statutory assistance at public expense.

Proposed solution

We therefore think it is vital that a provision for shorter notice where a house is needed for owner occupation should be included. This could be via prior notice at the start of an agreement as in the Housing Act 1988 Schedule 2 Part 1 Ground 1 (Mandatory Grounds). This is reproduced below:

Not later than the beginning of the tenancy the landlord gave notice in writing to the tenant that possession might be recovered on this ground or the court is of the opinion that it is just and equitable to dispense with the requirement of notice and (in either case)—

(a) at some time before the beginning of the tenancy, the landlord who is seeking possession or, in the case of joint landlords seeking possession, at least one of them occupied the dwelling-house as his only or principal home; or

(b)the landlord who is seeking possession or, in the case of joint landlords seeking possession, at least one of them requires the dwellinghouse as his, his spouse's or his civil partner's only or principal home and neither the landlord (or, in the case of joint landlords, any one of them) nor any other person who, as landlord, derived title under the landlord who gave the notice mentioned above acquired the reversion on the tenancy for money or money's worth.

A third unintended consequence – use of break clauses

The Welsh Government proposes that, where a court has deemed a notice under section 173 of the 2016 Act to have been issued in a retaliatory fashion (e.g. to avoid undertaking repairs reported by the contract-holder) a landlord will be prevented from issuing a further notice under section 173 for six months.

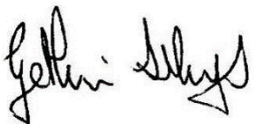
Parch./Revd Gethin Rhys
Swyddog Polisi'r Cynulliad Cenedlaethol / National Assembly Policy Officer

We understand the motivation behind this proposal, but believe that each case should be considered on its merits. A finding against a landlord in one case should not prevent the landlord taking action in a genuine case. This is especially true if the initial finding against the landlord is based on legal technicality rather than on a retaliatory motivation.

If churches feared that they would not have redress in genuine cases to serve a section 173 notice, it is likely to prevent them from offering the property to let in the first instance. In the case of property owned for the use of ministers of religion or church workers, this is likely to conflict with the trustees' property under charity law, as explained on page 2 above. But a reluctance to let in the light of the proposed change would extend to all church-let property, not only housing normally primarily made available to ministers of religion. **This could also increase anti-social behaviour and the policing and social cohesion consequences** of that, as one current effective means of redress for wider society would be removed.

We would be pleased to offer the Committee any further information that it requires on these matters, or to offer oral evidence.

Yr eiddoch yn gywir / Yours faithfully



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Agenda Item 11

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